

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT :: HYDERABAD

O.A.NO. 618 OF 1994

Between:-

1. T.K.Nagaraju, S/o.T.V.Kuppuswamy, aged about 47 years, Motor Driver,
2. G.Ananthaiah, S/o.G.Venkata Swamy, aged about 48 years, Motor Driver.
3. M.Savari, S/o.M.Chennaiah, aged about 39 years, Motor Driver.
4. K.Hanumanthu, S/o.Anjanaiah, aged about 49 years, Motor Driver.
5. S.A.Hameed Basha, S/o.S.M.D.Ismail, aged about 40 years, Motor Driver.
6. Syed Yousuf, S/o.S.Mahaboob Shaeb, aged about 41 years, Motor Driver.
7. G.Abdul Azeez, S/o.G.Md.Umar, aged about 44 years, Motor Driver.
8. G.S.Projyothi Kumar, S/o.G.Devavaram, aged about 43 years, Motor Driver.
9. D.Jason, S/o.D.Bilas, aged about 46 years, Motor Driver.

(All the Applicants were working under the Control of the Telecom District Manager, Kurnool).

... APPLICANTS

A N D

1. The Telecom District Manager, Kurnool.
2. The Chief General Manager, Telecom A.P.Circle, Doorsanchar Bhavan, Nampally Station Road, Hyderabad.
3. The Director General, Telecommunication, Sanchar Bhavan, New Delhi.
4. Union of India, represented by its Secretary to the Ministry of Personnel, Public Grievances & Pensions, (Department of Personnel and Training).

New Delhi

... RESPONDENTS.

DETAILS OF THE APPLICATION

1. Particulars of the Applicants : Shown as above
Address for Services : Mr. K.Venkateswara Rao, Advocate, 2-2-1136/3/1, Jayalaxminivas, New Nallakunta Hyderabad.
2. Particulars of the Respondents : Shown as above
3. Particulars of the Order:-
 1. Order No. & Date : MTA/STA/173/94 17/6/94
 2. Passed by : C. & HT Hyderabad
 3. Subject in brief : Seniorly

/Contd... 2.,

4. JURISDICTION:- The Applicants submit that this O.A. is within the jurisdiction of this Hon'ble Tribunal under Sec.14 of the Administrative Tribunal's Act, 1985.

5. LIMITATION:- The Applicants further declares that this O.A. is within the limit as per Sec.21 of the Admn.Tribunal's Act, 1985.

6. FACTS OF THE CASE:-

(A) The Applicants are aggrieved by the impugned action of the Respondents in reckoning their seniority on the basis of confirmation for purpose of promotion to the posts of Selection Grade Motor Drivers vide Lr.No.TA/STA/17-3/94, dated 16.2.1994 issued by the Chief General Manager, Telecom, A.P. Hyderabad contrary to the principle enunciated by the Hon'ble Supreme Court dated 2.5.1990 in SC Association Vs. State of Maharashtra CJT-1990(2) SC which is illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution and as such cannot be justified.

(B) The Applicants submit that they were originally appointed as Motor Drivers on 21.4.1975, 20.5.1976, 5.5.1979, 17.11.1978, 19.3.1979, 27.4.1979, 17.12.1979, 23.3.1980, 10.5.1978 respectively and since then they have been continuing in the said posts without any complaints.

(C) The grievance of the applicants is that although they have completed over ten years of service and eligible for promotion to Selection Grade Motor Drivers, their cases are not being considered on the untenable ground that their seniority in the cadre will be counted on the basis of the existing rule ie., & confirmed officials are seniors to officials yet to be confirmed as can be seen from the Lr.No. TA/STA/17-5/85/III/KW, dated 21.2.1994 which is clearly illegal, arbitrary, discriminatory and cannot be justified in the eye of law.

(D) The Applicants submit that the drivers working in the different Telecom Divisions get confirmed in their respective divisions on the basis of availability of permanent posts and

therefore it is likely a driver joined later in a particular divisions gets confirmed ^{rather} than a driver joined earlier in other divisions who may be awaiting for confirmation. Therefore the confirmation cannot be the basis for fixing seniority. It is relevant to submit that from 1.4.1988 confirmation is delinked from the availability of permanent vacancies in the grade and an officer who has successfully completed probation may be considered for promotion. It is also relevant to submit that the Hon'ble Supreme Court has considered this aspect in JT-1990(2) SC Association vs. State of Karnataka dated 2.5.1990 and held that once an incumbent is appointed to a post according to the rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. In pursuance of the above ~~judgement~~ the Government of India have decided that seniority may be delinked from confirmation as per the directive of Supreme Court in its judgement dated 2.5.1990. Accordingly the Government of India issued Office Memorandum No.20011/5/90-/Estt(D) dated 4.11.1992 that seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and not according to the date of his confirmation. However it was clarified that the above orders shall take effect from the date of issue of the office Memorandum which is clearly illegal.

(E) The Applicant submits that once the law is propounded by the Hon'ble Supreme Court it has to be applied in all cases and at all times and it is not permissible to contend that the law so declared will have only prospective effect much more so when there is no such mention in the said judgement of the Supreme Court. It is relevant to submit that when the Supreme Court has considered the question of fixation of seniority on the basis of date of confirmation and laid down that such ¹⁵ prompt principle is not proper and declared the law on the subject, the same has to be followed and implemented in letter and spirit without reference to the date of declaration of the law by the

court. It is relevant to submit that the Government of India has already decided to follow the law laid down by the Supreme Court and modified the principle of fixation of seniority with reference to the date of confirmation, it would be only illegal, to give effect ^{to the} said decision only from the date of issue of the office Memorandum dated 04.11.1992. In this view of the matters the office Memorandum No.20011/5/90-ESTT(D), dated 4.11.1992 is illegal, arbitrary, and irrational and cannot be justified in law to the extent of fixation of seniority from the date of regular appointment from 04.11.1992, i.e., the date of issue of the orders on the subject. Consequently, preparation and ~~circulation~~ of the circle gradation list of S.G.Motor Drivers, Motor Drivers and Seniority list of Drivers communicated through Lr.No.TA/STA/17-3/94, dated 16.2.1994 issued by Chief General Manager, Telecom, A.P. Hyderabad on the basis of date of confirmation in respective Divisions is equally illegal and untenable as it is not in consonance with the law declared by the Hon'ble Supreme Court as aforesaid. Therefore the applicants submit that the promotion of Drivers to the selection grade Motor Drivers by taking into the date of confirmation as seniority as stated by the Chief General Manager in his letter is clearly unsustainable in law. The Applicants submit that the respondents are duly bound to prepare the seniority list in accordance with the law laid by Supreme Court on the basis of the date of appointment without any reference to date of confirmation and consider the effect of such seniority on the Selection Grade Drivers on the basis of such seniority as otherwise they will suffer irreparable loss and hardship. The Applicants have therefore been constrained to approach this Hon'ble Tribunal as they have no other effective alternative remedy.

7. REMEDIES EXHAUSTED:- The Applicant has not filed any other alternative remedy except to approach this Hon'ble Tribunal

MATTERS NOT PREVIOUSLY FILED OR PENDING:- The Applicant has not filed any other O.A./W.P. in this regard and such a case is not pending in any court or authority of law.

9. MAIN RELIEF:- It is therefore prayed that this Hon'ble Tribunal may be pleased to declare that the applicants are entitled to have their seniority counted from the date of their appointment as Motor Drivers without reference to the date of confirmation visa-vis others similarly placed persons with all consequential benefits namely seniority and promotions to selection Grade Motor Drivers by holding the action of the respondents in giving effect to the
Grant only from the date of issue
of Office Memorandum No.20011/5/90-Estt(D), dated
4.11.1992 issued by the Government of India Ministry of
Personnel and Public grievances and Pensions and consequently
communicating the circle gradation list of Selection Grade
Motors, Motor Drivers vide Lr.No.TA/STA/17-3/94, dated
16.2.1994 by the Chief General Manager, Telecom, A.P.
Hyderabad as illegal, arbitrary, discriminatory and
violative of Articles 14 and 16 of the Constitution and
also opposed to all canons of equity, justice and fair
play and pass such other order or orders as this Hon'ble
Tribunal may deem fit and proper in the circumstances
of the case.

10. INTERIM RELIEF:- Pending disposal of the above O.A.
it is therefore prayed that this Hon'ble Tribunal may be
pleased to direct the respondents to consider the case of
applicants for promotion to the posts of selection grade
Motor Drivers by computing their service from the date
of their initial appointment as Motor Drivers without
reference to the date of confirmation
to fillup the vacancies of selection Grade Motor Drivers
on the basis of the seniority list communicated through
impugned Lr.No.TA/STA/17-3/94, dated 16.2.1994 and pass
such other order or orders as this Hon'ble Tribunal may

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deem fit and proper in the circumstances of the case.

11. COURT FEE:-

I.P.O. No. & Date :

506 912 829 D 3/94

Name of the P.O. which drawn :

M/S Nallakonda
Hyd.

12. ENCLOSURES:-

I.P.O.
Vakalath,
Material Papers,
Covers
Index & Chronological Events and etc.

~~I.P.O./B.O./D.D./Removal~~

We, the undersigned applicants do hereby verify that the contents in paras 1 to 6 are true to my knowledge and the contents in paras 7 to 12 are true from legal advise from my counsel and We have not suppressed any material facts.

Hyderabad,

Dated :

- (1) T.K. N. S. Sw.
- (2) C. Ananthakrishna
- (3) M. Anam
- (4) K. H. Senthil
- (5) S. Abdul Hammed Basla
- (6) S. Yasir
- (7) G. Abdul Aziz
- (8) S. Suman
- (9) D. Jagan

Signature of the Applicants.

K. Venkateswarar
Counsel for applicant