

(2013) 09 DEL CK 0508
In the Delhi High Court
Case No : Writ Petition (C) 3755 of 2002

P.S. Dhillon and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Citation : (2013) 09 DEL CK 0508

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Surat Singh, Mr. Brajesh Kumar Singh and Mr. Sumit Jidani, for the Appellant;

Final Decision : Allowed

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the judgment dated April 30, 2001, whereby the Central Administrative Tribunal dismissed four Original Application Nos. 464/2000, 871/2000, 2667/2000 and 923/2000 by a common order and to the order dated April 29, 2002 in Review Application No. 243/2001 in Original Application No. 2667/2000, Review Application No. 247/2001 in Original Application No. 871/2000 and Review Application No. 225/2001 in Original Application No. 464/2000. Out of the four Original Applications, three Original Applications were filed by the petitioners herein and the details are; P.S. Dhillon (Petitioner No. 1; Original Application No. 464/2000), G.S. Sethi (Petitioner No. 2; Original Application No. 871/2000) and J.C. Sur (Petitioner No. 3; Original Application No. 2667/2000).

2. The Original Applications were filed by the petitioners inter-alia challenging the orders passed by the respondents wherein they have been denied the benefit of continuous officiation in Senior Time Scale of Indian Telecom Service Group "A" till their regularization and withdrawing the orders fixing their pay with effect from January 01, 1996 and re-fixing the same with effect from September 24, 1997.

3. We may state here that one Mr. A.K. Roy who was the applicant in Original Application No. 323/2000 has not challenged the initial order of the Tribunal dated April 30, 2001.

4. Some of the facts which are necessary to adjudicate the issue are that the petitioners while working in Telecom Engineering Service Group "B" were promoted as Divisional Engineers in the Senior Time Scale of ITS Group "A" on local officiating basis between September to December, 1982. They were regularized in the Senior Time Scale of ITS Group "A" with effect from October 10, 1984.

5. The pay of the petitioners was fixed in the pay scale of Rs. 14300-400-18300 by the respondents vide office memorandum dated January 21, 1998 as per the Central Civil Services (Revised) Pay Rules, 1997 with effect from January 01, 1996 on they being promoted in Junior Administrative Grade, in terms of instructions of the respondents dated October 27, 1997 and February 09, 1998 which provides for a total service of 13 years in Group "A".

6. The only ground on which the petitioners had made their claim was that the period of officiation in the Senior Time Scale of ITS Group "A" between the period 1982 to 1984 should be counted for computing the total service of 13 years in Group "A". The petitioners relied upon various judgments of the Supreme Court including the Constitution Bench Judgment reported as *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*,

7. The respondents contested the claim of the petitioners inter-alia taking a stand that the service cannot be counted for the purpose of counting 13 years of service in Group "A". The Tribunal negated the claim of the petitioners in terms of the following conclusion:

The applicants have empanelled for promotion to JTS of ITS Group "A" on regular basis by the DPC held on 3.9.1984. Keeping in view the provisions of Rule 27(b) *ibid* the TES Group "B" officers have been empanelled by the DPC and appointed in STS of ITS Group "A" on hold charge basis w.e.f. 10.10.1984. The applicant and other TES Group "B" officers were already officiating in STS in local arrangement, were given the benefit of pay-fixation w.e.f. 24.9.1984, i.e. the date on which the minutes of the DPC were approved. As a consequence on promotion to STS on hold charge basis, the local officiating promotion was terminated in terms of promotion order dated 7.10.1982 and the applicants stood automatically reverted to their substantive grade of TES Group "B" and their pay was accordingly fixed w.e.f. 24.9.1984 as such the period up to which the applicants were regularised, there was a break in service vide order dated 10.10.1984 as such the claim of the applicants that their officiation to Group "A" post was continuous is not correct. The service book of the applicant finds mention of this. As such the case law relied upon by the applicant including that of *Constitutional Bench of Direct Recruit's case supra* would not be applicable in

the facts and circumstances of the present case as the applicants had not continued in the post uninterruptedly till the regularisation of their services. As such this period of officiating service will not be reckoned for seniority and other benefits. The claim of the applicant in this regard is also liable to be rejected as there is no relief claimed by the applicant in their OAs for counting of this officiating period towards seniority and other benefits.

The contention of the applicants that their initial appointments in Group "A" service through letter dated 13.12.1982 clearly stipulates that if the local arrangement was exceeded 45 days the officers would be entitled to claim the benefit, is also not well founded. The respondents have acted in accordance with the statutory rules. The appointments of the applicants were on officiating basis and were also on temporary basis and as a local arrangement with a stipulation that the same would be terminated automatically on joining of regular incumbent. As rightly pointed out by the respondents that the officiating promotion was on circle/units, seniority and not on all India seniority, if the officiating services is counted the same would be discriminatory to other officers who could not have been offered officiation, due to nonavailability of vacancies in their circles. It is next contended that in the letters issued by the respondents on 27.10.1997 and 9.2.1998, there is no reference of a regular service of 13 years to entitle the applicants for revision of pay scales w.e.f. 1.1.1996. As such as the applicants had rendered a total service of 13 years in 1982 to 1984 shall be counted as part of their total service to be reckoned for the purpose of fixation w.e.f. 1996. We find from the record that the applicants by their own declaration that they had completed 13 years of service in Group "A" were accorded pay scale w.e.f. 12.8.1996. At the time of grant of pay scale the applicants themselves had voluntarily given undertaking to the Department to refund the excess payment made to them in case the matter which had already been referred to DOPT is decided other way. From a letter dated 27.2.2001 we find that the Ministry of Finance had written to the Department of Telecommunications regarding clarification which have been arrived at on consultation with the DOPT wherein it is stated that for the purpose of computing 13 years of service in Group "A" post shall be taken into account. In this view of the matter, although the letter issued in 1997 and 1998 only refer to a total service of 13 years, but in view of the decision arrived at in consultation with DOPT the total service of 13 years referred to in Group "A" w.e.f. 24.9.1984, they were eligible for grant of pay scale w.e.f. 24.10.1997 and as such rightly accorded the benefit w.e.f. 1997. The refixation order issued by the respondents cancelling their previous order is in accordance with the DOPT instructions and cannot be found fault with. Apart from it, the applicants are estopped as they were accorded pay scale subject to the DOPT clarification and as such on their clarification the respondents had taken action accordingly, which cannot be found fault with.

8. The petitioners filed Review Applications before the Tribunal and relied upon a clarification issued on April 26, 2001, wherein it was clarified that the condition

of 13 years of regular Grade-A service would be relevant if the incumbents like direct recruits entered Group "A" through Junior Time Scale. If the incumbents enter through Senior Time Scale directly, then only 9 years of Grade-A service will be required. It is the case of the petitioners that they have entered Group "A" service through Senior Time Scale directly and having completed 9 years of service as on January 01, 1996, their fixation shown in departmental orders dated January 21, 1998 is correct.

9. The Review Applications were contested by the respondents on the ground of maintainability of the Review Applications inasmuch as the petitioners cannot be allowed to re-argue the matter as in appeal under the guise of the Review Applications.

10. On merit the respondents had taken the following stand:

It is further stated that applicants have entered in Group "A" at JTS level which is a lowest rung of Group "A" of ITS as well as his eligibility in Non-functional Selection Grade as clarified by the Ministry of Finance can be accounted by taking 13 years regular Group "A" service. As the applicants have been appointed in STS on hold charge basis which was available to the promote stream officers under Rule 27-B of the relevant Recruitment Rules, having completed the requisite eligibility of service their cases have been considered by the duly constituted DPC, for regular promotion to STS, applicants have been promoted to hold charge basis in STS had their basic seniority in JTS. The applicants have been promoted on officiating local arrangements and promoted as STS Group "A" on 10.10.1984 thereby terminating the local arrangement. It was made clear that if the person was given the local officiating arrangement, he or she will be reverted back automatically on joining of regular incumbents. As such the service rendered in local officiating arrangement cannot be computed towards the regular qualifying service for accord of pay scale to the applicant.

11. It is noted that the Tribunal dismissed the Review Applications by holding as under:

As regards the plea that on 30.4.2001, the clarification issued on 26.4.2001 was brought to the notice of the Court. We find that in our order dictated on 30.4.2001 applicants have been accorded liberty to file review, which should be in accordance with the provisions on the subject. We hold that the clarification issued on 26.4.2001 was not in existence at the time when the matter was finally heard on 28.3.2001. The applicant could not produce the same even after due diligence. Any subsequent clarification/notification brought to the notice of the Court cannot be gone into in a review application.

12. While deciding the Review Applications, it is noted that the Tribunal did not determine the aspect of applicability of the clarification issued by the Department of Telecommunications dated April 26, 2001. It took a very technical view and rejected the Review Applications. This is uncalled for. The Tribunal should have decided the applications on merits. Since the Tribunal has not decided so, we

have taken upon ourselves to decide the issue which is very germane to the case.

13. We have seen the promotion orders issued on October 07, 1982 (Annexure P1, page 11), September 14, 1982 (Annexure P1, page 12) and December 13, 1982 (Annexure P1, page 14) promoting the petitioners on local officiating basis, which reveals that the petitioners were working in TES Group "B" and were given the promotion on local officiating basis to Senior Time Scale. Similarly is the promotion order dated October 10, 1984 (Annexure P1, page 15) whereby the petitioners were given regular promotions, the same also records that they were given promotion from TES Group "B" to Senior Time Scale of ITS Group "A".

14. There is no iota of doubt that the petitioners entered the Group "A" through Senior Time Scale. Hence the clarification dated April 26, 2001 of the Department of Telecommunications is applicable to them. They would be entitled to the upgraded scale of Rs. 14300-400-18300, having 9 years of service in Group "A".

15. In view of the above, the pay of the petitioners could not have been re-fixed with effect from September 24, 1997. The earlier pay fixation with effect from January 01, 1996 would be a correct fixation. We note that when this writ petition was listed on June 07, 2002, this Court had restrained the respondents from recovering the alleged overpayment. The interim order was made absolute on January 06, 2003. In other words the recovery has not been effected.

16. We allow this writ petition by setting aside the judgment dated April 30, 2001, and order dated April 29, 2002 in Review Application No. 243/2001 in Original Application No. 2667/2000, Review Application No. 247/2001 in Original Application No. 871/2000 and Review Application No. 225/2001 in Original Application No. 464/2000. Consequently we allow the Original Application Nos. 2667/2000, 871/2000 and 464/2000. No costs.