

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A. No. 989 OF 1995.

Date of Order: 2. 6. 1998

Between:

1. S.Joseph.
2. Smt.D.Premalatha Devi. .. Applicants

A N D

1. The Telecom District Manager, Kurnool.
2. The Chief General Manager, Telecommunications, Nampally Station Road, Hyderabad.
3. Union of India, rep. by the Director General, Telecommunications, New Delhi.
4. A.Devadanam, s/o not known, aged about 46 yrs, Working as S.S.(O) in the O/o S.D.O.P., Adoni under the control of Telecom District Manager, Kurnool.
5. C.Obulesu, s/o not known, aged about 40 yrs, Working as S.S.(O) in the O/o the Telecom District Manager, Kurnool.

.. Respondents

COUNSEL FOR THE APPLICANTS :: Mr.K.Venkateswara Rao

COUNSEL FOR THE RESPONDENTS :: Mr.V.Bhimanna

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN)

AND

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

: O R D E R :

(AS PER HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL))

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ORDER(AS PER HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER(J))

Heard Sri K.Venkateshwara Rao, the learned Counsel for the Applicant and Ms.Parvathi for Mr.V.Bhimanna, the learned Standing Counsel for the Respondents. The respondents 4 and 5 though served personally with notice, they have remained absent. Hence this O.A. is decided in the absence of the respondents 4 and 5.

2. This is an applicant ^{tion} under section 19 of the Administrative Tribunals Act. The application was filed on 21-8-1995.

3. The applicants were appointed as Telephone Office Assistants(in short "TOAs") with effect from 28-3-1979 and 13-3-1979, respectively in the office of the Respondent No.1. Both of them were confirmed in the said cadre of TOAs with effect from 12-4-1982 and 12-5-1982 respectively. They submit that they belonged to SC community.

4. They submit that the respondents 4 and 5 belong^{ed} to Cuddapah Division and Ananthapur Division, respectively. Both of them were transferred to Kurnool Division under Rule 38 of the P & T Manual Volume.IV with effect from 29-7-1985 and 9-5-1987 respectively. It is submitted that in accordance with Rule 38 of the P & T Manual both the respondents 4 and 5 have to rank at the bottom of the seniority in the cadre of TOAs in Kurnool Division.

5. The OTBP Scheme was introduced in the Telecom Department through letter No.1-71/83-NCG(DOT), dated:17-12-1983. Under the scheme, an employee who had put in 16 years of qualifying service may be placed in the next higher grade, but however, subject to his suitability and fitness. The scheme was brought into force in the Telecom Department with effect from

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30-11-1983, vide letter No.11-14-/88-NCG, dated 4-8-1989.

It is submitted that under the scheme the principle of 40 point roster was introduced for promotion under the scheme, vide letter dated 4-8-1989. They submit that in case sufficient number of candidates belonging to SC and ST categories were not available or eligible, then the relaxed rules may be applied to the candidates belonging to SC/ST category to the extent of short fall and in such cases the candidates belonging to SC/ST community may become eligible for promotion under the scheme even if they did not fulfill the required condition of 16 years of qualifying service.

6. The applicants submit that since there were short fall in the SC quota in Kurnool Division, they were considered for promotion under the scheme and were promoted as such.

7. However, when the respondents 4 and 5 came on transfer on request to Kurnool Division, then the respondents arrived at the conclusion that the promotions accorded to the applicants ^{was erroneous} against 40 point roster, and the respondent no.1 reverted them to the position of TOAs. It is submitted that the respondents 4 and 5 were transferred to Kurnool Division after they earned the promotion under the OTBP scheme.

8. The applicants submit that they were seniors to the respondents 4 and 5 as per Memo No.E3-1/XV/92-93/37, dated 12-9-1994, the applicants submit that they were promoted under the OTBP scheme from 12-3-1991 and 25-8-1991 respectively, vide memo bearing no.E3-1/XV/92-93/44, dated:4-11-1994.

9. The 1st respondent, vide his Memo No.E.3-1/XV/92-93/58-59, dated 20-7-1995 cancelled their promotions under the scheme and restored the promotion of respondents 4 and 5.

10. Hence they have filed this O.A. to call for the records relating to Memo No. E.3-1/XV/92-93/58 and E.3-1/XV/92-93/59, dated:20-7-1995 issued by the Telecom District Manager and to quash the same by holding the impugned orders including the recovery sought to be made as illegal, discriminatory and violative of articles 14 and 16 of the Constitution of India and also opposed to the principles of natural justice, equity and fair play besides being violative of Rule 38 of P&T Manual volume.IV.

11. The official respondents have filed their reply stating that the applicants were given promotion under OTBP scheme and admitting that the respondents 4 and 5 came on transfer on request to Kurnool Division as contemplated under Rule 38 of the P&T Manual(Volume.IV). It is stated that after their transfer the matter was referred to SHQ for clarification,vide TDM,Kurnool office Letter No.E.3-1/XV/92-93, dated:23-7-1993(Annexure.1) that the SHQ, in turn, vide letter dated 29-12-1993 and 26-7-1994 clarified that Rule 38 transferees will also get promotion only after all such eligible officers of that Division having 10 years or more service were promoted as per their seniority in that Division. Hence in view of the above clarification Sri A.Devadanam and Sri D.Obulesu were reverted with effect from 12-9-1994, and in that two SC short fall vacancies Sri S.Joseph and Smt. B.Premalatha Devi were promoted with effect from 12-3-1991 and 25-11-1991 respectively, vide TDM,Kurnool Letter No.E.3-1/XV/92-93/44, dated 4-11-1994(Annexure.A4). They further submit that in suppression of earlier decision SHQ communicated a Circular received from DOT, New Delhi in Letter No.11-14/88-NCG/Vol.II), dated 24-3-1995, vide letter dated:17-4-1994(Annexures 5 and 6), wherein it was stated that the criteria for promotion under OTBP scheme will be length of service for all the Officers under the

OTBP scheme including the Rule 38 transferees. Thus the applicants were reverted and the respondents 4 and 5 were promoted maintaining Status-quo by keeping their promotion under the OTBP scheme as undisturbed from the date of their original promotion. They further submit that since the reversion of the applicants in the OA were made only as per rulings on the subject as clarified by the DOT, the reversion is proper and legal.

12. They submit that the dates of appointment along with the community/divisional gradation list particulars of the applicants and the respondents 4 and 5 have been furnished in page.3 of the reply. They submit that the promotion under the scheme was introduced with effect from 30-11-1983. According to the said DOT letters, the officials, who were having 16 years of qualifying service ^{were} ~~are~~ eligible for promotion under OTBP scheme. Also as per letter No.11-14/88-NCG, dated: 4-8-1989 from DOT, New Delhi(Annexure.A-X) sufficient number of candidates belonging to reserved communities having 16 years of qualifying service not becoming eligible or available for promotion against the points reserved for them in the 40 point roster then to the extent of short fall of SC/ST candidates may be given promotion even if they do not have 16 years of qualifying service subject to the condition that they rendered minimum period of service laid down in the relevant recruitment rules(i.e., in the instant case 10 years of service for promotion under OTBP scheme). That accordingly, the applicants were promoted respectively from 12-3-1992 and 25-11-1992.

13. It is in these circumstances the respondents attempt to justify the reversion of the applicants as a consequence of the transfer of respondents 4 and 5 on the request to Kurnool Division.



14. The learned Counsel for the applicants mainly relied upon Rule 38(1) of the P & T Manual Vol/IV which reads as under:

"38. Transfer at one's own request.

(1) Transfers of officials when desired for their own convenience should not be discouraged if they can be made without injury to the rights of others.

However, as a general rule, an official should not be transferred from one unit to another either within the same Circle, or to another Circle unless he is permanent.

As it is not possible to accommodate an official borne on one gradation list into another gradation list without injury to the other members in that gradation list such transfers should not ordinarily be allowed except by way of mutual exchange. Transfers by way of mutual exchange, if in themselves inherently unobjectionable, should be allowed, but in order to safeguard the rights of men borne in the gradation lists of both the offices, the official brought in should take the place, in the new gradation list; that would have been assigned to him had he been originally recruited in that unit or the place vacated by the official with whom he exchanges appointment, whichever is the lower."

Under the said rule an official who has been transferred at his own request to another division will rank junior in the gradation list of new unit of all the officials of that unit on the date of which the transfer order was issued including all persons who have been approved for appointment to that grade as on that date.

15. It may be noted that before the respondents 4 and 5 were transferred to Kurnool Division from Cuddapah and Ananthapur

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Divisions respectively, they were given promotions under the OTBP scheme. It is also to be noted that before the respondents 4 and 5 came on transfer to Kurnool Division, the applicants were already given promotions under the scheme. However, the applicants were given promotions under the Scheme under the relaxed rules.

16. Rule 38(2) of the P & T Manual Volume.IV came up for consideration in the case of HARIHARAN PILLAI VS P & G, KERALA CIRCLE, TRIVANDRUM & OTHERS. The bench interpreted Sub Rule (2) of Rule 38 of the P & T Manual and had observed as follows:

"The scope of sub-rule(2) of Rule 38 of the Posts and Telegraphs Manual, Vol.IV, dealing with transfer on request arises for consideration in this application which was originally filed as O.P.No. 1940 of 1984 on the file of the High Court of Kerala and transferred to this Tribunal. According to the sub-rule when an official is transferred on his own request without arranging for mutual exchange he will rank junior in the gradation list of the new unit not only to all the officials of that unit on that date on which his transfer order is issued but also to all persons who have been approved for appointment to that grade as on that date. The applicant while working as an extra-departmental mail carrier in Alwaye Division applied for selection for promotion to the cadre of Postman pursuant to the notification issued by the second respondent on 21-3-1982. He was allowed to take the examination and he came out successful. Ext.P-1 Memo containing the names of the successful candidates includes the name of the applicant at Sl.No.18. He was

directed to undergo training and after successful completion of the same was allotted to the Alwaye Head Office."

17. Thus from the above rule, it is clear that the respondents 3 and 4 have to rank at the bottom of the seniority in the common gradation list at Kurnool Division Unit on their transfer. Then it is evident that the applicants were seniors to the respondents 4 and 5 in the Kurnool Division.

18. The learned Counsel for the applicants relied upon the opening sentence of the rule and submitted that such transfers should not cause any injury to the rights of others. It is his submission that because the respondents 4 and 5 were transferred to Kurnool Division it caused injury and effected the service rights of the applicants. The respondents categorically admit that they reverted the applicants consequent upon the transfer of respondents 4 and 5 on their request to Kurnool Division. In our opinion such a request transfer which causes injury to the persons working in the unit must not be encouraged.

19. The learned Counsel for the applicants further submits that it may not be proper for a junior to get promotion under the OTBP scheme while seniors ^{in the division} to work without such promotion. In support of this submission, the learned Counsel for the applicants relied upon the decision of this Tribunal in O.A. No.1022 of 1995 decided on 13-1-1995. This Tribunal considered in the said OA the promotions under the BCR scheme. In para.6, this Tribunal observed as follows:

"Para.6. Similar BCR scheme was also introduced by the Department of Telecommunications and officials

promoted to LSG Cadre in the Telecom Department who were placed similar to the applicants herein, approached the Bangalore Bench of the Tribunal by filing O.A. No.403/92 for similar reliefs as prayed for in this O.A. It was held by the Bangalore Bench of the Tribunal that the LSG officials promoted under 1/3rd merit quota in Telecom Department should also be promoted under the BCR scheme even if they have not completed 26 years of service in the basic grade and LSG without insisting on completion of minimum prescribed years of service if their erstwhile juniors in the LSG and basic grades were promoted to Grade-II in the scale of Rs.1600-2660 (RSRP) under the BCR scheme."

20. This in our humble view reverting the applicants to the post of TOAs on account of request transfer of the respondents 4 and 5 to Kurnool Division may not be reasonable and justifiable. Moreover, allowing the respondents 4 and 5 who happened to be juniors in the Kurnool Division be promoted under the OTBP scheme while his seniors in the Kurnool unit are denied the promotion under the said scheme may be unjustifiable and unreasonable. In the decision relied upon by the learned Counsel for the applicants, the decision of the Bangalore Bench of this Tribunal has also been relied upon.

21. In that view of the matter that there were absolutely no justification for the respondents to revert the applicants to the post of TOAs only on the ground of transfer of respondents 4 and 5 on their request to Kurnool Division.

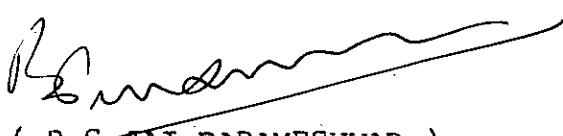
22. Hence in our humble view, the O.A. is liable to be accepted and the orders of reversion dated 20-7-1995 are liable to be set aside.

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23. Hence we issue the following directions:

- i) "The impugned orders dated 20-7-1995 by which the promotions of the applicants under the OTBP scheme were cancelled and reverted are hereby set aside. Their promotions under the scheme effective from 12-3-1991 and 25-11-1991 are hereby restored; and
- ii) The interim order dated 21-8-1995 under which the respondents were directed not to effect any recovery from the pay of the applicants on account of the impugned orders is hereby made absolute."

24. Thus the O.A. is allowed with the above directions. Parties are directed to bear their own costs.


(B.S.JAI PARAMESHWAR)
MEMBER (J)
21/6/98


(R.RANGARAJAN)
MEMBER (A)

Dated: 2 June 98


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Copy to:

1. The Telecom District Manager, Kurnool.
2. The Chief General Manager, Telecommunications, Nampalli Station Road, Hyderabad.
3. Director General, Telecommunications, New Delhi.
4. One copy to Mr.K.Venkateswara Rao, Advocate, CAT, Hyderabad.
5. One copy to Mr.V.Bhimanna, Addl.CGSC, CAT, Hyderabad.
6. One copy to HBSJP, Member(J), CAT, Hyderabad.
7. One duplicate copy.
8. one copy to DR(A), CAT, Hyd.

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II COURT

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR :
M (J)

DATED: 26/6/98

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in
D.A.NO. 989/95

~~ADMITTED AND INTERIM DIRECTIONS
ISSUED~~

~~ALLOWED~~

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~DISMISSED FOR DEFAULT~~

~~ORDERED/REJECTED~~

~~NO ORDER AS TO COSTS~~

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