

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 935/98

Date of Decision: 1/2/99

Shri K.Ramachandran & 23Ors. Petitioner/s

Shri A.I.Bhatkar Advocate for the
Petitioner/s.

v/s.

Union of India & Anr. Respondent/s

Shri V.S.Masurkar Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri D.S.Baweja, Member(A).

- (1) To be referred to the Reporter or not? ~~~~~
- (2) Whether it needs to be circulated to
other Benches of the Tribunal? ~~~~~

abp.


(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6, 4TH FLR, PRESCOT RD, FORT,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO:935/98.

DATED THE 1ST DAY OF FEBRUARY, 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri D.S.Baweja, Member(A).

- | | |
|---|---|
| 1. Shri K.Ramachandran, Sr.AO. | I |
| 2. Shri Y.Venkateswarlu, Sr.AO. | I |
| 3. Shri B.Krishnan, Sr.AO. | I |
| 4. Shri STM Kumar Sr.AO. | X |
| 5. Shri D.Jagannadha Rao, Sr.AO | I |
| 6. Shri K.Subramaniam, Sr.AO | I |
| 7. Shri K.Ramakrishnan, Sr.AO. | I |
| 8. Shri V.Anantharaman, Sr.AO | I |
| 9. Shri T.Sravanan, Sr.AO. | X |
| 10. Shri Janullah Hussain, Sr.AO | X |
| 11. Shri P.V.Subha Rao, CAO | I |
| 12. Shri V.VGR Prasad, CAO | X |
| 13. Shri K.Thiagarajan, Sr.AO | I |
| 14. Smt. Mallika Chidambaram | I |
| W/o. late S.Chidambaram, Sr.AO | X |
| 15. Shri M.Seetaramaswamy, Sr.AO. | X |
| 16. Shri B.S.Appa Rao, Sr.AO. | X |
| 17. Shri K.Ganesan, Sr.AO | X |
| 18. Shri K.Jawahar, Sr.AO | X |
| 19. Shri S.Anthonysamy, Sr.AO. | I |
| 20. Shri M.I.Punnoose, Sr.AO. | I |
| 21. Shri P.M.Venkiteswaran, CAO | X |
| 22. Shri T.V.R.Sarma, CAO Retd.30/11/97 | I |
| 23. Shri S.Raghavendran, CAO, Retd.31/10/97 | I |
| 24. Shri H.V.Ramakrishnaiah, CAO | I |

... Applicants.

C/o. Shri A.I.Bhatkar,
Advocate, 4/13, Mohamed Hussain Chawl,
Opp. Antop Hiss Post Office,
Shaikh Mistry Road,
Wadala (East),
Mumbai - 400 037.

V/s.

1. Union of India through
Secretary, Ministry of Communications,
Department of Telecommunications,
Sanchar Bhavan, New Delhi-110 001.
2. The Chief General Manager,
Mahanagar Telephone Nigam Limited,
Telephone House, Dadar(West),
Mumbai - 400 028.

By Advocate Shri V.S.Masurkar

... Respondents

ORDER

[Per Shri R.G.Vaidyanatha, V.C.]

In this application, the applicants are challenging the legality and validity of the order dated 13/2/98 so far as it applies to the applicants and they also challenge the order dated 30/9/98. Respondents have filed reply opposing the application.

Since the point involved is short and is covered by judgement of Supreme Court and earlier decisions of this Tribunal, we are disposing of this application at the admission stage. We have heard the learned counsels appearing on both sides.

2. The applicants who are 24 in number had filed previous OAs which are OAs 926/93, 927/93, 928/93, 929/93, 930/93, 1019/93, 1326/93, 1328/93, 5/94, 6/94 and 7/94 and by order dated 19/7/94, this Tribunal by common order allowed all applications and directed administration to step up the pay of the applicants ^{at} ~~at~~ ^{their} par with juniors.

Then the administration ^{took} ~~took~~ up the matter in SLP before Supreme Court. All the SLPs came to be dismissed because of inordinate delay., as can be seen from the xerox copy of order itself at page-25 of paper book.

3. The point of dispute between the applicants and administration ^{was} ~~was~~ whether the applicants are entitled to stepping up of pay due to adhoc or officiating promotion. This Tribunal upheld the contention of the applicants and allowed the application ^{and} ~~and~~ the SLP has been dismissed ^{and} ~~and~~ therefore the order of this Tribunal dated 19/7/94 has become final. In pursuance of this order, the administration fixed the pay of the applicants and granted them the benefit.

It appears, subsequently, some other benches of this Tribunal also had granted similar relief in number of OAs. The Government of India took up the matter in appeal before Supreme Court. The Supreme Court in R.Swaminathan's case (JT-1997(8) SC-61) Union of India v/s. R.Swaminathan

allowed all the appeals and held that the Officials are not entitled to stepping up of pay when the junior is getting higher pay because of officiating or adhoc promotion. It appears, in pursuance of this judgement, the administration has now issued the Impugned circular dated 13/2/98 directing all the departments to re-do the exercise and re-fix the pay of the officials and on that basis, now the administration wants to re-fix the pay of the applicants and recover the alleged excess payment made to them. Being aggrieved by that the applicants have approached this Tribunal.

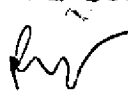
4. The short point for consideration is whether the Government can re-fix the pay of the officials in view of a subsequent judgement of Supreme Court.

As already stated, the order of this Tribunal granting the relief of stepping up of pay has now become final particularly after the SLP has been dismissed. Now whether the Government can undo the same in view of law declared by Supreme Court in a subsequent decision.

5. In R. Swaminathan's case, the Supreme Court has observed that the Government should revise the decision of giving stepping up of pay to other officials on the basis of Tribunal's judgement. The Supreme Court was only considered with those Tribunal's judgement against which the appeals had been filed. In the operative portion of the order, which is at para-17 of the reported judgement the Supreme Court has observed as follows:-

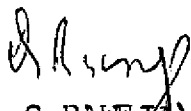
"The appeals are, therefore, allowed and the impugned orders of different Benches of the Central Administrative Tribunal which have held to the contrary are set aside. There will however, be no order as to costs."

From the above we see what the Supreme Court has done is to set aside the Impugned orders of Tribunals which were challenged before the Supreme Court. Supreme Court has ^{nowhere} ~~all~~ granted in all cases ~~xxx~~ observed that/similar reliefs to various officials/stand

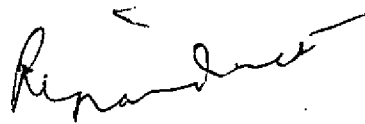


quashed or are liable to be set aside, etc. Infact, some of the officials had approached this Tribunal claiming stepping up of pay on the basis of earlier judgements of this Tribunal. We have rejected many cases in view of law declared by Apex Court. But the subsequent judgement cannot be used to set aside an order which has already become final. Therefore, in our view the Government cannot fix the salary of the applicants since the judgements in their favour have become final and the issue cannot be reopened now.

6. In the result, the application is allowed. The respondents are directed not to fix the salary of the applicants and not to take any steps to recover the amount already paid to them in pursuance of judgement dated 19/7/94 in OA-926/93 and connected cases. We are not saying anything about the Government order ~~regarding~~ ^{regarding} other officials, but so far as the applicants are concerned, the Impugned Government order dated 13/2/98 should not be enforced as against the applicants since their rights have been crystallised by the order of this Tribunal dated 19/7/94. No costs.


(D.S. BAWEJA)
MEMBER (A)

abp.


(R.G. VAIDYANATHA)
VICE CHAIRMAN