

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO : 1867/2003

(2)

New Delhi, this the 19th day of May, 2004

HON'BLE MR. SHANKER RAJU, MEMBER (J)

In the matter of :

1. Shri K.M.P. Singh,
S/o Late Shri Y.P. Singh,
Aged about 48 years,
Presently posted at DCP as Jt. Director,
R/o A-108, Pragati Vihar Hostel, New Delhi
2. Shri Arun Kumar,
S/o Shri Chet Ram,
Aged about 44 years,
Presently posted at DOA as Jt. Director,
R/o F-410, Pragati Vihar Hostel,
New Delhi
3. Shri K.D. Sharma,
S/o Late Shri K.L. Sharma,
Aged about 55 years,
Presently posted at DOA at Jt. Director,
R/o 32, Laxmi Bai Nagar, New Delhi-23
4. Shri B.P. Mishra,
S/o Shri B.S. Mishra,
Aged about 55 years,
Presently posted at DPS as Jt. Director,
R/o 206/15, Sec-I, Pushp Vihar, New Delhi
5. Shri K.D. Minhas,
S/o Late Shri Amar Singh,
Aged about 51 years,
Presently posted at DOP as Jt. Director,
R/o B-7, Brij Vihar, Pitam Pura, New Delhi
6. Shri Nirmal Kumar,
S/o Sh. Ram Kishan,
Aged about 50 years,
Presently posted at DNT as Jt. Director,
R/o B-36, Gaurav Apts.,
Patparganj, New Delhi
7. Shri Virendra Kumar,
S/o Late Shri L.C. Arya,
Aged about 51 years,
Presently posted at DNT as Jt. Director,
R/o 69, Hari Singh Park,
Rohtak Road, New Delhi
8. Shri K. Shivshankar,
S/o Shri M. Kannan,
Aged about 52 years,
Presently posted at DCPS as Jt. Director,
R/o N-202, Sec/VIII, R.K. Puram,
New Delhi
9. Shri S.L. Mehra,
S/o Late Shri K.L. Mehra,

(13)

Aged about 53 years,
 Presently posted at DCPS as Jt. Director,
 R/o 26/98, Shakti Nagar, Delhi

10. Shri Krishna Kumar,
 S/o Shri U.C. Gulati,
 Aged about 51 years,
 Presently posted at DPA as Jt. Director,
 R/o 411, Dr. Mukherjee Nagar,
 New Delhi-9

11. Shri Narsing Dass,
 S/o Shri Lachman Dass,
 Aged about 50 years
 Presently posted at DPA as Jt. Director,
 R/o A-2535, Netaji Nagar, New Delhi-23

12. Shri Jasbir Singh,
 S/o Late Shri Makhan Singh,
 Aged about 52 years,
 Presently posted at DNI as Jt. Director,
 R/o S-IV, 693, R.K. Puram,
 New Delhi

13. Shri Bhanu Pratap,
 S/o Shri Sukhnandan Ram,
 Aged about 44 years,
 Presently posted at DLS as Jt. Director,
 R/o F-417, Pragati Vihar Hostel,
 New Delhi

... Applicants

(By Advocate : Shri A.K. Behra)

Versus

1. Union of India,
 Through Secretary, Ministry of Defence,
 South Block, New Delhi-110 001

2. Chief of Naval Staff,
 South Block, New Delhi - 110 001,

3. Jt. Secretary (Training) & Chief Admn. Officer,
 Ministry of Defence,
 E-Block, Dalhousie Road,
 New Delhi - 110 001

4. The Director,
 Naval Signals, Naval Headquarters,
 Sena Bhawan, New Delhi-110 011

... Respondents

(By Advocate : Shri A.K. Bhardwaj)

O R D E R (ORAL)

Heard the parties.

2. Applicants impugn respondents' order dated
 3.12.2002 whereby they have been denied residential

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telephone facility.

3. Learned counsel of the applicants states that as per Ministry of Finance (Department of Expenditure) OM dated 2.4.1987 a decision has been taken to provide residential telephone facility to the officers of the rank of Deputy Secretary and above and below the rank of Deputy Secretary not more than 25% of Group 'A' officers can be provided with residential telephones. A question has been raised whether all the officers whose pay scales have been equated with that of the Deputy Secretary are to be extended the facility of residential telephone or not? It has been decided that Officers in the Secretariat and Headquarters Offices in the revised scale of pay of Rs.3700-5000, which has now been revised to Rs.12000-16500/-, and above may be allowed the facility of residential telephone. In this view of the matter, the officers holding posts in the same scale have been extended the facility of residential telephone in other Wings of the Ministry of Defence, i.e., Army Headquarters, Air Force Headquarters, ISO, whereas in the Naval Wing the same has been continued only on the ground that the functional requirements do not allow extension of such a facility. The learned counsel has drawn my attention to an order passed on 28.8.2001 issued by the Government of India, Ministry of Defence, whereby four additional direct residential telephone connections had been allowed for the use of SCSO (In-situ) officers. This facility was also provided to the SCSO (In-situ) Officers of the Air Headquarters vide order dated 24.10.2001. In this view of the matter, the learned

counsel for applicants contends that denying the facility to the applicants is arbitrary and discriminatory.

4. On the other hand, respondents' counsel Shri A.K. Bhardwaj contends that there is no co-relation of the applicants with the level of Deputy Secretary. In-situ promotion does not disturb the functional requirement of the post. The facility of residential telephone is to be provided to only in the case of regular appointments and not in In-situ promotions.

5. He further states that regarding withdrawal of the residential telephone from Officers holding the rank of Commander who are drawing higher pay than Deputy Secretary, a proposal has been sent for clarification to the Ministry of Defence and the decision is still awaited. In nut-shell, what has been reflected is that the applicants who do not hold a regular scale on the basis of pay scale cannot be given the facility of residential telephone as there is no change in their functions/responsibilities.

6. On careful consideration of the rival contentions, it is no more res-integra that equals cannot be discriminated, which violates mandate of Articles 14 and 16 of the Constitution. Once In-situ promotees in the same pay scale have been accorded the facility of residential telephone, the same cannot be denied to the applicants. The only exception to the principle of equating is when the differentia is intelligible and has a reasonable nexus with the object sought to be achieved.

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From the pleadings, I find that the only differentia is functional requirement. Nowhere in the Memorandum issued by the Ministry of Defence on 2.4.1987 there is a reference to the functional requirement of the post rather condition precedent for grant of facility of residential telephone. The only criteria is equation of pay scale to that of Deputy Secretary.

7. As the respondents' action being a model employer is not in consonance with the principles of natural justice, the same cannot stand scrutiny of law. Accordingly, the OA is allowed. The impugned order is quashed and set aside. Respondents are directed to extend the applicants the facility of residential telephone from the date they have been posted in the Naval Headquarters with all consequential benefits. The respondents are directed to comply with the order within a period of two months from the date of receipt.

S. Raju
(Shanker Raju)
Member (J)

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