

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

AT HYDERABAD

D.A.No.580 OF 1997.DATE OF ORDER:2-2-1999.BETWEEN:

Md.Yaseen.

... Applicant

a n d

1. The Executive Engineer, Telecom, Civil Division No.I, Barkatpura, Hyderabad.
2. The Chief Engineer, Telecom Civil Zone, Koti, Hyderabad.
3. The Secretary to the Department of Telecommunication, Sanchar Bhavan, New Delhi.
4. The Union of India, represented by the Secretary to the Government of India, Ministry of Finance, Department of Expenditure, Secretariate, New Delhi.
5. The Superintending Engineer, Telecom, Civil Circle, Chikkadpally, Hyderabad.

..... Respondents

COUNSEL FOR THE APPLICANT :: Mr.K.Venkateshwara Rao

COUNSEL FOR THE RESPONDENTS:: Mr.V.Rajeshwara Rao

CORAM:

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

A N D

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

: O R D E R :

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

Heard Mr.K.Venkateshwara Rao, learned Counsel for the Applicant and Mr.V.Rajeshwara Rao, learned Standing Counsel for the Respondents.

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2. The applicant was originally appointed as Draughtsman Grade-II with effect from 4-8-1979 in the scale of pay of Rs.330-560/- (pre-revised). Subsequently, his pay was fixed in the scale of pay of Rs.425-700 giving actual monetary benefits from 4-8-1979 as per Letter No.15-30/88-CSE, dated: 19-7-1993. Again his pay was fixed in the pay scale of Rs.1400-2300 with effect from 1-1-1986, vide OM No.9(2)93/1527, dated:19-8-1993.

3. The 3rd respondent issued a letter dated:23-8-1993 bearing No.22-5/92-TE-II, dated:23-8-1993, adopting the pay scales at par with those obtained in CPWD and conveyed the sanction of the Telecom Commission for introduction of three grades in the scales of pay of Rs.330-560, 425-700 and 550-750 respectively, and designated as Draughtsman Gr-III, Draughtsman Gr-II and Draughtsman Gr-I, respectively. The number of posts in these grades are in the ratio of 60:30:10. It was clarified that the existing Draughtsmen will be placed in the new grades i.e., Draughtsmen in the scale of Rs.260-430 into Draughtsmen Gr-III in the pay scale of Rs.330-560 and higher grade Draughtsmen in the pay scale of Rs.330-560 into Draughtsman Gr-II in the pay scale of Rs.425-700. It was in pursuance of these orders, the pay of the applicant was revised and re-fixed in the pay scale of Rs.425-700.

4. The respondent no.1 issued OM No.13(1)-IC/91, dated:19-10-1994, communicated by O.O.T.No.in Lr. No.15-21/95-TE.II, dated:4-12-1995, whereby the

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decision of the President was conveyed for placing Draughtsman Grade-I, II and III irrespective of their recruitment qualifications in all Government of India Offices. As per the said Order, the Draughtsman Grade-II in the scale of Rs.260-430 will be placed in the revised scale of Rs.330-560 on completion of 7 years, while Draughtsman Grade-II in the scale of Rs.330-560 will be placed in the scale of Rs.425-700 and Draughtsman Grade-I in the scale of Rs.425-700 will be placed in the revised scale of Rs.550-750 on completion of qualifying service of 5 years and 4 years respectively.

5. The applicant submits that the above revised scales came into effect on the basis of the award of the Board of Arbitration and also by the President of India as is clear from the OM dated:19-10-1994. He submits that, once the Draughtsman are placed in the regular scales, further promotion as would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules.

6. The applicant submits that this benefit of revision was directed to be given with effect from 13-5-1982 notionally and actually monetary benefits from 1-11-1983. In pursuance of these Orders, the pay of the applicant was fixed in Office Order No.9(2) SEHO/96/177, dated:6-2-1996 in the revised scale of Rs.550-750, and the applicant was being paid accordingly.

7. In the meanwhile, respondent no.3 issued impugned letter bearing No.15-21/95-TE.II, dated:19-2-1997, reviewing the earlier orders dated:19-10-1994 issued by R-4 conveying the decision of the President of India. It was clarified in the impugned letter that the eligible officials with four years regular service in the scale of pay of Rs.425-700 shall be placed in the scale of Rs.550-750 as Draughtsman Grade-I on adhoc basis limited to the ratio of 10% as indicated in the DOT Order on their appointment after identifying the post pending finalisation of recruitment rules. The Ministry of Finance had not stipulated the 10% element in its OM dated:19-10-1994. It, however, states that promotion will be made against available vacancies in the higher grade and in accordance with normal criteria laid down in the recruitment rules. The applicant submits that the OM dated:19-10-1994 contemplates placing of the existing draughtsmen in the revised scales on completion of requisite number of years of service and it does not contemplate any ratio muchless 6:3:1 as stipulated in the letter of R-3 dated:23-8-1993. He submits that the impugned letter dated:19-2-1997 issued by R-3 cannot be treated as a clarification to the OM dated:19-10-1994. The OM dated:19-10-1994 contemplated further promotion in the higher grades in accordance with the eligibility criteria as well as availability of vacancies. The applicant submits that as per the OM dated:19-10-1994 and the letter dated:19-2-1997, the stipulation of 10% to the Draughtsman Grade-I will apply for further promotions and not for promotions/placement in higher scales already

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made under OM dated:19-10-1994. By the impugned letter No.59(2)/TCOH/97/148, dated:1-5-1997, issued by the Respondent No.1 read with Letter No.15-21/95-TE.II, dated:19-2-1997, issued by Respondent No.3, directing the applicant to remit the amount received by him towards arrears on account of re-fixation in the grade of Draughtsman Grade-II without giving him an opportunity.

8. The applicant submits that the impugned letter dated:1-5-1997, directing him to remit back the payments received by him towards arrears is illegal and arbitrary.

9. Hence, he has filed this OA to call for the records relating to the letter dated:1-5-1997 bearing No.59(2)/TCOH-I/97/148, issued by the Executive Engineer, Telecom Civil Division-I, Barkatpura, Hyderabad, read with Letter No.15-21/95-TE.II, dated:19-2-1997 issued by the Department of Telecommunication, and quash the same by holding that the applicant is entitled to have the benefit of pay fixation as per Office Order No.9(2) SEHO/96/177, dated:6-2-1996 issued by the Superintending Engineer, Telecom Civil Circle, Hyderabad, in terms of OM No.13(1)-OC/91, dated:19-10-1994 issued by the Ministry of Finance.

10. On 7-5-1997 an Interim Order was passed suspending the impugned letter dated:1-5-1997 until further Orders.

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11. The respondents have filed their reply stating that the applicant was a Draughtsman in Grade-II as on 4-8-1979 in the pay of scale of Rs.330-560. Hence, his pay was fixed in the revised pay scales of Rs.425-700 giving actual monetary benefits from 4-8-1979. As per letter dated:19-8-1993 again his pay was fixed in the scale of pay of Rs.1400-2300 with effect from 1-1-1986(Annexure.R-1). It is submitted that there were three grades in the cadre of Draughtsman prior to 1979 in the Civil Wing of the Department of Telecom. However, the cadre of Draughtsman Grade-III was abolished after 1978 and there remained only two grades viz., Junior Draughtsman and Senior Draughtsman. Again in 1995 the Recruitment Rules were amended and three grades structure was re-introduced. As per OM dated: 13-3-1984, the scale of pay of Draughtsman in the Offices/Departments of Government of India other than CPWD Draughtsman on fulfilling the recruitment qualifications of the CPWD Draughtsman, their scales of pay were revised. The same was implemented in the Civil Wing of the DOT with slight modification as per the Order dated:12-9-1984. This letter was issued by the DG P & T, New Delhi. As per this letter the scales of pay of P & T Civil Wing were revised on par with the scales of pay of Draughtsman of the CPWD. In accordance with the above letter, Draughtsman who were in the pay scale of Rs.425-700 as on 13-5-1982, and who had completed 8 years of service in both pay scales i.e., Rs.425-700 and 330-560, were placed in the revised pay scale of Rs.550-750 notionally with effect from 13-5-1982 with actual benefit from 1-11-1983.



Likewise, Draughtsman Grade-III were placed in the pay scale of Rs.425-700 after completion of three years in Grade-III giving effect from the dates mentioned above. They submit the scales of pay of Draughtsman of P&T Civil Wing was further revised by an Order dated:19-7-1993(Annexure.R-III) and the pay of the applicants was revised from Rs.425-700 to Rs.1400-2300 with effect from 1-1-1986 and the arrears were also paid to the applicant.

12. The above Order was issued in concurrence with the Ministry of Finance, vide their letter dated:28-6-'93 bearing No.12(26)IC/92. They submit that the applicant after enjoying the benefits of scales of pay on par with CPWD Draughtsman, he is not entitled for further revision of his pay as per Order dated:19-10-1994, which was intended for Draughtsman Grade-I, II and III in the Offices/Departments of Government of India other than CPWD. They further submit that the Ministry of Communications, circulated the letter of the Finance Department dated:19-10-1994, through letter No.15-21/95-TE-II, dated:4-12-1995 to all the Offices of Telecom Circles and other Offices, a copy of the letter dated: 4-12-1995 is filed as Annexure-R-IV. Accordingly, the letter bearing No.15-21/95-TE-II, dated:3-7-1996 was issued by the Department of Telecom directing the Circles to withhold any action on the basis of the OM dated:19-10-1994 on the ground that the above OM was not applicable to the Draughtsmen of the Telecom Wing. Subsequently, the question of implementation of the

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Finance Ministry OM dated:19-10-1994 was reviewed and decided as per Order dated:19-2-1997 to the effect that the promotions to Draughtsman of Telecom Wing would be regulated in accordance with the Order dated:23-8-1993 under which their scales of pay were revised on par with CPWD. They submit that since the benefits of revised scales of pay as per the OM dated: 19-10-1994 were already given to the Draughtsman of Telecom Wing, vide Order dated:19-7-1993, the applicant is not entitled for second revision. Thus they submit that the impugned Order is in order and the recovery has to be made accordingly.

13. The first contention to be considered is, whether the applicant was promoted to the scale of pay of Rs.425-700 or due to change in the scale of pay he was placed in the scale of pay of Rs.425-700/-.

14. It is very clear from the OA that the applicant was in the scale of pay of Rs.330-560 in the year 1979, which was revised to Rs.425-700. Thus the placement of the applicant in the scale of pay of Rs.425-700 in the year 1979 is not on account of any promotion but was only due to the revision of scales of pay from Rs.330-560/-. By OM dated:19-10-1994, the Finance Ministry has given certain proposals for further promotion to those who are in the Draughtsman grades III, II and I, if they have not earned any promotion. The applicant herein in our opinion had got no promotion to the scale of pay of Rs.425-700. He obtained his
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scale of pay of Rs.425-700 because of the revision of the pay scales. Hence he is entitled for the promotion to the scale of pay of Rs.550-750 in accordance with the Finance Ministry OM dated:19-10-1994, after completion of 5 years of service. The applicant was to hold the post in the scale of pay of Rs.425-700 from 4-8-1979. After lapse of 5 years from that date, the applicant was entitled to the scale of pay of Rs.550-750 after 4 years of service. The applicant has been correctly promoted to the scale of pay of Rs.550-750 in the year 1983 after lapse of 4 years and his pay was correctly fixed as per the Memorandum dated:6-2-1996(Annexure.A-7, page.15 to the DA).

15. The OM dated:19-10-1994 does not regulate any percentage of posts to be fixed for in the higher grade for implementing OM referred to above. But for higher promotion after one promotion has been given as per the OM dated:19-10-1994, the Draughtsmen are entitled only on the basis of the available vacancies.

16. Even fixing of the 10% of the posts in the higher grade as contemplated in P & T Circular dated:19-2-1997 is not warranted. After giving promotion, for future promotions, the percentage can be worked out and fixed. The respondents in their reply appear to suggest that the OM dated: 19-10-1994 may not be applicable to the Civil Wing of the P & T. We do not accept this view. The Finance Ministry letter dated:19-10-1994 is for all the Draughtsman Cadre, whether it is in the Telecom Wing or in the Civil Wing. Hence, this contention is also rejected.

17. In the result the impugned letter dated:1-5-1997 is set aside. The respondents should adhere to their earlier fixation of pay issued by letter No.9(2)SEHO/96/177, dated:6-2-1996(Annexure.VII, page.15 to the OA) and regulate his pay accordingly.

18. The OA is ordered accordingly. No costs.


(B.S.JAI PARAMESHWAR)

~~2 MEMBER (JUDL)~~


(R.RANGARAJAN)

MEMBER (ADMN)

DATED: this the second day of February, 1999

Dictated to steno in the Open Court

Amby
10-2-99.

DSN

Copy to:

1. HDHNJ
2. HHRP M(A)
3. HOSJP M(J)
4. D.R. (A)
5. SPARE

27/2/99
1st and IIInd Court.
Typed By
Compared by

Checked by
Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD.

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

THE HON'BLE H. RAGENDRA PRASAD
MEMBER (A)

THE HON'BLE R. RANGARAJAN
MEMBER (A)

THE HON'BLE MR. B.S. JAI PARAMESHWAR:
MEMBER (A)

DATED: 26/2/99

ORDER/JUDGMENT

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

IN

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

