

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 1012 OF 1994

DATE OF ORDER: 22nd September, -1997-

1. YB Ramamani,
2. CB Sripathy,
3. M.Kanakadurgamba,
4. Mohd. Hamid Hussain,
5. M.Udayasree,
6. V.Vishwanatham,
7. P.Sheshi Reddy,
8. Y.Balraju,
9. I.Lakshmi.



.. APPLICANTS

AND

1. Union of India represented by its Secretary,
Ministry of Communications,
Dept. of Telecom, New Delhi-1,
2. The Chairman, Telecom Commission,
Dept. of Telecommunications,
New Delhi-1,
3. The Chief General Manager,
Telecommunications, AP Circle,
Abids, Hyderabad 500001,
4. Smt.P.Shamanthakamani,
5. Smt.V.Lakshminarasamma.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr.V.Venkateswara Rao

COUNSEL FOR THE RESPONDENTS: Mr.Kota Bhaskar Rao, Addl.CGSC
for R-1 to R-3

Mr.URS Gurupadam for R-4

CORAM:

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

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGEMENT

ORDER (PER Hon'ble SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.V.Venkateswara Rao, learned counsel for
the applicants, Mr.Kota Bhaskar Rao, learned standing

R

when they were brought to the TOA scheme, could not be posted in the scale of pay of Rs.1400-2300 as TOA Gr.II as they did not complete 16 years of service. Applicants in this OA submit that in view of the fact that their juniors were given TOA Gr.II in the scale of pay of Rs.1400-2300 as they had completed 16 years of service earlier to them they should also be considered for promotion to that grade in the pay scale of Rs.1400-2300 without insisting the qualifying service of 16 years for them. Though they ^{were} ~~were~~ given the scale of pay of Rs.1320-2040 from June 1993, that is not correct as they are legitimately entitled to get the scale of pay of Rs.1400-2300 on par with their juniors in the UDC/LDC/TOAs cadre who had completed 16 years of service earlier to them and thus they should also be given the scale of pay of Rs.1400-2300 on par with their juniors. They have submitted that R-4 and R-5 in this OA are juniors to them.

5. This OA is filed praying for direction to the respondents 2 and 3 to consider their case for promotion to the next higher scale of pay of Rs.1400-2300 with effect from 9.9.92, the date on which their far junior in the TOA cadre i.e, R-4 herein was promoted to the said scale of pay with all consequential benefits such as arrears of pay allowances, seniority on promotion etc.

7. If any of the employee in the LDC/UDC pattern wish to continue in that pattern then ^{he} ~~they~~ will not get promotion under OTBP/BCR scheme or to the higher grade of Deputy Office Superintendent, Office Superintendent etc. as those posts stand abolished. Those who are in the LDC/UDC pattern

R

A

to TOA pattern in the circle office also and finally decided to abolish the LDC/UDC pattern and introduce a uniform TOA pattern in the circle office also and orders to that effect were issued in Septmeber, 1992.

4. Conversion from LDC/UDC pattern to TOA pattern was considered necessary and compulsory. But the officials, however, had liberty to opt out the system if they so - ~~the~~ ^d ~~UDCs~~ ^{UDCs} who were brought under TOA scheme were placed senior to all the LDCs protecting their pay and they were placed in the lower post of TOA in the scale of pay of Rs.975-1660. All UDCs working in the circle office and who were in the scale of pay of Rs.1200-2040 were placed in the scale of pay of Rs.1320-2040 from June 1993 as senior TOA.

5. The applicants herein submit that they were promoted as UDC as they have ^d ~~have~~ passed the competitive examination and their senior LDC/TOAs could not be promoted as UDC~~s~~ as they had not passed the competitive examination. When the OTBP scheme was introduced, those who had put in 16 years of service in LDC/UDC/TOA cadre were promoted as TOA Gr.II in the scale of pay of Rs.1400-2300. Some of the LDCs/TOAs who have joined earlier to them and could not be promoted as UDC~~s~~ as they had not passed the competitive examination were continued as LDCs. When the OTBP scheme was introduced, they opted for that pattern and as they had completed 16 years of service because of their joining service earlier to the applicants herein they became eligible for promotion to TOA Gr.II in the scale of pay of Rs.1400-2300 on completion of 16 years of service. The applicants though promoted as UDC earlier to their seniors

R

A

competitive examination ^{Could} ~~cannot~~ get the relief as granted in OA 403/92 decided on 2.9.93 on the file of Bangalore Bench of this Tribunal and ~~on the file of this Bench~~ on 28/94 on the file of this Bench.

9. The official respondents in their reply have not stated any thing in regard to the option of the applicants herein to come over to TOA pattern from LDC/UDC pattern. It is not very clear whether the applicants had opted to come to the TOA pattern. The official respondents' reply further states that the pay of the applicants was protected when they came to TOA pattern and posted in the scale of pay of Rs.975-1660. But immediately they were ordered officiating promotion in the senior TOA cadre in the scale of pay of Rs.1320-2040. From the reply it can be possibly inferred that the applicants herein had opted for TOA pattern and because of that only they were posted as Sr.TOA on promotion in the scale of pay of Rs.1320-2040. Though it is not clearly stated in the reply before giving them the higher scale of Rs.1320-2040, it may be inferred that the applicants were not given the scale of pay of Rs.1400-2300 from June 1993 when they were given the scale of pay of Rs.1320-2040 presumably because of the fact that they had not completed 16 years of service in the cadre of UDC/LDC/TOA. The reply does not indicate any reason that why the applicants were not given promotion in the scale of pay of Rs.1400-2300 when their juniors in the category of TOA who had put in 16 years of service were promoted to the grade of Rs.1400-2300. The reply is also silent in regard to the seniority position of the applicants vis-a-vis R-4.

R

A

were retained in the selection grade of DOS and OS etc. treating the same as personal to them if they opt out of the scheme and thus these posts will be abolished on being vacated by the present incumbents. The above clauses are incorporated in Clause 8(e) and Clause 8(t) of the DoT ND letter dated 9.9.92.

U. --- filed both by R-4 as well as the official respondents. In the reply filed by R-4 ~~in para~~ 7.1, the date of entry of the applicants in the department and their promotion as UDC ^{have} ~~has~~ been given in Para 7.1. In page 5, the date by which the applicants will complete 16 years of service to be eligible under OTBP scheme is also given. As per that the applicant No.1 ~~will~~ completed 16 years of service on 17.3.95 and the rest of the applicants thereafter. Hence R-4 submits that the applicants are not entitled for promotion against OTBP scheme as they had not completed 16 years of service in 1992. R-4 further submits that she cannot be considered as junior to them even though she had come to the circle office under R-3 under Rule 38 of the P&T Manual Vol.IV. She was TOA earlier at Ongole and because there were no posts of TOAs in the circle office she was initially taken as LDC but subseugently she was transferred to the TOA cadre. She had completed 16 years of service in 1992 itself and hence the applicants comparing their case with her is not appropriate and the applicants cannot get any relief based on her promotion as TOA Gr.II in the scale of pay of Rs.1400-2300. It is also seen from the reply of R-4 that she appears to claim seniority over the applicants herein. R-4 further submits that the applicants herein though promoted as UDC earlier to her ^{by} passing the

R

D

years of service earlier to the applicants herein. Though the applicants submit that R-4 is junior to them and was promoted to the higher grade of Rs.1400-2300 in 1992, R4 vehemently denies that she is junior to the applicants herein. As the respondents have not given any details comparing the seniority of the applicants and R-4, no decision can be taken in this connection. It is for the official respondents to check up whether R-4 is senior to the applicants herein or not. The official respondents should also check up whether some of the juniors other than R-4 were promoted to the scale of pay of Rs.1400-2300 on completion of 16 years of service and on that basis whether the applicants herein will get any relief as prayed for in this OA. The question of checking the factual position is left open to be decided by the official respondents.

12. The respondents in their reply rely on the judgment of this Tribunal in OA 1070/93 and OA 205/94 to contend that the applicants are not eligible for promotion if they have not completed 16 years of service. But the case history of those two applications are not explained nor the judgment is enclosed. Hence this contention has to be rejected for want of details.

13. In view of what is stated above, the following direction is given:-

The applicants if they had given option to come to the TOA scheme, their case has to be considered for promotion to the scale of pay of Rs.1400-2300 as TOA Gr.II from the date their juniors are promoted to that scale without

R

A

10. The only point for consideration in this OA is whether the applicants are entitled for the scale of pay of Rs.1400-2300 if they have opted for TOA pattern from the date their juniors in the cadre of UDC/LDC/TOA were given the pay scale of Rs.1400-2300 even though the applicants had not completed 16 years of service and the juniors had completed 16 years of service due to their joining the Department earlier to the applicants herein.

11. In this connection though R-4 submits that the judgment of the Bangalore Bench of this Tribunal in OA 403/92 is irrelevant, we do not consider this submission^{is} in order. The main principle laid down in the judgment in that OA is that if the juniors are given promotion on the basis of the OTBP/BCR scheme as the juniors had required number of years of service then seniors in that cadre even if they had not completed the required number of years of service for promotion under OTBP/BCR scheme as the case may be, are also entitled for promotion under that scheme. This principle is not only applicable in the case of those promoted under LSG scheme for promotion to BCR scheme but should be treated as general principle in similar cases. In this OA, juniors were promoted as they had completed 16 years of service for promotion under OTBP scheme whereas seniors i.e, applicants herein had not completed that 16 years of service. Hence the principle laid down in the above referred decision of the Bangalore Bench holds good equally for the present case also. But from the details available we are not able to come to the conclusion whether any of the juniors to the applicants were promoted to the scale of pay of Rs.1400-2300 due to their joining service earlier thereby completing 16

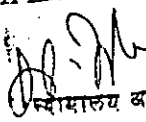
22

1

insisting on the applicants completing the minimum prescribed years of service in the basic grade ^{under the Scheme} provided they fulfilled all the other conditions of eligibility. The respondents should check up the records in regard to the juniors who were promoted to the scale of pay of Rs.1400-2300 including the case of R-4 to comply with the above direction. If the applicants are found eligible for promotion on the basis of the direction above to the scale of pay of Rs.1400-2300, they should be fixed in that scale and their pay thereafter has to be fixed on par with their juniors from the date their juniors were promoted to the scale of pay of Rs.1400-2300.

14. The OA is ordered accordingly. No order as to costs.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY


न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH