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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DECCAN
HYDERABAD

O.A. No. 214 of 1987 198
PXXXN6

DATE OF DECISION 26/10/87

Mr. K. Varaprasada Rao and another Petitioner's

Mr. K.S.R. Anjaneyulu

Advocate for the Petitioner(s)

Versus

The Post Master General, Hyd. Respondent

Mr. K. Jagannatha Rao, C.G.S.C. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.N. JAYASIMHA: VICE CHAIRMAN

The Hon'ble Mr. D. SURYA RAO MEMBER (JUDL)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000


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(DSR)

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ORIGINAL APPLICATION NO.214 of 1987

(JUDGMENT OF THE BENCH)

1. The applicants herein ~~are~~ ^{have} filed this application claiming that they are entitled to be absorbed as regular Postal Assistants in Visakhapatnam Postal Division, in the regular vacancies now available as per their seniority without inducting officials from R.M.S. wing and other Divisions and that they are entitled to payment of salary and emoluments ^() ~~from the date of~~ ^{Then} appointment ~~as~~ ^(as was) paid to regular Postal Assistants.) The applicants state that on 12-3-1983 there was an advertisement calling for applications for the posts of Reserved Postal Assistants, Trained Pool (hereinafter called RTP) in A.P. Eastern Region. It was specifically stated in the advertisement that the selected candidates will be placed in the R.T.P. and will be absorbed as Postal Assistant in the scale of pay of Rs. 260-480 against regular vacancies in the unit of recruitment, ⁱⁿ ~~over~~ a period of five years. The applicants applied for the post and after selection they were appointed as RTP Postal Assistants in June, 1983.

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They were sent for training for a period of 2½ months.

On completion of training they were posted at Visakha-patnam Head Office as Short Duty Postal Assistants pursuant to a letter of 3rd respondent dated 11-1-84.

Though they were fully qualified for absorption and even though regular vacancies arose in the normal course in the division, they have not been absorbed as regular postal assistants. In fact regular vacancies exist even now ⁱⁿ to which the applicants can be absorbed.

The applicants though termed as Short Duty Postal Assistants are performing the same work as that of regular Postal Assistants. Initially they were appointed on hourly basis of Rs.2/- per hour which was revised from time to time. Regular Postal Assistants, on the other hand, ^{are} kept paid nearly Rs.1,500/- per month with other facilities for doing the same work. The applicants are thus denied the right of "Equal Pay for Equal Work" and are being discriminated. It is stated that the action of the respondents in not absorbing them as regular Postal

Assistants on a regular time scale with upward revision is arbitrary and discriminatory. The applicants state that there are 18 vacancies of regular Postal Assistants available in the division. Any ban orders issued by the Government will not be applicable in regard to filling ~~of~~ of these vacancies. The Director General of Posts, New Delhi by a letter dt. 25-5-1985 circulated by Post Master General, Andhra Circle by his letter dt. 27-6-1985 made it abundantly clear that R.T.P. candidates will be given due consideration for absorption in regular vacancies or additional vacancies which will arose in the normal course. The applicants were, therefore, hopeful that they would be absorbed in the regular vacancies. It was made clear as per the P & T Directorate, New Delhi, letter No. 2-1/84 Fine dated 19-7-1984/6-8-1984 that the ban imposed by the Ministry of Finance in filling up of vacancies will not apply to cases where advance recruitment action has been taken. Despite this, the applicants are not being absorbed in regular vacancies. The respondents are trying to induct

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officials from the RMS unit to fill up the vacancies by transfer under Rule 38 pursuant to the Post Master General Andhra Circle's letter No. STA/21-65/86-1 dated 29-1-1987. This action of the respondents to bring the RMS unit officials is in gross violation of rules offending article 14 and 16 of the Constitution of India, since the applicants are entitled to be absorbed in the regular vacancies according to their seniority and none from the other division should be inducted. The applicants, therefore, seek a declaration that the action of the respondents to fill up the regular posts of Postal Assistants in Visakhapatnam Division by officials from RMS Wing is arbitrary and unjustifiable. Besides seeking absorption as regular Postal Assistants as per their seniority they are seeking payment of emoluments from the date ^{initial} ~~of appointment as being received by the Postal~~ Assistants.

2. On behalf of the respondents a counter has been filed admitting that the applicants were recruited to the Reserved Trained Pool along with 20 others. It is

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stated that it was made clear in the advertisement that they will be absorbed within a period of five years and that they will be required to work as short-duty clerks till such time they are absorbed.

It is admitted that the applicants have completed training and that they were posted as Short-duty Postal Assistants. Their services are being utilised in leave vacancies of regular staff. It is stated that they were initially paid at Rs. 2/- per hour and the hourly rate has since been revised to Rs. 5.75 per hour pursuant to the letter No. 66-39/86.SPB-I

dated 2-12-1986 of the Director General Posts New Delhi. This is in accordance with the orders of the Supreme Court dated 28-7-86 in W.Ps.No.11764/85 and 570/86. This enhanced rate is based on the revised scale of pay, dearness allowance, HRA and CCA as recommended by the IVth Pay Commission. The enhanced

rate covers ~~the~~ lunch break also. In these circumstances, it is stated that it cannot be said that the applicants are denied pay on the principle of 'Equal pay for Equal Work'. It is stated that the Department is passing through

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a critical ^{moment} movement on account of certain commitments like re-organisations of the set-up of Railway Mail Service which resulted in Surplus of a number of posts being rendered surplus, under Groups 'C' and Group 'D' Posts; introduction of the Time-bound promotion scheme with effect from 1-11-83 resulting in abolishing of 15% of posts in supervisory cadre and 5% posts in the operative cadres.

It is further stated that as a consequence of abolition of the wireless licencing system with effect from 1-4-1985, 142 posts of Postal Assistants and others were abolished. Consequently, the Government of India has imposed restrictions on creation of new posts with effect from 2-1-1984. The cumulative effect of all these resulted in delay in absorption of the RTP employees in regular posts. It is also stated that the instructions issued by the Post Master General, Andhra Pradesh circle dt. 29-1-1987 is in accordance with the policy guidelines issued by the Director General of Posts, New Delhi, dt. 5-12-86. The said policy guidelines are applicable throughout the country.

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3. We have heard the arguments of the learned Counsel for the applicant Shri K.S.R.Anjaneyulu, and learned Standing Counsel for the Central Government Shri Parameshwar Rao on behalf of Shri K.Jagan-natha Rao.

4. The main argument advanced by the learned counsel for the applicant is that the Jabalpur Bench of the Central Administrative Tribunal has allowed an application filed by similarly placed RTP employees in Madhya Pradesh Circle and this judgment has become final since no appeal has been filed against this judgment by the Department in the Supreme Court. It is contended that there cannot be a different policy for different regions in regard to RTP employees. Shri Parameshwar Rao argued that the RTP candidates had filed a Writ Petition before the Supreme Court and the Supreme Court did not consider the regular absorption of the employees but only passed an order in regard to payment of wages. The Supreme Court order has therefore become final in regard to the wages and the applicants cannot agitate for payment of salary on

monthly basis. We have considered these contentions.

It would be necessary to extract the relevant points ~~portions~~ from the Judgment of the Supreme Court in Writ Petition Nos. 11764/85 and 570/1986. The applicant therein ~~which~~ is the National Federation of P & T employees and had ~~had raised and taken up~~ ^{pvt. forth} the following prayer in regard to the RTP employees:

" In the above premises, the petitioners most respectfully pray that this Hon'ble Court be pleased to issue a writ of certiorari/ mandamus or any other appropriate writ/order/ direction:-

- a) Striking down and setting aside the orders and instructions issued by the respondents imposing a ban on recruitment which are taken to be orders preventing the regularisation of the employment of the RTP employees in the departments;
- b) Striking down and setting aside any decision taken by the respondents against the regularisation of the RTP employees' appointment and service and for the adjustment of surplus staff in existing/future vacancies;
- c) Directing the respondents to regularise the appointment/service of all RTP employees who have completed six months' service and to treat their service as regular from the date of their appointment and to give them all consequential and due benefits;
- d) Directing the respondents to grant the RTP employees the same pay-scales, allowances including Dearness Allowance, CCA, HRA and other ~~ems~~ allowances etc., effecting from the date of their appointment.
- e) xx xx xx

The Supreme Court has passed the following orders:

" We have heard learned Counsel for the parties. We are of the view that the order passed by the Court on 1-5-1986 (By Hon'ble CJI, Khalid J and M.M.Dutt J) in this Petition shall be the final order in this case. The wages shall be paid in accordance with the terms contained in that order. We, however, make it clear that if the Dearness Allowance and other allowances are varied hereafter the workers concerned shall get D.A. and allowances accordingly subject to the limit that the total emoluments would not exceed the salary of regularly appointed Telephone Operators. Both these Petitions are disposed of accordingly. If the Petitioners have any other grievance they are at liberty to agitate. This order will apply to all RTPA employees who are similarly situated."

5. The Jabalpur Bench of the Central Administrative Tribunal, after considering the issues raised before them passed the following orders:

"We direct that:

(a) Government shall review their policy to stop recruitment/absorption of persons against regular Postal Assistants.

(b) No person shall be inducted from other Departments like Railway Mail Service and Telecommunication Department to man posts of Postal Assistants until the petitioners are absorbed against regular posts.

(c) No fresh persons be taken and recruited against the R.T.P. (Reserved Trained Pool). Until the Government reviews their policy as under (a) above the operation of the circular dt. 31-10-1980 (Annexure R1) in regard to recruitment of fresh persons to RTP other than petitioners is struck down in exercise of this Tribunal's writ jurisdiction.

(d) The absorption of the petitioners against regular posts will be so phased on the basis of para 2 of circular of 30-10-1980, as if no restriction had been imposed on their regular recruitment/absorption earlier and shall be completed within a reasonable period from the date of this order, if necessary by creating supernumerary posts, and subject to screening of the unfit by a especially constituted Screening Committee to examine their record and performance. The Screening Committee shall also keep in view their seniority in the RTP."

6. The R.T.P. employees in the Punjab Circle also agitated the matter before the Chandigarh Bench of the Central Administrative Tribunal, and the Chandigarh Bench directed as follows:

" Notice to the respondents was issued. The learned Counsel for the respondents has stated at the Bar that the applicants are being paid at the rate of Rs.4.90 per hour in view of the judgment of the Supreme Court of India. In view of this, we find that the application so far it relates to relief No.1 has become infructuous. The learned Counsel further stated that services of the applicants shall be made regular on the availability of vacancies. No further recruitment will be made till the applicants are absorbed permanently. The only grievance of the applicants now remains is that whether they are entitled to the salary which is being paid to a regular Postal Assistant.

We find that the matter involved in the present application is entirely covered by the judgment delivered by Jabalpur Bench of the Tribunal in TA No.82/1986 titled as All India Postal Employees Vs. Union of India."

P12
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7. We are in agreement with the conclusion arrived at by the Chandigarh Bench in OTA No. 262 of 1986 dt. 29-4-1987 (Binder Ram and others Vs. Union of India and others) which has been extracted in para 6 supra, and accordingly direct that the applicants' wages shall be regulated as per the directions of the Supreme Court from time to time in accordance with the revisions of salary for the regular Postal Assistants. The other reliefs are entirely covered by the judgment delivered by the Jabalpur Bench in T.A. No. 82 of 1986 dt. 16th December, 1986 (All India Postal Employees vs. Union of India) which has been extracted in para 5 supra and the reliefs given thereon will also apply to the applicants herein.

8. With these directions, the application of the applicants is ALLOWED. In the circumstances, there will be no order as to costs.

B.N.Jayasimha
(B.N.JAYASIMHA)
VICE CHAIRMAN

D.S.Rao
(D.SURYA RAO)
MEMBER (JUDL)

DT. 26¹⁸ October, 1987.

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