

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2888 of 2002

New Delhi, this the *6th* day of February, 2004

HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR.S.K. NAIK, MEMBER (A)

Bahadur Chand, Ex.SDE
Department of Telecommunications,
R/O 63-A, Ekta Enclave,
Peera Garhi, New Delhi.

-APPLICANT

(By Advocate: Shri S.N.Anand)

VERSUS

1. Union of India through
Secretary, Ministry of
Communications, Deptt.of Telecom.
Sanchar Bhawan, 20, Ashoka Road,
New Delhi-110001

2. The Chief General Manager,
Mahanagar Telephone Nigam Limited,
Khurshid Lal Bhawan,
Janpath, New Delhi-110050

-RESPONDENTS

(By Advocate: Shri V.K.Rao)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member (Judl)

Applicant has filed this OA as he has grievance about denial of promotion to the grade of Senior Time Scale in IIS Group -A and thereby grant of consequential reduced pensionary benefits.

2. The facts in brief, as alleged by the applicant, are that the applicant was working as IS Clerk in the Department of Telecom w.e.f. 16.8.1961 and there after he was promoted to IES Group-B w.e.f. 31.5.1993. That on 26.4.2001, department had released a list showing names of eligible SDES for promotion to STS of IIS Group-A in local arrangements and the names of the applicant figures at S.No.61 on the said list.

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3. It is further stated that on 31.10.2001 respondent No.2 issued orders sanctioning/retaining total 18 posts in the grade of STS Group-A, as per copy of the sanction order dated 31.10.2001, Annexure-B.

4. The applicant further submits that on 3.11.2001 the department had promoted 14 SOEs to STS of IIS Group-A on local officiating basis, leaving 4 posts unfilled. Had respondent No.2 filled up these 4 remaining posts, applicant would have been definitely promoted. A representation was made against this but no reply was received.

5. It is further submitted that after more than a year from the date of convening of the aforesaid DPC pursuant to which promotion was made on 3.11.2001 which was issued vide letter dated 28.12.2001 Confidential Report Cell of respondent No.2 reminded General Manager (W-II) to sent ACRs of the applicant since convening of DPC was being unnecessarily delayed. When the applicant learnt that his ACRs are being called again when the same were available with the officer responsible for convening DPC, it was clarified to him that due to some oversight his ACRS were asked for but actually the same were available with the respondents.

6. A fresh DPC was convened on 31.12.2001 but the applicant's name was not considered. The applicant also superannuated on 31.12.2001.

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7. It is further stated that respondent on 8.1.2002 promoted 5 Additional SDEs to STS of ITS Group-A in which the juniors to the applicant have also been promoted but applicant was denied the benefit of promotion on the plea that he had already superannuated.

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8. Thus it is submitted that the action of the respondent in not considering the name of the applicant though he was well within the zone of consideration and was on the rolls as on 3.11.2001 and 31.12.2001 is illegal, arbitrary and discriminatory and the inaction on the part of the respondents has resulted into reduction of status and pecuniary loss inasmuch as the applicant has been granted reduced pensionary benefits like pension, gratuity etc.

9. It is further submitted that applicant did not fall in the category of persons to be excluded from being considered for promotion as those who are away on deputation, under suspension or against whom departmental or criminal proceedings are pending so he could not have been ignored.

10. It is further submitted that in a similar case one Shri S.N. Nanda, SDE (W-I) who was to superannuate on 28.2.2000 was promoted for one day on 28.2.2000 itself and he relinquished charge of the promoted post on the same day in the afternoon and he got the benefit of the enhanced retiral benefits whereas applicant has been discriminated.

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11. Respondents have filed their written submission contesting the OA. The respondents pleaded that the applicant has no right to file the OA as the same is totally misconceived and untenable as the promotions which have been made is purely on local officiating basis and the same would not confer any right on the applicant for being considered and promoted on the said post and there are no allegation of mala fides whatsoever against the members of the DPC and in the absence of the same the Tribunal would not like to intervene.

12. As regards the non-promotion of the applicant it is submitted that in the absence of any allegations that persons junior to the applicant have been promoted on local officiating basis on 3.11.2001, the same cannot be challenged.

13. With regard to the holding of the DPC meeting on 31.12.2002 it is submitted that on the basis of the recommendations given by the DPC, an order dated 8.1.2002 was issued whereby some SDEs were promoted in the Grade of STS of the ITS Group-A.

14. It is further submitted that the name of the applicant did not figure for the reason that he already stood retired on attaining the age of superannuation on 31.12.2002. Merely because a DPC met on the date of retirement of the applicant on 31.12.2002 would not give any right to the applicant to seek a promotion in the grade of STS of Group-A.

15. As regards the promotion given to Shri Nanda is concerned it is submitted that the applicant cannot claim any parity with that of the case of Shri Nanda as the facts in the case of Shri Nanda are totally different than the case of the applicant so it cannot be said that the applicant has been discriminated.

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16. We have heard the learned counsel for the parties and gone through the records of the case.

17. The only short issue which requires to be resolved in this case is if the vacancies were available why promotion could not be made only because the DPC could not meet and whether the applicant has a right to be promoted from an earlier date when DPC had met on 31.12.2001 was also supposed to recommend the persons who was to retire on the same date.

19. The learned counsel for the applicant submitted that it is because of the inaction on the part of the respondents the applicant has been denied the pecuniary benefits and had the respondents taken action well in time to convene the DPC then the applicant would have been promoted even on 3.11.2001 and he would not have been deprived of pecuniary benefits and would not have got reduced pension.

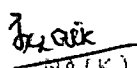
20. In our view this contention of the learned counsel for the applicant has no merits because the respondents had taken steps to convene the DPC and whatever the DPC had recommended promotions were made accordingly though there was a slight delay on the part

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of the respondents as they had been unnecessarily recalling ACR's whereas the same were available with the respondents but it goes to show that the same was due to oversight and that does not give a right to the applicant to be granted promotion before the DPC met for considering the case for promotion and in this particular case the promotions were made on local officiating basis so the promotions could not be given effect to from retrospective effect.

21. Even otherwise as per the guidelines for holding of DPC the promotions had to be prospective only and since on the date of meeting of the DPC applicant was to superannuate on the same day so the DPC could not have recommended his name because recommendations had to be accepted by the appointing authority subsequently and only thereafter promotion could take effect and in his case the promotions took effect on 8.1.2002 when the order was issued, after the recommendations of the DPC had been accepted by the appropriate authority so the same cannot be challenged.

22. In view of the above, OA is bereft of any merit and the same is dismissed.


(S.K. NAIK)
MEMBER (A)


(KULDIP SINGH)
MEMBER (JUD.)

/Rakesh