

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 9<sup>th</sup> August, 2001

OA No.537/2000

Gurucharan Pareek s/o Shri Hanuman Sahai Pareek r/o village post Nayan via Amarsar, Distt. Jaipur, presently working as senior TOA (P) O/o SDOT Shahpura under the Principal General Manager, Jaipur T.D.

..Applicant

Versus

1. Union of India through the Secretary to the Department of Telecom, Sanchar Bhawan, Sansad Marg, New Delhi.
2. Chief General Manager, Rajasthan Circle, Jaipur-8.
3. Principal General Manager, Jaipur Distt., Jaipur.
4. S.D.O.T., Shahpura, Jaipur.

.. Respondents

Mr. P.N.Jati, counsel for the applicant

Mr. Vijay Singh proxy counsel to Mr. Bhanwar Bagri, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagrath, Administrative Member

The applicant was given officiating promotion in the grade of Senior Telecom Operating Assistant [for short STOA (P)] in the pay scale of Rs. 1320-2040 by order dated 5.11.96 effecting the promotion from 20.2.96. Further by order dated 8.9.99 the applicant was allowed to work as Sr. TOA (P) scale Rs. 4000-6000. By order dated 19th January, 2000 (Ann.A1) the applicant has been regularised to the post of STOA(P) in the pay scale Rs. 4000-6000 w.e.f. 27.9.99. The applicant has challenged this order on the plea that this order indicates that his date of regularisation as 27.7.99 while he has been




: 2 :

continuously officiating w.e.f. 20.2.96. He is further aggrieved that his pay has been reduced from Rs. 4300 to Rs. 4100 w.e.f. 1.12.99 without giving him any opportunity.


2. The plea of the applicant is that while working as STOA (P) he has completed a training successfully and on completion of the training, the respondents issued the impugned order in which he is shown to have been officiating w.e.f. 10.2.98 though he actually continued to officiate w.e.f. 20.2.96. His claim is that his services should be regularised as STOA (P) w.e.f. 20.2.1996 and not w.e.f. 27.9.99 as mentioned by the respondents in the impugned letter. The action of the respondents has been stated to be arbitrary and violative of Articles 14 and 16 of the Constitution as also in violation of principles of natural justice.

3. The respondents have opposed the prayer of the applicant by filing a written statement in which it has been stated that applicant was only put to work as STOA (P) w.e.f. 20.2.96 purely on ad-hoc basis. This was an interim arrangement till regular arrangement were put in place by calling fresh options and out of these optees those found suitable were to be given training for STOA (P). This process was initiated to man the posts in the restructured cadre of STOA (P) and the orders were issued on 5.11.1996 and 8.9.99 for making purely temporary and officiating promotion on ad-hoc basis. Such an ad-hoc arrangement does not confer any right of regularisation to the applicant. The respondents' case is that in pursuance of Department of Telecommunications letter dated 17.4.95, proceedings regarding calling of options and preparation of list of eligible candidates for officiating promotion to STOA (P) were initiated and the Chief General Manager, Telecom, Rajasthan vide letter dated 1.2.96 sought options by 20.2.96 subject to condition that the new optees will be sent for



: 3 :


training of Sr. TOA. Before this process could be completed, the Department of Telecom, New Delhi vide letter dated 30.12.96 directed that further supplementary screening test should <sup>not</sup> be conducted. By letter dated 11.11.97 /fresh options were invited ~~from~~ and last date of options was fixed as 10.2.98. This was in supersession of all previous orders regarding options for restructured cadre of Sr. TOA (P). While calling for fresh options, the officials who had given options in 1996 were also required to submit their options afresh as was made clear in the letter dated 3.12.96. Thus, respondents contend that any regular arrangement could have been only consequent to the completion of this process and arrangements made earlier of granting purely temporary ad-hoc arrangement stood superseded. This temporary officiating arrangement was made for 26 officials against 103 vacant posts of Sr. TOA (P) and such an arrangement does not create a right in favour of any individual so promoted on ad-hoc basis. In view of the fresh options being called so that all eligible officials in the feeder cadre could get adequate opportunity, an interim arrangement was allowed to continue. The respondents have placed on record copies of the letter dated 11.11.97 and 3.12.97 in support of the arguments that those officials who had given options for entry into the restructured cadre vide office endorsement dated 16.10.96 were also required to submit options afresh. The order dated 3.12.97 was in supersession of all previous orders and the last date for giving options was 10.2.1998. It is further submitted by the respondents that pay of the applicant had been reduced as the date of officiating arrangement was revised to 10.2.98 in view of the revised date of option <sup>as per letter</sup> dated 11.11.97. On completion of 4 weeks' training the applicant's services were regularised w.e.f. 27.9.99 and his pay was fixed accordingly as per regular arrangement. The respondents contend that in view of the letter dated 11.11.97, the payment made to the applicant for officiating on higher grade was erroneous and thus overpayment was



recovered in terms of revised order dated 11.11.97.

4. The learned counsel for the applicant while reiterating the grounds taken in the OA placed reliance on the decided cases of Rudra Kumar Sen and ors. v. Union of India and ors., 2000 (3) ATJ 392; Anand Kumar v. Prem Singh, 2000(3) ATJ 317; P.K.G.Kurup and ors. v. Union of India and ors, 10/99 Swamysnews 82 (Mumbai), date of judgment 10.12.98, OA No.386 of 1997 and Benjamin Jayaraj Kurnsu and ors. v. Union of India and anr., 10/99 Swamysnews, 86 (Mumbai) date of judgment 15.12.1998, OA No.950/92 in support of his contention that if the ad-hoc arrangement is continued and in further continuation of which the applicant has been regularised, he is entitled to regularisation from the date of initial appointment even though his initial appointment was on ad-hoc basis. The learned counsel also derived support from page 79 of the Swamysnews in the case of Rita Singhal (Smt.) v. Union of India and ors., 1099, Swamysnews (PB, New Delhi), date of judgment 26.11.1998, OA No.1983 of 1997, to contend that adverse orders could not be passed without affording reasonable opportunity to show cause. He argued that action of the respondents in reducing the pay of the applicant without giving show-cause notice was in violation of the principles of natural justice.


5. The learned counsel for the respondents, on the other hand, stated that there was no discrimination in the process adopted and in fact when the earlier letters calling for options were issued many officials in the field units could not exercise their options for various reasons. The Department of Telecom taking into account all the facts and circumstances and in supersession of all previous orders decided to seek fresh options from all eligible individuals from the feeder cadre who were desirous of entering into the restructured cadre of Phone Mechanic, TTA and Sr. TOAs. These options were called with



: 5 :

some terms and conditions<sup>as</sup> under letter dated 27.4.94. The learned counsel for the respondents contended that after completion of process from the stage of calling for options to successful training of the officials, the successful officials were regularised by the impugned order and that there is no infirmity or illegality in this action. The applicant, alongwith others were placed in the grade of Rs. 4000-5000 on regular basis w.e.f. 27.7.99. For reducing the pay of the applicant w.e.f. 1.12.99 from Rs. 4300 to Rs. 4100, the respondents have taken a plea that the date of ad-hoc promotion of the applicant was revised from 20.2.96 to 10.2.98 vide letter dated 8.9.99 (Ann.A4) in view of the information issued under DOT letter dated 11.11.97. Pay of the applicant is stated to have been fixed from this revised date of 10.2.98 and then recovery of overpayment was made in terms of revised orders dated 11.11.97.


6. It is admitted fact that applicant alongwith others were put to officiate on adhoc basis w.e.f. 20.2.96. No departmental rule were placed before us by either side to indicate ~~that~~ whether such an arrangement was as per the laid down rules. From the process followed on calling for the options and then selecting the optees, it is obvious that adhoc promotions are made dehors the rules or prescribed procedure. The date for calling for options kept on changing from 1995 onwards and final options were called for from all willing staff of all the units in terms of DOT letter dated 11.11.97. As per the procedure adopted, even those who had been officiating on adhoc basis earlier, had to exercise options afresh. The persons empanelled for the post of Sr. TDA(P) underwent a training of four weeks and on successful completion of this training they came to be regularised on the post of Sr. TDA(P) w.e.f. the date indicated in the impugned order. We do not find any infirmity in the procedure followed as this gave fair opportunities to all the employees who were willing to opt



for the post of Sr. TOA(P). Consequently, there can be no grievance in respect of the applicant having been promoted to the post of Sr. TOA (P) on regular basis w.e.f. 27.9.99, the date indicated in the impugned order.

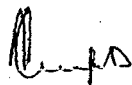
7. The cases cited by the learned counsel for the applicant in support of his contention that the applicant is entitled to regularisation from the date of his adhoc promotion are of no help to the case of the applicant as these are distinguishable to the facts of this case as we have discussed above.

8. In respect of reducing the pay of the applicant, we find no justification in the action of the respondents. Admittedly, the applicant was put to officiate on adhoc basis by order dated 5.11.96 (Ann.A3) and it has been specifically indicated in that letter that applicant's period of promotion starts from 20.2.96 and he is to continue. By letter dated 8.6.99 (Ann.A4) the revised date of promotion has been indicated as 10.2.98 to 13.11.2002. In the same letter the previous date of promotion has been indicated as 20.2.96 to continue. It is obvious that the applicant continued from 20.2.96 on the post of Sr. TOA (P) till his regularisation. Merely indicating the revised date of promotion as 10.2.98 cannot result into reducing of his pay, as such an action would be totally arbitrary. The applicant actually officiated, though on adhoc basis, on the post of Sr. TOA (P) and he was fully entitled to the pay of that post. Action of respondents of considering his date of ad-hoc promotion only from 10.2.98 is totally arbitrary and the consequent action of the Department of reducing the pay of the applicant from Rs. 4300 to Rs. 4100 is not sustainable. The applicant is entitled to draw his pay as if he has continued on this post w.e.f. 20.2.96. If any recovery has been made, the same shall be refunded to the applicant forthwith.



: 7 :

9. We, therefore, partly allow this OA, in as much as, the impugned order dated 19th January, 2000 is maintained. The respondents are directed to fix the pay of the applicant in the grade Rs. 4000-6000 considering him as continuing on the post w.e.f. 20.2.96. Any recovery made by the respondents after reducing his pay w.e.f. 1.12.99 of shall be refunded to him within a period of one month from the date of this order. No order as to costs.

  
(A.P. NAGRATH)

Adm. Member

(S.K. AGARWAL)

Judl. Member