

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

OA 972/90.

Dt. of Decision: 28-10-93.

1. G.Ch.Pichaiah
2. S.Nageswara Rao
3. L.Krishna Rao
4. N.Ramachandra Rao

....Applicants

Vs.

1. The Divisional Engineer (Admn. & Planning),
O/o the T.O.M. Guntur - 522 050.
2. The Chief General Manager, Telecom,
A.P., Hyderabad - 500 001.
3. Union of India, rep. by its Secretary,
Department of Telecom, Sanchay Bhavan,
New Delhi - 110 001.

....Respondents

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Counsel for the Applicants : Shri L.Venkateswarlu.Posani

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

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CORAM:

THE HON'BLE JUSTICE SHRI V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN)

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R.YJ

JUDGMENT

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard the learned Counsel for the applicants ~~and~~ Shri P.Venkateswarlu and the learned Standing counsel for the respondents, Shri N.V.Ramana. When these four applicants were working as Linemen, they were considered for promotion to the posts of Telephone Operators in 1982. These applicants were given first four rankings and S/Shri P.Malayadri, L.Muralimohan Rao, N.Biskhalu and G.Suresh were given the rankings 5 to 8 respectively in Guntur Division. It was then ~~found~~ felt that there were four vacancies in the posts of Telephone Operators, and hence these four applicants were sent for pre-promotional training on 4.8.1982. and they completed their training on 30.10.1982. On the same day, the applicants were informed that there were no vacancies in the posts of Telephone Operators in their Division and hence they were asked to report to the concerned authority for continuing as Linemen and the applicants had accordingly reported.

2. Shri P.Malayadri and the other three Linemen who were given rankings below the applicants were sent for training on 17.8.1982 and they completed their training on 16.11.1982. Then, those four were required to ~~opt~~ for other Divisions, as the rules envisage, that if there are any surplus qualified in any Division, they were required to opt for other Divisions where there are no sufficient number of qualified employees. Accordingly, Shri P.Malayadri and the three others opted for other divisions and they were appointed as Telephone Operators on 19.11.1982. The first two applicants herein were promoted as Telephone Operators on 29.5.1986 in the next available

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vacancies in Guntur Division and the other two applicants were promoted as Telephone Operators in that Division on 30.5.1986. Shri Malayadri and three others who were promoted on 19.11.1982 were transferred to Guntur Division from 1988 onwards. As their transfer is at their request, they were given bottom seniority and hence they were shown as juniors to the applicants in the seniority list of Telephone Operators in Guntur Division.

3. This OA was filed praying for a direction to the respondents to appoint the applicants as Telephone Operators retrospectively on regular basis atleast with effect from the dates from which their juniors ie., Shri Malayadri and 3 others were appointed with protection of seniority and to grant them pay and allowances as well as other incidental and consequential benefits.

4. It is contended inter-alia for the applicants that even though they are seniors to Shri Malayadri and three others ~~approx~~ and when it was noticed in October 1982 that there were no vacancies in Guntur Division, the applicants should have been required to exercise their option for going to other Divisions before Shri Malayadri and other three were asked for options and in view of the failure on the part of the respondents to require the applicants to exercise options, they lost promotion from 1982 and hence they have to be given ~~notional~~ promotion from that date with all consequential benefits.

5. One of the pleas ~~that~~ the respondents taken in the counter is that this OA is barred by limitation. The other contentions for the respondents is that the applicants cannot compare their pay with the pay of the Telephone Operators in the other Divisions.

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6. In cases of continuing right, this Bench of Central Administrative Tribunal is entertaining the applications though filed beyond one year after the cause of action had arisen, ~~by limiting the monetary benefits.~~ ^{and if} The OAs were ~~now~~ allowed, ~~restricting the monetary benefits with effect from~~ ^{is allowed} one year prior to the date of filing of the OA. This OA cannot be dismissed on the ground of limitation as there is continuing right.

7. The plea of the applicants that they were not asked to exercise option to go to other divisions is not challenged. It is not in controversy that these applicants are given rankings over and above Shri Malayadri and other three referred to above. When once it was realised in October 1982 that there were ^{new} vacancies in the posts of Telephone Operators in ~~these~~ ^{their} Divisions to accommodate the applicants, they should have been asked to exercise option to go to other Divisions before those who were ranked below were required to exercise the option. It is not the case of the respondents that the applicants would ~~have~~ not have chosen to go to other divisions on promotion as Telephone Operators. It is not equitable to allow the seniors to suffer ^{due to} for the failure on the part of the administration to take appropriate steps at the relevant time. So, the applicants have to be given the ~~relief to the~~ ^{benefit of the} extent of ~~equity~~ equating it with the relief obtained by their juniors ^{who} are enjoying.

8. As per the B.C.R. Scheme, time bound promotions have to be given on completion of 16 years of service in the category of Telephone Operators. When the service of Shri Malayadri

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To:

1. The Divisional Engineer (Admn. & Planning)
O/o the T.D.M. Guntur-050.
2. The Chief General Manager, Telecom,
A.P. Hyderabad-1.
3. The Secretary, Union of India,
Dept. of Telecom, Sanchar Bhavan, New Delhi-1.
4. One copy to Mr. Venkateswarlu Posani, Advocate, 1-10-20
Ashoknagar, Hyd.
5. One copy to Mr. N. V. Ramana, Addl. CGSC. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

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P.W.D.
2-1-13

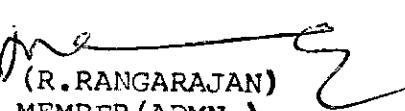
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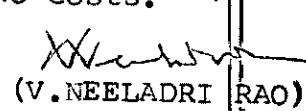
.. (5) ..

and three others had to be considered from 19.11.1982 for the BCR scheme, the services of the applicants have to be considered only from 29/30.5.1986 for the said scheme on the basis of the dates on which they were promoted to the posts of Telephone Operators. If the same is allowed, it will be inequitable for the applicants for ~~themselves~~ their cases have to be considered about more than three years after the cases of their juniors are going to be considered for BCR scheme. As such, it is proper to hold that for the purpose of BCR scheme, the date of promotion of the applicants has to be notionally taken as 19.11.1982.

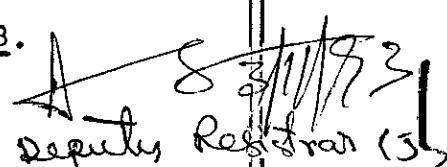
9. As Shri Malayadri and other three got promotion as Telephone Operators in 1982, their pay in the category of Telephone Operators is more than the pay of the applicants in that category for they were promoted in 1986. So, this is a justifiable case where the pay of the applicants has to be stepped up with the pay of Shri S. Malayadri who was given 5th ranking in the empanelment for promotion in 1982. As the monetary benefits have to be given only from 22.11.1989 ie., one year prior to 22.11.1990, the date of presentation of the OA, the pay of these applicants as on 22.11.1989 has to be stepped up with the pay of Shri S. Malayadri as on that date. The respondents are directed to pay the difference on the basis of the said stepping up within six months from the date of receipt of this order.

10. The OA is ordered accordingly. No costs.


(R. RANGARAJAN)
MEMBER (ADMN.)


(V. NEELADRI RAO)
VICE CHAIRMAN

DATED: 28th October, 1993.
Open Court dictation


8/11/93
Deputy Registrar (S)

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR.A.B.GORTHI :MEMBER(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY
MEMBER(JUDL.)

AND

THE HON'BLE MR.F.T.TIRUVENGADAM:M(A)

Dated: 28 - 10 - 1993

ORDER/JUDGMENT:

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

in

O.A.No. 9721 90

T.A.No. (W.P.)

Admitted and Interim directions
issued

Allowed

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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