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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O. A. 773 OF 1997

Dated, the 3rd Feb. '99.

BETWEEN :

G. Ramamurthy Applicant

A N D

1. The Director General, Telecom,
(reptg. Union of India),
NEW DELHI 110 011.
2. The General Manager,
Telecom District, W-G.,
Eluru 534 050

COUNSELS :

For the Applicant : Mr. C. Suryanarayana

For the Respondents : Mr. V. Rajeswara Rao

CORAM :

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)

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

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O R D E R

(PER: HON'BLE B.S. JAI PARAMESHWAR, MEMBER (JUDL))

1. None appeared on either side.
2. We are not inclined to adjourn the O.A. due to the absence of the learned counsels. Hence, we reserved the O.A. for pronouncing the order on the basis of the material available on record in accordance with Rule 15(2) Central Administrative Tribunals (Procedures) Rules, 1987.
3. While the applicant was working as Short Duty Office Assistant in the o/o DET, Bhimavaram, his services were terminated effective from 5.4.83. The applicant herein challenged the said termination by raising an Industrial Dispute vide I.D. No.29 of 1988 before the Industrial Tribunal, Hyderabad. On 29.8.80 the Industrial Tribunal dispute held that the Termination as illegal and directed the respondents as under :

"In the result the demand of Sri G. Rama Murthy, Ex-Employee of Telecom, Bhimavaram for his absorption on regular basis in the post of Telephone Operator or Office Asstt. is justified and he must be immediately absorbed into service from the date of his dismissal or termination or non-engagement but without any back wages, with all other attendant benefits.

Award is passed accordingly."

4. The respondents herein unsuccessfully challenged the direction given by the Industrial Tribunal, Hyderabad before this Bench in O.A. No.927/91 decided on 23.3.92.
5. The applicant herein was appointed as Telecom Office Assistant in the scale of pay of Rs.975-1660 by order dt.15.4.83. The said letter of appointment was in accordance with the directions given by the Industrial Tribunal, Hyderabad. Hence, the Respondents by their order dt. 21.9.93 stated that the date of appointment has been revised from 4.3.83 to 5.4.83.

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6. The Respondents issued District Gradation List of Telecom Office Assistants, Eluru as on 1.7.93. A copy of the Gradation List is at Annexure-A5 to the O.A. In the said Gradation List the name of the applicant finds place at Srl. No.98 and stated that his seniority had been "Provisionally Fixed". At Srl. No.99 one G. Chenchaiah has been included.

7. The applicant was promoted temporarily as Sr.TOA in the scale of pay of Rs.1320-2050 vide orders dt. 12.1.98 dt. 24.4.95 (Annexure-A12), 19.10.95 (Annexure-A14) and 31.10.96 (Annexure-A17). These promotions were of officiating in nature and for a specified period.

8. The Respondents reverted the applicant by order dt. 5.12.96 (Annexure-A18) to TOA.

9. The applicant submitted his representation dt. 12.12.96 and 27.12.96 (Annexure-A20 and 21). Against his reversion he stated that juniors to him has per the Gradation List as per at Annexure-A5 were continued and promoted. He further submitted that his case was not considered for deputing him for training for Sr.TOA though his juniors were deputed for training and promoted.

10. The respondents have failed to consider the representations dt. 12.12.96 and 26.12.96.

11. After completion of the Sr.TOA Training the applicant was not promoted on the pretext of non-availability of vacancies.

12. The applicant has filed this O.A. for the following reliefs :

To direct the respondent authorities to appoint the applicant as Sr.TOA retrospectively with effect from the date which his immediate junior (Sri G.Chenchaiah shown at S.No.99 of the Gradation List, Annexure A-5 hereto) was appointed and consequently to fix his pay at the appropriate stage in the pay scale of Rs.1320-2040 applicable to Sr.TOAs, ensuring that he does not draw less



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pay than any of his juniors at any stage.

13. The respondents have filed their counter stating that the applicant was selected as Telephone Operator for the first half year of 1980; that he was offered the duties of Telephone Operator on casual basis during 1980-91 and his services were dispensed with from 27.4.81. However, he was again engaged as Telephone Office Assistant in the office of DET, BVM on casual basis from 9.7.81 to 27.9.82; that he was engaged as a Counter Clerk w.e.f. 31.7.85 in the Tiffin Room at Telephone Exchange which was not an employment under the respondents since Welfare Committee is not a statutory body. They admit the Industrial Dispute raised by the applicant. Accordingly, they submit that he was reinstated and appointed as Telephone Operating Assistant after completion of the TOA Training from 4.12.92 to 3.3.93 and was regularly appointed as an outsider w.e.f. 4.3.93. In accordance with the directions given in the Industrial Disputes Tribunal the date of appointment was modified as 5.4.83, from the date of original termination.

14. They submit accordingly that the national increments of the applicant were given and pay was fixed at Rs.1210 in the scale of Rs.975-1660. The applicant was to be a 'probationer' for four years or till passing of confirmation test, whichever is later, as per the recruitment rules 1988. As regards seniority of the official who pass the confirmation test in the 4th year or subsequent years, the DGP&T letter dt. 2.3.81 (Enclosed as Annexure-R2) held that they would be fixed below all the departmental qualified officials of the year in which they passed the prescribed confirmation test.

15. As regards placing the applicant at Sr. No.98 in the Gradation List of TOAs as on 1.7.83 it is stated that it was erroneous as the applicant passed the confirmation test on 11.11.94 and was promoted as Sr.TOA w.e.f. 12.1.95 on officiating basis.

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16. They submit that the applicant cannot claim the reliefs as sought for.

17. The applicant was engaged earlier to 5.4.83. The Industrial Dispute Tribunal had held that the termination of the applicant was not proper and given certain directions. In compliance with the directions given by the Industrial Tribunal, the respondents appointed the applicant and revised the date of appointment as 5.4.83. When they have revised the date of appointment of the applicant as 5.4.83 then it ^{not} cannot be said that the Gradation List as on 1.7.93 is/correct. Further while revising the date of appointment, the respondents have not spelt out the reasons for fixing the date as 5.4.83. Hence, the date of appointment of the applicant has to be considered as 5.4.83.

18. The respondents attempted to contend that the applicant was confirmed from 11.11.94 and therefore he cannot claim seniority. We are not persuaded to accept the said contention because the Hon'ble Supreme Court in the year 1988 itself delinked the confirmation with the seniority and held that the date of appointment is the criteria for fixing the seniority.

19. Hence, the circular instructions relied upon by the respondents issued in the year 1981 cannot be accepted. His seniority has to be fixed from the date of appointment, which in the case of the applicant is 5.4.83.

20. The applicant made a grievance in the O.A. that he has not been paid wages from 13.4.90 to 4.4.93 and 25.10.94 to 11.1.95. These are not the subject matter of the O.A. Hence, the applicant, if so advised, may submit a detailed representation to the concerned respondent authorities. We have no doubt that the concerned respondent authorities shall consider the representation of the applicant in accordance with the rules and ^{law}, pay the wages, if not already paid.

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O.A.773/97

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21. Hence, in our opinion the O.A. is liable to be allowed.

22. The O.A. is accordingly allowed. The following directions are issued :

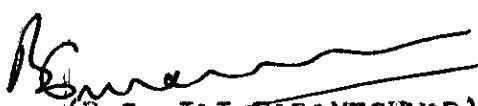
(a) The case of the applicant for promotion to the post of Sr. TOA shall be considered ~~at~~ par with G.Chenchaiah at Srl. No.99 of the Gradation List at Annexure-5 to the O.A.

(b) The pay of the applicant shall be notionally fixed in the cadre of Sr.TOA at par with G.Chenchaiah and pay monetary benefits to the applicant from the date he shoulders higher responsibilities as Sr. TOA on regular basis.

(c) The applicant, if so advised, may submit a detailed representation as regards the payment of wages for the period from 13.4.90 to 4.4.93 and 25.10.94 to 11.1.95, within one month, to the concerned respondent authorities, from the date of receipt of a copy of this order.

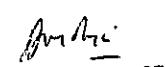
(d) If such a representation is received, the respondent authorities shall consider the same and dispose off in accordance with the rules within 2 months from the date of receipt of the said representation.

23. With the above directions the O.A. is allowed leaving the parties to bear their own costs.


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


(R. RANGARAJAN)
MEMBER (A)

Dated, the 3rd Feb. '99


3.2.99

CS

1st and IIInd Court.

Copy to:

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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 H. RAJENDRA PRASAD:
MEMBER (A)

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

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

DATED: 3.2.99

ORDER/JUDGMENT

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

IN
O.A.NO.: 773/97.

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

(7 copies)

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal
शेषण / DESPATCH

10 FEB 1999

हैदराबाद आयरीह
HYDERABAD BENCH