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Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Mar-26-2009

Judge : George Paracken, Judicial Member & the Honourable Mrs. K. Noorjehan, Administrative Member

Appeal No. : O.A. NO. 685 of 2002 & 698 of 2002

Appellant : Mereena a Paul

Respondent : Union of India Represented by Secretary Ministry of Communications Sanchar Bhavan New Delhi and Othe

Advocate for Pet/Ap. : For the Appellant: ----. For the Respondents: N. Nagaresh, T.C. Krishna, Advocates.

Judgement :

Hon'ble Mrs. K. Noorjehan, Administrative Member

Since identical question of facts and common question of law are involved, these two O.As were heard together and are being disposed of by this common judgment.

2. These two O.As were heard along with a batch of cases on the issue of jurisdiction of the Tribunal in the matter of adjudication relating to the BSNL

employees and since fixation of pay of the applicants was prior to corporation of the BSNL, the O.As were ordered to be listed for admission. However, the common order of the Tribunal in the batch cases was challenged by the Union of India and others before the Hon'ble High Court of Kerala in W.P. (c) 28386/2005, the Hon'ble High Court of Kerala stayed the order of the Tribunal. The OP was finally dismissed with a direction to the Tribunal to hear the parties and dispose of the O.As as expeditiously as possible.

3. The applicant was initially appointed as Stenographer Grade-III and was posted in Bombay Telephones w.e.f.13.4.1982. On request she was transferred to Kerala Telecom under Rule 38 of the P and T Manual Vol. IV. She joined in Thiruvananthapuram SSA on 19.7.1996. It is averred in the Application that the applicant was promoted as Stenographer Gr.II in the pay scale of Rs.1400-2600 on regular basis w.e.f. 13.11.1991 that her basic pay at the time of transfer was Rs.1700/-, that the applicant continued to draw this basic pay till September, 2001, that the respondents fixed her pay wrongly at Rs.4900/-w.e.f. 19.7.96, on the representation for protecting her pay the respondents gave A-6 reply turning down her request. Aggrieved, the applicant has filed this application for set aside A-4 and refix the basic pay of the applicant protecting the basic pay at the time of her transfer from Bombay to Kerala, to refix the pay as per FR 22(I) A (2) read with FR 22 (I) A(3) with all consequential benefits.

4. The applicant was initially appointed as Stenographer Grade-III and was posted in Bombay Telephones w.e.f. 7.5.1980. On request, the applicant was transferred to Kerala Telecom under Rule 38 of the P and T Manual Vol. IV. She joined Kannur SSA on 23.6.95, was promoted as Stenographer Gr. II in the pay scale of Rs.1400-2600 on temporary basis w.e.f. 12.7.90,that her basic pay at the time of transfer was Rs.1750/-, that she continued to draw this basic pay up to October, 1995, that she was transferred to Calicut SSA from Kannur SSA on mutual transfer on 1.11.95, that the basic pay was fixed wrongly at Rs.1680/- and that on her representation for protecting her pay the respondents give A-7 reply turning down her request. Aggrieved, she has filed this application to set aside A4 and A-7 and direct the respondents to refix the basic pay protecting the pay at the time of her transfer from Bombay, to refix her pay under FR 22 (I)(a) (2) read with FR

22(I)(a)(3) to pay all arrears.

5. The respondents filed separate reply statement opposing the averments in the O.As.

6. In the reply statement in O.A.685/2002 the respondents stated that an inter-Circle transferee on her own request would be governed by the provisions under Rule 38, which required reversion and consequential refixation in the lower cadre before effecting transfer. The applicant a regular Grade-II Stenographer was drawing a basic pay of Rs.1700/- in the scale of Rs.1400-40-1600-50-2300-60-2600. Accordingly, on reversion to Stenographer Grade-III in the pay scale of Rs.1200-30-1360-40-2040 her pay has been fixed at a stage reckoning her entire past service in Grade-III. That being the position, the applicant on her transfer to Kerala Circle was granted the same pay of Rs.1700/- she was drawing as Stenographer Grade-II and her pay was never refixed in the scale due to Stenographer Grade-III. The applicant has also never brought this fact to the notice of the authorities. In the mean while, she was transferred to Trichur SSA on a temporary basis w.e.f.16.8.99. When her Service Book was verified for the purpose of grant of ACP, the mistake was noticed. Therefore, in consultation with the Trivandrum SSA, the pay of the applicant was refixed w.e.f.19.7.1996 the date of joining Trivandrum Division on inter-circle transfer.

7. Similar reply statement was filed in O.A.698/2002 as well. The applicant herein was selected to the cadre of Stenographer Grade-II on temporary and adhoc basis and allowed to officiate continuously w.e.f.14.7.90 as per Annexure A-1. She was granted inter-Circle transfer under Rule 38 of the P and T Manual Vol. IV. She was relieved on 16.6.1995 as Stenographer Grade-III. On transfer she has to be reverted to her original post of Stenographer Grade-III and her pay had to be fixed in the scale of Rs.1200-2040 w.e.f. the date of reversion. Accordingly, her pay was fixed at Rs.1680/- in the scale of Rs.1200-2040 w.e.f. 23.6.95

8. The counsel for the applicant in both the OAs Shri G.D. Panicker relinquished Vakalath. No fresh Vakalathma is filed on behalf of the applicants. We have heard the learned counsel for the respondents Shri N. Nagaresh and perused the pleadings in the O.A.

9. We find that the applicants have accepted the conditions stipulated by the respondents for inter-circle transfer to Kerala Circle. As per the prescribed conditions, Rule 38 one way transfer can be granted only in the basic cadre. Therefore, the applicants had to first seek reversion to the cadre in which they are recruited which in their case is Stenographer Grade-III. Consequently the pay of the applicant is to be regulated in terms of para 4 of Department of Personnel and Public Welfare OM No. 4/18/87-Pand WW (D) dated 5.7.1989.

10. The Department of Telecom by its letter No. 19-20/89-SEA dated 14th October, 1998 (Annexure A-7(2) in O.A. 698/2002) addressed to all heads of Telecom Circle/Telecom Districts, etc. laid down guidelines to be followed in the case of transfer under Rule 38. For convenience, the letter is extracted below:-"I am directed to intimate that Dept of Personnel and Training has observed that undue benefit in fixation of pay on reversion to lower post in the case of transfer under Rule 38 is being allowed in some cases and has directed that where transfers are made in the cadre of LDC(TA) under Rule 38, the pay of the official will be fixed in the following manner: (a) On reversion from a higher post say UDC to the post of LDC his /her pay would be fixed at the stage at which he/she would have drawn had she/he not been promoted to the posts of UDC (b) It is also added that there are no provisions for protection of pay drawn against the higher cadre post on reversion to a lower cadre post at one's own request." In the case of the applicants also, the same principle is applied by the Department.

11. Admittedly, the applicant in O.A. 685/2002 while working as Stenographer Grade-II was granted transfer to the post of Stenographer Grade-III in Kerala Circle under Rule 38 of P and T Manual Vol. IV. According to the principle followed by the Department as extracted above, first she was reverted to the post of Stenographer Grade-III, then her pay was fixed in the post of Stenographer Grade-III as if she was not promoted to the post of Stenographer Grade-II. As regards the applicant in O.A. 698/2002 while working as Stenographer Grade-II purely on temporary basis, she requested for transfer as Stenographer Grade-III to Kerala Circle under Rule 38. Therefore, first she was reverted from the post of Grade-II and her pay was fixed in the post of Stenographer Grade-III following the principle evolved in the letter quoted above. Therefore, we do not find any infirmity in the

fixation of pay.

12. The judgment of the Bombay Bench of the Tribunal in O.A.335/93 dated 21.10.1993 is different from the case of the applicants in the present OAs. In that case it was an inter-departmental transfer whereas in the present cases, it was inter-Circle or inter-Division transfer in the same department. The applicant therein who was working in the higher post of Stenographer Grade-II joined the post of Stenographer-Grade-II in a new department in accordance with the terms and conditions stipulated in the transfer order, after resigning from the parent department.

13. In view of what is stated above, we do not find any infirmity with the action of the respondents. Accordingly, the O.As are dismissed. There is no order as to costs.

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