

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::
AT HYDERABAD.

O.A.No.600/89.

Date of Judgment: 16 Jan 87

Between:

1. P.Bala Nageswara Rao
2. P. Surya Rao ..

Applicants

And

1. Sub-Divisional Officer, Telecommunications, Narsipatnam, Visakapatnam-531 116.
2. Chief General Manager, Telecommunications, A.P.Circle, Hyderabad-500 001.

.. .. Respondents

For the Applicants : Shri P.B. Vijaya Kumar, Advocate.

For the Respondents : Shri Naram Bhaskara Rao, Addl. Standing Counsel for Central Govt.

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN.)

HON'BLE SHRI C.J. ROY, MEMBER (JUDL.)

X JUDGMENT OF THE BENCH AS PER HON'BLE SHRI C.J. ROY, MEMBER (J) X

.....

This is an application filed under sec.19 of the Administrative Tribunals Act, 1985 praying for a direction to the respondents to extend the benefits as granted in T.A.No.21/87 (W.P.No.12057/84) dated 16-10-1987 to the applicants also by declaring the order of retrenchment void with all consequential benefits.

2. The applicants state that they had applied for the post of Telephone Operators in regular vacancies in Telegraph Department in response to an advertisement in Newspaper.

.....2.

In pursuance thereto, by proceedings dt. 10.10.1980 issued by the Sub-Divisional Officer, Telecommunications, Anakapalli, the applicants were informed that they were selected for short duty telephone operators training for one week and that they would be selected as short duty telephone operators after undergoing the said training. The applicants were appointed as short-duty telephone operators in Narsipatnam Exchange and had worked for one year 7 months. The applicants averred that they ought to have been appointed as Regular Telephone Operators after completion of 120 days of service as short duty telephone operators as per rules, but instead they were kept out of employment with effect from 16-5-1982 by the 1st respondent without any reasons or notice, including the persons appointed along with the applicants. The applicants state that the other ~~candidates~~ had filed a Writ Petition bearing No.12057/84 on the file of the Hon'ble High Court of A.P. and the same was transferred to this Hon'ble Tribunal subsequently which was allowed and they were taken to ~~duty~~. The applicants state that ~~they~~ all along they were representing in the matter and even subsequent pronouncement of the Judgment by the Hon'ble ~~Court~~ ^{But} Tribunal, ~~but~~ the representation dt. 21-9-1988 submitted by the applicants was negatived. The applicants further allege that the respondents by order dt. 28-9-1983 had absorbed all short duty telephone operators as regular telephone operators and though the applicants are similarly placed their services were not regularised as regular telephone operators and hence filed this O.A.

3. The respondents filed counter affidavit on their behalf stating that the names of the applicants who apply for the posts in response to the advertisement are placed

M

...3.

according to their merit in their educational qualifications and that 2 to 4 candidates for one post will be called for aptitude test. The candidates who pass the above test will be placed in 'A' list upto the available number of vacancies and that they will be appointed after training. The respondents state that a 'B' list will also be prepared to the extent of 50% of 'A' list keeping in view the drop-outs for utilisation of their services as short duty telephone operators on daily wage basis. They state that these Short Duty Telephone Operators will be appointed as Telephone Operators after completion of prescribed number of days. The respondents allege that the applicants herein did not come up either in 'A' list or in 'B' list.

4. The respondents further alleged that the applicants were engaged on casual basis and were paid on hourly rate basis, to tideover the shortage of Telephone Operators during 1980-81 and 1981-82 after short training. It is also further averred that the attendance of regular Telephone operators gradually improved and therefore the services of the applicants were disengaged from 16-5-1982. The respondents also alleged that the applicants were disengaged from 16-5-1982 and therefore hit by Limitation provided under the Act, and desired the application be dismissed.

5. The applicants filed annexures along with the application viz. Selection Memo dt. 10.10.1980, Service Certificates issued by respondents dt. 1-9-82, 31-10-88, and 1-9-1982, Representations of the applicant dt. 21-9-88, 4.12.1987, Order issued by Respondent No.2 dt. 8-6-1989, Circular dt. 13-3-1972 issued by the Director General of Respondents organisation.

6. We heard Shri P.B.Vijaya Kumar, learned counsel for the applicant and Shri Naram Bhaskara Rao, learned counsel for respondents and perused the records carefully.

7. The questions that arose for determination are;

(i) whether the application is hit by the provisions of Limitation? and (ii) whether the applicants are entitled to the reliefs prayed for?

8. It can be seen that the applicants had been representing the respondents subsequent to their disengagement including representation dated 21-9-1988. In pursuance thereto, the respondents acted on the said representation and rejected the claim of applicants for regular absorption as Telephone Operators. The learned counsel for applicants contend that the application is not hit by limitation as the final order passed by the respondents is dt. 8-6-1989. In support of his contentions, the learned counsel cited a Judgment reported in ATR 1988(1) (CAT, PRINCIPAL BENCH) B. Kumar Vs. Union of India and others, wherein Their Lordships held in para-12 (page-8) that -

"regarding limitation, while it is true that limitation is to run from the date of rejection of a representation, the same will not hold good where the department concerned chooses to entertain a further representation and considers the same on merits before disposing of the same. Since it is, in any case, open to the Department concerned to consider a matter at any stage and redress the grievance or grant the relief, even though earlier representations have been rejected, it would be inequitable and unfair to dismiss an application on the ground of limitation with reference to the date of earlier rejection where the concerned Department has itself chosen, may be at a higher level to entertain and examine the matter afresh on merits and rejected it."

In the said Judgment (page-2) Their Lordships observed -

"As regards delay and latches this would be relevant in case of petitions under Articles 226 & 227 of the Constitution of India where no limitation is prescribed; but where the admissibility of the application u/s. 19 of the Administrative Tribunal Act is specifically regulated on the question of limitation by the provisions of Sec.20 & 21 of the Act, the matter has to be considered only with reference to the express provisions and the scheme of the Act."

9. In view of the observations supra, we have no hesitation to hold that the application is within the meaning of Sec.20 & 21 of the Act, as the respondents entertained the representation of the applicants dt. 21-9-1988 and passed orders dt. 8.6.1989 bearing No.TA/STB/2-21/II which amounts to final disposal of the matter. The applicants also approached the Tribunal within two months thereafter. Therefore, the application is not hit by the provisions of Sec. 21 of the Administrative Tribunals Act, 1985.

10. The second point to be considered is, whether the applicants herein are similar to that of petitioners in T.A.No.21/87 (W.P.No.12057/84) which was allowed by this Tribunal on 16.10.1987, and are entitled for the reliefs prayed for. It can be seen that the applicants alleged that they are similarly placed persons and respondents have not opposed the same. While allowing the said T.A. this Bench of the Tribunal observed that -

"We are unable to agree with the contention of the respondents that the applicants were selected on casual basis different from the others who were selected along with them and included in the 'B' list. It is not open to the respondents now to say that they are to be treated differently from those included in the 'B' list."

In view of the said observation of the Tribunal, since the applicants herein are also similarly placed, we direct that

the applicants be treated on par with the 'B' List candidates who were selected and appointed in pursuant to the advertisement and vide orders issued on 10-10-1980 by the Sub-Divisional Officer, Telecom, Anakapalli, Visakapatnam. There will be no order as to costs.

R. Balasubramanian

(R. Balasubramanian)
Member (A)

(C.J. Roy)
Member (J)

Dated:

29th January 82

8/1/92
Deputy Registrar (J)

grh.

To

1. The Sub-Divisional Officer,
Telecommunications, Narsipatnam,
Visakhapatnam- 531 116.
2. The Chief General Manager, Telecommunications,
A.P. Circle, Hyderabad-1.
3. One copy to Mr.P.B.Vijayakumar, Advocate
1-8-7/13, Chikkadapally, Hyderabad.
4. One copy to Mr. N.Bhaskar Rao, Addl. CGSC. CAT.Hyd.
5. One spare copy.
6. ~~one copy to D.R(J)~~

pvm.

6/1/92