

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

13.09.2011

TA 03/2008 (CWP 2988/2006)

None present for applicant.

Mr. Sudeep Mathur, Proxy counsel for

Mr. Inderjeet Singh, Counsel for respondents.

Mr. Sudeep Mathur puts appearance on behalf of Mr. Inderjeet Singh, Advocate, and submits that Mr. Inderjeet Singh, Advocate, is now appearing on behalf of the respondents and his power has also been filed.

Put up on 22.09.2011.

Anil Kumar

(Anil Kumar)
Member (A)

ahq

K. S. Rathore

(Justice K.S. Rathore)
Member (J)

power filed
by Sudeep Mathur
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22/09/2011

22/09/2011 [TA 03/2008 (CWP 2988/2006)]

Mr. Vinod Enyal, proxy counsel for
Mr. Virendra Lodha, Counsel for applicant.
Mr. Inderjeet Singh, Counsel for respondents.

Heard.

The T.A. is disposed of by a
separate order on the separate sheets
for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K.S. Rathore]
Member (J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

T.A. No. 03/2008
(C.W.P. No. 2988/2006)

DATE OF ORDER: 22.09.2011

CORAM

**HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

1. Radhey Shyam Meena S/o Shri Govind Narayan, aged about 53 years, R/o II/64, Telecom Colony, Jaipur.
2. Jai Mangal Shah S/o Shri Ram Jaman Shah, R/o P-5, Sanmati C-1, Jaipur.
3. Ram Chandra Swami S/o Shri Dhanna Lal, R/o P.B. 69, Jaipur Circle, Jaipur.
4. Nand Lal Bhatia S/o Shri Thakur Das, R/o C-311, Vidhyadhar Nagar, Jaipur.
5. Ram Ratan Sharma S/o Shri Bhanu Kr. Sharma, R/o 8, Krishna Nagar-A, Kartarpura, Jaipur.
6. Hanuman Sahai Sharma S/o Shri Birdhi Chand Sharma, R/o 58, Gyatri Nagar, Jaipur.
7. Hari Narayan Rajput S/o Shri Mahadev Singh, R/o 46, Virdha Vihar, Agra Raod, Jaipur.
8. Ram Gopal Rana S/o Shri Mangi Lal, R/o Ganesh, C-1, Moti Dungari, Jaipur.
9. Prakash Chand Meena S/o Shri Hari Ram Meena, R/o Plot No. 13, Meena Colony, Near J.P. Colony, Jaipur.
10. Balu Ram Gurjar S/o Shri Ghasi Lal, R/o P&T Colony-1, C-Scheme, Jaipur.
11. Raman Lal Sharma S/o Shri Gangadhar Sharma, R/o 155, Surya Nagar, Jaipur.
12. Kalu Ram Sen S/o Shri Kajod Mal, R/o B-117, Arjun Nagar, Jaipur.
13. Prabhu Narain Meena S/o Shri Sedu Ram, R/o 1-C-125, Gujar Basti, Jaipur.
14. Om Prakash Sharma S/o Shri Rameshwar Lal Sharma, R/o 73, Kundan Nagar, Jaipur.
15. Kanhaiya Lal Yadav S/o Shri Nanag Ram Yadav, R/o 214, Jagganthpuri, Jaipur.
16. Suraj Narain Mali S/o Shri Nanag Ram Mali, R/o 119, SK C-1, Jaipur.
17. Ravindra Kumar Sahni S/o Shri Badri Narain, R/o A-176, Murlipura, Jaipur.
18. Ram Narain S/o Shri Ram Chandra, R/o 488, Prabatpuri, Agra Road, Jaipur.
19. Brij Mohan Yadav S/o Shri Nanag Ram Yadav, R/o 216, Jaggannathpuri, Jhotwara Road, Jaipur.
20. Laxmi Narayan Meena S/o Shri Pratap Meena, R/o Suraj Colony, 5, Panna Ki Chowki, Gangapole Road, Jaipur.
21. Shiv Shanker S/o Shri Radhey Shyam, R/o Plot No. 4, Niboon Ka Bagh, Jaipur.

22. Babu Lal Saini S/o Shri Bhagwan Sahai, R/o E-688, Vaishali Nagar, Jaipur.
23. Nathu Lal Mali S/o Shri Balu Ram, R/o Mahadev Nagar, Sirsi Road, Jaipur.
24. Chotu Lal Meena S/o Shri Ram Chandra, R/o 68, Gulabnagar, Near Sanganer Railway Station, Jaipur.
25. Ram Prakash Sharma S/o Shri Onkar Sharma, R/o Near Adarash School, Jhotwara, Jaipur.
26. Sita Ram Sharma S/o Shri Shridhar, R/o Telecom C-1, Malviya Nagar, Jaipur.
27. Kheru Ram Raigar S/o Shri Bodu Ram Raigar, R/o Raigeron Ka Mohalla, Achrol, Jaipur.
28. Ramesh Chand Harijan S/o Shri Nathu Lal, R/o Jawahar Nagar, Tila No. 4, Jaipur.
29. Dayanand Saini S/o Shri Gulji Ram, R/o B-42, Ram Nagar, Jaipur.
30. Kalu Ram Saini S/o Shri Jhutha Ram, R/o Sawa Nadi Pulia Bandikui, Dist. Dausa.
31. Satya Narayan Kholia S/o Shri Omilal, R/o village Goner, Raigar Mohalla, Goner, Jaipur.
32. Rameshwar Lal Sain S/o Shri Kalyan Sain, R/o Village Dudu, PO Evli, Dist. Jaipur.
33. Bodu Ram S/o Shri Chiman Lal, R/o B-26-27, Hasanpura, Jaipur.
34. Gopal Lal Meena S/o Shri Kalyan Mal, R/o Bilwa Khurd, Bassi.
35. Prahlad Sain S/o Shri Bhanwar Lal, R/o DD-177, Shanti Nagar, Jaipur.
36. Deep Chand S/o Shri Ghasi Lal, R/o M-6, Ram Nagar, Sodala, Jaipur.
37. Gulab Chand Aheer S/o Shri Laxmi Narain, R/o B-81, Vinoba Vihar, Vaishali Nagar, Jaipur.
38. Shiv Shanker Gautam S/o Shri Jhamak Lal, R/o 595, Devi Nagar, Jaipur.
39. Ajendra Singh S/o Shri Hari Singh, R/o H.No. 64-65, Hasanpura, Ajmer Road, Jaipur.
40. Satya Narain Meena S/o Shri Sugna Ram, R/o D-5, Shanti Path, Jaipur.
41. Kana Ram Sharma S/o Shri Bheru Ram, R/o B-43, Sita Bari, Tonk Road, Jaipur.
42. Chauth Mal Mali S/o Shri Gangaram, R/o Plot No. 47, Sanskar Vihar, Meenawala, Sirsi Road, Jaipur.
43. Ram Gopal Garuda S/o Shri Kalyan Sahai, R/o 49, Saraswati Nagar, Jhotwara, Jaipur.
44. Shriram Yadav S/o Shri Bhagwan Sahai, R/o Village Sector 9/539 Ke Pass, Malviya Nagar, Jaipur.
45. Rameshwar Lal Bunkar S/o Shri Narain Lal, R/o B-19, Shriram Nagar, Jhotwara Road, Jaipur.
46. O.P. Chaubey S/o Shri Ram Sahai Chaubey, R/o Loyai, Tehsil Bonli, Dist. Sawai Madhopur.
47. Ramesh Chand Daubhi S/o Shri Ram Pal, R/o Subhash Nagar Colony, Near Railway Colony, Sawai Madhopur.

Petitioners No. 1 to 43 presently working on the post of Telecom Mechanic & petitioners no. 44 & 45 are working as

Regular Mazdoor under the control of Assistant General Manager (Admn.) & Petitioners No. 46 and 47 are working as Telecom Mechanic under Telecom District Manager, Sawai Madhopur, O/o the Principal General Manager, Telecom District, Jaipur.

...Applicants

Mr. Vinod Goyal, proxy counsel for
Mr. Virendra Lodha, counsel for applicants.

VERSUS

1. Union of India through the Secretary, Department of Telecom and Chairman, Telecom Commission, Department of Telecom, Sanchar Bhawan, New Delhi.
2. The Chairman & Managing Director, Bharat Sanchar Nigam Ltd., 20, Ashok Road, New Delhi.
3. The Chief General Manager, Telecom, Rajasthan Circle, Jaipur-8.
4. The Principal General Manager, Telecom District Jaipur.
5. The Telecom District Manager (TDM), Sawai Madhopur.

...Respondents

Mr. Inderjeet Singh, counsel for respondents.

ORDER (ORAL)

The applicants have filed the Writ Petition before the Hon'ble High Court of Rajasthan at Jaipur Bench, Jaipur, which was registered as S.B. Civil Writ Petition No. 2988/2006 seeking relief that by an appropriate writ, order or direction, the respondents may be directed to allow the pay scale of Rs. 4000-6000 to the applicants on completion of total 16 years of service including the restructure cadre, and thereafter to fix the pay scale of Rs. 4500-7000 w.e.f. 01.12.1998 after completion of 26 years of service. Besides this prayer, the Annexure A/1 circular dated 20th April, 1999, by which the aforesaid pay scales have been denied by the respondents, be quashed and set aside.

2. The Hon'ble High Court vide its order dated 05.12.2008 the said Writ Petition has been transferred to this Bench of the



Tribunal for its adjudication in view of notification dated 21.10.2008, in exercise of powers conferred by S. 14 (2) of Central Administrative Tribunals Act, 1985, Central Government has notified 10th day of November, 2008 as the date on and from which provisions of S. 14 (3) of the Act shall apply to the organizations including respondent B.S.N.L. - as a consequence whereof, orders passed by the BSNL are appealable before the Central Administrative Tribunal under Act, 1985. Therefore, the matter is transferred to this Bench of the Tribunal for its adjudication, and the same has been registered as T.A. No. 03/2008.

3. The brief facts giving rise to this T.A. are that the respondents have denied the pay scale of Rs. 4000-6000 to the applicants in accordance with the rules as already held by the Central Administrative Tribunal, Hyderabad Bench vide its order dated 09.08.2000 passed in O.A. No. 1966/1999, and the same has been affirmed by the Hon'ble High Court of Andhra Pradesh at Hyderabad in Civil Writ Petition No. 14744/2001 vide its judgment dated 16.10.2003.

4. The order dated 09.08.2000 passed in O.A. No. 1966/1999 by the Central Administrative Tribunal, Hyderabad Bench, has been complied with by the respondents, and while complying with the same, the respondents have decided to remove the condition of minimum 04 years of service in the restructure cadre for such official.



5. The applicants have preferred the present T.A. seeking for applying the ratio decided by the C.A.T. Hyderabad Bench and affirmed by the Hon'ble High Court of Andhra Pradesh, at Hyderabad, as aforesaid, for giving the same benefits as has been given to the applicants before the C.A.T. Hyderabad Bench.

6. The respondents have strongly controverted the facts as stated by the applicants, and submitted that the ratio decided by the C.A.T., Hyderabad Bench in O.A. No. 1966/1999 decided on 09.08.2000 was considered by the Department of Telecommunication and vide letter dated 27.10.2004 (Annex. R/1) addressed to the Chief General Manager, BSNL, Andhra Pradesh Telecom Circle, Hyderabad, it was communicated that it had been decided to implement the judgment of the Hon'ble Tribunal in favour of the applicants only, but it is denied that the ratio decided by the CAT, Hyderabad Bench, is applicable to the present case, as the order of C.A.T., Hyderabad Bench is confined to the applicants only, as evident by the Annexure R/1. Therefore, the learned counsel appearing for the respondents submitted that this judgment is in persona and not in rem, therefore, the same is not applicable to the facts and circumstances of the present case.

7. The Hon'ble High Court of Andhra Pradesh at Hyderabad while upholding the order dated 09.08.2000 passed in O.A. No. 1966/1999 by the Central Administrative Tribunal, Hyderabad Bench, has observed as under: -

"5. We are afraid we cannot accept the contention of the learned Standing Counsel for the Central Government. When once the re-structured cadre has been



introduced and in the said re-structured cadre various persons were brought into the main stream, they have to be treated equally for all purposes including the scales of pay and other promotional prospects. Allowing the higher pay scales to certain employees in the re-structured cadre and denying the same to other persons when they are holding the same post viz., Phone Mechanics, would amount to discrimination. It is to be noted that when re-structured group-C cadre formed a homogeneous group, there cannot be discrimination while giving higher pay scales to the employees in group-C cadre. Either it must be extended intoto or denied intoto, but the discrimination cannot be meted out on the ground that earlier to restructuring the respondents were holding group-D cadre and that group-C cadre itself is a promotional cadre. We do not find any nexus to the object sought to be achieved by carving out invidious discrimination. Converting homogenous group into heterogeneous without discernible criteria attracts the Wrath of Article 14 of the Constitution of India. Thus, we are in agreement with the conclusions reached by the Tribunal and we do not find any infirmity or illegality in the order of the Tribunal. We find no merits in the Writ Petition."

8. We have heard the rival submissions of the learned counsel appearing for the respective parties, and also carefully gone through the pleadings and documents available on record and also gone through the judgments available on record.

9. Having considered the claim of the applicant and the ratio decided by the C.A.T., Hyderabad Bench in OA No. 1966/1999 and affirmed by the Hon'ble Division Bench of the High Court of Andhra Pradesh at Hyderabad while deciding the Civil Writ Petition No. 14744/2001, it reveals that the Hon'ble High Court has rightly held that when once the re-structured cadre has been introduced and in the said re-structured cadre various persons were brought into the main stream, they have to be treated equally for all purposes including the scales of pay and other promotional prospects. Allowing the higher pay scales to certain



employees in the re-structured cadre and denying the same to other persons when they are holding the same post viz., Phone Mechanics, would amount to discrimination.

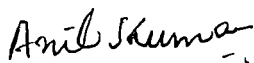
10. Applying the ratio decided by the Hon'ble High Court of Andhra Pradesh at Hyderabad as well as the C.A.T., Hyderabad Bench, on the facts and circumstances of the case of the applicants herein vide impugned order dated 20th April, 1999 (Annex. A/1) the benefits of pay scale have been denied to them merely because the order which has been passed by the C.A.T., Hyderabad Bench and upheld by the Hon'ble High Court of Andhra Pradesh at Hyderabad, has been passed in persona and not in rem, is misconceived and not tenable in the eyes of law, and the ratio, which has already been decided by the C.A.T., Hyderabad Bench and upheld by the Hon'ble High Court of Andhra Pradesh at Hyderabad, is applicable uniformly to the other similarly situated persons also, being judgment in rem, and the applicants herein also entitled to take the similar benefit in the light of the aforesaid order and judgment (supra), therefore, we deem it proper to quash and set aside the impugned order dated 20th April, 1999 (Annexure A/1) and directed the respondents to consider the case of the applicants in the light of the order dated 09.08.2000 passed by the C.A.T., Hyderabad Bench in O.A. No. 1966/1999 and affirmed by the Hon'ble High Court of Andhra Pradesh at Hyderabad in Civil Writ Petition No. 14744/2001 vide its judgment dated 16.10.2003.


11. Consequently, we quash and set aside the impugned order dated 20th April, 1999 (Annexure A/1). The respondents are



directed to consider the case of the applicants in the light of the order dated 09.08.2000 passed by the C.A.T., Hyderabad Bench in O.A. No. 1966/1999 and affirmed by the Hon'ble High Court of Andhra Pradesh at Hyderabad in Civil Writ Petition No. 14744/2001 vide its judgment dated 16.10.2003.

12. With these observations and directions, the T.A. stands allowed with no order as to costs.


(ANIL KUMAR)
MEMBER (A)


(JUSTICE K.S. RATHORE)
MEMBER (J)

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