

(41)

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 971/89.

Date of Decision : 23-12-91

-T.A.No:-

S.Ganapathi Rao & 34 others

Petitioner.

Shri T.Jayant

Advocate for the
petitioner (s)

Versus

Union of India, rep. by the Secretary,
Min. of Defence, New Delhi & 2 others

Respondent.

Shri N.V.Ramana, Addl. CGSC

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. R.Balasubramanian : Member(A)

THE HON'BLE MR. T.Chandrasekhar Reddy : Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal? No
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HRBS
M(A).

T.C.R.
HTCSR
M(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.971/89.

Date of Judgment 23-12-91

1. S.Ganapathi Rao
2. M.Ramamohan Rao
3. Smt. R.Lakshmi
4. N.N.R.Reddy
5. B.M.B.Sagar
6. Smt. PVI Jayakumari
7. A.Babjee Rao
8. Smt. D.Shanthy
9. M.Trimurthulu
10. A.P.Mani
11. Smt. S.Rama Devi
12. Smt. K.Sujatha
13. Kum. P.N.Radha
14. P.M.Deva Raju
15. B.V.Ramana
16. S.Veeri Naidu
17. Smt. V.Jaya Mary
18. Smt. B.Swarnalatha
19. D.Prasada Rao
20. V.V.Narasimha Rao
21. R.V.Rao
22. Smt. P.Lavanya Kumari
23. P.Kameswara Rao
24. P.Ananda Kumar
25. P.Nooka Raju
26. Kum. MKV. Indira Devi
27. P.Rama Rao
28. Smt. P.Usha Rani
29. K.V.Srinivasa Rao
30. Smt. A.Vijaya Lakshmi
31. Kum. B.V.Ratnam
32. M.Babuji Rao
33. Kum. C.Benjamin
34. Smt. K.Ammaji
35. Smt. M.Rajani Rani .. Applicants

Vs.

1. Union of India,
rep. by the Secretary,
Min. of Defence,
New Delhi.
2. Chief of Naval Staff,
Naval Headquarters,
New Delhi-1.
3. Flag Officer Commanding-in-chief,
Headquarters,
Eastern Naval Command,
Visakhapatnam-14. .. Respondents

Counsel for the Applicants : Shri T.Jayant

Counsel for the Respondents : Shri N.V.Ramana, Addl. CGSC

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri T.Chandrasekhar Reddy : Member(J)

I Judgment as per Hon'ble Shri R.Balasubramanian,
Member(A) I

This application has been filed by Shri S.Ganapathi Rao and 34 others under section 19 of the Administrative Tribunals Act, 1985 against the Union of India, rep. by the Secretary, Min. of Defence, New Delhi and 2 others with a prayer

(a) to declare the impugned order of the respondents dated 29.6.79 quoting SRO-182 dated 29.6.79 as illegal.

(b) to restore them to the scale of Rs.260-480 with an annual increment of Rs.8/- p.m. instead of the scale allotted to them viz: Rs.260-400 with an annual increment of Rs.6/- p.m. from October, 1982.

2. The applicants were appointed as Telephone Operators on various dates in the years 1980 to 1985. Those who were appointed in the years 1980, 1981 and 1982 were granted the scale Rs.260-480 with an annual increment of Rs.8/- p.m. and those who were appointed thereafter were granted the scale Rs.260-400 with an annual increment of Rs.6/- p.m. While so, in October, 1982 in the case of Telephone Operators who were granted an annual increment of Rs.8/- p.m. in the pay scale of Rs.260-480 with the annual increment of Rs.8/-p.m. was reduced to Rs.6/- p.m. and the said overpayment was recovered from them. In the case of those who were appointed in the year 1982 and thereafter there was naturally no recovery since they were placed in the lower scale from the date of appointment itself. The applicants had been representing against this pointing out that in the case of Shri B.J.Manasane, Telephone Operator, such a downward change in the scale had not been effected. By his reply dated 23.6.89 the 3rd respondent rejected the representations made by the applicants. Hence, their application with this prayer.

3. The respondents have filed a counter affidavit and oppose the application. It is admitted that some of the applicants who were appointed in 1980, 1981 and 1982 were placed in the scale Rs.260-480 with an annual increment of Rs.8/- p.m. It is contended that this placement was erroneous much earlier to the appointment of these applicants even SRO-182 dated 29.6.79^{W.R.D} notified and published on 14.7.79^{in Gazette}. In the said notification the scale prescribed for Telephone Operator Grade-II was only Rs.260-400 with an annual increment of Rs.6/- p.m. When this oversight was noticed, they ordered the recovery. In the case of Shri B.J.Manasane also they had subsequently decided to place him in the scale of Rs.260-400 with an increment of Rs.6/- p.m. only because he was also appointed only in 1980 long after the gazette publication.

4. We have examined the case and heard the learned counsel for the applicants and the respondents. The questions to be decided are:

- (a) whether the case is attracted by limitation.
- (b) whether the placement of the applicants in the Rs.260-400 scale after their initial placement in the Rs.260-480 scale was correct or not.

5. As regards limitation, the cause of action arose in ~~October~~ year 1982 and a strict view would make it clear that being a pre-1.11.82 case it is beyond the jurisdiction of this Tribunal. However, cases of this nature ~~are recurring~~ have the effect now every month. When the applicants think receive less what they think is due to them they have a grievance. In order to give life to the cases and also to observe the clause in the sections of limitation in the Act, we would take that the cause of action can be deemed to have arisen on 14.12.88 i.e., one year before the date of presentation of this O.A. on 14.12.89. The main ground raised by applicants is that there cannot be two classes of Telephone Operators Grade-II viz: those appointed prior to 29.6.79 and those appointed after 29.6.79. This would violate

(b)

V.P

23/10/94

the provisions of Articles 14 and 16 of the Constitution, more so when similar Operators in the Posts & Telegraphs Department are placed in the scale of Rs.260-480. The respondents contend that the revision of the new scale was a sequel to the III Pay Commission Recommendations. It is seen that from 1.1.73, two scales Rs.110-180 and Rs.110-225 were merged into one ~~Rs.~~ Rs.260-400 whereas the scale of Rs.110-240 was replaced by the scale Rs.260-480. It is also shown in the enclosure to the letter dated 4.4.77 issued by the Govt. of India, Ministry of Defence that all employees initially appointed as Telephone Operators Grade-II on or after 1.1.73 are entitled only to the scale Rs.260-400. It is contended that the initial placement of the applicants in the scale Rs.260-480 was done by oversight.

6. We shall now see the legality or otherwise of the gazette notification. The learned counsel for the applicants drew our attention to a judgment dated 27.12.89 of this Bench in O.A.No.541/88. In that O.A. a discrimination ~~was~~ made between two sets of promotees - those promoted prior to 22.7.82 and those promoted after 22.7.82. It was this discrimination that was struck down. What is to be borne in mind in ~~this~~ ^{that} case is that people in a certain cadre ~~expected~~ ^{could logically expect} that when they are promoted they ~~were~~ ^{pre determined} should be placed in a ~~proper~~ ^{proper} scale. When promoted they ~~were~~ cannot be placed in two different scales depending upon the date of promotion. That is where the illegal discrimination crept in and this Bench struck down that discrimination. The case before us is altogether different. When the applicants were appointed they were to be appointed according to a statutory recruitment rule. In this case, the recruitment rule in force at that time was the one dated 29.6.79 ^{which had come} coming into effect from the date of publication in the gazette ~~viz:~~ viz: 14.7.79. According to that

7.3

Copy to:-

1. Secretary, Ministry of Defence, Union of India, New Delhi.
2. Chief Naval Staff, Naval Headquarters, New Delhi-1.
3. Flag Officer Commanding-in-Chief Headquarters, Eastern Naval Command, Visakhapatnam-14.
4. One copy to Shri. T.Jayant, 17-35B, Srinagar colony, Gaddiannaram, P&T Colony, Hyderabad.
5. One copy to Shri. N.V.Ramana, Addl.CGSC CAT, Hyd.
6. One ~~copy~~ spare copy.

Rsm/-

10/10/2021
10/10/2021

- 5 -

statutory notification the scale laid down for Telephone Operators Grade-II was only Rs.260-400. The Government has the powers to change/scales of pay from time to time. If they do not have the powers to change the scales of pay how else can Pay Commission Recommendations be implemented. What is to be ensured is that a person recruited is placed in the appropriate scale in accordance with the recruitment rule in force on that date. If they were the applicants who were appointed after the publication of the notification they should only have been placed in the scale Rs.260-400. After entering service in accordance with this recruitment rule they cannot claim a higher scale simply on account of their initial placement in a higher scale by oversight on the part of the respondents. We have no reason whatsoever to strike down the notification which is well within the competence of the respondents and where there is no discrimination among the same class of people.

7. The recoveries made in this case are also within a reasonable time. This Tribunal had held in some cases that where recoveries are made as long as 10 to 15 years after the event such recoveries are unjustified but in the case before us the recoveries have all been made within a short time of less than two years of the error having been noticed.

8. In view of the above, we find no reason to interfere and we accordingly dismiss the application with no order as to costs.

R.Balasubramanian

(R.Balasubramanian)
Member(A).

Dated 23rd December, 1991.

T. Chandrasekhar Reddy

(T.Chandrasekhar Reddy)
Member(J).

831/291
Dy. Registration (JUL.)

Donec P.P.M. 30/1/91 O. A. 971/89.

(b)

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

:V.C

AND

THE HON'BLE MR.

M(J)

AND

THE HON'BLE MR. R. BALASURRAMANTAN M(A)

AND

THE HON'BLE MR. T Chandra Sekhar Reddy M(J)

DATED: 23/2/1991

ORDER/JUDGMENT: ✓

M.A./R.A./C.A. No.

O.A.No.

in-
971/89

T.A.No.

Admitted and Interim directions
Issued.

Allowd.

Disposed of with directions

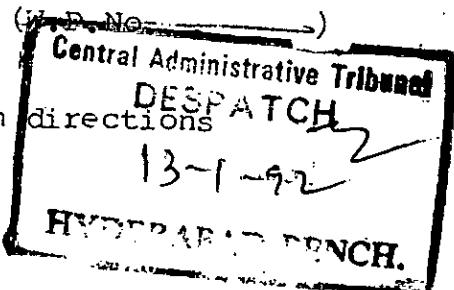
Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

M.A.Ordered/Rejected

✓ order as to costs.



pvm

23/2/91
S. J. Reddy