

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

AT HYDERABAD

O.A.NO.338 OF 1990

Date of Order 9th January, 1992

BETWEEN

Mr. G. Prakasa Rao

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Applicant

AND

Union of India represented by:

1. Chairman, Telecom Commission,
New Delhi

2. The Chief General Manager,
Telecom, Hyderabad 3.

3. The Deputy General Manager,
Telecommunications, Vijayawada

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Respondents

COUNSEL FOR THE APPLICANT :: Mr K.S.R. Anjaneyulu

COUNSEL FOR THE RESPONDENTS : Mr N. Bhaskar Rao, ACGSC

CORAM:

HON'BLE ~~MR.~~ T. CHANDRASEKHAR REDDY, MEMBER (JUDICIAL)

T. Chandrasekhar Reddy

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ORDER OF THE SINGLE MEMBER BENCH DELIVERED BY
THE HON'BLE SHRI T. CHANDRASEKHAR REDDY, MEMBER (JUDICIAL)

This is an application filed under Section 19 of the Administrative Tribunals Act. by the applicant to declare the order of the Directorate that had been communicated to the applicant with the date 21/10/88 (Annexure 13) stating that the pay fixation of the applicant cannot be fixed with reference to his pay as LSG Monitor as arbitrary, untenable in law and further to direct the respondents to fix the pay of the applicant with reference to his pay as LSG Monitor as was drawn on the day of promotion and appointment as Phones Inspector and also to refund the amount already recovered from the applicant after reverting him to the post of Telephone Operator.

The facts giving rise to this application in brief are as follows:

1. The applicant was initially appointed as Tele-phone Operator in the year 1957. Thereafter, he was promoted to the cadre of LSG Monitor in the pay scale of Rs. 425-640/- as per the proceedings of the General Manager Letter dated 19.10.74, w.e.f. 1.6.74. The pay of the applicant in the post of LSG Monitor was fixed at Rs. 425/-.

While the applicant was working as Operator and before his promotion as LSG Monitor, the applicant appeared for the Phones Inspector examination and he was declared successful in the said examination

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for the Phones Inspector on 7.8.74. Thereafter, the applicant was sent for training as Phones Inspector w.e.f. 22.11.74. While the applicant was undergoing training the applicant gave an option on 6.8.75 for retention in his parent cadre i.e. LSG Monitor cum Operator. This option was rejected by the Competent Authority as per the proceedings dated 1/12/75 on the ground, that the said option was exercised by the applicant at a belated stage.

2. It is the case of the applicant that he is entitled for pay protection and that, he is liable to be paid the same pay as he was paid in the post of LSG Monitor even though the applicant is working as Phones Inspector.

3. As the competent authority refused to pay to the applicant, the same pay and allowances which the applicant had drawn as LSG Monitor, while the applicant is working as Phones Inspector, the present application is filed by the applicant for the reliefs indicated above.

Counter is filed by the Respondents opposing the said application.

4. A few more facts may be stated for determining the question in controversy.

5. We have already stated that the applicant herein subsequent to his promotion as LSG Monitor, underwent Phones Inspector Training and on successful completion of training, the applicant was appointed as Phones Inspector on 17.10.75 in the pay scale of Rs.380-560/-. The applicant during his training as Phones Inspector was paid the pay and allowances in the Telephones cadre as per rules.

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6. Consequent to the applicant's promotion as Phones Inspector, the pay of the applicant had been fixed at Rs.416 on 17.10.1975 taking into account the substantial pay of Rs.396/- in the Telephone Operator's cadre. The above pay of the applicant was fixed under FR 22c and further, it was revised and fixed at Rs.440/- in Phones Inspector cadre with reference to his LSG Pay of Rs.440/- under FR22(a)(ii) as per the proceedings dated 17.6.1983 of the Directorate letter.

7. The post of Phones Inspector, which the applicant at present working is an intermediary post in between the post of Telephone Operator which is a lower one and that of LSG Monitor which is a higher one. The scale of pay for the post of LSG Monitor is higher than the post of Phones Inspector. The claim of the applicant is, as he had worked for some time as LSG, he is entitled to be paid the same salary in the present post as Phones Inspector also.

8. Absolutely, no material is placed before us to show that the applicant had been appointed on a regular basis in the said post of LSG Monitor. It is needless to mention that except in cases of substantive appointments to permanent posts and appointments to temporary posts for specified periods, the appointment to a post permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the Government servant so appointed NO RIGHT to the post and his services may be terminated unless his services had ripened into a right under the relevant service rule.

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9. Absolutely, there is no material before us to show that the applicant had acquired any right to continue in the said post of LSG Monitor. There is also no material before us to show that the applicant had obtained any lien for the said post of LSG Monitor in which post he had worked for short duration. As the applicant is claiming pay and allowances in the present post as payable in the post of LSG Monitor (which is higher post than the post of Telephone Inspector), the burden is heavily cast on the applicant to show that he had a lien on the said post of LSG Monitor.

10. Absolutely there is no material to show that the applicant has worked for such period in the said post of LSG as to acquire "ANY RIGHT OF LIEN" for the said post of LSG Monitor.

11. As no material is placed before us to show whether the appointment of the applicant as LSG Monitor was on temporary basis or on adhoc basis, we have to infer in the circumstances of the case that the said appointment of the applicant - on promotion from the post of Telephone Operator to that of LSG Monitor might have been on adhoc basis. So far valid reasons, the respondents had a right to revert the applicant to the lower post of Telephone Inspector from the post of LSG Monitor as the applicant was qualified to the appointment of Telephone Operator and he had also undergone training as Telephone Operator. As already pointed out, the applicant had been appointed as Telephone Inspector after reversion from LSG Monitor

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as clearly as in 1975. But the applicant had not at all questioned in any court or tribunal the proceedings reverting him from the LSG Monitor. So that being the position, we are unable to understand how it is open now to the applicant to question any of the actions of the respondents in fixing the pay of the applicant in the post of Telephone Inspector in which post the applicant is working. So that being the position, the applicant is not entitled to any of the reliefs prayed for by him.

12. The applicant strongly relied on the decision reported in 1990(2) CSEJ CAT Page 97 (K.S. Joseph and others Vs. Union of India and others).

13. We have gone through the said decision and we are very clear that the said decision does not apply to the facts of this case, as the facts of the above said case are completely different from the facts of the present case.

14. As a matter of fact in the said decision in para 4 of the Judgement, it is observed:

"It is not disputed that while undergoing the said training, the lien of the applicants in the post of Technician was continuing and they were allowed only the pay in the grade of technicians. In view of FR 12A, the Govt. servant who holds a substantive appointment on a permanent post acquires a lien on the post and only on acquisition of such lien, he will cease to hold the lien previously acquired on any other post".

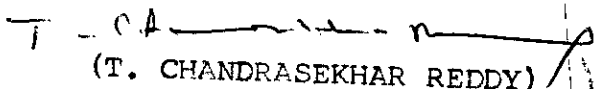
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As already pointed out by us, the applicant has not acquired any lien for the post of LSG Monitor. So the said observations in the said decision as a matter of fact, cut at the very root of the case of the applicant.

We see no merits in this application and hence, this application is liable to be dismissed and we accordingly dismiss the same. In the circumstances of the case, we direct the parties to bear their own costs.


(T. CHANDRASEKHAR REDDY)
Member (Judicial)

Dt. 9 Jan., 1992


Deputy Registrar(J)

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To

1. The Chairman, Union of India,
Telecom Commission, New Delhi.
2. The Chief General Manager, Telecom, Hyderabad-3.
3. The Deputy General Manager Telecommunications, vijayawada.
4. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT.Hyd.Bench.
5. One copy to Mr. N.Bhaskar Rao, Addl. CGSC.
6. One spare copy.

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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. BALASUBRAMANIAN: M(A)

AND

THE HON'BLE MR. T. Chandrasekhari: M(J)

DATED: 9 - 1 - 1992

ORDER/JUDGMENT:

M.A./P.A./C.A. No.

in

O.A. No. 338/90

T.A. No.

(W.P. No.)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

M.A. Ordered/Rejected

No order as to costs.

