

R.K. Sinha And Others vs Union Of India And Others on 20 December, 1991

Equivalent citations: AIR1992SC1483, JT1992(1)SC69, 1992LABLC1552, (1992) IIL LJ 1 SC, 1991(2) SCALE 1409, 1992 SUPP(1) SCC 652, [1991] SUPP3SCR524, AIR 1992 SUPREME COURT 1483, 1992 AIR SCW 1573, 1992 LAB. I. C. 1552, 1992 (1) SCC(SUPP) 652, 1992 SCC (SUPP) 1 652, (1992) 1 JT 69 (SC), 1992 SCC (L&S) 509, (1992) 2 LAB LJ 1, (1992) 64 FACLR 496, (1992) 2 LAB LN 604, (1992) 1 SERVLR 347, (1992) 1 CURLR 297

Author: S.C. Agrawal

Bench: L.M. Sharma, S.C. Agrawal

ORDER

S.C. Agrawal, J.

1. In the Posts & Telegraphs Department of the Government of India, there were earlier two cadres: (i) Telegraphic in the pay scale of Rs. 110-240, and (ii) Telegraph Masters (for short 'TMs') in the pay scale of Rs. 210-380. There were certain posts known as 'allowanced posts' of Assistant Telegraph Masters (ATMs), Testing Telegraphic (TTLs) and Teleprinter Supervisors (TPSs). Appointments to these allowanced posts were made from amongst Telegraphic on the basis of selection through a departmental examination and the selected candidates were required to undergo a training for a period of two months. They were paid an allowance (special pay) of Rs. 30 per month. In 1968 as a result of reorganisation, 75% of the allowanced posts of TTLs, TPSs and ATMs were merged into the post of ATM and the remaining 25% posts were abolished. Selection/appointment for the post of ATM was thereafter made on the basis of seniority-cum-fitness from amongst Telegraphic who wanted to volunteer for such post. The requirement of training of two months was continued. The Telegraphic were entitled to extra benefits in the shape of incentives to which the ATMs were not entitled. The Third Pay Commission recommended revision of the pay scales of Telegraphic to Rs. 260-480. For TMs, the Pay Commission recommended two scales-a scale of Rs. 425-640 for Lower Scale Grade Telegraph Masters (LSGTMs) and a scale of Rs. 550-750 for Higher Scale Grade Telegraph Masters (HSGTMs).. The Pay Commission also recommended a pay scale of Rs. 380-560 for ATMs in lieu of the special pay which was given to them for the reason that the said post was not held on tenure basis and that they also relieve the TMs of routine supervisory duties regarding disposal of traffic. The recommendations of the Third Pay Commission were brought into force with effect from

January 1, 1973. Consequent to the aforesaid recommendations of the Third Pay Commission, the P&T Board issued the order dated August 9, 1974, whereby it was decided "that the cadre of Assistant Telegraph Masters to be borne in the pay scale of Rs. 380-560 with effect from January 1, 1973 will be treated as a new cadre for all intents and purposes". In the said order, it was also stated that the recruitment rules for this new cadre of ATMs would follow in due course. It appears that the recruitment rules were not made.

2. In order to improve the avenues of promotion for Telegraphic to the post of TM, the P&T Board, by their order dated June 16, 1974, decided to increase the posts of LSGTM in the pay scale of Rs. 425-640 to the extent of 20% of the posts of Telegraphic by conversion of existing time scale posts. By letter of the Director-General of Posts & Telegraphs dated November 29, 1978, it was intimated that the cadre of ATMs created with effect from January 1, 1973 in the pay scale of Rs. 380-560 under letter dated August 9, 1974 would continue as at present and Telegraphic would be promoted as ATMs from amongst the volunteering Telegraphic as per the existing instructions issued from time to time. It was further decided that 20% of LSGTM posts will be determined on the basis of the combined strength of ATMs and Telegraphic and further that ATMs would be considered for appointment to the grade of LSGTM based on their seniority in the gradation list of Telegraphic. By letter dated May 30, 1979, the Director-General of P&T directed that those ad hoc ATMs who were selected according to the instructions contained in the office letters dated November 12, 1969 and March 29, 1971 and were given only abridged on the job training should now be given regular training and made regular ATMs.

3. By letter dated August 7, 1980, the Director-General of P&T directed that ATMs would be considered for appointment to the grade of LSGTM based on their seniority in the gradation list of Telegraphic as per his order dated November 29, 1979 and that once ATMs were confirmed as such they would lose the right to have the lien on the posts of Telegraphic and hence could not be considered for promotion to the cadre of LSGTM and that it has been decided that existing incumbents may not be confirmed as ATMs till further orders from his office.

4. A Committee on Telecommunication, known as 'Sarin Committee', was constituted for rationalisation of cadres in the Ministry of Telecommunications, Department of P & T. The said Committee submitted its report in 1982 wherein it was recommended that the cadre of ATMs and TMs may be merged by suitably increasing the posts of TMs for the reason that the creation of this ad hoc intermediate cadre of ATMs had created unnecessary compartmentalisation of functions with consequent problems of coordination and there was no reason why this work could not be entrusted to TMs. In pursuance to the aforesaid report of the Sarin Committee, order dated August 17, 1983 was passed by the Director-General of P&T whereby it was decided that the cadre of ATMs in the pay scale of Rs. 380-560 may be merged and 85% of the existing sanctioned posts of ATMs may be upgraded to that of LSGTM in the pay scale of Rs. 425-640 and the balance of 15% of the posts of ATMs may be abolished and the surplus ATMs be reverted as Telegraphic against existing/future vacancies of Telegraphic. By the said order, it was directed that the promotion of ATMs to that of LSGTM would be on the basis of existing rules, in the case of existing ATMs, who were eligible to be promoted as LSGTMs by virtue of their seniority as Telegraphic and that their promotion as LSGTMs straight from the post of ATMs would not involve assumption of duties or

responsibilities of greater importance and that on up gradation of the eligible ATMs to the posts of LSGTMs, the incumbents may be given an additional one month's training on Telegraph Traffic instruments as they had already received two months training as ATMs.

5. The appellants were appointed as Telegraphic during the period 1952 to 1967 and they were appointed as ATMs during the years 1967 to 1982. They were posted in the U.P.Circle. On the basis of the order of Director-General of P&T dated August 17, 1983, the General Manager Telecom, U.P.Circle, Lucknow passed an order dated March 2, 1984 whereby the appellants were reverted to the post of Telegraphist and persons who were working as Telegraphic were appointed on the upgraded posts of LSGTM.

6. Feeling aggrieved by the said order, the appellants filed a writ petition in the Allahabad High Court which was transferred to the Central Administrative Tribunal (hereinafter referred to as 'The Tribunal') under Section 29 of the Administrative Tribunals Act, 1985. The Tribunal, by its judgment and order dated February 28, 1989, partly allowed the application of the appellants to the extent that the reversion of the appellants was quashed and it was held that they were entitled to continue as ATMs and draw the pay scale of the said posts but the Tribunal rejected the claim of the appellants for appointment on the upgraded posts of LSGTMs on the basis of the order dated August 17, 1983. The present appeal is directed against the said order of the Tribunal.

7. The appeal raises questions as to interpretation of the letter of the Director-General of P&T dated August 17, 1983, which reads as under:

Subject: Merger of the cadre of ATMs into that of LSGTMs as per COT recommendations.

Sir, I am directed to say that in pursuance of the report of Committee on Telecommunication the question of merger of the cadre of Asst. Telegraph Masters into that of LSG Telegraph Masters has been under consideration of this office for some time past.

2. That P&T Board is now pleased to decide that the cadre of ATMs, in the pay scale of Rs. 380-560, may be merged and 85% of the existing sanctioned post of ATMs may be upgraded to that of LSG Telegraph Masters, in the pay scale of Rs. 425-640. The Heads of Circles may sanction the requisite posts of LSGTMs, to the extent of 85% of the existing sanctioned strength of ATMs under them and abolish the balance 15% posts of ATMs, by reverting, if necessary, the surplus ATMs as Telegraphic against existing/future vacancies of Telegraphic.

3. The promotion of ATMs to that of LSGTMs would be on the basis of existing rules. In the case of existing ATMs, who are eligible to be promoted as LSGTMs by virtue of their seniority as Telegraphic, their promotion as LSGTMs straight from the post of ATM would not involve assumption of duties or responsibilities of greater importance. Their pay would be fixed under FR 22(a)(ii) i.e. at the same stage as in

the pay scale of ATMs, if that stage is available otherwise, at the lower stage treating the difference as personal pay to be absorbed in future incumbents.

4. On up gradation of the eligible ATMs to the posts of LSG Telegraph Masters the incumbents may be given an additional one month's training on Telegraph Traffic instruments as they had already received two months training as ATMs.

5. The present pay of such ATMs, who get reverted due to nonavailability of LSG Telegraph Master posts, may be protected by grant of personal pay to be absorbed against future increase in pay. On promotion the pay of such employees should be fixed under normal rules with reference to their pay as Telegraphic.

6. In future the posts of LSG Telegraph Masters for looking after the work of ATMs, may continue to be sanctioned by heads of Circles till revised norms are evolved by IWSU/SIU, within their own powers, to the extent of 85% of number of posts/justified as per norms prescribed for ATMs vide this office letter No. 19-20/80-TE.II dated 4.10.80 such posts will be over and above the 20% functional posts of LSG Telegraph Masters which will be sanctioned by the Circle. In order to ensure that the 15% reduction is actually made effective while sanctioning the posts of LSG Telegraph Masters in lieu of posts of ATMs annual review of all the CTOs/DTOs should first be completed and thereafter only additional posts of LSG Telegraph Masters found justified at 85% of the norms applicable to ATMs should be sanctioned on circle basis.

8. Shri Sunil Gupta, the learned Counsel for the appellants, has urged that as a result of the said order, 85% of the existing sanctioned posts of ATMs were upgraded to that of LSGTMs in the pay scale of RS. 425-640 and the balance 15% posts of ATMs were abolished with the result that amongst persons who were holding the posts of ATMs on that date 85% were to be selected for posting on the upgraded post of LSGTM on the basis of their inter se seniority as Telegraphic and the remaining 15% ATMs who were not so selected were to be reverted to the post of Telegraphic though on reversion they would continue to receive the emoluments which they were drawing on the posts of ATMs. The submission of the learned Counsel was that the seniority as Telegraphic was only to be taken into consideration amongst the ATMs who were to be selected for the upgraded posts of LSGTMs and the said order dated August 17, 1983 cannot be construed to mean that all the ATMs would stand reverted to the post of Telegraphist and from amongst Telegraphic promotion would be made on the basis of seniority in the Cadre of Telegraphic on the 85% posts of ATMs which had been upgraded as LSGTMs.

9. Shri J.D.Jain, the learned Counsel for the respondents, on the other hand, has argued that the cadre of ATMs was only an ad hoc cadre and persons who were holding the post of ATMs prior to August 17, 1983 were retaining their lien on the post of Telegraphic and that they could be promoted to the post of LSGTM only on the basis of their seniority in the cadre of Telegraphic and that on account of up gradation of 85% posts of ATMs as LSGTMs appointment on the said upgraded posts could only be made from amongst Telegraphic on the basis of their seniority in that cadre and the

appellants could not claim to be appointed on the said upgraded posts by virtue of their being ATMs on the date of passing of the order dated August 17, 1983. Shri Jain has, in this connection, placed reliance on the words "the promotion of ATMs to that of LSGTMs would be on the basis of existing rules," in paragraph 3 of the letter of August 17, 1983 and also on the letter of the Director-General of P&T dated November 29, 1978 whereby it was directed that ATMs would be considered for appointment to the grade of LSGTMs based on their seniority in the gradation list of Telegraphic.

10. It is not disputed by the learned Counsel that there were no statutory rules governing the matter of appointment on the posts of ATM or for promotion from the post of ATM to the post of LSGTM and the matter was governed by administrative orders. It appears that after the creation of a separate pay scale of Rs. 385-560 with effect from January 1, 1973 for ATMs on the basis of the recommendations of the Third Pay Commission, a new cadre of ATMs was created by order August 9, 1974. Subsequently on the basis of the recommendations of the Sarin Committee, it was decided by letter dated August 17, 1983, that the cadre of ATMs in the pay scale of Rs. 380-560 be merged into that of LSGTMs by upgrading 85% posts of ATMs to that of LSGTMs and abolishing the balance 15% of the said posts of ATMs. The merger of cadre of ATMs with that of LSGTMs as envisaged in the letter dated August 17, 1983 could be effected in two ways: by reverting all existing ATMs as Telegraphic and promoting from amongst Telegraphic to the 85% upgraded posts of LSGTMs, as suggested by the respondents or by retaining 85% ATMs and posting them on the upgraded posts of LSGTMs and reverting the balance 15% as Telegraphic, as submitted by the appellants. In paragraph 2 of the letter dated August 17, 1983, it has been stated "and abolish the balance 15% of posts of ATM, by reverting, if necessary, the surplus ATMs as Telegraphic against existing/future vacancies of Telegraphic". This would mean that by order dated August 17, 1983, it was envisaged that from amongst the existing ATMs 85% would be retained and posted against the upgraded posts of LSGTMs and only the surplus 15% would be reverted as Telegraphic. Paragraph 3 of the letter dated August 17, 1983 prescribes the manner of selection of these 85% of ATMs for the purpose of posting as LSGTMs. It cannot be construed to mean that all ATMs have to be reverted as Telegraphic and from amongst Telegraphic promotions would be made for 85% upgraded posts of LSGTMs. In paragraph 3, which provides that "the promotion of ATMs, to that of LSGTMs would be on the basis of existing rules, in the case of existing ATMs, who are eligible to be promoted as LSGTMs by virtue of their seniority as Telegraphic, their promotion as LSGTMs straight for the post of ATM would not involve assumption of duties or responsibilities of greater importance", it is envisaged that there would be promotion of ATMs to that of LSGTMs straight and that the criterion for such promotion would be seniority in the gradation list of Telegraphic as envisaged in the earlier order dated November 29, 1978 wherein it was provided that ATMs were eligible for promotion as LSGTMs on the basis of their seniority in the gradation list of Telegraphic. This is also clear from paragraph 5 of the letter dated August 17, 1983 wherein it is stated "the present pay of such ATMs who get reverted due to non-availability of LSGTM posts, may be protected....". This indicates that the reversion of ATMs to the posts of Telegraphic was to be done only on account of nonavailability of LSGTM posts because all the posts of ATMs were not being upgraded and only 85% posts were being upgraded and the balance 15% posts were being abolished. In paragraph 6 of the letter dated August 17, 1983 it is provided that the 85% upgraded posts would be over and above 20% functional posts of LSGTMs sanctioned as per norms laid down in letter of Director-General of P&T dated October 4, 1980 which means that the 20% posts of LSGTMs which were meant for Telegraphic would not, in

any way, be affected by the up gradation of 85% posts of ATMs as LSGTMs. In other words, the rights of existing Telegraphic for promotion to the the posts of LSGTMs were not adversely affected by the up gradation and the up gradation was only limited to the persons who were holding the posts of ATMs on the date of the passing of the order dated August 17, 1983. The Tribunal was not right in taking the view that as a result of the order dated August 17, 1983 all the ATMs were liable to be reverted to the posts of Telegraphic and after such reversion they were to be considered for promotion to the posts of LSGTMs against 85% upgraded posts of LSGTMs along with all the Telegraphic on the basis of their seniority in the cadre of Telegraphic. In our opinion, the selection for the purpose of appointment on the 85% upgraded posts of ATMs as LSGTMs had to be made from amongst persons who were working as ATMs on the August 17, 1983 and the said selection was to be made on the basis of their inter se seniority as Telegraphic.

11. In this context, it may also be mentioned that in his letter dated January 27, 1984, the Assistant Director-General (Stn.), P&T, has clarified his instructions contained in the letter dated November 29, 1978 making ATMs eligible for promotion to the LSGTMs cadre and he has stated that seniority in the cadre of LSGTMs promoted either directly or from the cadre of ATMs is fixed on the basis of their relevant seniority in the cadre of Telegraphic and the question of their promotion to LSGTMs earlier or later does not have any relevance so far as their seniority is concerned. This indicates that the only effect of the order dated August 17, 1983 would be that ATMs who are selected for promotion as LSGTMs would be placed in the scale of LSGTMs but that would not make them senior to the Telegraphic who were senior to them but were promoted as LSGTMs subsequently because on promotion such Telegraphic would regain their seniority in the cadre of LSGTMs.

12. The appeal is consequently allowed, the judgment and order of the Tribunal dated February 28, 1989 in T.A.No. 1483 of 1987 is set aside and it is held that the appellants are entitled to be considered along with other ATMs for posting against the 85% upgraded posts of ATMs as LSGTMs on the basis of their inter se seniority in the cadre of Telegraphic. There will be no orders as to costs.