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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.1407/95

dt.27-4-98

Between

1. A. Ram Mohan Rao
2. A. Suryanarayana Murthy
3. Smt. P Susheela
4. Sri G.R.P. Sarma
5. T. Krishna Murthy
6. Smt. K. Vimala
7. Smt. K. Swaroopa Rao
8. P.V. Subba Rao
9. T.R. Kumar
10. Smt. K. Damayanthi
11. Smt. P Eleswari
12. A. Malleshwar
13. Smt. Usha R. Singh and
14. D. Venkateswar Rao, and
15. Smt. V. Vijayalakshmi
and

: Applicants

1. Chief Genl. Manager
Telecommunications, AP Circle
Doorsanchar Bhavan
Hyderabad

2. Chairman,
Telecom Commission
New Delhi

3. Union of India, rep. by Secy.
Dept. of Telecommunications
Govt. of India, New Delhi

4. N. Raghava Kannan
5. A. Singara Charya
(Stenos in R-1 office)
Counsel for the applicants

: Respondents

: D. Venkateswar Rao
Advocate

Counsel for the respondents

: V. Rajeswara Rao
OGSC

Coram

N. R. Prinivasan.

Hon. Mr. R. Rangarajan, Member(Admn.)

Hon. Mr. B.S. Jai Parameshwar, Member(Judl.)

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O R D E R.

Oral order (per Hon.Mr.B.S.Jai Parameshwar,Member (J))

1. Heard Sri K. Venkateswara Rao for the applicants Sri V. RajeswararRao for the respondents 1 and 2 and Sri N.R.Srinivasan for the respondents 4 and 5.
2. There are 15 applicants in this O.A. They are all working as Stenographers Grade II/ III under the control of the respondent No.1. They submit that originally there were two separate Circles, namely, Hyderabad Telecom District and Andhra Pradesh Telecom Circle. While the Circles were separate, the respondents 4 and 5 who were working as Stenographers sought transfer on request from A.P.Circle to Hyderabad Telecom District as contemplated under Rule 38 of the P.& T. Manual Vol.IV. Their transfers were ordered with effect from 6.9.1980 and 8.1.1983 respectively.
3. They submit that under Rule 38 of the P.&T. Manual Vol-IV an employee who seeks transfer from one circle/unit to another circle/unit has to rank juniormost to all the officials of the transferee unit; even to all those persons who have been approved for appointment to that unit as on that date. Accordingly the seniority of the respondents 4 and 5 was determined on their request for transfer to Hyderabad Telecom District.
4. During 1986 both Hyderabad Telecom District and A.P. Telecom Circle were merged and Secondary Switch Area concept was introduced in the department of Telecommunication. As a result of merger, a common gradation/^{list} of Stenographers was released on 1.11.1991 i.e. after a lapse of 5 years vide letter No.TA/STB/49-10/90 dated 31.7.1992. It is submitted that in the said common gradation list, the respondents 4 and 5 were shown at Sl.Nos.40 and 78 respectively in accordance with Rule 38 of the P.&T. Manual.

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5. While so, the respondent No.1 issued the letter bearing No.TA/STB/49-10/93 dated 28/31.7.1995 proposing to review seniority position of the respondents 4 and 5 and indicating their names at Sl.Nos.17-A and 21-A respectively in the common gradation list.

6. The applicants submit that the respondent No.1 issued the said letter on the basis of the instructions contained in D.G. P.&T.'s letter No.7/124/74-STB-I dated 30.7.1978. They further urged that the said letter does not hold good in respect of Hyderabad Telecom District or A.P. Telecom Circle.

7. It is submitted that the applicant No.1 and others submitted a representation dated 28.8.1995 against the proposed revision of seniority of the respondents 4 and 5 in the common gradation list. However, the respondent No.1 issued a letter of even number dated 5.10.1995 revising the seniority of the respondents 4 and 5 in the common gradation list of A.P. Telecom Circle prepared as on 1.11.1991 interpolating the names of the respondents 4 and 5 at Sl.Nos.17-A and 21-A respectively. Hence they have filed this O.A. for the following reliefs :

To call for the records relating to Lr.No.TA/STB/49-10/93, dated 5.10.1995 issued by the first respondent and quash the same by holding the impugned letter as illegal, arbitrary discriminatory, void, and without jurisdiction and violative of Articles 14 and 16 of the Constitution and also in clear contravention of letter No.7/124/74-STB I dated 30.7.1975 issued by the second respondent by holding that the applicants are entitled to have their seniority fixed strictly in conformity with the orders issued by the Chief General Manager, Telecom A.P. Circle, Hyderabad vide his Lr.No.TA/STB/49-10/90 dated 31.7.1992.

8. By an interim order dated 20.11.1995 this Tribunal directed that if any promotion is going to be made on the basis of the impugned seniority list as per the order dated 5.10.95,

the same will be subject to the result in this O.A. and it has to be so mentioned in the order of promotion.

9. The respondents 1 and 2 have filed their counter.

The factual position narrated by the applicants shows that the transfer on request of the respondents 4 and 5 to Hyderabad Telecom Circle is not in dispute. It is also not in dispute that in the common gradation list of Stenographers prepared as on 1.11.1991 the position of the respondents was at Sl. Nos. 40 and 78 respectively. However, they submit that the respondents 4 and 5 submitted a representation in accordance with the instructions contained in letter dated 30.7.1975 and therefore, they attempted to revise the seniority position of the respondents 4 and 5. It is submitted that the letter issued by the TCHQ, New Delhi during July, 1975 clearly lays down the procedure to be followed while deciding seniority of the transferred employees under Rule 38 of the P&T Manual between the units which get subsequently merged. They admit that the letter dated 30.7.1975 does not apply to A.P. Telecom Circle and Hyderabad Telecom District. Thus they submit that those telecom districts were not included in the letter telecom districts with the status of a circle at that time. They submit that the policy indicated in the letter dated 30.7.1975 is as well applicable to the SSAs also when they get merged with the corresponding territorial circles. Thus they justify the revision of seniority position of the respondents.

10. It may be noted that Rule 312 of IREM is similar to Rule 38 of the P.&T. Manual Vol-IV. Rule 312 of the IREM came to be considered by the Jodhpur Bench of this Tribunal in the case of V.K. Saxena v. Union of India and others, reported in (1990) 13 ATC 798. There also the Railway Administration attempted to revise the seniority of those who were transferred

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under Rule 312 of the IREM. In para-13 the Tribunal observed as follows :

" 13. The point for consideration is whether the seniority of an incumbent in the zone as per Rule 303 is obliterated completely for all purposes when he is transferred to another division on his own request and assigned the seniority in accordance with Rule 312 of the Manual. The initial seniority is assigned on the basis of a person's placement in the merit list, as determined by the recruiting authority and this inter se seniority is retained even after his/her allocation to a particular division which is done in the public interest or the interest of the administration. The rationale of Rule 312 is that when a person is transferred to a particular division on his own request, it is the individual's interest which prevails and therefore, he has to be assigned seniority at the bottom of the seniority in the division. The rationale of Rule 312 is reconciliation between public interest and individual's interest, the interest of administration on the one hand and that of the individual on the other hand but in this process when the incumbent's seniority is submerged or depressed below all those who are already working in the division, the individual does not completely lose his identity in the zone for which the initial recruitment was made. His past service continues to be counted for purposes of his pay and increment etc. It is only for purposes of confirmation and promotion etc. in the new division that the revised seniority becomes relevant and therefore, when promotions are made on the basis of inter se seniority in the zone, the original inter se seniority based on merit list in the zone must prevail. There the public interest is not infringed by the interest of other incumbents in the zone or the division. This position was in fact recognized by the respondent railways through the contents of their letter dated February 1, 1980 (Annexure A-6/18) and G.M.'s circular dated July 25, 1969 (Annexure A-6/33)."

11. The respondents 4 and 5 have also filed their reply, contending that originally they were recruited and allotted to Hyderabad Telecom District of A.P. Telecom Circle and were appointed as Stenographers in the Hyderabad Telecom District. Subsequently there were reverted to A.P. Telecom Circle for the reasons best known to the authorities. The respondent No.4 had joined the Hyderabad Telecom District on 22.12.1976. He joined the Hyderabad Telecom District on transfer at his request with effect from 10.7.1980. It is submitted that the respondent No.5 was initially recruited and appointed as Stenographer on 22.3.1977 by the A.P. Telecom Circle and he joined the Hyderabad Telecom District on 1.8.1983 on transfer at his own request.

Thus the seniority of the respondents 4 and 5 in the Hyderabad Telecom District was fixed under Rule 38 of the P&T Manual. It is submitted that at that time their entire service rendered in the A.P. Telecom Circle was ignored.

12. It is stated that their seniority position was shown at Sl.Nos.40 and 78 in the common gradation list of Stenographers as on 1.11.1991. They submit that the revision of seniority would not in any way affect the interests of the applicants 2, 12 and 14 who are placed above them being seniors. It is submitted that the applicant No.10 who has been placed at Sl.No.79 is junior to them. They submit that their revision of seniority has been attacked by the applicants only on the basis of the instructions contained in the letter dated ^{of} 30.7.1975. They reply upon para-(ii) of the said letter, which reads thus :

"(ii) Officials officiating in the circle cadre like LSG Monitors who sought reversion and transfer under Rule 38 will also be restored to their original seniority without affecting the promotions already made. They will be promoted on the basis of their original seniority in future vacancies."

Thus they submit that the O.A. be dismissed.

13. ~~in the case of Hyderabad D.L.I. vs. DMO Kavali Central~~ reported in 1988(8) ATC 511 the Madras Bench of this Tribunal considered the scope of Rule 38 (2) of the P&T Manual. In para-1 the Tribunal has analysed Rule 38 (2) of the P&T Manual.

14. During the course of arguments, the official respondents submitted that the policy embodied in the letter dated 30.7.1975 is applicable in this case also.

15. The private respondents contended that this O.A. is not maintainable with regard to the applicants 2, 12 and 14 as they are seniors to them and the applicant No.10 who is junior to them. Their seniority position was lowered by upgrading the seniority position of 11 persons. Thus the O.A. is not maintainable against the above four applicants, and maintainable against the rest of the applicants.

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16. The respondents 4 and 5 were no doubt senior to the applicants when they were working in the A.P. Telecom Circle. When they sought transfer to Hyderabad Telecom District, they lost their seniority in view of their request for transfer in accordance with Rule 38 of the P & T Manual Vol-IV. Thus the respondents 4 and 5 were transferred to Hyderabad Telecom District on 7.9.1980 and 8.1.1983 respectively. The merger of Hyderabad Telecom District with A.P. Telecom Circle took place in the year 1986 i.e. 6 and 3 years after they sought transfer on request. When the respondents 4 and 5 sought transfer on request, then there was no proposal to merge Hyderabad Telecom District with A.P. Telecom Circle. Had there been such a proposal, the same would have been brought to the notice of the respondents 4 and 5. In fact, both the units were merged during the year 1986, that means, 6 years after the transfer of the applicant No.1 and 3 years after the applicant No.2. Therefore, it cannot be imagined that when they sought transfer on request, the proposal for merger of both the units was under consideration.

17. The respondents prepared the common gradation list as on 1.11.1991. In the said gradation list, the respondents 4 and 5 were at Sl.Nos.40 and 78 respectively.

18. Basing on the letter dated 30.7.1975 the respondents revised the seniority of the respondents 4 and 5 and placed them at Sl.Nos.17A and 21 A respectively, probably, taking into consideration their length of service in the parent unit. They relied on the letter dated 30.7.1975. This letter specifically states that the same is not applicable to Hyderabad. ~~Then~~ that is so, the respondents could not have attempted to revise the common gradation list prepared as on 1.11.1991 and revise the seniority of the respondents 4 and 5. By the said act, the seniority of the applicants were affected. Hence they have filed this O.A.

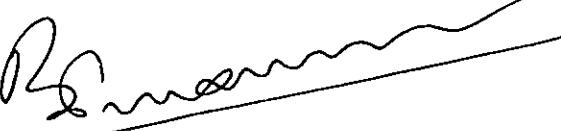
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19. The respondents could not justify their act in revising the seniority of the respondents 4 and 5. Their case does not come under letter dated 30.7.1975. In that view of the matter, the O.A. is liable to be accepted and the impugned order dated 5.10.1995 requires to be set aside.

20. Hence the following order is passed :

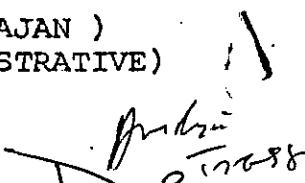
- a) The impugned order dated 5.10.1995 revising the seniority of the respondents 4 and 5 in the common gradation list of A.P.Telcom Circle as on 1.11.1991 is set aside.
- b) The seniority of the respondents 4 and 5 shall be maintained at Sl.Nos.40 and 78 respectively in accordance with the common gradation list prepared as on 1.11.1991.

The O.A. is accordingly disposed of. In the circumstances of the case, parties to bear their own costs.


(B.S.JAI PARAMESHWAR)
MEMBER (JUDICIAL)

27.4.98


(R. RANGARAJAN)
MEMBER (ADMINISTRATIVE)


D.R. Rangarajan

Dated the 27th April, 1998
Dictated in Court.

SK/DJ.

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OA.1407/95

Copy to:-

1. The Chief General Manager, Telecommunications, A.P.Circle, Doorsanchar Bhavan, Hyderabad.
 2. The Chairman, Telecom Commission, New Delhi.
 3. The Secretary, Dept. of Telecommunications, Govt. of India, New Delhi.
 4. One copy to Mr. K.Venkateswara Rao, Advocate, CAT., Hyd.
 5. One copy to Mr. V.Rajeswara Rao, Addl.CGSC., CAT., Hyd.
 6. One copy to Mr. BSJP.M(J), CAT., Hyd.
 7. One copy to D.R.(A), CAT., Hyd.
 8. One duplicate copy.
- ✓ one copy to Mr. Srinivasan, Advocate, CAT, Hyd*

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II COURT

TYPED BY
COMPARED BY

CHECKED BY
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 (3)

DATED: 27/4/98

ORDER/JUDGMENT

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

in

D.A.NO. 1407/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

