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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.377/96

DATE OF ORDER : 26-08-1998.

Between :-

Rafiuddin Khan

... Applicant

And

Union of India rep. by

1. Chairman, Telecom Commission,
Sanchar Bhavan, New Delhi.
2. Chief General Manager, AP,
Telecom Circle, Hyderabad.
3. General Manager, Telecom District,
Suryalok Complex, Hyderabad.
4. Divisional Engineer, Telecom (Rural)
5-9-25, Adarshnagar, Hyderabad.

... Respondents

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Counsel for the Applicant : Shri K.S.R.Anjaneyulu

Counsel for the Respondents : Shri K.Ramulu,CGSC

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CORAM:

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

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

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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Heard Sri K.S.R.Anajansyulu, counsel for the applicant and Ms.Shama for Sri K.Ramulu, standing counsel for the respondents.

2. By Office Memorandum No.F.5(59)-E.III/82 dated 13-03-1984 (Annexure-I to the counter affidavit), revision of pay scales of Draughtsmen Grade III, II and I in all Government of India offices on the basis of the Award of Board of Arbitration in the case of Central Public Works Department was issued. By that order the Draughtsmen Gr.I who were in the scale of pay of Rs.425-700 were placed in Rs.550-750. Similar is the revision for Draughtsmen Gr.II to and Gr.III/the next higher grade from the existing lower grade.

3. Adverting to the earlier memo dt.13-3-1984, President of India by OM No.13(1)-1C/91 dt.19-10-1994 (page-12 to the OA) had decided that the Draughtsmen Gr.I, II and III in/offices/departments of the Government of India other than in CPWD may also be placed in the scales of pay mentioned above subject to the following conditions which are re-produced below :-

(a) Minimum period of Service for placement from the post carrying scale of Rs.975-1540 to Rs.1200-2040 (pre-revised Rs.260-430 to Rs.330-560) : 7 years

(b) Minimum period of service for placement from the post carrying scale of Rs.1200-2040 to Rs.1400-2300 (pre-revised Rs.330-560 to Rs.425-700) : 5 years

(c) Minimum period of service for placement from the post carrying scale of Rs.1400-2300 to Rs.1600-2660 (pre-revised Rs.425-700 to Rs.550-750) : 4 years

that
It is further stated in the OM dt.19-10-1994/"Once the Draughtsmen
are placed in the regular scales, further promotions would be made
as per
against available vacancies / criteria laid down in the recruit-
ment rules." ~~The benefit of revision of scales of pay~~ It is further
added that "the benefit of this revision of scales of pay would be
given with effect from 13-5-1982 notionally and actually from
the
1-11-1983". The OM dt.19-10-94 was circulated to all/concerned
by letter No.15-21/95-TE-II dt.4-12-1995 (page-13 to the OA).

Accordingly the applicant herein who had completed 4 years of service
in the scale of pay of Rs.425-700/- ~~xxxxxx~~ on 30-4-1983 was granted
the scales of pay of Rs.550-750 in accordance with the memorandum
dt.19-10-94 notionally with effect from 1-5-83 but actually from
1-11-1983 by memo dt.18-1-96 (Annexure-2 page-9 to the OA). That
order of dt.18-1-96 was cancelled by impugned memo dt.14-2-96
(Annexure-I page-8 to the OA).

4. This OA is filed to set aside the memo No.E/14-6/27
dt.14-2-1996 (Annexure-I page-8 to the OA) of Divisional Engineer
Telecom (Rural) cancelling the orders dt.18-1-96 by holding the
same as arbitrary, illegal and for a consequential direction to
the respondents to restore the applicant to the scale of Rs.550-
750/as per order dt.18-1-96 and to refund the amount recovered
as excess payment and further order payment of difference in pay
and allowances with effect from 1-11-83 as arrears of pay and
allowances.

5. A reply has been filed in this OA. The reply in our opinion
does not touch the vital point in regard to the reasons for

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cancellation of order dt.18-1-96 by the impugned order dt.4-2-96. However from the reply it transpires that the cancellation was instituted due to (i) the order dt.18-1-96 was issued by D.E.T. who ^{was} is not competent to issue that order for a Circle Level post; (ii) that there appears to be no vacancies for promoting the applicant on the crucial date notionally with effect from 1-5-1983.

6. The learned counsel for the applicant submits that in case the order dt.18-1-96 was issued by an in-competent authority ~~such an order is to be issued because of the memorandum dt.28-28-84,~~ the order dt.18-1-1996 could have been ratified by the competent authority instead of cancelling the same.

7. We fully agree with the above submission of the counsel for the applicant. If an order ^{is} was issued by an incompetent authority, but such order is in accordance with the existing rules, there is no need for cancellation of that order but the same order issued by an incompetent authority ^{shall} ~~should~~ be got ratified by the competent official. This is the normal rule followed in Government of India. Hence the cancellation of order dt.18-1-96 on the ground that the order was issued by an incompetent authority is untenable and hence that contention/has to be upheld.

8. learned counsel
The/for the applicant submits that in the order dt.19-10-94 there are no instructions in regard to the placement of the applicant on the higher grade vacancy and hence irrespective of availability of vacancies, the applicant should be given

the scale of pay of Rs.550-750/1600-2660 when he had completed four years of service on the crucial date viz., 1-5-1983.

9. For this we have scrutinized the OM dated 19-10-1994.

The para-3 of the memorandum reads as follows :-

"Once the Draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules."

It is not very clear from that para that the upgradation should be effected only if there are vacancies available on that crucial date for upgradation. It may also be read that promotion to higher grade higher than the upgraded post can be given only if vacancies in the higher grade above the upgraded grade are available. The reply submitted by the Respondents did not clarify that point. The learned counsel for the respondents could not advance any arguments in this connection. In view of that, we have no other alternative except to remit it back to the respondent No.2 for examining the issue de-novo and issue a detailed speaking order in this connection. Till such time a speaking order is issued, no recovery should be made from the pay and allowances of the applicant. If in pursuance of the speaking order to be issued by Respondent No.2 any further action is to be taken, it should be kept pending for a month so as to enable the applicant to challenge that order, if he is so advised.

10. In the result, the following order is issued :-

- (i) the impugned order No.E/14-6/27 dt.14-2-1996 is hereby set aside;
- (ii) the applicant should be paid in higher grade till a speaking order is issued as directed above;

(iii) no recovery shall be made from the pay of the applicant till a speaking order is issued;

(iv) if the applicant is to be shown in the lower grade till the vacancies are available as interpreted by the respondents, he should be shown as reverted up to that date only after issuing the speaking order;

(v) If he is reverted in pursuance of the speaking order, then the higher payment made to the applicant from the date of his placement in the grade of Rs.500-750/ 1600-2660 till he is reverted is liable for recovery;

(vi) The revision order as mentioned above will come into force one month after issue of that revision order.

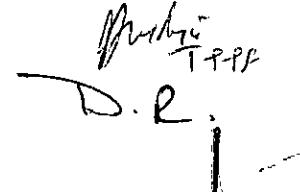
11. The Original Application is ordered accordingly. No order as to costs.



(B.S.JAI PARAMESHWAR)
26.8.98 Member (J)


(R.RANGARAJAN)
Member (A)

Dated: 26th August, 1998.
Dictated in Open Court.


D.R.

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Copy to:-

1. The Chairman, Telecom Commission, Sanchar Bhavan, New Delhi.
2. The Chief General Manager, A.P. Telecom Circle, Hyderabad.
3. The General Manager, Telecom District, Telecom District, Suryalek Complex, Hyderabad.
4. The Divisional Engineer, Telecom (Rural), 5-9-25, Adarshnagar, Hyderabad.
5. One copy to Mr. K.S.R. Anjaneyulu, Advocate, CAT., Hyd.
6. One copy to Mr. R. Ramulu, Addl. CGDC., CAT., Hyd.
7. One copy to D.R.(A), CAT., Hyd.
8. One duplicate copy.

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26/8/98
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II COURT

TYED 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(J)

DATED: 26/8/98

ORDER/JUDGMENT

M.A/R.A/C.P.NS.

in
C.A.NO. 377/98

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

