

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4488 of 2013

Date of decision: 03.12.2015

Shashi Bala Sharma

.....Petitioner(s)

Versus

CAT, Chandigarh Bench and others

.....Respondent(s)

**CORAM:- HON'BLE MR.JUSTICE M. JEYAPPAUL
HON'BLE MR.JUSTICE DARSHAN SINGH**

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

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Present: Mr. Sumit Sangwan, Advocate for the petitioner.

Mr. Varun Issar, Advocate for respondent No.2-UOI.

Mr. D.R. Sharma, Advocate for respondents No.3 and 4.

DARSHAN SINGH, J.

- 1. The present civil writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of any appropriate writ, order or direction in the nature of certiorari quashing the impugned order dated 16.10.2012 passed by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short 'the Tribunal) whereby the Original Application No.872/HR/2011 (in short**

'OA') filed by the petitioner has been dismissed. The petitioner has further prayed for issuance of a writ of mandamus directing the respondents for stepping up her pay at par with her juniors and to remove the anomaly in her pay scale. She also claimed the consequential benefits along with interest @ 18% from the date of accrual till the date of realization.

2. As per the averments in the petition, she joined the respondent-Department of post and Telegram (now BSNL) on the post of Telephone Operator (in short 'T.O'). She got herself transferred under Para 38 of the Post and Telegram, Manual, Volume IV from Hissar (Hisar Division) to Panipat (Karnal Division) in March 1980 and thereafter, she was transferred from Panipat to Karnal in the year 1986. In the year 1992-93, the respondent-Department decided to close the Telephone Exchange (Trunk Exchange). At that time, option was sought to change of cadre from Telephone Operators (T.O) to Telephone Office Assistant (TOA) from the concerned staff. 15 to 20 T.Os opted and filled the form of option under para 38 of the aforesaid manual. The petitioner was also one of them. In the gradation list dated 31.3.1993 her name was shown at Serial No.86. Thereafter, the respondent-Department has not issued any gradation list for TOA (P) and TOA (G). The petitioner made numerous request to know her seniority in the gradation list. 11 T.O.As were placed at their original seniority but this benefit was not offered to the petitioner. She filed an appeal to the Assistant Director, Telecom claiming that the T.O.As, who do not want to be transferred to their parent cadre i.e Telephone Operator, should not

lose their seniority while working as T.O.A but no decision was taken on the said communication. That when the gradation list corrected upto 30.4.2008 was circulated, the petitioner came to know that she has been put in the gradation list of Sr.T.O.A(G) on 30.4.2008 while other telephone operators were kept in their old cadre with original seniority. She pleaded that the respondent-Department has adopted the pick and choose policy. The petitioner was kept at Serial No.46 in Gradation List on 30.4.2008. She filed an objection to the aforesaid Gradation list vide letter dated 19.7.2008 but no decision was taken by the Department. She further came to know that number of juniors to the petitioner have been brought on Grade IV in the pay scale of ₹ 8570-245-12245. The petitioner made a representation to upgrade her pay scale w.e.f. 1.1.2008 with all consequential benefits. After availing all the departmental remedy, she filed OA No.872/HR/2011 but the same was dismissed by the learned Tribunal. Hence, this petition.

3. The original application filed by the petitioner was contested before the learned Tribunal by the respondents on the grounds, inter alia, that as per para 38 of P&T Manual, Volume IV, she became junior most at Karnal (SSA). As per the aforesaid para when an official is transferred at his own request but without arranging for mutual exchange he/she will rank junior in the gradation list of the new unit to all the official of that unit on that date. She was transferred under Para 38 from Hissar SSA to Karnal SSA (at Panipat) in the year 1980. The petitioner again opted for her transfer of the cadre from TOA (P) to TOA(G). She was again ranked junior

to all the TOAs(G) working at that time. It was further pleaded that options were called for to go back to the old cadre of Telephone Operator later on from the telephone operators who had changed their cadre under para 38. The last date for receipt of the options was 14.10.1994 but no such option of the petitioner is available on record and she continued to be in the cadre of T.O.A(G). She also undertook the training of Sr.TOA (G). She was placed in the relevant gradation list as per relevant rules. The employees with whom the petitioner is making the comparison are from the different cadre i.e. TOA (P) while the petitioner belongs to the cadre of TOA (G). So, she cannot claim any anomaly in the pay scale.

4. We have heard Mr. Sumit Sangwan, Advocate, Mr. D.R. Sharma, Advocate and Mr. Varun Issar, Advocate and have carefully examined the paper book.

5. Initiating the arguments, learned counsel for the petitioner contended that this fact is not disputed that originally the petitioner was appointed as Telephone Operator. Later on, she was transferred to cadre of TOA(G) on account of the closure of the Telephone Exchange (Trunk Exchange) Karnal. He further contended that 11 other employees were transferred from TOA(P) to TOA(G). He further contended that all those 11 TOAs were granted their original seniority in the cadre of Telephone Operator but the petitioner has been discriminated against. She was originally kept at Serial No.86 in the gradation list dated 31.3.1993 but later on his seniority was downgraded and she was kept in the gradation list of TOA(G) at Serial No.46. He contended that the petitioner had opted for retaining

her original seniority in the cadre of Telephone Operator vide letter dated 12.10.1994 available at page No.116 of the paper book. That letter was written by the 7 persons. 6 of them have been granted benefit only the petitioner was discriminated against. He further contended that the employees who were junior to the petitioner have been granted the higher pay scale. So, she is entitled to step up her pay at par with her juniors.

6. On the other hand, learned counsel for the respondents contended that there is no anomaly in the pay of the petitioner. She has lost her seniority as a result of two transfers under para 38 of P&T Manual, Volume IV. She has also not opted for retaining her original seniority in the cadre of the Telephone Operator. Thus, the learned counsel contended that the petitioner has been shown at right place in the gradation list of TOA(G) and there is no anomaly in her pay scale.

7. We have duly considered the aforesaid contentions.

8. The relief claimed by the petitioner in the original application was for stepping up her pay at par with her juniors and remove the anomaly in the pay scale given by the Department, the petitioner being senior as per gradation list of the year 1993. She has also claimed the consequential benefits along with interest @ 18% per annum from the date of accrual till the date of realization.

9. There is absolutely no dispute with the proposition of law that when the senior receives less pay than his junior that is anomaly of pay and senior is entitled to step up his pay at par with his junior but in the instant case it is the admitted position that initially

the petitioner was appointed at Hisar SSA as Telephone Operator in the year 1974 but later on she was transferred under Para 38 of the P&T Manual, Volume IV from Hisar Division to Karnal Division (at Panipat) in March 1980 on her own request. Para No.38 of P&T Manual, Volume IV provides that when an official is transferred at his own request, but without arranging for mutual exchange, he/she will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer is made, including all persons who have been approved for appointment in that cadre as on that date. On her transfer from Hisar SSA to Karnal SSA under Para 38 in the year 1980, her seniority was fixed in the new SSA. She again opted for her transfer under Para No.38 of P&T Manual, Volume IV from TOA (P) cadre to TOA(G) cadre and she was put junior to all TOAs (G) working at that time as per para 38.

10. The main grievance of the petitioner is that the other Telephone Operators were allowed to retain their original seniority but she was denied this benefit though she had also submitted the letter dated 12.10.1994 for retaining the original seniority but this plea of the petitioner is without any substance. This fact is not disputed that the Telephone Operators who were transferred to the cadre of TOA(G) were granted an opportunity to exercise their option to revert to the old cadre of the telephone operator. The last date for exercising the said option was 14.10.1994. Learned counsel for the petitioner has drawn our attention to the letter dated 12.10.1994 available at page 116 of the paper book in order to plead that the petitioner has exercised that option well within time but the learned

counsel for the officials respondents has pleaded that no such letter was available in the record. Moreover, even the bare perusal of the letter dated 12.10.1994 shows that it cannot be stated to be the option exercised by the petitioner for cadre conversion. This letter is in the shape of an appeal against the order of ADG(Delhi) dated September 28 and reads as under:

“To

Assistant Director Telecom (Staff)
/o/ C.G.M.T. (Hya),
Ambala

Dt.12.10.94

Subject:- Appeal against the order of A.D.G., Delhi Dt.Sept.28.

R/Sir,

Please refer to A.D.G. Endst.No.Staff/R1g/-7/III endorsed on back dated at Ambala 8.10.94, we appeal you that the officials working as Telecom Office Assistants transferred from Telephone Operators who do not want to be transferred to their parent cadre i.e. Telepone operator should not lose their old seniority, while working as telecom officer Assistants and also be given chance to the entry of grade-IV in 2000-3200.

Thanking you,

Yours faithfully,

Name	Signature
Satinder	sd/-
Kamlesh Dua	sd/-
Naresh Rani	sd/-
Shashi Bala Sharma	sd/-
Sushma Rani	sd/-
Shashi Kapoor	sd/-
Promila Chawla	sd/-

“True Copy”

Advocate”

11. The aforesaid letter shows that the employees who were

signatory to this letter have appealed to the Assistant Director Telecom that the Telecom Office Assistants transferred from Telephone Operators who do not want to be transferred to their parent cadre i.e. Telephone operator should not lose their old seniority while working as Telecom Officer Assistants. So, in this letter, it is nowhere mentioned that they had opted for cadre conversion from TOA (G) to TOA (P). Hence, it cannot be stated that any valid option was exercised by the petitioner for the cadre conversion. Thus, she cannot claim that she has been discriminated against by the respondent-Department.

12. Consequently, there is no merit in the claim of the petitioner for claiming the step up of her pay by making comparison with the employees who had exercised their option for the cadre conversion who cannot be stated to be a junior to the present petitioner.

13. Thus, we do not find any illegality in the impugned order passed by the learned Tribunal. Resultantly, the present petition is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

December 03, 2015
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