

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 328/97.

Dt. of Decision : 7-1-99.

1. B.Purnachander Rao
2. D.Kiran Kumar
3. S.Lacha Reddy

.. Applicants

Vs

1. The Telecom District Engineer,
Adilabad.
2. The General Manager,
Telecommunications,
Warangal Area,
Hanamakonda.
3. The Chief General Manager,
Telecom, A.P. Circle,
Hyderabad.
4. The Chairman, Telecom Commission,
New Delhi.

.. Respondents.

Counsel for the applicants : Mr.K.Venkateswara Rao

Counsel for the respondents : Mr.V.Rajeswara Rao, Addl.CGSC.

CCRAM:-

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

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

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ORDER

ORAL ORDER (PER HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.))

Hear~~d~~ Mr.K.Venkateswara Rao, learned counsel for the applicants and ^Mr.V.Rajeswara Rao, learned counsel for the respondents.

2. There are three applicants in this OA. They were initially appointed as Telephone Operators in Adilabad Telecom Division w.e.f., 21-4-87, 22-2-86 and 18-7-86 respectively. Consequent on automisation ^{of the exchange at} of Adilabad Division, R-1 issued Memo No.E.9-11/ADB/92-93/1 dated 23-7-92 (Annexure-I to the OA) calling for options for cadre conversion of surplus from Telephone Operators to TOAs in Adilabad Division. This letter reads as follows:-

"Consequent on automisation of Telephone exchanges of Adilabad Division, options are called for from Telephone Operators for cadre conversion from Telephone Operators to Telecom Office Assistants under Rule 38 of P&T Man. Vol.IV in the interest of service.

All the officials who opt for cadre conversion as Telecom Office Assistants are eligible for entitlement of TA and TP, if they are transferred away from their place of present posting.

Last date for receipt of options is 5-8-92."

It is stated that the applicants had given their options on the basis of the memo of R-1. The applicant No.1 has submitted his option dated 30-7-92 accepting the conditions laid down therein. Similarly applicant No.3 has also given his option on 17-2-93 (Annexure R-2). The applicant No.2 has not given any option letter. This is also accepted by the respondents and the,

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respondents submit that applicant No.2 being junior to the surplus candidates was transferred even though he had not given any option letter. They were transferred as TOA on 16-2-93, 16-2-93 and 15-4-93 respectively. All the 3 applicants had submitted a representation dated 14-6-96 (Enclosed as Annexure-9 at Page-18, 19 and 20) requesting the respondent No.3 to retain their seniority of the Telephone Operator even though they were posted as TOA. It is not known whether these representations have been replied or not.

3. This OA is filed praying for a declaration that the applicants are entitled for counting their seniority in the cadre of TOA (G) on cadre conversion from the date of their original appointment as Telephone Operators (T.O.A.(P)) namely from 21-4-87, 22-2-86 and 18-7-86 respectively with all consequential benefits like promotion to senior T.O.A.(G) etc., by holding the action of the respondents is arbitrary in fixing their seniority in the cadre of TOA (G) only from the date of their cadre conversion under Rule 38 of P&T Manual Vol.IV as evident from selection panel list issued in the year 1997 for Sr.T.O.A.(G) (Annexure-IV to the OA) with all consequential benefits.

4. It is evident from the option letter dated 23-7-92 that the applicant will be transferred as TOA or their cadre will be converted as TOA under Rule 38 of P&T Manual Vol.IV. The fixation of seniority has been incorporated in sub-para(2) of Rule-38. This relevant sub-para (2) is reads as below:-

"When an official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order issued, including also all persons who have been approved for appointment to that grade as on that date."

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5. The above letter dated 23-7-92 has two important ingredients. They are (1) Conversion and transfer will be under Rule-38 of P&T Man. Vol.IV. (2) The transfer will be in the interest of service. Hence, the whole issue has to be considered whether the fixation of seniority of the applicants in the converted TOA cadres is in accordance with the two main ingredients of the letter dated 23-7-92.

6. As per the Rule-38 of P&T Man. Vol.IV conversion transfer on the basis of the option rendered by an employee is to fix the seniority of such employee based on the date of joining in the converted cadre as is evident from sub-para-(2) of Rule-38 of P&T Manual Vol.IV extracted above. Hence, if the applicants are given the battum seniority in accordance with that rule the same cannot be questioned. But it is further stated in that option letter dated 23-7-92 the cadre conversion is in the interest of service. The learned counsel for the applicants submits that the interest of service is fully protected by allowing the surplus staff to go to other cadre with their original seniority thereby the surplus staff are not paid without work. That is the interest of service and as the applicants had been transferred on that basis they cannot lose their seniority.

7. If the applicants feel that their cadre was converted in the interest of service they should have protested while giving options stating that they cannot be transferred under Rule-38 of P&T Manual Vol.IV. If they are transferred in the interest of service they should not have given option ^{accepting the condition} or they should have submitted in detail with the extent instructions as to why they should not be transferred under Rule-38 of P&T Manual Vol.IV. They could have added in the representation that

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in case the above deletion of the rule is not effected they will not accept the posting as TOA under Rule-38. But as can be seen from the option letter submitted by the applicants No.1 and 3 that they had accepted the above transfer without reservation. Hence, After a lapse of about 5 years when they were put at a disadvantageous position in their promotion to the post of Sr.TOA (G) they have approached this Tribunal for retaining their earlier seniority as TO. This is a belated action on the part of the applicants. Hence such a belated request at this juncture cannot be accepted. However, the interest of service indicated in the letter dated 23-7-92 should be read as the interest of service in reducing the surplus staff and that letter was not issued in the interest to improve the cadre prospects of the applicants herein. The wording of that letter in our view is very clear that the interest of service is to be read as to reduce only the surplus staff. As stated earlier if the applicants ^{were} not willing to accept the cadre conversion under the conditions laid down in the letter dated 23-7-92 they should not have given the un-conditional option letter. Having given the un-conditional option 5 years back, now they cannot go back on their option and request for getting the original seniority as TO. Hence, this contention has to be rejected.

8. The learned counsel for the respondents submits that the applicants may be given chance to go back as TO. It is for them now to approach the authorities opting to go back as TO if so desired and if such an option letter to go back to their parent department of TO is received by the respondent authorities the respondents may decide this issue in accordance with the rules. No direction in this connection can be given as this is not one of the reliefs asked for in this OA.

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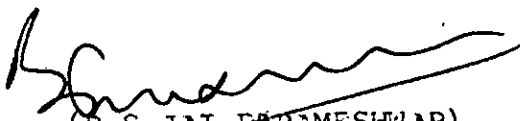


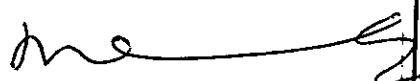
9. As stated earlier the applicant No.2 has not given his option, the respondents have no right to transfer him to the cadre of TOA without obtaining his option letter. Even if his seniors were sent as TCA on their accepting the cadre conversion the course left to the respondents in case of the applicant No.2 ^{was} ~~is~~ either to retrench him as per rule or to follow any other rules which in the opinion of the respondents ^{was} ~~is~~ adequate to reduce the surplus staff without ^{requesting} ~~requesting~~ to transfer applicant No.2 as TCA under Rule-38 without his option letter. Without option the cadre conversion given to the applicant No.2 is irregular. Hence, the applicant No.2 if he requests for going back to his parent cadre of TO by submitting an application he should be sent back to the cadre of TO retaining his original seniority as T.O.

10. In the result, the following direction is given:-

The case of the applicants No.1 and 3 for retaining their seniority as TO in the converted cadre of TCA (G) is dismissed subject to the observation made in para-8. Similarly the relief prayed ^{by} ~~for~~ applicant No.2 to retain his original seniority as TO in TOA cadre is rejected. But if the applicant No.2 submits a representation to go back to his parent cadre as TO he should be sent back to the cadre of TO maintaining his original seniority as TO.

11. No costs.


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


(R. RANGARAJAN)
MEMBER (ADMN.)

7.1.89
Dated : The 7th January, 1999.
(Dictated in the Open Court)

SPR

25/1/99

1ST AND IIND COURT

COPY TO:-

1. HDHMJ
2. HMRP M(A)
3. HBSJP M(J)
4. D.R.(A)
5. SPARE

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR :
VICE CHAIRMAN

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

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

THE HON'BLE MR. B. S. JAI PARAMESWAR :
MEMBER (J)

DATED: 21/1/99

ORDER/JUDGMENT

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

In
O.A. NO. 328/97

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS

SRR

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Central Administrative Tribunal
प्रेषण / DESPATCH
21 JAN 1999
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HYDERABAD BENCH