

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.400/2013
Connected With
ORIGINAL APPLICATION No.402/2013
Dated this the 12th day of June, 2019

**CORAM: DR.BHAGWAN SAHAI, MEMBER (A)
R.N. SINGH, MEMBER (J)**

(ORIGINAL APPLICATION No.400/2013)

D.P. Pansare, (No.3877 HQ C.M.E.)
Civilian Switch Board Operator Gr.-I,
College of Military Engineering,
Dapodi, Pune-411031.
(R/o: 500, Gajanand Jadhav's House,
Near Z.P. School, Hind Kesari Nagar,
Pune-31).

...

Applicant.

(Advocate : Ms.Sujatha Krishnan)

Versus.

1. The Union of India through,
The Secretary,
Ministry of Defence, South Block,
DHQ Post Office, New Delhi-11.
2. The Engineer-in-Chief,
Army Headquarters, Kashmir House,
New Delhi-110011.
3. The Commandant,
College of Military Engineering Dapodi,
Pune-411 031.

...

Respondents.

(Advocate : Shri R.R. Shetty)

(ORIGINAL APPLICATION No.402/2013)

Paras Nath (No.4344 HQ C.M.E.)
Civilian Switch Board Operator Gr.-II,
College of Military Engineering,
Dapodi, Pune-411031.
(R/o: Flat No.406, Bldg.No.3, Avalon City,
Dapodi, Pune-12).

... **Applicant.**

(Advocate : Ms.Sujatha Krishnan)

Versus.

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(Advocate Shri R.R. Shetty)

ORDER (Oral)

Per : R.N. Singh, Member (J)

This is third round of litigation by the applicants in the aforesaid OAs. The applicants in the aforesaid OAs are presently working as Civilian Switch

Board Operators (hereinafter referred at CSBO) Grade-I under the respondents. As a common issue has been raised in the present OAs and claims of the applicants are also entirely identical in the aforesaid OAs, as such both these OAs were heard together and are being disposed of by a common order.

2. The applicant in O.A.No.400/2013 was regularly appointed to the post of CSBO Grade-II with effect from 25.04.1991 and was placed in the pay scale of Rs.260-480/- and the applicant in O.A.No.402/2013 was appointed as CSBO Grade-II with effect from 08.06.1987 and was placed in the pay scale of Rs.975-1660/-. Consequently, upon acceptance of the recommendations of 5th Central Pay Commission, the pay-scale of CSBO Grade-II was revised to Rs.3200-4900/- with effect from 01.01.1996. In view of the ACP Scheme issued by DoP&T vide O.M. dated 09.08.1999, on completion of 12 years of service, the applicant in OA No.400/13 was placed in pay-scale of Rs.4000-6000/- with effect from 09.08.1999, which is to be the pay-scale of next higher post i.e. CSBO Grade-I.

3. The applicant in OA No.400/2013, was regularly

promoted to the next higher post of CSBO Grade-I with effect from 24.12.1999 and the applicant in O.A.No.402/2013 was also promoted with effect from 24.12.1999. The CSBOs working under the respondents and posted at the various units of the Respondents have been demanding parity in pay-scales with the pay-scales admissible to Telecom Operators in Telecom department. When such demands of the CSBOs were not acceded to by the respondents, various similarly placed persons approached various benches of this Tribunal and the Tribunal allowed their applications by granting the same pay-scales as are given to the Telecom Operator Grade-II and Grade-I and Telecom Supervisors in the Telecom department, Government of India and such orders of this Tribunal attained finality.

4. The applicants in the aforesaid OAs also approached this Bench of the Tribunal by filing O.A.No.603/2013 titled ***D.R. Kakade & Others vs. Union of India and Others*** decided on 18.06.2004 (Annex A-3) for extension of the benefit of such judgment and the said O.A.No.603/2013 was allowed by this Tribunal directing the respondents that the applicant in

O.A.No.400/2013 be given pay scale of Rs.260-480 and subsequent scale of pay of Rs.975-1660/- and Rs.3200-4900/- and the applicant in O.A.No.402/2013 be given the scale of pay Rs.975-1660/- and Rs.3200-4900/-.

5. The CSBOs employed under the Ministry of Defence had filed O.A. before Chandigarh Bench of this Tribunal for grant of pay-scale/Time-bound Promotion benefits to them in the grade of CSBO Grade-I in the pay scale of Rs.5000-8000 and 2nd Time-bound Promotion in the pay scale of Rs.5500-9000, which were the pay-scales of Telecom Operators Grade-II and Grade-I, Telecom Supervisors in Telecom department.

6. The O.A.No.450/HR/2002 titled **Balraj Singh & Others vs. Union of India & Others**, raising such demands of CSBOs, filed before the Chandigarh Bench of this Tribunal was allowed by the judgment dated 13.09.2002. CWP No.8759/2002 filed by the respondents against that judgment before the Hon'ble High Court was dismissed and later SLP No.(CC) 143/2004 was also dismissed by the Hon'ble Supreme Court.

7. Consequently, Government of India, Ministry of Defence, obtained sanction of Hon'ble President of

India for grant of three pay scales of Telephone Operators as prevalent in the Telecommunication department, Government of India to CSBOs working under the General Staff Branch with effect from 01.01.1996 along with time-bound promotion to be given after 16 years and 26 years of service. Such sanction of the Hon'ble President was issued vide letter dated 27.02.2004 (Annex A-2).

8. The learned counsel for the applicants contend that the aforesaid order dated 27.02.2004 of Ministry of Defence was not widely circulated and the applicants have no knowledge of the improved pay-scale of CSBOs. Learned counsel for applicants argues that the respondents were duty-bound to give effect on their own to their order dated 27.02.2004 in the case of the applicants herein as well.

9. However, as they did not do so the applicants herein preferred a representation requesting the respondents to grant 1st Financial Upgradation in the pay-scale of Rs.5000-8000 with effect from 09.08.1999 instead of Rs.4000-6000 and also to grant them 2nd Financial Upgradation in the pay-scale of Rs.5500-9000

instead of Rs.4500-7000 with effect from 25.04.2005.

10. When such request of the applicants herein was not acceded to by the respondents, the applicants herein approached this Tribunal by filing Original Application No.118/2010 titled **D.P. Pansare & Others vs. Union of India & Others** which alongwith few other OAs was disposed of vide common order/judgment dated 24.02.2011 (Annex A-5) with liberty to the applicants to approach the respondents by stating the complete relevant facts and seek appropriate redressal of their grievances and the respondents were directed that as model employer they should address the issue in accordance with law as laid down in the **State of Punjab versus Surjit Singh, reported in 2010 (1) SLJ-403** in just and fair manner.

11. It is further contended by the learned counsel for the applicants that in view of the liberty in the order dated 24.02.2011 of this Tribunal, the applicants preferred individual detailed representations dated 30.08.2011 (Annex-A-6) to the Respondent No.2. The respondents in compliance of this Tribunal's order dated 24.02.2011 have passed the impugned order dated 09.08.2012, which is completely

identical and addressed to the individual applicants in the aforesaid O.As.

12. In the aforesaid background the applicants in the present OAs have sought similar reliefs. In O.A.No.400/2013 the applicant has sought following reliefs:-

"(a). to allow the Original Application.

(b). to hold and declare that, the Applicant is entitled to be granted 1st Time Bound Promotion on completion of 16 yrs. Of service, w.e.f. 25.04.1997 in the pay scale of Rs.5000-8000/-, and he is also entitled to be granted 2nd Time Bound Promotion on completion of 26 yrs. Of service, in the pay scale of Rs.5500-9000/-, w.e.f. 25.04.1997.

(c). to direct the Respondents to fix the pay of the Applicant, in the pay scale of Rs.5000-8000/- w.e.f. 25.04.1997 and in the pay scale of Rs.5500-9000/-, w.e.f. 25.04.2007.

(d). to grant all consequential benefits including the payment of arrears of pay and allowances arising out of the pay fixation as prayed in Para (c) above.

(e). to award the cost of application."

The applicant in O.A.No.402/2013 has sought for the following reliefs:-

"(a). to allow the Original Application.

(b). to hold and declare that, the Applicant is entitled to be granted 1st Time Bound Promotion on completion of 16 yrs. Of service, w.e.f. 08.06.2003 in the pay scale of Rs.5000-8000/-.

(c). to direct the Respondents to fix the pay of the Applicant, in the pay scale

of Rs.5000-8000/- w.e.f. 08.06.2003.

(d). to grant all consequential benefits including the payment of arrears of pay and allowances arising out of the pay fixation as prayed in Para (c) above.

(e). to award the cost of application."

13. The learned counsel for the applicants argues that the impugned order of the respondents is cryptic and result of non-application of mind. She argues that letter dated 27.02.2004 (Annex A-2) was issued in implementation of the directions of Chandigarh Bench of this Tribunal in O.A.No.450/HR/2002 titled **Balraj Singh (supra)** which has attained finality after dismissal of the Writ Petition by the Hon'ble High Court and Hon'ble Apex Court dismissal of SLP No.(CC) 143/2004 filed by Union of India. Thereafter the sanction of the Hon'ble President was conveyed for grant of pay-scale of Rs.5000-8000 of Telecom Operator Grade-I and Rs.5500-9000 for Telecom Supervisor.

14. Besides, benefit of the ACP Scheme introduced by OM dated 09.08.1999 so far as in the case of CSBOs was withdrawn by the same letter dated 27.02.2004. Learned counsel further argues that though it was incumbent upon the respondents to give the benefit of the letter dated 27.02.2004 to all similarly placed

CSBOs including the applicants herein, they have failed to do so even after the applicants approaching this Tribunal in O.A.No.118/2010. She further argues that the respondents are compelling all similarly placed persons to approach this Tribunal and only on Court's directions they have been granting the benefits as would be evident from their letter dated 02.12.2005 (Annex A-8) which was issued in compliance of the directions of Kolkata Bench of this Tribunal in O.A.No.380/2004 which reads as under:-

"CP(P) /7837/ REPORTI TELE STAFF
1838/US(MP) / D(N-11)

Government of India

Ministry of Defence

New Delhi -110 011

Date :02nd December, 2005.

The Chief of the Naval Staff Integrated HQrs.
of Ministry of Defence (Navy),
New Delhi.

SUB IMPLEMENTATION OF ORDER OF HON'BLE C.A.T.
KOLKATA BENCH, IN O.A.No.380 /2004, FILED
BY SHRI.SUBHASH CHANDRA BASU AND 04 OTHERS.

Sir,

1. I am directed to convey the sanction of the President for the grant of follow pay scales to the Telephone Operators of Indian Navy, as already sanctioned to Telephone Operators/Civilian Switch Board Operators of the Army Gr. I, much with effect from 01.01.1996 in satisfaction of the Hon'ble Central Administrative Tribunal, Kolkata Bench in O.A.No.380/2004 passed on 20.07.2005.

- (a) Telephone Operators-Grade-II Rs.3200-4900/-
- (b). Telephone Operators-Grade-I Rs.5000-8000/-
- (c). Telephone Supervisor Rs.5500/9000/-

2. This issues with the concurrence of Ministry of Defence, Finance Division, vide their U.O. No.1342/NA/05 dated 02.12.2005.

Sd/-xxxx

(BABU CHERIAN)

Under Secretary to the Govt. of India."

15. She further places on record a copy of the order/judgment dated 31.08.2006 of Chandigarh Bench of this Tribunal in OA No.675-PB of 2005 titled **Swaran Kaur & Others vs. Union of India & Others**, decided on 31.08.2006 and para 5 and 6 thereof read as under:-

"5. Examination of facts of this case indicate that facts of this case are not only identical to the cases decided by Annexures A-1, A-2, A-4 etc. but also that the applicants are working under Ministry of Defence, performing similar duties as those applicants. The distinction, attempted to be drawn by the respondents, is found to be frivolous. This Court cannot accept the plea that ratio of those judgments cannot be extended to other similarly placed employees of the respondents. The Courts have repeatedly recorded that employees should not be compelled to come to the Courts individually when a proposition of law has been settled at the level of High Court and, as in this case, at the level of Supreme Court as well. The Government, as a model employer, should, on their own, have extended the benefits of the judgment of the High Court and the judgment of this Tribunal at Annexure A-2, which has been upheld up to the level of Supreme Court and duly implemented by the respondents through Annexure A-3. We, thus, hold that applicants are entitled to the same benefits as given to applicants

in judgment at Annexure A-2 in OA No.450-HR of 2002 decided on 13.9.2002. Besides this, we are reproducing the order of Government of India, dated 27th February, 2004, Annexure A-3, which is relevant for the present case as well:-

"I am directed to convey the sanction of the President of India, for the grant of following three pay scales of telephone Operators as prevalent in telecom department to CSBOs under General Staff Branch common roster of Defence department with effect from 1.1.96:-

- a) CSBO Gde II Rs/.3200-4900
- b) CSBO Gde I Rs.5000-8000
- c) Tele/SB Supvr Rs.5500-9000
- d) After completion
of 16 years service Rs.5000-8000

2. This is in satisfaction of the order of CAT Chandigarh Bench on OA No.450-HR of 2002 passed on 13 Sep 2002, consequent to dismissal of CWP 8759 by High Court of Punjab & Haryana and dismissal of SLP No.CC/143/2004 filed by Union of India by Hon'ble Supreme Court.

3. Consequent to implementation of these orders, ACP scheme introduced vide GOI letter No.35034/1/97-Estt.(D) dated 09 Aug 1999 will be treated as withdrawn in so far as CSBOs under General Staff Branch common roster concerned, as both the schemes, i.e. ACP Scheme and time bound promotion scheme of Telecom Deptt. As granted by CAT Chandigarh to all CSBOs cannot run concurrently. Hence the benefits granted to all CSBOs under SCP Scheme will be withdrawn and benefits of time bound promotion scheme as per court order will be implemented."

6. In view of the above discussion, we hold that the applicants are entitled not only to the benefits of the judgment at Annexure A-2, but shall also be covered by the decision at Annexure A-3, reproduced above, with all the terms and conditions, mentioned in it. They shall also be given the revised

scales of pay with effect from the dates with the same conclusion recognized in Annexure A-2 with all consequential benefits of pay fixation etc. as extended to those applicants. We expect the respondents to comply with these directions within a period of three months from the date of receipt of a copy of this order. There is no order as to costs."

16. She also places on record a copy of judgment and order dated 27.03.2009 of Chandigarh Bench of this Tribunal 399/PB/2008 titled **Mastan Singh & Others vs. Union of India & Others** and para-6 thereof reads as under:-

"On going through the various decisions we have no hesitation in holding that the issue is no longer res-integra and stands settled by various Benches of this Tribunal that Telephone Operators (CBSO) working in respondent Department are entitled to pay scale at par with their counter parts working in Department of Posts. In view of this, the respondents have no ground, whatsoever, to deny the applicants benefits of decisions referred to above and the case in hand is squarely covered by the ratio laid down in the cases of **Balraj Singh (surpa)** and **Swaran Kaur (supra)**. It is, thus, disposed of in the same terms. Respondents are directed to consider the claim of the applicants and pass necessary orders in the light of these two decisions within a period of three months from the date of receipt of copy of this order. There shall, however, be no order as to costs or interest."

17. Learned counsel for the applicants also refers and relies on the common order/judgment dated 12.3.2013 of this Bench of the Tribunal in O.A.No.678/2009, 680/2009 titled **Namdeo Narayan Patil**

& Others vs. Union of India & others and the relevant para 4 to para 7 thereof read as under

"4. When these two cases are taken taken up for consideration, learned counsel for the applicants submits that the applicants will not be entitled to get their 2nd Financial Up-gradation on completion of 24 years as prayed for. He fairly concedes that the said benefit would accrue only on completion of 26 years. In other words, learned counsel submits that applicants will be entitled to get the 1st Financial Up-gradation on completion of 16 years and 2nd Financial Upgradation Completion of 26 years under the Scheme applicable and on par with similar benefits granted other employees in the same Department. In this context our attention is invited to an order passed by a Coordinate Bench of this Tribunal at Chandigarh dated March 27, 2009 in OA No.399-PB-2008 particularly Para 3 thereof which is extracted herein below;

"3. The Applicants who were appointed as Telephone Operators (SBCO) in Respondent Department on various dates as mentioned in the O.A. submitted various representations for grant of benefit of the decisions referred to above but to no avail. Feeling aggrieved, they have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, for issuance of direction to the Respondents to extend them the benefit of the judgment in **Balraj Singh & Others and Sawarn Kaur & Others** (supra) and grant them benefits of pay scale of Rs.3200-4900 w.e.f. 1.1.1996 and first financial up-gradation under ACP Scheme in the pay scale of Rs.5000-8000 in place of Rs.4000-6000 and second financial up-gradation in the pay scale of Rs.5500-9000 instead of Rs.4500-7000, with all the consequential benefits with interest."

5. Learned counsel for the applicants submits that the above order has been

implemented by the respondents in the said Original Application.

6. Smt.H.P.Shah, learned counsel, who appears for the Respondents, on getting instructions, submits that Respondents are prepared to give similar benefits to the applicants in these two cases as well. In other words, she submits that the applicants will be granted the 1st and 2nd Financial Up-gradation on completion of 16 and 26 years as claimed by them. The above undertaking is recorded.

7. Original Applications are disposed of with a direction to Respondent No.3 to grant the benefits of 1st and 2nd Financial Up-gradation in the scale of Rs.5000-8000 and 5500-9000 respectively on completion of 16 years and 26 years. This shall be done as expeditiously as possible, at any rate within four months from the date of receipt of a copy of this order. Needless to mention that the applicants will be granted all the consequential benefits like arrears of pay etc. as well. No costs."

18. In response to the notice issued by this Tribunal, the respondents have filed affidavit in reply. In it they have taken objection that the OA is barred by limitation. They have referred to various judgments in para 10 of their reply affidavit to urge that these OAs are barred by limitation. However the respondents have not shown as to how the reliefs sought by the applicants are barred by limitation. With regard to the reliance of the applicants on the letter dated 27.02.2004, the respondents in para 14 say that the Respondent No.3 did not receive such letter and moreover, the pay scales mentioned in the

said letter apply to the applicants mentioned O.A.No.450/HR/2002.Hence, they have no comments to offer.

19. They further submit that the Respondent No.2 has taken up the matter with Respondent No.1. However, Ministry of Finance, Department of Expenditure has not agreed to the proposal due to the reasons recorded in the UO No.1572/JS(Per)/09 dated 28.07.2009. The said UO letter, reads as under:-

"Ministry of Finance

Department of Expenditure

E.III B Branch.

Ministry of Defence may please refer to their notes at pre-page regarding upgradation of the pay scales of Telephone Operators/Civilian Switch Board Operators in various Headquarters/Dtes./organizations under Ministry of Defence at par with their counter parts in General Staff Branch (GS Branch), Army Headquarters and Naval Headquarters.

2. The proposal has been considered in this department and it is observed that though the Telephone Operators in Army, Navy, AF, DGQA, OS Dte., E-in-C Branch have same educational qualification i.e. matric or its equivalent with English as a compulsory subject plus proficiency in handling of private board exchange but their mode of recruitment is different which reflect that there is no wholesale parity between the Telephone Operators in different Hqrs/Dtes. Of MOD. The total financial implication involved in the instant proposal is also quite high. Further, though of MOD has put forth a composite proposal therein all the

Telephone Operators working in different Hqrs./Dtes. Of MOD have been taken into account, however, there is a possibility that similar demand may arise from civilian Ministries/Departments. Therefore, acceptance of the proposal will have wider repercussions. Further, the 6th CPC have also not made any recommendation in the matter.

In view of the above, the proposal from MOD has not been agreed to.

3. JS(Per) has seen.

(R.K. Thapar)

Under Secretary to the Govt.of India"

20. We have gone through the pleadings on record and have also considered submissions made on behalf of the parties. It is not in dispute that the applicants are similarly placed as the applicants in O.A.No.450-HR of 2002, which was allowed by the Chandigarh Bench of this Tribunal vide order dated 13.09.2002 and the Writ Petition file by the Union of India before the Hon'ble High Court was dismissed and the SLP filed against the same was also dismissed by the Hon'ble Supreme Court. It is also not disputed that the said order of this Tribunal was implemented by the respondents vide their order dated 27.02.2004 (Annex A-2) and such implementation was evidently done with the concurrence of Defence (Finance).

21. It is also not disputed when other similarly placed persons approached the Kolkata Bench of this

Tribunal in O.A.No.380/2004, the said OA was allowed and the respondents had implemented the directions of the Tribunal vide their letter/order dated 02.12.2005 (Annex A-8). It is further noticed that when similarly placed persons again approached the Chandigarh Bench of this Tribunal in O.A.No.399/PB/2008, it was allowed vide order/judgment dated 27.03.2009, referred to hereinabove and when two similar matters came up in O.A.678/2009 and 680/2009 before this Bench of the Tribunal, the learned counsel for the respondents therein on instructions submitted that the respondents are prepared to give similar benefits to the applicants in those two O.As. as well. After recording that submission, the Tribunal disposed of the said O.A.s vide order/judgment dated 12.03.2013, operative portion whereof reads as under:-

"7. Original Applications are disposed of with a direction to Respondent No.3 to grant the benefits of 1st and 2nd Financial Up-gradation in the scale of Rs.5000-8000 and 5500-9000 respectively on completion of 16 years and 26 years. This shall be done as expeditiously as possible, at any rate within four months from the date of receipt of a copy of this order. Needless to mention that the applicants will be granted all the consequential benefits like arrears of pay etc. as well. No costs."

22. With regard to the objection of the

respondents that the OAs are barred by limitation, we are of the considered view that the matter involves fixation of pay and entitlement for such pay fixation has been decided long back by the Chandigarh Bench of this Tribunal vide its order/judgment dated 13.09.2002 in O.A.No.450/HR/2002 and the Presidential sanction has been issued in this regard on 27.02.2004. Therefore, it was incumbent upon the respondents to extend the benefits of that order/judgment on their own to the similarly placed persons and not to compel all similarly placed persons to approach one bench or the other bench of this Tribunal by separate OAs for the same reliefs.

23. However, from the aforesaid, it is found that the respondents have given the benefits to the similarly placed persons only when they have approached various Benches of this Tribunal and they have rejected the claims of the present applicants inspite of the fact that they are similarly placed with the applicants of O.A.No.450/2002 as well as O.A.No.380/2004, referred to hereinabove. It appears that the respondents have rejected the claims vide impugned order dated 09.08.2012 as it was left to them

to consider the representations of the applicants whereas in other OAs, filed by the similarly placed persons specific directions were given by the Tribunal.

24. The issue involved in the present O.As. is regarding grant of correct pay-scale and fixation of pay of the applicants. On account of grant of wrong fixation the applicants are getting less pay and thus there is recurring cause of action for them. Reliance is placed on the law laid down by the Hon'ble Apex Court in *M.R. Gupta vs Union of India & Ors* dated 21st August, 1995 reported in 1996 AIR 669, 1995 SCC (5) 628.

25. On merits, it is not disputed by the respondents that the applicants are similarly placed with the applicants in various other O.A.s which were allowed. The judgments in some of such O.As. have been referred to hereinabove.

26. In view of the aforesaid, the OAs are partly allowed with the following orders/directions:-

(1). The applicants are entitled to grant first time bound promotion on completion of

16 years of service in the pay scale of Rs.5000-8000 and are also entitled to grant of 2nd financial upgradation on completion of 26 years of service in the pay-scale of Rs.5500-9000.

(2). the Respondents shall pass necessary order(s) to fix the pay of the applicants in the pay-scale of Rs.5000-8000 on completion of 16 years of service and Rs.5500-9000 on completion of 26 years of service.

(3). The applicants shall be entitled for arrears of pay on such re-fixation as ordered above.

(4). Respondents are directed to complete the aforesaid exercise within a period of four months from the date of receipt of a certified copy of this order.

(5). No order as to cost.

(R.N. SINGH)
MEMBER (J)

(DR. BHAGWAN SAHAI)
MEMBER (J)

