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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 513 of 2000

Jabalpur, this the 30<sup>th</sup> day of April, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri A.S. Sanghvi, Member (Judicial)

1. Shri B.R. Bhoomik  
s/o Sh. B.M. Bhoomik,  
aged about 45 years  
R/o O/O the CGM,  
Telecom Factory, Richhai,  
Jabalpur-10  
& 16 others.

...Applicants

(By Advocate: Shri S. Paul)

-versus-

Union of India & Others.

...Respondents,

(By Advocate - Shri P. Shankaran)

O R D E R

By A. S. Sanghvi, Member (Judicial):

The applicants are the employees working under respondents no. 3 and 4 and they have approached this Tribunal for implementation of the directions of the respondents nos. 1 and 2, so far they are concerned with the restructuring of the cadre of Senior Telecom Operating Assistant. Their grievance is that due to inaction of respondent no. 3, they are deprived of their officiating promotions and promotions as Sr. TOA. According to their case, the respondent no. 2, realising the need for restructuring of cadres on account of the introduction of new technology and computerisation etc., had from time to time issued various orders directing restructuring of the cadres in view of the policy decision taken in this regard in the year 1990. The first direction was given on 16.10.90 with the heading of "Introduction of New Operating Cadres". It was stated that the Government had decided to introduce

a new restructured cadre of Sr. Telecom Operating Assistant (Sr.TOA) in the scale of Rs. 1320-2040/- and Rs. 1600-2660/- for Gr.II. It was also stated that existing cadres of Telephone Operators, Telecom Office Assistants, Telegraphists and Telegraph Asstt. would be redesignated for the sake of standardisation as TOA Gr.I, Gr.II, Gr.III and G.IV and provided norms for creation of posts in new restructured cadre. The norms introduced were/creation of one Sr.TOA against two existing post of Telephone Operating Asstt. It also envisaged giving of intensive in-service training to the candidates selected for new created restructured cadres.

2. This circular was followed by letter dated 11.7.1991 wherein it was pointed out that the training programme for the employees to be inducted in the new restructured cadre was likely to start in June-July, 1991 and, therefore, action was required to be initiated to identify and sanction posts in the new restructured cadres. The letter which was addressed to all heads of Telecom Circles etc. prescribed the procedure for identifying and sanctioning of the posts in new restructured cadres. This was again followed by another letter dated 20.5.1993 wherein the respondent no. 2, noting that many circles were finding difficulties to create sufficient number of posts in the new restructured cadres, given further guidelines for the restructuring of the cadres and creation of new posts. Since complaints were received about non-implementation of the above directions, the respondent no. 2 again addressed another letter dated 23.7.1993 observing as under:-

"The matter has been examined by the Telecom Commission and I am directed to intimate that posts in the restructured cadres shall be created expeditiously as per instructions already issued and the officials appointed against these posts. Pending formal appointment of officials to these posts after their selection and training, the existing officials in the basic cadre who are performing the duties of Sr. TOAs for operation of computer etc. may be given officiating chance against these posts. These cadres will come

into force from the date of issue of orders and any officiating arrangement made is purely temporary and will not confer any right on them for regular appointment to these posts."

3. Again thereafter vide circular dated 6.3.1995, the respondent no. 2 observed that the circles/field units are facing difficulties in creation of posts in the restructured cadres of Group 'C' and 'D'. Orders/clarifications issued by the Telecom Commission from time to time to the requirements of the circles/field units have not yielded the desired results. The Staff Unions were pressing for training to all the existing employees and absorb them in restructured cadres. The letter thereafter proceeded to give further directions to all the heads of Telecom Circles/Metro Dissts. etc. to create the posts in the restructured cadres at the earliest. Thereafter again vide Memo dated 9.3.1995, clarification was made by the respondent no. 2 with regard to officiating arrangement to be made in the cadre of TTA/Sr.TOA etc.

4. The grievance of the applicants is that inspite of all these directions given by the higher authorities from time to time, the respondent no. 3 did not take any action for restructuring of the cadres and for creating a cadre of Sr. TOA. This had resulted into deprivation of the promotional chances to applicants and as such they are forced to approach this Tribunal for directions against the respondents nos. 3 and 4, to implement the orders of the higher authorities in spirit and substance.

5. The applicants preferred various representations pointing out that in other units, the directions for restructuring were immediately implemented and their counterparts were given officiating and regular chances of promotion as Sr. TOA but they were deprived of the same. They have contended that they were performing practically the same duties of Sr. TOAs and operating computers etc. but still they were not designated as Sr. TOAs by the respondent

no. 3. They were, therefore, deprived of the pay scale of restructured cadre and also the status of Sr. TOA. They have alleged that the respondent no. 3 by not implementing the orders of the higher authorities had indulged in the discriminatory treatment towards the applicants thereby violating the fundamental right of equal treatment under Articles 14 and 16 of the Constitution of India. The Department of Telecom thereafter again directed vide Memo dated 22.7.1999 for creating the posts in restructured cadre by applying conversion ratio on the sanctioned strength in pre-restructured cadre as on 28.2.1995. The respondents no. 3 and 4 thereafter took pains to implement the orders of the DOT and vide orders dated 15.3.2000, some applicants were promoted in the restructured cadre as Sr. TOA with effect from different dates but not giving the effect from 1993. They have alleged that in Circles under Comptroller, Telecom Store, Jabalpur, the orders of the DOT to provide officiating chance to work as Sr. TOA and then regular promotion as Sr. TOA was given to the basic cadre employees with retrospective effect while they were treated differently by the respondent no. 3 and deprived of this benefit. They have contended that the inaction of the respondents is arbitrary, unjustified, unreasonable, unfair and hence they are required to be directed to give effect to the orders of DOT for restructuring of the cadre and giving promotions to the employees as Sr. TOA with effect from their dates of entitlement as per DOT's orders.

6. The respondents have resisted the OA by filing and the written statement/contending inter-alia that such an O.A. is not maintainable. According to them, the orders regarding introduction of new restructured cadre of Sr.TOA were not applicable in TF organisation initially. However, the respondent no. 2 clarified vide order dated 20.12.1996 that orders relating to introduction of new operating cadre

i.e. Sr. TOA are applicable in Telecom Factories organisation. Thereafter posts were calculated, training etc. was arranged and department implemented the orders expeditiously and there was no delay. They have also contended that several difficulties were experienced in carrying these orders and, therefore, various clarifications were sought from the respondent no. 2 and only after receiving further clarification dated 1.6.1998, the number of posts to be created in Sr. TOA cadre, were worked out and sanctioned by the respondent no. 3 vide order dated 10.6.1998. 27 posts were created in the restructured cadre of Sr. TOA and the options were called from eligible officials on 18.6.1998 for entry to the restructured cadre. Those who opted for entry in the restructured cadre were empanelled in inter-se seniority and sent for computer training in batches at office of the SDE Br.(CTTC), Jabalpur. On their successful completion of the required training, they were inducted into the restructured cadre by granting advance increments vide order dated 17.4.1998. According to them the officials, who were appointed in the restructured cadre, will get the benefit of higher scale i.e. Rs. 5000-8000 and Rs. 5500-9000 on completion of 16/26 years of service respectively under the restructured cadre and those who have not opted for the restructured cadre will continue to enjoy the benefits available in the old cadre including that of OTBP/B.C.R. etc. It is further pointed out by the respondent no. 3 that in view of the clarification issued by the respondent no. 3 on 22.7.1999, a Committee was constituted to examine various instructions issued with regard to introduction of new restructured cadre of Sr. TOA and based on the recommendations of the Committee, 94 posts (including 27 posts created and sanctioned earlier) were created vide order dated 2.9.1999. Accordingly, further appointments in the cadre of Sr.TOA

were made from among those officials who had successfully completed the required training in computer application. The respondents have also pointed out that the strength of the restructured cadre would be 94 and the vacant posts would be surrendered. Subsequently, vacancies in the basic cadre due to death, retirement, promotion etc. will be abolished/surrendered to the extent of 168 posts. These figures, according to the respondent no. 3, will go to show that the orders issued by the DOT have been implemented. They have contended that the claim of the applicants that they were performing the duties of the Sr.TOA prior to receiving training, was not correct. According to them, the applicants have no right to claim ~~for~~ officiating promotion unless they were put under specified job on computers, imparted the training and post of Sr. TOA is created after matching saving by surrendering 2 posts of TOA and one post of Sr. TOA. The applicants were eligible for posting as Sr. TOAs only after receiving prescribed training and availability of posts. Since no posts were created and there were no sanctioned posts of Sr. TOAs, the applicants cannot claim by way of right any such post or the pay of such post. It is also contended by the respondent no. 3 that the Telecom Factories <sup>~ did ~ have ~</sup> had not adequate number of computers to work with, and there was no delay in implementing the Scheme on his part after the clearance was received from respondent no. 2 vide letter dated 22.7.1999. The question of giving ad hoc promotion also did not arise as there were no vacant posts available. The applicants cannot claim promotion from a specified date when there was no existence of any post. They have prayed that the O.A. be dismissed with costs.

7. We have heard the learned counsel for both the parties at length and duly considered the rival contentions.

8. Relief prayed for by the applicants in this O.A. is to direct the respondents to give retrospective promotions/appointments to them as on officiating basis as Sr. TOA with effect from the dates of their entitlement as per DOT's letter. Mr. S.Paul, learned counsel for the applicant has tried to justify the claim of the applicants for promotion/appointment on the ground of the respondent no. 3 failing to take necessary actions for creation of the post of Sr. TOA in compliance with the policy decision of the respondents nos. 1 & 2. According to Mr. Paul, inspite of the DOT directing the respondent no. 3 to implement the decision of restructuring of cadres as far back in 1990, the respondent no. 3 had not taken any action and this inaction on the part of the respondent no. 3 has led to deprivation of the promotion or higher scale to the applicants. According to him, it was not the fault of the applicants that they were not considered and promoted to the post of Sr. TOA as no such post was created by the respondent no. 3 inspite of several directions given by the respondent no. 2. He has further submitted that ultimately on the representations of the Unions and Associations when the respondent no. 2 implemented the policy decision of respondent no. 2, the same was implemented half-heartedly and perhaps grudgingly. He has pointed out that though in other circles, the promotions even on officiating basis were given with retrospective effect from 1993, the applicants were not extended the benefit of retrospective promotions but were given promotions from 2000 onwards. This has clearly resulted into heartburning as the directions of the respondent no. 2 had been to give promotions retrospectively.

9. On the other hand Mr. P. Shankaran, learned counsel for the respondents, has questioned the right of the applicants to claim promotion with retrospective effect. According to him when there was no existence of a cadre of Sr. TOA, the applicants cannot be heard to demand promotion to a cadre, which was not in existence at all. He has further submitted that though a policy decision was taken by the respondent no. 2 to create the posts of Sr. TOA and directions were given for implementation of the policy, there were several difficulties in putting into practice those directions. Clarifications were required as there were no sanctioned posts available and only after receiving the required clarifications, the respondent no. 3 was in a position to implement those directions. Drawing attention to the various directions given by the DOT, every year till 1996, he has submitted that there were several difficulties in implementing the policy and these clarifications and guidelines given by the respondent no. 2 by various circulars clearly go to indicate that it was not feasible to implement the policy without examining all the facets of the policy. Considering that some time is taken by respondent no. 3 in implementing these directions as the directions had come to be implemented in the year 1999, he has submitted that this was not a deliberate delay caused by the respondent no. 3 but the same had occasioned due to several administrative difficulties in implementing the policy. According to him, computers were not available, training facility for the staff was also not available and there were some surplus staff which also required to be dealt with, most of the staff had not worked on the computers and as such could not have been allowed to work on computers without imparting training to them. These difficulties were sorted out in the phased manner and, therefore, some delay had occurred but this does not entitle the applicants to claim

promotions with retrospective effect. He has further submitted that the applicants cannot claim to have <sup>been</sup> prejudiced by their delayed promotions and since they had not worked on the promotional post as the promotional post was not available at all, the question of their having been deprived of the salary of the promotional post does not arise. Referring to the claim of the applicants of pay and arrears of the promotional post, the learned counsel has submitted that the principle of 'no work no pay' applies to their case as they have never worked on the promotional post and cannot claim the salary or arrears of the promotional post. He has emphasised that there was no sanctioned post of Sr. TOA and, therefore, officiating promotion also could not have been given.

10. We have considered the rival contentions and carefully gone through the circulars issued by the respondent no. 2. We are in agreement with the submissions made by the learned counsel for the applicant that there has been an extra-ordinary delay on the part of the respondent no. 3 in implementation of the policy decision of the respondent no. 2 for the creation of the posts of Sr. TOA. It also cannot be denied that if these decisions of the respondent no. 2 had been implemented earlier, the applicants could have received the benefits of the promotional post. However, if the applicants are blaming the respondent no. 3 for the delay in non-implementation of the policy decision of the respondent no. 2, they also cannot claim to have <sup>been</sup> sufficiently vigilant in protecting their rights. They have also not taken adequate measures to see that the decisions favourable to them are implemented at the earliest. The averments made in the O.A. clearly suggest that the applicants have waited till they were given promotions by way of implementation of the policy decision of the respondent no. 2 and only when they found that their promotions were not with retrospective effect, only then they have approached this Tribunal. It would, therefore, appear that their real grievance is not against the non-

implementation of the policy in time by respondent no. 3 but their grievance is about the non-extension of benefits of promotions with retrospective effect.

11. It is a general experience that whenever any new ideas are sought to be canvassed and new policy decisions are sought to be implemented, they generally meet with some resistance. Either the vested interest or persons not liking the change in routine or not adaptable to the new ideas try to resist the implementation of such new ideas. Introduction of the computers in official work also had met the same resistance and several theories of increase in the unemployment etc. were advanced. When viewed in this context, the delay in the implementation of the directions of the respondent no. 2 can easily be understood. We find from the reply of the respondents, that there was no valid justification for not implementing the policy decision of the respondent no. 2. However, respondent no. 3 on his part may have sufficient reasons for not implementing the decision and awaited clarifications from the respondent no. 2 on all points. This delay in implementation of the policy decision of the respondent no. 2 however, does not give a right to the applicants to claim promotion to the post of Sr. TAO when the posts were not in existence at all. Mr. Shankaran, learned counsel for the respondents, has pointed out that the directions of the respondent no. 2 were to make the appointments on the sanctioned posts and when it was not clear which sanctioned posts were to be identified for the purpose of making appointments even on officiating basis, it was not possible on the part of the respondent no. 3 without sufficient clarification on this point to make appointments on officiating basis on this post also. According to him, it was not clear to the respondent no. 3 that these orders were applicable to the Telecom Factories at Jabalpur and only after receiving the clarifications in the year 1996 that these orders were applicable to the Telecom Factories

at Jabalpur, further actions were taken by the respondent no. 3 to implement the directions of the respondent no. 2. All these factors clearly indicate that administration cannot be blamed for delay in creation of these posts and the applicants cannot claim any right of promotion with retrospective effect.

12. We are conscious of our limited jurisdiction and also of the right to claim promotion by the employees. It is a settled position that no employee can claim by way of right the promotion to a particular post. He has the only right to be considered for promotion. When there is no right of promotion, the Tribunal also cannot direct the respondents to give promotion to the applicants from a back date. Learned counsel for the applicants has, however, pointed out that pursuant to the directions given by the respondent no. 2, other circles had already given promotion to their respective employees with retrospective effect. It is pointed out that the Telecom Division of Balaghat, the Comptroller of Telecom Stores, Jabalpur and several other units of the Telecom Department have extended the benefit of promotion to Sr.TOA post with retrospective effect of 1993 while the applicants have been deprived of this benefit with retrospective effect by the respondent no. 3. Mr. P. Shankaran, learned counsel for the respondents has however pointed out that these promotions are given on ad hoc basis and that none of the Factories has given promotion with retrospective effect. There is, therefore, no question of discrimination having been shown towards the applicants. According to him, none of the juniors of the applicants have been given promotion from the back date or none of the Factories where the applicants are transferable have given promotions to the post of Sr. TOA with retrospective effect thereby prejudicing the rights of the applicants. He has emphatically submitted that the Tribunal in view of this position, should not give any direction to

respondent no. 3 to extend the promotion even on officiating basis to the applicants in the post of Sr. TOA from the back date.

13. No doubt, the learned counsel for the respondents has tried to make a distinction between the employees of the Factories and the employees of other Circles of the Telecom Division but the fact remains that they are all controlled by the respondent no. 2 i.e. Department of Telecommunication. It was the policy decision taken by the DOT that was required by all the Divisions uniformly, when one Circle or Division implements the policy and extends the benefits available under the policy to its employees, it would naturally give rise to heartburning on the part of the employees of the other Circles or Division, if their Circle or Division does not extend the same benefits to them. Strictly speaking this may not be termed as discriminatory attitude on the part of the respective division but as a model employer DOT is required to see that its policy is uniformly applied to all its employees and no heartburning is caused to them by different divisions applying the policy in different manner. It will, therefore, be for the respondent no. 2 to see that its policy decision to create the posts of Sr. TOA by way of restructuring of the cadre for the operating staff in the Department of Telecom to handle the computerised jobs and new technologies etc. is implemented uniformly in all the divisions and Factories etc. under its control. It is for the respondent no. 2 to see that no heartburning or grievance survives of the employees while implementing the policy decision in respect of restructuring of the cadres. The restructuring of the cadres should not be left only to the heads of the departments of various divisions or factories and the respondent no. 2 should play an active role in seeing that the decisions taken by it are implemented uniformly by all sections.

14. For these reasons though we are of the opinion that no directions of giving promotion to post of Sr.TOA, in view of the restructuring of the cadre of Sr. TOA, can be given with retrospective effect by this Tribunal, we direct the respondent no. 2 i.e. DOT to examine the grievances of the applicants pertaining to their promotions to the restructured cadre of Sr. TOA with retrospective effect and take all appropriate and adequate steps to redress their grievances, if their grievances are found to be valid and justified. This exercise shall be undertaken and completed within a period of six months from the date of receipt of a copy of this order.

15. with the above directions, the O.A. stands disposed of with no order as to costs.

(A.S. Sanghvi)  
Member (Judicial)

*M.P. Singh*  
(M.P. Singh)  
vice Chairman

/na/

पृष्ठांकन से ओ/व्या..... जलपुर, वि.....  
प्रतिलिपि अच्युतः—

पत्रिलिपि अंग्रेजीतः

- (1) संस्कृत, उच्च व्यायामात्र वापि एसोरिएशन, जवाहलपुर  
दो अंग्रेजी S. Patel
- (2) अंग्रेजी श्री/श्रीमती/कुं...  
के प्राप्तिकाल
- (3) अंग्रेजी श्री/श्रीमती/कुं...  
के प्राप्तिकाल P. Shantaram
- (4) अंग्रेजी, योग्यता, जवाहलपुर व्यायापीठ  
सूचना एवं आवश्यक कार्यवाही देनु  
B. S. Patel

7.5-09