

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

Original Application No.203/959/2013

Jabalpur, this Thursday, the 02nd day of May, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Vijay Kumar Upadhyay, S/o Late Shri Dau Prasad Upadhyay, aged about 55 years, Sorting Assistant, RMS – RP Division, Durg (C.G.) – 491002.
 2. Shashank Mohan Sharma, S/o Late Shri Nianjan Sharma, aged about 54 years, Sorting Assistant, RMS – RP Division, Bilaspur (C.G.) – 495004.
 3. Om Prakash Pandey, S/o Late Shri Krishna Pandey, aged about 53 years, Sorting Assistant, RMS RP Division, Bilaspur (C.G.) – 495004.
 4. Pitamber Kumar Sakhariya, S/o Shri Dauwa Ram Sakharia, aged about 51 years, Sorting Assistant, RMS – RP Division, Bilaspur (C.G.) - 495004
- Applicants**

(By Advocate – Shri Harsh Wardhan)

V e r s u s

1. Union of India through its Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110116.
 2. The Chief Postmaster General, Chhattisgarh Circle, Raipur – 492001 (C.G.).
 3. The Superintendent of Railway Mail Service, Chhattisgarh Circle, Ganj Post Office, RP Division, Raipur – 492009 (C.G.)
- Respondents**

(By Advocate – Shri Vivek Verma)

(Date of reserving order :25.09.2018)

ORDER

By Navin Tandon, AM.

The applicants are aggrieved by the fact that their service while working as Reserve Trained Pool (RTP) employee are not being considered for pay, promotion and seniority etc.

2. They have made the following submissions in this O.A:

2.1 Respondents vide circular dated 30.10.1980 (Annexure A-8) had framed a scheme for constitution of a standing pool of Trained Reserve candidates, which should be formed in each recruiting unit to meet the regular as well as emergent needs of manpower in Post Offices and RMS offices. These candidates will be absorbed in regular vacancies in their turn.

2.2 The applicants had rendered several years (1982 to 1989) of service on ad-hoc basis on the post of Postal Assistants/Shorting Assistants as RTP employee before appointment in the respondent department. The period of service as RTP was not counted for the purpose of service.

2.3 Applicants are claiming benefits of pay in respect of services rendered as RTP employees as directed on 31.08.2010 by Mumbai/Nagpur Bench of this Tribunal in OA 719/1996 (Annexure A-1), which was based on orders

passed by this Tribunal in TA 82/1986 on 16.12.1986 (Annexure A-14).

2.4 The applicants approached this Tribunal in OA 248 of 2011, wherein the respondents were directed on 23.03.2011 (Annexure A-2) to decide the undisposed representation, without entering into the merits of matter.

2.5 Detailed representation was filed by the applicants, one such representation dated 30.03.2011 has been filed as Annexure A-3.

2.6 The said representations have been rejected by respondent No.3 vide their order dated 20.07.2011 (Annexure A-4).

3. The applicants have, therefore, sought for the following reliefs:

“8) RELIEF (S) SOUGHT:-

In the light of submissions made above in the preceding paragraphs the applicant most humbly and respectfully seeks the following reliefs:-

8.1 That, the Hon’ble Tribunal may be kindly pleased to call for the entire records of appointment of the applicant s’ and other RTP’s in possession of the respondents, for its kind perusal.

8.2 That, this Hon’ble Tribunal may kindly be pleased to quash and set aside the impugned order dated 20.07.2011

(Annexure-A/4) passed by the respondent no.3 and declare the same to be non-est and void ab initio in the eyes of law.

8.3 That, this Hon'ble Tribunal may kindly be pleased to adjudicate and declare that the period of service rendered by the applicants' from 1982-1989 is liable to be considered and counted for all purposes of service i.e. pay, promotion, seniority etc.

8.4 That, this Hon'ble Tribunal may kindly be pleased to direct the respondents to grants all consequential benefits including the benefits of pay, service, seniority etc.

8.5 That, the Hon'ble Tribunal may be pleased to grant any other relief which the Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case.

8.6 That, the Hon'ble Tribunal in the facts and circumstances of the present case may further be pleased to grant cost of the application to the applicant."

4. The respondents, in their reply, have submitted that:

"17. **Reply to Para 4.6 & 4.7** – Contents of this para made by the applicant is denied. It is respectfully submitted that in compliance of order passed by the Hon'ble CAT Jabalpur Bench in OA No. 248/2011 dated 23-3-2011 the difference of RTP wages calculated and submitted by the Head Record Officer RMS RP Dn. Raipur in respect of 4 applicants which is to be paid to the above 4 applicants for executing the Hon'ble CAT Jabalpur order dtd. 23-3-2011. As per letter from HRO Raipur vide No. ५०३०३० /

आरपी/आरटीपी/ओए/पत्रा-11-12 रायपुर दिनांक 21-10-2011

(प्रति संलग्न है) difference of RTP wages amount shown as under :-

| क्रमांक | कर्मचारियों का नाम | देय अन्तर राशि | वसूली की राशि | रिमार्क |
|---------|-----------------------|----------------|---------------|-------------|
| 1 | श्री व्ही0के0उपाध्याय | 1425-90 | 6005-75 | (-) 4579-85 |
| 2. | श्री एस0एम0 शर्मा | 1728-15 | 5547-55 | (-) 3819-40 |
| 3. | श्री ओ0पी0 पाण्डेय | 1497-35 | 6215-10 | (-) 4717-75 |
| 4. | श्री पी0के0 साखरिया | 1495-55 | 7452-20 | (-) 5956-35 |

From the above it is clear that the department has already paid the wages as required under the Hon'ble CAT Jabalpur orders dtd. 23-3-2011 therefore there is no any action required to be taken in respect of above 4 applicants."

5. The applicants, in their rejoinder, has stated as under:-

"10. IN REFERENCE TO PARA 17 OF THE

RETURN:- That, the contents of this para are incorrect hence denied. This has been stated for the first time, however there is no whisper about these calculations in the impugned order. The respondents had not considered the claim of difference of wages at the time of passing the order dated 20.07.2011 and now are submitting false data."

6. The applicants have filed MA No.1089/BSP/2013 for condonation of delay. It has been stated that since their representation was rejected on 20.07.2011, which was against the orders passed by this Tribunal, they filed Contempt Petition, which was dismissed on 01.12.2011 with liberty to challenge the order dated 20.07.2011.

6.1 Since the dispute pertains to 1980-1990's, it was difficult to gather all information and documents which took considerable amount of time. Further, they were hopeful of a positive outcome in view of the representations dated 29.12.2010 of the Union and letter dated 13.01.2011 issued by Ministry of Communication & IT.

6.2 We have considered the matter and in view of the explanation given, we condone the delay of about 16 months.

7. Heard the arguments of learned counsel of both the parties and perused the pleadings available on record.

8. Learned counsel for the applicants submitted that the matter is no more *res integra* and places reliance on :-

- (i) Orders of this Tribunal in T.A.82/86 dated 16.12.86 –
The appeal against this order was dismissed by Hon'ble Apex Court in SLP 11313/1987 on 11.05.1988.

(ii) Orders of the Bombay Bench, Camp at Nagpur in Original Application No.719/1996 to 727/1996 dated 31.10.2010.

(iii) Orders of the Ernakulam Bench of this Tribunal in O.A No.79 of 2011 and other connected OAs dated 01.10.2013.

(iv) CAT, Chandigarh Bench order in O.A 788/HR/2001 dated 31.10.2003, which has been affirmed by the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No.1466/CAT/2004 decided on 18.02.2014.

8.1 He also vehemently denied that any payment has been made to the applicants as claimed in Para 17 of the reply.

9. Learned counsel for the respondents submitted that RTP employees were paid as per Para 7 of the advertisement (Annexure A/7). Now they have been paid the difference of pay.

FINDINGS

10. The representation said to be submitted by applicant No.2 (Annexure A-3) prayed for relief as granted by this Tribunal in TA 82/86 and Mumbai/Nagpur Bench of this Tribunal in OA 719 to 727/1996.

11. Respondent no.3 in his decision dated 20.07.2011 (Annexure A-4) has stated that the applicants have prayed for granting seniority from the date of joining as RTP.

11.1 The representation of applicant no.2, as quoted in Annexure A-4, is as under:-

“प्रार्थी माह अगस्त 1982 में as a RTP SA के रूप में आपके आदेशानुसार Bilaspur RMS में Join किया, तत्पश्चात् माह फरवरी 1989 में SA Regular Postal Assistant के रूप में बिलासपुर पोस्टल डिवीजन में किया। फिर माह.....में सार्टिंग असिस्टेंट के रूप में बिलासपुर पोस्टल डिवीजन से आरएमएस आरपी डिवीजन बिलासपुर में ज्वाइन किया।

महोदय, बहुत सारे पोस्टल व आरएमएस डिवीजन में पूर्ववर्ती आरटीपी एस ए को उनके आरटीपी के ज्वाइनिंग दिनांक से सिनियारिटी प्राप्त हो चुकी है। अतः मैं आपसे करबद्ध प्रार्थना करता हूं कि इसका लाभ मुझे भी प्रदान करने की कृपा करेंगे।”

11.2 The extracts of representations of other 3 applicants as quoted in Annexure A/4 are on similar lines.

11.3 The operative part of the decision taken by Respondent No.3 in his order dated 20.07.2011 (Annexure A-4) is as under:

“(5.) The CAT Jabalpur Bench in its decision TA 82/86 dated 16.12.1986 had granted two reliefs namely the direction to absorb the respondents against the regular posts in a phase manner and payment of same salaries as payable to regular employees.

There is no direction given by the CAT Jabalpur Bench to regularise the services of respondents from the date of appointments under the RTP scheme.

Applicants Shri O.P. Pandey, Stg. Asstt. SRO Bilaspur, Shri P.K.Sakharia, Stg. Asstt. SRO Bilaspur, Shri S.M.Sharma. Stg. Asstt. SRO Bilaspur and Shri V.K.Upadhyay. Stg. Asstt. SRO Durg were already absorbed against the regular posts. The applicants demanded regularization of services rendered in RTP for which no direction was given in Hon'ble CAT Jabalpur decision in TA 82/86 dated 16.12.1986

The applicants pointed out that case were decided in other Division and allowed the seniority from the date of their appointment in RTP, which is not correct. The Nagpur City Postal Division in its letter no. B-1/CAT(N)/80/SSS/96 dated 14.01.2011 which is enclosed by the applicants allowed only the difference of wages for the period worked under RTP. No seniority order issued by the Supdt. Nagpur City Postal Division.

(6.) In compliance to order (oral) dated 23.03.2011 passed by the Hon'ble CAT Bench Jabalpur, the representations of all the four applicants have been considered keeping in view the direction of Hon'ble CAT Nagpur/Bombay Bench in OA No. 719/96 dated 31.08.2010 and Hon'ble CAT Jabalpur decision in TA 82/86 dated 16.12.1986 and the Departmental instructions on the subject with the findings in foregoing paras and that no aspect of the grievance of the applicants remain to be settled accordingly the representation dated 11.03.2011/07.03.2011 of all the above four applicants (viz Shri O.P. Pandey, Shri P.K.Sakharia, Shri S.M.Sharma and Shri V.K.Upadyay) for regularization of services under the RTP Scheme are hereby rejected.”

12. Now we will examine the various judicial pronouncements in this regard.

13. We find that this Tribunal in its order dated 16.12.1986 in TA 82/86 (Annexure A-14) has held as under:-

“10. Under the circumstances to end the unreasonable and unjust classification that has been introduced as the result of a dual policy of the Government as reflected in the issue of the circular (Annexure P1) and the stopping of further recruitment and absorption to the cadre of posts of Postal Assistants, as affirmed in para 8 of the Respondent’s return dated 24.6.1985, we direct that:-

(a) Government shall review their policy to stop recruitment/absorption of persons against regular Postal Assistants.

(b) No person shall be inducted from other Departments like Railway Mail Service and Telecommunication Department to man posts of Postal Assistants until the petitioners are absorbed against regular posts.

(c) No fresh persons be taken and recruited against the R.T.P (Reserved Trained Pool). Until the Government reviews their policy as under (a) above the operation of the circular dated 31.10.1980 (Annexure R1) in regard to recruitment of fresh persons to R.T.P other than petitioners is struck down in exercise of this Tribunal’s writ jurisdiction.

(d) The absorption of the petitioners against regular posts will be so phased on the basis of para 2 of circular of 30.10.1980, as if no restriction had been imposed on their regular recruitment/absorption earlier and shall be completed within a reasonable period from the date of this order, if necessary by creating supernumerary posts, and subject to screening of the unfit by a specially constituted Screening Committee to examine their record and performance.

The Screening Committee shall also keep in view their seniority in the R.T.P.

11. As regards the question of equal pay for equal work claimed by the petitioners, we have also to keep in mind article 39 relating to Directive Principles of State Policy in Part IV of the Constitution, while reading Article 14 and 16 in the present case. This provision together with other provisions of the Constitution contain one main objective, namely, the building of a welfare state and egalitarian, social order, as pointed out by Hon'ble the Supreme Court in *Keshavand Vs State of Kerala* (1973) 4 SCC 225. If the state itself violates the directive principles and introduces inequality in the matter of equal pay for equal work it would be most unfortunate and cannot be justified. It is a peculiar attitude to take on the part of respondents to say that they would pay only hourly wages to R.T.P employees and not the same wages as other similarly employed Postal Assistants when they are performing the same work as held by us in paras 6 and 7 of this order. It cannot be justified also in the light of the following observations of Hon'ble the Supreme Court, cited in the case of *Surendra Singh Vs the Engineers in Chief* C.P.W.D A.T.R 1986 SC 76.

“The argument lies ill in the mouth of Central Government, for it is all too familiar argument with the exploiting class and a welfare state committed to a socialistic pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or take employment on whatever exploitative terms are offered by the employer. This fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees cannot provide an escape to

the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This Article declares that there should be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work for equal value”.

In the matter of Dearness and other allowances and the need for maintaining equality between wages of casual workers and salary etc of regularly appointed Telephone operators the order of Supreme Court dated 28.7.85 in the case of All India Telegraph Engineering Employees Union Vs Union of India and Another has also been cited by the petitioner's besides some other rulings.

12. Under the circumstances, for reasons stated in the preceding paragraph we find the provisions of circular dated 30.10.1980 (Annexure R1) in so far they relate to payment of hourly rates of wages to employees in the R.T.P discriminatory and violative of Articles 14 and 16 of the Constitution and are struck down. We direct respondents that the R.T.P employees performing the same duties as Postal Assistants, shall be paid the same salary and emoluments per mensem as are being received by Postal Assistants with effect from the date of their appointment. As regards other conditions of service and facilities requested by the petitioners, this is subject to their regular absorption as directed in para 10.

13. In the net result this petition is allowed in this manner as directed in paras 10 and 12 of this judgement. In the circumstances of the case the parties shall bear their own costs of litigation.”

13.1 The Hon'ble Supreme Court has dismissed SLP 11313/1987 on 11.05.1988 against the order of this Tribunal.

14. Our coordinate Bench at Mumbai/Nagpur in OA No.719 to 727/1996 (total 9 OAs) in its order dated 31.08.2010 (Annexure A-1) held that:

“10. The absorption of the applicants as Postal Assistants, which took place long back, is not disputed by the Respondents. Evidently, all the applicants have also been granted all the consequential benefits from the date of absorption. Therefore, keeping in view the admitted position that the applicants in the O.As. in hand are similarly situated as the applicants were in T.A. 82/1986 and on a total reconsideration of the issues involved in the present nine cases and after minutely perusing the directions and observations of the Hon’ble High Court in its order dated 11.06.2010, we allow this nine O.As. by directing the respondents to extend to the present nine applicants same reliefs as granted to the applicants in TA 82/1986 decided by the Jabalpur Bench on 16.12.1986 and as upheld by the Hon’ble Supreme Court in its order dated 11.05.1988 by dismissing the SLP No. 11313 of 1987 preferred by the Union of India against the order of Jabalpur Bench in question.”

15. Orders of Chandigarh Bench of this Tribunal (Annexure A-18) and Hon’ble High Court at Chandigarh are also on the same lines.

16. The orders of Ernakulam Bench of this Tribunal (Annexure A-17) is regarding grant of TBOP/MACP, which is not subject matter of this O.A.

17. From the above, we find that in none of the judicial pronouncement referred to by the learned counsel for the applicants, it has been ordered to consider their seniority from the date of joining as RTP.

18. We also find that the representation said to be submitted by applicants (Annexure A-3) is different from what has been extracted in the impugned order dated 20.07.2011 (Annexure A-4). Since this aspect has not been challenged by the applicants in this O.A, we ignore the representation (Annexure A-3). Thus, the representations were purely for giving the seniority w.e.f. the date of joining as RTP, as has been granted in other Divisions.

18.1 Respondent No.3 has rightly observed that neither there were judicial orders for treating the date of joining as RTP for seniority purposes nor any other Division has granted this relief. Therefore, there is no irregularity in passing the said order.

19. Accordingly, we are not in a position to grant relief as prayed for in Para 8 of the O.A.

20. However, we find that the issue of making payment of wages to the applicants while working as RTP is not clear. While respondents in para 17 of their reply has said that payment has been

made, the applicants have controverted it in para 10 of the rejoinder.

21. We direct the respondents the following to be complied within 60 days from the date of receipt of certified copy of this order:-

21.1 Furnish due and drawn statement for the period the applicants were working as RTP and payment details of the amount so paid.

21.2 In case payment has not been made so far, the same be made including interest at GPF rate from 31.10.2010 (2 months after date of pronouncement of Mumbai/Nagpur Bench order) to the date of payment.

22. The O.A is accordingly disposed of. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-