

THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH, JAIPUR ORDER SHEET

19

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

31-5-2011

OA No. 242/2010

Mr. C.B. Sharma Counsel for applicant.
Mr. Mukesh Agarwal Counsel for respondent No. 1.
Mr. N.S. Yadav. Counsel for respondent No. 2.

Argument heard.

The OA is disposed of by
a separate order.

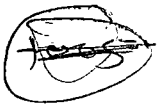
Anil Kumar

(Anil Kumar)

Member (J)

Arif (B) / m
C.O.

me



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH,
JAIPUR.

Jaipur, the 31st day of May, 2011

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. ORIGINAL APPLICATION No.454/2009

S.P.Gupta
S/o Late Shri L.C.Gupta,
R/o 87, Muktanand Nagar,
Gopalpura Road,
Jaipur.

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through
Secretary to the Govt. of India,
Department of Telecommunications,
Ministry of Communications & Information Technology,
Sanchar Bhawan,
New Delhi.

(By Advocate : Shri Mukesh Agarwal)

2. Principal General Manager,
Telecom District,
Sardar Patel Road,
Jaipur.

(By Advocate : Shri N.S.Yadav)

... Respondents

2. ORIGINAL APPLICATION No.201/2010

M.L.Pareek
S/o Late Shri Raghunath Purohit,
R/o B-73, Near Jain Temple,
Nehru Nagar,
Jaipur.

Anil Kumar

... Applicant

(By Advocate : Shri Nand Kishore)

Versus

1. Union of India through
Secretary to the Govt. of India,
Department of Telecommunications,
Ministry of Communications & Information Technology,
Sanchar Bhawan,
New Delhi.

(By Advocate : Shri D.C.Sharma)

2. Principal General Manager,
Telecom District,
Sardar Patel Road,
Jaipur.

(By Advocate : Shri N.S.Yadav)

... Respondents

3. **ORIGINAL APPLICATION No.242/2010**

Chhagan Lal
S/o Late Shri Panna Lal,
R/o B-113, Vijay Nagar-II,
Kartarpura,
Jaipur.

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through
Secretary to the Govt. of India,
Department of Telecommunications,
Ministry of Communications & Information Technology,
Sanchar Bhawan,
New Delhi.

(By Advocate : Shri Mukesh Agarwal)

2. Principal General Manager,
Telecom District,

Sardar Patel Road,
Jaipur.

(By Advocate : Shri N.S.Yadav)

... Respondents

4. ORIGINAL APPLICATION No.273/2010

Jhaman Lal
S/o Late Shri Mohan Lal,
R/o 37, Shiv Colony-II,
New Sanganer Road, Sodala,
Jaipur.

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through
Secretary to the Govt. of India,
Department of Telecommunications,
Ministry of Communications & Information Technology,
Sanchar Bhawan,
New Delhi.

(By Advocate : Shri Mukesh Agarwal)

2. Principal General Manager,
Telecom District,
Sardar Patel Road,
Jaipur.

(By Advocate : Shri N.S.Yadav)

... Respondents

ORDER (ORAL)

Since the facts and point of law is similar in all these four OAs, therefore, they are being disposed of by this common order. The case of Shri S.P. Gupta vs. UOI & ors (OA No. 454/2009) is being taken as the lead case.

Anil Kumar

2. The applicant has stated that this application is made against the order dated 31.8.2009 (Annexure A/1), issued on behalf of the respondent No.1, by which it has been informed to the applicant that the grant of concessional telephone facility to retired P&T employees has been implemented in individual cases of those who approached this Tribunal and thereafter to the respective Hon'ble High Courts and the similar benefit can not be extended to the applicant inspite of the fact that he served in the erstwhile Post and Telegraph Department for more than 20 years before bifurcation of the Post and Telegraph Department into Department of posts & the Department of Telecom. The controversy involved in this case has already been decided by the Principal Bench of this Tribunal and has been upheld by the Hon'ble Delhi High Court but the respondents are not extending the benefit to the applicants being similarly situated retired employees. The applicants are pursuing the matter since 2006 but the respondents are not extending the benefits.

3. That the applicant joined the erstwhile Post & Telegraph Department on 2.7.1956 and retired on superannuation on 31.8.1993 from the post of Sr. Superintendent of Post Offices, Udaipur Postal Division, Udaipur. The Post & Telegraph Department bifurcated into the Department of Posts & the Department of Telecom on 1.4.1985 and prior to that the officials of Post & Telegraph Department were covered by the same set of rules.

4. That the Department of Telecom vide order dated 25.9.1998 (Annexure A/2) granted concessional telephone facility to the retired employees who put in minimum 20 years or more continuous service in the Department of Telecom or having their last posting in the Department of Telecom for at least one year before retirement. The scheme further provided rent free facility and free telephone calls as per the category of retired employee.

5. That one Dr.M.S.Sachdeva approached the Principal Bench of this Tribunal by filing OA No.2129/2004 for extending concessional telephone facility as per the scheme issued vide order dated 25.9.1998 (Annexure A/2) from the date he had applied in the month of February, 2000. The Principal Bench of this Tribunal allowed the said OA vide order dated 4.3.2005 (Annexure A/3) taking into consideration the Full Bench decision in the case of **J.P Kaushik v. Union of India** [(2002 (1) ATJ 589] and in the case of the **Association of AICGP Orissa, Cuttack v. Union of India & Ors.** [2004 (2) ATJ 291] with a direction to the respondents to provide concessional telephone facility.

6. The applicant has submitted that he remained in service from 2.7.1956 to 31.8.1993 i.e for more than 37 years, wherefrom he served the erstwhile P&T Department upto 1.4.1985 i.e. for more than 28 years when the P&T department bifurcated into Department of Posts & Department of Telecom. The applicant being similarly situated, made request on 20.4.2006 before respondent No.2 for extending benefit of the decision rendered by the Principal Bench of the Tribunal to provide rent free telephone connection. The applicant also made available copy of the said decision of the Principal Bench, New Delhi, with his request dated 10.6.2006. Respondent No.2 vide letter dated 15.5.2006 informed the applicant that order of CAT, Principal Bench, New Delhi, made available by him is not applicable in his case. The Department of Telecom approached Hon'ble High Court of Delhi against order of the Principal Bench (Annexure A/3) and Hon'ble High Court of Delhi dismissed the Writ Petition on 4.9.2008 and thereafter on behalf of respondent No.1 the authorities of Mahanagar Telephone Nigam Limited directed to implement the decision vide letter dated 29.1.2009.

7. The applicant made request on 30.5.2009 before respondent No.2 and further before respondent No.1 on 24.7.2009 stating therein that he is also entitled for the benefit

of free telephone, as he rendered more than 28 years of service at the time of bifurcation of P&T department i.e. 1.4.1985, and his case be reconsidered. The applicant further made request before respondent No.2 on 3.8.2009.

8. That action of the respondents in connection with not allowing the benefit of the scheme of free telephone to the retired employees promulgated in the year 1998 vide Annexure A/2 to the applicant is arbitrary, illegal, unjustified and such action of the respondents is liable to be quashed and set aside. The applicant has prayed that respondent No.1 & 2 be directed to provide concessional telephone facility to him from the date 20.4.2006 by quashing the letter dated 31.8.2009 (Annexure A/1) with all consequential benefits.

9. The respondents have filed their reply contesting the claim of the applicants. They have admitted that the Department of Telecom vide letter No.2-79/94-PHA dated 25.9.1998 issued the policy instructions for provision of concessional telephone facility to retired DOT employees who have put in minimum of 20 years or more continuous service in DOT or were having their last posting in DOT for at least one year before retirement. Thereafter, clarifications were issued vide letter No.2-79/94-PHA dated 30.12.1999, vide letter No.30-36/2002-PHP dated 5.3.2002, vide letter No.2-79/94-PHA/PHP dated 20.2.2009 and vide letter No.11-8/2009:PHP-I dated 15.5.2009. As per clause-8 of the clarification dated 30.12.1999, retired employees of Department of Posts are not eligible for the concessional telephone facility under RE-DOT category (Retired employees - Department of Telecom category).

10. The retired employees of Department of Posts have on various occasions approached the respective benches of CAT seeking parity with the retired employees of Department of Telecommunication in getting the concessional telephone facility in terms of the DOT order dated 25.9.1998. In the

instant case, the applicant has sought similar relief based on the decisions of the Hon'ble courts in the following cases :

i) **Dr.M.S.Sachdeva v. Union of India & Ors.**, before the Principal Bench, CAT, New Delhi.

ii) **B.Mohanty and the Association of All India Central Government Pensioners, Orissa Circle v. Union of India and Ors.**, before Hon'ble CAT, Cuttack Bench.

In the case of Dr.Sachdeva, the Principal Bench, CAT, New Delhi, directed the DOT to provide concessional telephone facility to Dr.M.S.Sachdeva, a government employee, who retired from the Department of Posts. The order of CAT, Principal Bench, was subsequently challenged by the DOT before Hon'ble High Court of Delhi, but it was dismissed. Accordingly, the order of Hon'ble High Court of Delhi in the case of Dr.M.S.Sachdeva has been implemented.

In the case of B.Mohanty, Cuttack Bench of the Tribunal vide its order dated 10.12.2003 directed the respondents to extend the concessional telephone facility to the applicants. The order was challenged by the DOT before the Hon'ble High Court of Orissa, Cuttack, which referred the matter for re-examination to a three member Bench of CAT, Cuttack Bench. The three member Bench of CAT, Cuttack Bench, after reconsidering the facts of the case directed the respondents to consider the extension of the concessions to the petitioners of the erstwhile DOP&T as per circular dated 25.9.1998. The issue of sanction of concessional telephone facility to the pensioners of erstwhile P&T Department is under examination in the DOT at present. Extension of concessional telephone facility to the pensioners of the erstwhile P&T Department is having serious financial implications. The Department of Posts has been requested to intimate the number of pensioners who have either retired on or before 31.3.1985 or have completed 20 years of service or more on 31.3.1985 but retired later on. The Department of Posts has not given the final reply. Once

the final reply is received, the financial implication will be calculated and a decision to extend or not to extend the concessional telephone facility will be taken by the DOT. The CAT, Cuttack Bench, will also be informed accordingly.

11. The applicant has been informed that if a change in policy of RE-DOT takes place after detailed examination, the revised policy will be implemented thereafter. He was also informed that his request could not be accepted as of now (i.e. before any change in the policy of RE-DOT category takes place).

12. That the applicant is not placed at par with Dr. M.S.Sachdeva as Dr.M.S.Sachdeva was a Senior Personal Assistant belonging to a different service i.e. Central Secretariat Stenographers Service (in which the employees can be posted in any of the Secretariat offices of the Central Government). Although, Dr.Sachdeva retired from the Department of Posts, his cadre was controlled by the DOT. In the case of Dr.Sachdeva, he was recruited by the DOP&T and not by the P&T Department, whereas Shri S.P.Gupta was recruited by the erstwhile P&T Department. Based on the above facts, the respondents have prayed that the OA filed by the applicant may be dismissed with costs.

13. Respondent No. 2 has filed a separate reply. He has also denied that the applicant is entitled to the benefit of the above scheme and prayed that the OA deserves to be dismissed with costs.

14. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicants argued that these OAs are squarely covered by the judgment of the CAT, Principal Bench, New Delhi, in the case of Dr. M.S.Sachdeva, which has also been upheld by the Hon'ble High Court and, therefore, the applicants are entitled to the relief claimed by them.

15. Learned counsel for the respondents raised a preliminary objection of limitation during the arguments. They placed reliance on the judgment of the Hon'ble Supreme Court in the case of **D.C.S Negi v. Union of India & Ors.** [Civil Appeal No.7956/2011, decided on 7.3.2011], wherein the Hon'ble Supreme Court held as under:

"It is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3)."

They also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **E.Parmasivan & Others vs. Union of India & Ors.** [2003 (12) SCC 270] and argued that the policy regarding grant of concessional telephone facility to the retired DOT employees was issued on 25.9.1998 but the present OAs were filed in the year 2009 & 2010 i.e after a lapse of about 10 to 11 years in the case of S.P.Gupta (OA 454/2009), M.L. Pareek (OA 201/2010) & Chhagan Lal (OA 242/2010) and after a lapse of about six years in the case of Jhaman Lal (OA 273/2010), therefore, they are barred by limitation.

16. In the case of **Union of India & Ors. v. M.K.Sarkar** [(2010) 1 SCC (L&S) 1126], the Hon'ble Apex Court in para 16 has held as under:-

"16. A court or Tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct "consideration" without itself examining the

merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and latches. Even if the court does not expressly say so, that would be the legal position and effect."

17. Learned counsel for the applicants submitted that these OAs are not barred by limitation as the claim of the applicants is continuous and, therefore, the law of limitation will not apply in these cases. However, I am not inclined to agree with the submission made by learned counsel for the applicants. The applicants should have moved applications for claiming the relief under the policy dated 25.9.1998 within the prescribed time limit. Section 21 of the Administrative Tribunal Act, 1985 reads as under:-

21. Limitation.- (1) A Tribunal shall not admit an application, --

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months."

I

18. It is not disputed that the present OAs have been filed after a lapse of about 10 to 11 years in the case of S.P.Gupta (OA 454/2009), M.L. Pareek (OA 201/2010) & Chhagan Lal (OA 242/2010) and about six years in the case of Jhaman Lal (OA 273/2010). It was the duty of the applicants to have agitated the matter before the appropriate forum within the period of limitation. I am of the opinion that the present OAs *are squarely covered by the ratio laid down by the Hon'ble Supreme Court in the cases of D.C.S. Negi v. Union of India & Ors., E.Parmasivan & Ors. v. Union of India & Ors., and Union*

of India & Others v. M.K.Sarkar, referred to above. Therefore, these OAs are dismissed being time barred. However, it is made clear that in case the respondents issue any fresh guidelines on the subject and if the case of the applicants is covered under the new guidelines, they should also be considered on merit at appropriate time. No order as to costs.

19. The Registry is directed to place a copy of this order in all the connected files, referred to above.

(ANIL KUMAR)
MEMBER (A)

vk