

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

28.01.2013

TA No. 43/2009 (CWP 6584/2005)

Mr. P.N. Jatti, Counsel for applicant.
None present for respondents.

On the request of the learned counsel for the applicant,
list it on 04.02.2013.

Anil Kumar
(Anil Kumar)
Member (A)

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

ahq

04/02/2013

T.A. No. 43/2009 (CWP No. 6584/2005)

Mr. P. N. Jatti, Counsel for applicant.
Mr. Neeraj Batra, Counsel for respondents.

Heard.

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)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

TRANSFER APPLICATION No. 43/2009
IN
S.B. CIVIL WRIT PETITION NO. 6584/2005

Jaipur, the 04th day of February, 2013

CORAM :

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

Navrat Mal Meena son of Shri Nathu Lal Meena, by cast Meena, aged about 33 years, resident of K-1, Sanchar Vihar, Vaishali Nagar, Ajmer. Presently working as Senior T.O.A. (T) Office of A.O. Cash in the office General Manager Telecom District, Bharat Sanchar Nigam Limited, Ajmer.

... Applicant

(By Advocate : Mr. P.N. Jatti)

Versus

1. Union of India through the Secretary to the Government of India, Department of Telecommunication, Sanchar Bhawan, New Delhi.
2. The Chairman, Bharat Sanchar Nigam Ltd. through Chairman Corporate Office, Personnel IV Section, Sanchar Bhawna, New Delhi.
3. The Chief General Manager, Telecom Rajasthan Circle, Jaipur.
4. The General Manager, Telecom District, Ajmer.

... Respondents

(By Advocate: Mr. Neeraj Batra)

ORDER (ORAL)

The applicant had filed a SB Civil Writ Petition No. 6584/2005 before the Hon'ble Rajasthan High Court, Jaipur Bench, Jaipur claiming the following reliefs:-

- (A) The Hon'ble Court by an appropriate writ/order or the direction be pleased to quash and set aside the impugned order dated 17.05.2005 with Schedule I.
- (B) That by an appropriate writ/order or the direction the respondents be directed not to reduce the pay of the petitioner from 7460.00 which was drawn by the petitioner in May, 2005.

Anil Kumar

- (C) That the pay of the petitioner not to be reduced from Rs.7460.00 to Rs.6660.00 and the petitioner further be continued to draw the increments after Rs.7460.00
- (D) That any other relief which this Hon'ble High Court deems fit in favour of the humble petitioner."

2. This Writ Petitioner was transferred to this Tribunal by the Hon'ble Rajasthan High Court , Jaipur Bench, Jaipur vide its order dated 21.08.2009. Accordingly, this TA was registered as TA No. 43/2009 in this Tribunal.

3. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was initially appointed as a Telecom Operating Assistant (Telegraph) in the Department of Telecom in Ajmer Division under the General Manager Telecom District, Ajmer in the pay scale of Rs.975-1660. The posts of Telecom Operating Assistants were abolished and the applicant was promoted to the post of Senior Telecom Officiating Assistant in the pay scale of Rs.1320-2040 with effect from 06.06.1994 and in the pay scale of Rs.4000-100-6000 with effect from 01.01.1996. By an order dated 29.11.1999, this pay was converted as in the scale of Rs.5700-160-8100 with effect from 01.10.2000.

4. That the applicant was drawing Rs.7460/- but by an arbitrary order dated 17.05.2005 (Schedule-I), the applicant has been reverted to the post of Telecom Operating Assistant from the post of Senior Telecom Operating Assistant and his pay has also been reduced to Rs.6660/-. The order dated 17.05.2005 is

Anil Kumar

quite arbitrary, unjustified and against the principles of natural justice.

5. That the applicant was posted as Senior Telecom Assistant (T) at Jalore as on 21.03.1995 in the pay scale of Rs.1320-2040/-. On that date, Jalore was under the Ajmer Division.

6. Subsequently, the Ajmer Division was bifurcated between two divisions. Therefore, option was called for as to where the officials want to remain either in Ajmer Division or in Sirohi Division. The applicant, Navrat Mal Meena, opted for Ajmer Division.

7. The Traffic Arm of the division was merged with Engineering Arm. In 1994 options were invited on the merger of the two divisions. The applicant opted for Ajmer Division/SSA. On submitting the option, the applicant was transferred to Ajmer Division vide order dated 30.09.1998 (Scheduled-II).

8. The learned counsel for the applicant argued that subsequent upon merger of the Traffic Arm with Engineering Arm, the posts of TOA (T) were abolished with effect from 28.02.1995. Subsequently, 192 posts of TOA (T) and 137 posts of TOA (TG) were declared surplus as on 28.02.1995.

9. That the applicant vide order dated 27.08.1999 was sent for training of Sr. TOA (TG) at Jhalana Doongri with effect from

Anil Kumar

02.08.1999 for four weeks. He successfully completed the training (Schedule -IV).

10. The applicant was allowed the pay scale of Rs. 1320-2040 with effect from 02.01.1994 and this scale was converted into the pay scale of Rs.4000-6000/- as per the recommendations of the Vth Pay Commission. After the formation of the BSNL, the pay scale of Rs.4000-6000/- was converted in the pay scale of Rs.5700-8000/- vide order dated 29.12.1999.

11. The learned counsel for the applicant further submitted that the applicant has been working against the post of Sr. TOA (TG) with effect from 06.06.1994 and as all the post so TOA (TG) were abolished by the orders of the respondents and the services of the applicant had been confirmed on the post of Sr. TOA (TG) with effect from 06.06.1994, therefore, the action of the respondents to revert the applicant vide order dated 17.05.2005 is quite illegal, arbitrary and against the rules.

12. He further argued that the transfer under Rule 37 is also in the public interest, therefore, there is no justification in reducing the pay of the applicant from Rs.7460/- to Rs.6660/- and, therefore, this TA should be allowed.

13. On the contrary, the learned counsel for the respondents submitted that the applicant has submitted his declaration/undertaking (Option) for reversion in his basic cadre for transfer to his opted Ajmer SSA. As per his

Anil Kumar

declaration/undertaking dated 22.09.1998 (Annexure R/1), he has committed following condition of transfer under Para 37 to his opted Ajmer SSA, on repatriation of Group 'C' & 'D' Staff consequent upon merger of Traffic Administration with Engineering Administration of DOT .

"I am unconditionally willing for reversion from the restructured cadre of Sr. TOA(T) or Sr. TOA (TG) (strike out which is not applicable) to my old basic cadre of TOA (T) (Telegraphist) or TOA (TG) (Telegraphist Assistant) and the option given consequent upon merger of T.T. Arm into Engg. Arm as per D.O.T. New Delhi letter No. 5-1/94-TE-II dated 05.04.1994 and option list circulated vide C.G.M.T., Jaipur letter No. STA/T/3-18/11/13 dated 28.1.1997. I shall not claim any consequential benefits of restructured cadre in the SSA for which I have opted and repatriated. This declaration/undertaking for such reversion is final"

Now after submitting his option, the applicant has no right to challenge order dated 17.05.2005 passed by respondent no. 4.

14. Learned counsel for the respondents further argued that as per order 10.06.1996, 192 posts of TOA (T) and 137 posts of TOA (TG) were declared surplus as on 28.02.1995 (Annexure R/2). Thus the surplus posts were to be abolished as & when vacated due to retirement/resignation/death etc.

15. Learned counsel for the respondents further argued that the applicant has exercised his option for reversion in his basic cadre for transfer to Ajmer SSA under Para 37. In accordance with the Circle Office, Jaipur Order No. STA/T/7-56/98/104 dated 30.09.1998 (Annexure R/3), he was reverted in his basic cadre and relieved on his transfer to Ajmer SSA by GMTD, Sirohi vide his letter No. E-63/Sr.TOA/Tfr/02/111/4 dated 07.05.2002

Anil Kumar

(Annexure R/4) under Para 37. As per the above order, all the officials mentioned in the letter were reverted to their basic cadre and transferred to their respective opted SSAs. On transfer, all the officials were financially fixed up in the pre-restructured cadre but by mistake, Shri Navrat Mal Meena (applicant) was not financially fixed up in the pre-restructured cadre and the mistake has been rectified by GMTD, Ajmer vide letter No. Q-3089/2004-05/40 dated 17.05.2005 (Annexure R/5). Therefore, it is not correct to say that the order dated 17.05.2005 is quite arbitrary, unjustified, illegal and contradictory to the article 14 and 16 of the Constitution of India.

16. Learned counsel for the respondents argued that the applicant was appointed by SSTT Ajmer as Telegraphist at Bhinmal. He was transferred from Bhinmal to Jalore as Telegraphist vide SST, Ajmer letter No. S-7/32-7/94-95/19 dated 02.02.1995. An application of the applicant dated 09.09.1999 indicates that he was working as Telegraphist (Annexure R/6).

17. He further submitted that the applicant got the senior TOA (TL) training with effect from 02.08.1999 to 27.08.1999 and he was given officiating promotion to the grade of Senior TOA (T) in the scale of Rs.1320-2040 with effect from 06.06.1994 on purely temporary and ad hoc basis. He was not given any right for regular appointment to the restructured cadre of Senior Telecom Operating Assistant (T). His pay was wrongly fixed by mistake,

Anil Kumar

which was rectified vide letter dated 17.05.2005 (Schedule -I). He also denied that the transfer order of the applicant under Rule 37 of the P&T Manual Vol. IV was in public interest. The reduction of pay of the applicant was due to reversion from the higher pay scale of Senior TOA to lower TOA as per the declaration given by the applicant. He further submitted that the applicant was wrongly confirmed with effect from 06.06.1996 in the TOA (TL) Cadre as he had not completed his probation period of 2 years in Telegraphist cadre. He was in TOA (TL) cadre. For rectification of this mistake, action is under process for Review DPC.

18. Learned counsel for the respondents argued that the pay of the applicant has been correctly revised vide order dated 17.05.2005 (Schedule-I) and, therefore, this TA has no merit and it should be dismissed with costs.

19. Heard the rival submissions of the parties and perused the documents on record. It is not disputed that 192 posts of TOA (T) and 137 posts of TOA (TG) were declared as surplus as on 28.02.1995. These posts were to be abolished as & when vacated due to retirement/resignation/death etc. It is also not disputed that the divisional cadre of Traffic Arm with Engineering Arm was merged and after merger of two arms, options were invited from the employees. The applicant gave his option and an undertaking vide letter dated 22.09.1998. His declaration/undertaking reads as follows:-

Anil Kumar

"I Navrat Mal Meena son of Shri Nathu Lal Meena working as TL in O/o DTO Jalore under Sirohi undertake/declare that

I am unconditionally willing for reversion from the restructured cadre of Sr. TOA(T) or Sr. TOA (TG) (strike out which is not applicable) to my old basic cadre of TOA (T) (Telegraphist) or TOA (TG) (Telegraphist Assistant) and the option given consequent upon merger of T.T. Arm into Engg. Arm as per D.O.T. New Delhi letter No. 5-1/94-TE-II dated 05.04.1994 and option list circulated vide C.G.M.T., Jaipur letter No. STA/T/3-18/11/13 dated 28.1.1997. I shall not claim any consequential benefits of restructured cadre in the SSA for which I have opted and repatriated. This declaration/undertaking for such reversion is final"

20. Learned counsel for the respondents admitted that the applicant was wrongly confirmed in Sr. TOA (TL) cadre with effect from 06.06.1996 as he had not completed his probation period of two years in the Telegraphist cadre. The applicant was in TOA (TL) cadre. For rectification of mistake, the action is under process for review DPC.

21. Learned counsel for the respondents also admitted that on transfer, all the officials were financially fixed up in the pre-restructured cadre but by mistake, Shri Navrat Mal Meena (applicant) was not financially fixed up in the pre restructured cadre. This mistake has been rectified by GMTD Ajmer vide order No. Q-3089/2004-05/40 dated 17.05.2005 (Scheduled -I).

22. We have also perused the order dated 30.09.1998 (Annexure R/3) vide which the names of the officials/employees who were willing for repatriation/transfer by giving declaration/undertaking/option for their reversion to their basic cadre have been transferred/posted in their opted SSAs have

Anil Kumar

been shown. The name of the applicant, Shri Navrat Mal Meena, has also been mentioned in this letter.

23. The contents of Annexure R/1 that is the declaration/undertaking of the applicant dated 22.09.1998 and the contents of Annexure R/3, the repatriation/transfer order of the applicant have not been disputed by the learned counsel for the applicant. Therefore, in our considered opinion, in view of the option given by the applicant vide Annexure R/1, there is no illegality/infirmity in the order passed by the respondents dated 17.05.2005 (Scheduled-I).

24. The learned counsel for the respondents have admitted that on transfer, all the officials were financially fixed up in the pre restructured cadre but by mistake, the applicant was not financially fixed up in the pre restructured cadre. The mistake has been rectified by the GMTD vide order dated 17.05.2005 (Annexure A/1). In our opinion, the respondent department has a right to correct the mistake in the fixation of pay of its employees. Therefore, on this count, we do not find any illegality in the order dated 17.05.2005. Thus we find no merit in the TA.

25. Consequently, the TA being devoid of merit is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

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

AHQ