

73

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
HYDERABAD

ORIGINAL APPLICATION NO. 260 of 199

Date of decision: 9-3-96

M.A.Rahman

..... APPLICANT(S)

Versus

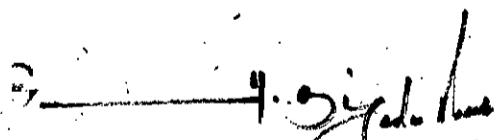
Chief General Manager, Telecom,
"Hyderabad and others"

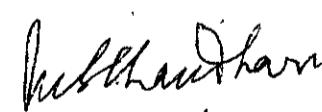
RESPONDENT(S)

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters
or not? No

2. Whether it be circulated to all the
Benches of C.A.T. or not? No


(H. RAJENDRA PRASAD)
Member (Admn)


(M.G. CHAUDHARI)
Vice Chairman/Mem. ~~XXXXXX~~

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 260 of 1996

Date of Judgement: 9/4/1996 *April*

BETWEEN:

M.A.Rahman

.. Applicant

and

1. The Chief General Manager,
Telecom, A.P.Circle, Hyderabad,
2. The Telecom District Manager,
Warangal 506050,
3. The Superintendent Incharge,
Central Telegraph Office,
Warangal

.. Respondents

COUNSEL FOR THE APPLICANT: SHRI V.VENKATESWARA RAO

COUNSEL FOR THE RESPONDENTS: SHRI K.BHASKAR RAO, Addl.CGSC

CORAM:

HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE CHAIRMAN

HON'BLE SHRI H.RAJENDRA PRASAD, MEMBER (ADMN.)

JUDGEMENT

(AS PER HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE CHAIRMAN)

Heard Shri V.Venkateswara Rao, learned counsel for the applicant and Shri Kota Bhaskara Rao, learned standing counsel for the respondents.

2. The applicant, Shri M.A.Rahman, was initially appointed as Extra Departmental Branch Post Master in the then composite Posts and Telegraph Department. He was appointed to Grade 'D' on regular basis in the year 1963 in the scale of Rs.750-940. The Department was thereafter

hml

75

bifurcated and the applicant was placed in the Telecom Department.

3. Prior to 16.10.90, the Biennial Cadre Review (BCR) scheme was in existence for 'C' and 'D' groups for upgradation of posts on the basis of functional justification for those employees who completed 16 years of service in the basic grade. That scheme was known as "one time bound promotion". However, staff unions had been pressing demand for "second time bound promotion" on completion of 26 years of service in the basic grade. The Government, however, was not willing to accept that concept but with a view to provide the relief from stagnation in the grade, issued instructions under the letter No.27-4/87/TE.II dated 16.10.90 issued by the Directorate (TE). The material instructions were as follows:

(i) The BCR scheme was applied only to those regular employees who were in service as on 1.1.1990.

(ii) The officials who had completed 26 years of service in the basic grade were to be screened by a Review committee to assess their performance and determine their suitability for advancement.

(iii) Creation of posts by upgradation was to be

✓



in the following scales:-

Basic grade	Scale of OTBP after 16 years of service in basic grade	Scale after Biennial Cadre Review on completion of 26 years service
750-940	800-1150	950-1400
.....		
.....		
.....		

(iv) The first BCR was to be conducted for the period upto 30.6.92 with reference to crucial dates of completion of 26 years service namely 1.1.1991, 1.7.1991 and 1.1.1992.

The applicant satisfied the first condition (as above). He completed 26 years of service on 2.10.1989. He was placed in the scale of 950-1400 with effect from 8.1.1991. That was on adhoc basis. He was regularly placed in the scale on 22.12.93 with retrospective effect from 2.10.89. He was also paid arrears of difference of the pay scale from 2.10.91 onwards. Thus as on 1.7.91 he was eligible to be screened for the ~~extension~~ benefit of the scheme notwithstanding that he was given the scale of 950-1400 earlier thereto.

4. The scheme, however, has to be understood in the light of further instructions issued by DoT on 11.3.91 and 19.4.91. These interalia provided that the officials in Group 'D' who are appointed to the pay scale of 950-1400 after the BCR shall be classified as Group 'C' and shall retire at 58 years of age and those who opt for lower scale of Rs.800-1150 shall retire at the age of 60 years.



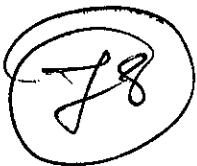


For this purpose, it was clarified (DoT letter dated 19.4.91) thus,

"2. Certain proposals regarding retirement age of Group 'D' personnel placed in the scale of Rs.950-1400 are under consideration. In the meanwhile, it is clarified that officials in Group 'D' can refuse promotion in biennial cadre review in writing, if they want to serve beyond 58 years of age. Also, those who have got the benefit of biennial cadre review may opt for reversion to the lower grade and refund the benefits received on this account and continue in service upto the age of 60 years, if they desire so.

3. In case a decision is taken in favour of Group 'D' staff to retire at the age of 60 years even after getting the pay scale of Rs.950-1400, it will be effective from a prospective date(s) only. Also, those who refuse promotion as per para 2 above, will remain eligible for promotion and will not be debarred from consideration on the grounds of earlier refusal for promotion as per para 2."

5. It, therefore, clearly means that at the time when the promotion under BCR was offered, the person concerned had either to refuse to accept the promotion to the scale of 950-1400 or was entitled to opt for the lower scale of 800-1500 and if he so opted then he was entitled to continue upto the age of 60 years. By the later decision, the recovery was waived. The applicant was promoted to the scale of 950-1400 on a regular basis by *hsc*



the order dated 21.12.93. The order clearly recites that on completion of 26 years of service in the basic grade, the persons mentioned in that order including the applicant were placed in the upgraded post in the pay scale of Rs.950-1150-1400 under biennial cadre scheme with effect from the date noted against their names. The date specified in respect of the applicant as the date of promotion was 2.10.89. It is obvious that no question of exercising option to remain in the scale of 800-1150 could arise as on 2.10.89. However, such an option could be exercised and was required to be exercised on 21.12.93 i.e., at the time when the promotion was granted. The applicant did not either refuse promotion nor opted for the lower scale. The respondents, therefore, have treated him as a Group 'C' official and he has to retire on completion of 58 years of age.

6. The applicant became due for retirement on superannuation on completion of 58 years of age on 29.2.96. Prior to that date, he submitted an application to the Telecom District Manager, Warangal District on 10.1.96 purporting to exercise his option to come over to the scale of 825-1200 to serve till 60 years of age and for accepting that option. That request was refused by the respondents vide letter of the Superintendent Incharge, CTO, Warangal dated 15.2.96 stating that the benefit of placement in the scale of 825-1200 is applicable to those Group 'D' officials who were promoted in the pay scale of 950-1400 under BCR scheme on or after 13.9.91 and since he was promoted under the scheme prior (vide letter to 13.9.91) dt. 16.10.90 he is not eligible to exercise





the option. The applicant, therefore, filed the instant Original Application on 26.2.96. He prays that it be declared that he is entitled to be retained in service upto the age of 60 years and further prays that the letter dated 15.2.96 (supra) be set aside it being illegal, arbitrary and unconstitutional and he may be directed to be given all consequential benefits including the monetary benefits. By an interim order dated 29.2.96, one of us (Dr.H.Rajendra Prasad, Member) granted an ad interim order directing the respondents that the applicant shall not be asked to proceed on retirement on superannuation for a period of 15 days from the date of the order or till the final disposal of the case, whichever is earlier. The case was directed to be listed for further orders on 8.3.96. Considering the circumstances and at the request of the learned counsel for the applicant and of the learned standing counsel for the respondents, we took up the case for final hearing and disposal and for hearing the submissions of the counsel for the parties on 19.3.96.

7. The application is not based on the scheme as was introduced in 1991 but is filed on the basis of something that has transpired thereafter. The Department of Telecom prescribed a new scale of pay namely 825-1200 which was introduced in the BCR Scheme for Group 'D' staff vide DoT letter dated 24.2.95 for enabling such staff to retire at the age of 60 years. By the letter No.E-85/136 dated 28.12.95 issued by the Chief Superintendent, CTO, Hyderabad, it was notified that all the Group 'D' staff who have been promoted to BCR may exercise options choosing the pay scale of 825-1200 or 950-1400 to retire



80

at the age of 60 years or 58 years respectively and that option once exercised will be final and no withdrawal will be permitted. Last date for receipt of the fresh options was specified as 12.1.96. That notification was issued by the Chief Superintendent, CTO, Hyderabad on 28.12.95. According to the applicant, he has exercised his option to select the pay scale of 825-1200 within the prescribed time under the above notification and thus the respondents were bound to accept that option and extend the benefit of continuation of service upto the age of 60 years. The applicant contends that although he attained the age of 58 years on 29.2.96, he is entitled to be retained in service till 28.2.98.

8. The respondents oppose the application. They interalia contend that the option in fact was available to the applicant in terms of the DoT letter dated 19.4.91 to be exercised at that time but he did not do so and continued to remain in the scale of 950-1400 and he could not exercise the option on 10.1.96 since the options were called for choosing the scale of 825-1200 and that was not applicable to the applicant. They contend that the applicant thus is deemed to be in classification of posts as 'C' and he has to retire at the age of 58 years. They, therefore, contend that the applicant has no right to claim to continue for another two years and the request of the applicant has been rightly refused by the respondents.

9. The crucial question that falls for consideration, therefore, is as to whether after the introduction of the scale of 825-1200 which is described

Lia

(81)

as intermediary pay scale vide DoT letter dated 24.2.95, it was open to the applicant to exercise option to go over to that scale from his existing scale notwithstanding that he had not earlier exercised the option for choosing the scale of 800-1150 under the 1991 instructions. The answer to the question whether the applicant will retire at the age of 60 years will depend upon the determination of the above question. Our answer to the above question is in the negative for the following reasons:

Reasons:

We have already set out above the salient features of the BCR scheme of 1991. The instructions contained in the letter dated 16.10.90 after providing for the first review for the period upto 30.6.92 also provided that the second review will cover the period from 1.7.992 to 2.10.94 and the crucial dates for determining completion of 26 years of service were 1.7.92, 1.1.93, 1.7.93 and 1.1.94. There can be hardly any doubt that the applicant was promoted to the scale of 950-1500 by the order dated 21.12.93 under the Biennial Cadre Scheme. That was a date between the two crucial dates specified for the second review namely 1.7.93 and 1.1.94. As on that date, ignoring for the time being that the promotion was related back to 2.10.89, the applicant had a choice of refusing promotion or opting for the scale of 800-1500 under 1991 scheme. The intermediary scale of 825-1200 was not in existence at all at that time and, therefore, cannot have any relevance for exercise of the option. That scale was introduced as late as on 24.2.95.





10. As a result of introduction of the new scale, consequential instructions were issued vide memo dated 24.2.95 16.10.90 providing that Group 'D' officials can have option of selecting the pay scale of 950-1400 or the pay scale of 825-1200 on their promotion under BCR scheme and that if an official chooses the pay scale of 950-1400, he would retire at the age of 58 years as per the present regulations. However, if a Group 'D' official chooses the scale of 825-1200, he will continue to be a Group 'D' official notwithstanding Group 'C' pay scale of 825-1200 and will retire at the age of 60 years. A provision was made that the Group 'D' officials will have to be given a clear option at the time of promotion under the scheme for this purpose. The recitals in the memo go to show that after under the earlier scheme, the officials were permitted to opt for the scale of 800-1150, the matter was reexamined and it was now decided to extend the benefit to the officials to go over to the scale of 825-1200 by exercising options. The material difference between the earlier provisions was that the scale of 950-1400 was treated as Group 'C' pay scale whereas the scale of 800-1150 was the scale of a Group 'D' official and was allowed to be retained. This has given rise to the claim of the applicant that the option was extended to all the Group 'D' officials notwithstanding that the earlier option was to opt for the scale of 800-1150 and, therefore, he is entitled to opt for the scale. Para 2 of the letter of DoT dated 17.10.95 reads as follows:

"The question of exercising of option retrospectively with effect from the





date the Group 'D' officials opted for reversion to the scale of 800-1150, in terms of the orders contained in this office letter No.27-4/87-TE-II dated 19.4.91 has been decided that the Group 'D' officials who either reverted to the scale of 800-1150 or opted for the said scale to retain the age of retirement of 60 years, may be given the benefit of placement in the scale of 825-1200 from the date of reversion/option provided it is not earlier than 13.9.91 the date on which the scale of 825-1200 had been introduced by the Ministry of Finance,

Department of Expenditure vide their O.M.No.10(1)/E-III/88, dated 13.9.91 circulated vide DoT letter No.1-25/91-NCG dated 9.1.92."

11. That makes abundantly clear that all those who had earlier opted for the scale of 800-1150 and those who were now permitted to opt to the scale of 825-1200 were brought on par by placing the officials who had opted for the scale of 800-1150 also in the scale of 825-1200. All of them, therefore, would be entitled to the benefit of the age limit of 60 years. That itself contemplated that categories there were two ~~types~~ of officials namely those who had opted on the earlier occasion and who were given opportunity to opt after the introduction of the new scale. That, therefore, establishes that the memo dated 16.3.95 was not intended to reopen the options since 1991. The applicant had not availed of the option at the time when he was appointed when the option under earlier instructions was available. As a consequence, he continued to be a Group 'C' official in the scale of 950-



1400. He has, therefore, to retire at the age of 58 years. There could not, therefore, arise any question of exercising option on 10.1.96. The decision of the respondents to refuse to accept the option, therefore, is unassailable. It has also to be noted that the scheme introduced in 1991 was in the nature of *in situ* promotion to be allowed only to the next higher scale available in ~~the scheme~~ if the requisite conditions were fulfilled. The employees in the pay scale of 800-1150 were, therefore, promoted to the scale of 825-1200 and consequently they were also extended the benefit of exercising option as was done in the case of the officials who were already promoted earlier to the scale of 950-1400 and were allowed to revert to the scale of 800-1150.

12. The learned counsel for the applicant Shri V.Venkateswara Rao strenuously urged that the options were reopened after the introduction of the intermediary scale and it was open to the applicant to avail of the same. He submitted that it is a case of open end option. He relies in this connection on the letter dated 24.2.95 issued by the DoT under which the memo dated 16.10.90 was circulated and to the instructions contained in the letter dated 19.4.91 and contended that till the issue was reexamined and a final decision was taken as stated in the letter dated 24.2.95, options were permissible to be exercised till that date particularly having regard to the para 2 of the letter dated 19.4.91 wherein it was



85

stated thus, "In the meanwhile, it is clarified that officials in Group 'D' can refuse promotion and those who have got the benefit of biennial cadre review may opt for reversion to the lower grade.....".

Emphasis is placed on the word "meanwhile" and it is contended that since a final decision was taken only on 24.2.95, the submission that options could be exercised even now deserves to be accepted. We find it difficult to accept this line of argument because the Biennial Cadre Review is a continuous process undertaken from time to time in the light of the prevailing situation. The provisions for calling ~~options~~ under the 19.4.91 letter although was not final, as such, it has to be understood in the light of para 3 thereof which states that in case a decision was taken in favour of Group 'D' staff to retire at the age of 60 years even after getting the pay scale of 950-1400, it will be effective from a prospective date ^(A) and in such a case those who refused the ~~reversion~~ ^{promotion} will remain eligible ^{for promotion} and will not be debarred from consideration on the ground of earlier refusal for promotion. That explains that the words 'meanwhile' has a ^{whether} reference to this larger issue namely those officials who continued in the scale of 950-1400 should also be made to retire at the age of 60 years and has no relevance to the scheme envisaged at that time for those officials to opt for retirement at the age of 60 years. The learned counsel for the applicant submitted that no date was specified in the letter dated 19.4.91 to exercise option and, therefore, it can be exercised on 10.1.96 also. The





short answer to his submission is that the option was to be exercised at the time of promotion and immediately. That stage had arisen on 22.10.93 when the applicant was promoted.

13. The learned counsel for the applicant next urged that the action of the respondents in giving opportunity to certain officials to opt for the scale of 825-1200 after that scale was introduced and to deny the same to the officials like the applicant who was promoted earlier to that date is discriminatory and violative of doctrine of equality enshrined in the Constitution of India. He urged that since all the Group 'D' officials formed one homogenous class, such a differential treatment violates Article 14 of the Constitution of India. We find no merit in the submission for the simple reason that all the officials have been treated equal by giving the benefit of choosing to the lower scales for different periods of time, the basic factor remaining that all those who were in the scale of 950-1400 were entitled to opt for a lower scale and continue upto the age of 60 years. Moreover, action to be discriminatory must arise and treat different classes of persons at the same time differently without any rational basis. That is not the case here. Certain officials in the same class were given opportunity to opt for lower scale on an earlier occasion and another batch was given that opportunity at a later stage and not under the same orders. We see no



87

discrimination practised by the respondents.

14. Lastly, the learned counsel for the applicant submitted that ~~a s~~ beneficial interpretation to the various orders of the respondents is required to be given and since in the implementation of the BCR scheme, the respondents are able to allow some of the Group 'C' officials to exercise the option and refused the same on the technical ground that the option should have been exercised earlier and that would not have been in consonance with the welfare policy of the State. In support, he seeks to rely on the observations of the Hon'ble Supreme Court in the case of D.S.NAKARA v. UNION OF INDIA (AIR 1983 SC 130). The learned counsel drew our attention ~~xxxxxx~~ to para 10 of the judgement in which their lordships have dealt with the content and the meaning of the Article 14 of the Constitution of India. In para 15 it has been held that the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question. For the reasons already discussed, we do not find as to how this ratio helps the case of the applicant since we find no class being differently treated from

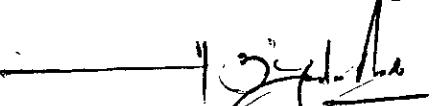
LML



another class. The learned counsel then referred to the observations in para 50 of the judgement. It was held therein that the pensioners did not challenge the liberalised pension scheme but were seeking the benefit of it. In that context, the observations in para 65 are relied upon in which it was emphasised that since the respondents had introduced arbitrary eligibility criteria and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the object sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, the impugned memo specifying the date was violative of Article 14 and was unconstitutional. We are unable to understand as to how the learned counsel for the applicant reads these observations as applicable to the instant case where on facts we find that no arbitrary steps have been taken by the respondents.

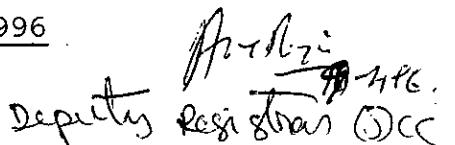
15. For the aforesaid reasons, we are not satisfied that the applicant is entitled to the relief he has prayed for.

16. In the result, the OA is dismissed. The interim order dated 29.2.96 maintained by our further order dated 19.3.96 is hereby vacated. No order as to costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)


(M.G. CHAUDHARI)
VICE CHAIRMAN

DATED: 9/16 - ^{April} MARCH, 1996


Deputy Registrar (OCC)

To

1. The Chief General Manager,
Telecom, A.P.Circle, Hyderabad.
2. The Telecom District Manager,
Warangal-050.
3. The Superintendent Incharge,
Central Telegraph Office,
Warangal.
4. One copy to Mr.V.Venkateswara Rao, Advocate, CAT.Hyd.
5. One copy to Mr.K.Bhaskar Rao, Addl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy,

pvm

Sig/95
I COUR.

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD :M(A)

Dated: 9 - 4 - 1996

~~ORDER/JUDGMENT~~

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

in
O.A.No. 260/96

T.A.No. (w.p.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default

Ordered/Rejected.

No order as to costs.

pvm

No Spare Copy

केन्द्रीय प्रशासनिक विधिकरण
Central Administrative Tribunal
देशपात्र/DESPATCH
15 APR 1996
हैदराबाद व्यापारीठ
HYDERABAD PEAK