

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00361/2016

Date of Order: This, the 11st day of November 2019

THE HON'BLE SMT. MANJULA DAS, MEMBER (J)

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)



Sri Prabir Kumar Majumdar
Son of Late Rabindra Nath Mazumdar
Presently residing at Wireless Monitoring Station
GS Building, 3rd Floor, Moncotta Road
Dibrugarh, Assam, Pin – 786001.

Permanent resident of 100, RNT Road
Chakraborty Para, P.O. – Harinavi
Kolkata – 700148.

...Applicant

By Advocates: Sri A.D. Choudhury, Sri D. Choudhury
Sri P Dutta and Sri T. Chakraborty

-Versus-

1. The Union of India
Represented by the Secretary to the
Government of India
Ministry of Telecommunications
Sanchar Bhawan, 20, Ashoka Road
New Delhi – 110001.
2. The Under Secretary, Administration IV
Department of Telecommunications
Sanchar Bhawan, 20 Ashoka Road
New Delhi – 100001.
3. The Director, Wireless Monitoring Organization
Wireless Monitoring Headquarters
Pushpa Bhawan, E. Wing, 3rd Floor
Madangiri Road, New Delhi – 110062.



4. Smti. Anees Abraham
Engg, Wireless Monitoring Station
Kachani Aruvikkara Road
Nettayam, Thiruvananthapuram
Kerala, Pin – 695013.
5. Sri Ravi Shankar Srivastava
Engg, Wireless Monitoring Station
Delhi, Sanchar Bhawan, WPC Wing
Ashoka Road, New Delhi – 01.
6. Sri Vinod Singh
Engg., Wireless Monitoring Station
Dehradun, Uttarakhand 108
Dharumpur, Haridwar Road, Dehradun – 248001.
7. Smti. Leela Kumari
Engg., Wireless Monitoring Station
Lucknow, Uttar Pradesh
Room No. 208, RTTC Building
Sector 'C' LDA, Lolory, Lucknow-12.
8. Sri Deepak Kumar Pant
Engg., MHQ Delhi, Wireless Monitoring Station
H.Q. – Pushpa Bhawan, E-Wing
3ed Floor, Madan Giri Road, New Delhi – 62.
9. Sri Sukhbir Singh
Engg., NRHQ Delhi
IMS Delhi Campus, P.O. – Ghitorni
New Delhi – 30.
10. Sri Yogesh Kumar Sharma
Engg., WPC Delhi
Sanchar Bhawan, WPC Wing, 20
Ashoka Road, New Delhi – 01.
11. Sri K V S Vara Prasad
Engg., Wireless Monitoring Station
Visakhapatnam, Lake View Layout
Near Midhilapuri Colony, Back Side of Vambay
Colony, Pothina Mallayapalem
Visakhapatnam – 530048, Andhra Pradesh.

...Respondents

By Advocate: Sri S.K. Ghosh, Addl. CGSC

ORDER (ORAL)

NEKKHOMANG NEIHSIAL, MEMBER (A):-

This case was last heard on 11.11.2019. After hearing both the parties, the present O.A. was dismissed.

2. The present O.A. has been filed by the applicant through Sri A. D. Choudhury, learned counsel under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:



- “8(i) To restore the seniority position of the applicant above the respondent No. 4 to 11 in the cadre of Junior Wireless Officer;
- (ii) To set aside and quash the decision of the respondent authority to promote the respondent No. 4 to 11 to the post of Engineer from the post of Junior Wireless officer;
- (iii) to set aside and quash the impugned Office Memorandum dated 08.09.2016 so far the same relates to the respondent No. 4 to 11;
- (iv) To promote the applicant to the post of Engineer; and
- (v) Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case as deemed fit and proper; and
- (vi) Cost of the application.”

2. Grounds for relief are as follows:-

- (i) That as per the final seniority list of Junior Engineer (Wireless), the applicant is senior than the respondent No. 4, 5, 6 and 7 but the respondent No. 2 ignoring such fact of seniority prepared the seniority list of Junior Wireless Officer. As per the earlier seniority list

of Junior Engineer (Wireless) the respondent No. 4, 5, 6 & 7 was at serial No. 34, 36, 37 and 38 respectively, whereas, the applicant was at serial No. 32. But the respondent authority without considering such facts prepared the seniority list and therefore, the same is bad and liable to be re-settled.



- (ii) That the respondent authority treated the applicant with hostile discrimination while preparing the final seniority list of the Junior Wireless Officers. The respondent No. 4, 5, 6 & 7 were promoted to the post of Junior Wireless Officer on 16.02.2010 but at that time promotion was not given to the applicant on the plea that the same is under seal cover and will be open after termination of the disciplinary case initiated in the month of July, 2006. In the disciplinary case, the Hon'ble Calcutta High Court vide order dated 27.01.2015 set aside the order passed by the Disciplinary Authority and also directed the respondents to give all the service benefits to the applicant which were so long denied and/or not made available to the applicant. Therefore, the respondents are duty bound to treat the applicant as promoted w.e.f. 16.02.2010 when the promotion were given to the respondent No. 4, 5 6 & 7, who are junior to the applicant.
- (iii) That in view of the order dated 17.01.2014 issued by the respondent No. 2, the merger of Junior Engineer (wireless) and Junior Wireless Officer was given effect from 29.08.2008. Thus it is apparent that by virtue of such order dated 17.01.2014, the applicant has entered into the service of Junior Wireless Officer w.e.f. 29.08.2008. Therefore, any promotions given after 29.08.2008 from Junior Engineer (Wireless) to Junior Wireless Officer are to be ignored for further promotion and for determination of seniority in as much as by virtue of recommendation of Sixth Pay Commission the applicant and others achieved the scale of pay and pay band of the promotional post w.e.f. 01.01.2006 and in view of such recommendation of pay commission both the post were merged w.e.f. 29.08.2008. In fact, the Principal Bench, Central Administrative Tribunal, New Delhi in O.A. No. 3038/2013 held that effect of merger should be granted w.e.f. 01.01.2006 instead of 29.08.2008.



(iv) That the respondent No. 8, 9, 10 and 11 are junior to the applicant in view of the order dated 17.01.2014 passed by the respondent No. 2, whereby the merger was given effect from 29.08.2008, therefore, as per the order dated 17.01.2014, the applicant obtained the post of Junior Wireless Officer w.e.f. 29.08.2008 and the respondent No. 8, 9, 10 and 11 joined on service as Junior Wireless Officer without considering such fact and subsequent promotion of the respondent No. 8, 9, 10 and 11 to the post of Engineer is bad and arbitrary and therefore, liable to be reconsidered. Further, putting the respondent no. 8, 9, 10 & 11 above the applicant in final seniority list are also in violation of the Office Memorandum dated 04.03.2014 issued by the Ministry of Personnel, Public Grievances and Pension, Govt. of India.

(v) That for the fault of the respondent authority the applicant was not promoted to the post of Junior Wireless Officer on 16.02.2010 with the respondent No. 4, 5, 6 and 7 and therefore, at the time of preparation of the seniority list of Junior Wireless as well as at the time of consideration for promotion to the post of Engineer, the applicant has been deprived from his rights.

(vi) That the applicant is having all the requisite qualification for promotion to the post of Engineer but the respondent authority wrongly ignored such promotion to the applicant. Thus the action of the respondent authorities against the applicant is arbitrary and discriminatory on the touchstone of Article 14 of the Constitution of India.

3. The respondents filed their written statement on 10.04.2017.

4. On 20.12.2018, the applicant had informed that he is not willing to file rejoinder to the written statement filed by the respondent authorities.



5. In the written statement, the respondent authorities have pointed out that seniority is not the only condition for promotion to the grade of promotional hierarchy. The DPC considers the seniority list, vigilance clearance and service records (ACRs/APARs) for assessing the suitability of an official for promotion to the grade of next hierarchy. Promotion is decided on the recommendations made by the Departmental Promotion Committee (DPC) constituted under the provisions of the service Rules (Statutory Rules). During the DPC meeting held on 16.02.2010 for filling up of 13 vacancies for promotion to the grade of JWO, the Committee did not assess the applicant as he has placed at Sl. No. 17 in the zone of consideration. In the DPC meeting held on 19.11.2010 and 19.08.2011, he was not assessed due to currency of the minor penalty of withholding of one increment for a period of one year without cumulative effect under Rule 11 of CCS (CCA) Rules 1965, as he was imposed a penalty for misuse of LTC vide Department of Telecom order No. C-14013/1/2018-Admn.III dated 08.10.2010.

6. They also have pointed out that the respondent No. 4 Smt. Anees Abraham was promoted to the grade

of JWO in the DPC held on 19.11.2010 while Ravi Shankar Srivastava (respondent No. 5), Vinod Singh (Respondent No. 6) and Smt. Leela Kumari (respondent No. 7) were promoted to the grade of Junior Wireless Officer on the recommendation of DPC meeting held on 19.08.2011. The applicant Sri Prabir Kumar Majumdar was not assessed as the departmental proceeding was pending against him. The applicant was considered for promotion by the DPC on 26.03.2012. Since the penalty period of one year was over, he was assessed fit for promotion, accordingly, Sri Prabir Kumar Majumdar (applicant), Smt. Sikha Ghosh and Shri N.P. Sati were promoted to the grade of JWO vide DoT order No. 41-05-2010-Admn.IV dated 10.04.2012. However, the applicant and Smt. Sikha Ghosh did not accept the promotion on personal grounds. Accordingly, both the officials were debarred from promotion for one year as per provisions of the Service Rules.



7. As pointed out by the applicant in his O.A., he approached the Tribunal in Calcutta Bench vide O.A. No. 726/2012. Said O.A. was rejected by the Calcutta Bench vide order dated 11.06.2013. Thereafter, he approached the Hon'ble Calcutta High Court vide



W.P.C.T. No. 423/2013 challenging the order of the Tribunal of Calcutta Bench dated 11.06.2013. The Hon'ble Calcutta High Court vide order dated 27.01.2015 set aside the order of the Tribunal dated 11.06.2013 and directed the respondents to grant necessary benefits to the applicant. In the meantime, the Ministry of Communication & IT, Govt. of India vide order dated 17.01.2014 under No. A-11011/2/2013-Admn.II issued an order merging the pay scales of the posts of Junior Engineer (Wireless) (pre-revised scale Rs. 5000-8000/-) (revised PB-2 Rs. 9300-34,800/- with Grade Pay of Rs. 4200/- with the post of Junior Wireless Officer (pre-revised Rs. 5500-9000). The merger of the two posts i.e. Junior Engineer (Wireless) and Junior Wireless Officer to be effective from 29.08.2008.

8. In the meantime, the applicant, as narrated above, was promoted and he had rejected the offer of promotion as indicated vide his application dated 16.08.2012. His grounds for rejection have been recorded as here under:-

“(i) That Junior Wireless Officer and Junior Engineer (Wireless) are on same grade pay w.e.f. 01.01.20006, Grade Pay determined seniority of the post in cadre hierarchy. JWO and JE (W) are in an identical grade. Consolidated seniority list based on same grade pay as on

01.01.2006 and sequential arrangement of substantive seniority of the year is expected from the concerned authority.

(ii) In view of the abovementioned matter and giving utmost respect to the Nodal Departments' Office Memorandum I am expressing my inability to accept Junior Wireless Officer promotion which is on the basis of obsolete G.S.R. 313 dated 1st August 2000."



9. The respondent authorities, accordingly have taken stand that since he has rejected the offer of promotion, he had lost the chance of promotion for a period of another one year. His claim for restoring his seniority with reference to the private respondents is not maintainable.

10. We have carefully gone through the case and the relevant orders submitted by both the parties. The first issue is whether the promotion, that has been effected from one post to the higher post, subsequently merged by the Government with retrospective effect could be ignored only because of the two posts/scales have been merged subsequently with retrospective effect. This is a pertinent issue which need to be carefully examined and considered. We have carefully applied our mind and in the absence of any specific orders supplied by the applicant in support of his claim, we are of the considered view that the promotion

which had taken place from the lower post to the higher post though subsequently merged, have to take the effect on the seniority of the official who have been promoted through the normal process of DPC vis-a-vis others who might have been left out due to any reason as per the criteria stated in the promotion. During the operative period of this order, the promotional effect on the pay fixation in the scale of higher post also must have taken place to give benefits to those who had been promoted.



11. In the instant case, the applicant was not initially promoted in the DPC held on 16.02.2010. In the DPC held on 19.11.2010, one of his colleague Ms. Anees Abraham, respondent No. 4 was promoted to the grade of JWO and the applicant was not considered as DPC was pending against him. On the subsequent DPC held on 19.08.2011, three of his colleagues namely Sri Ravi Shankar Srivastava, respondent No. 5, Vinod Singh, respondent No. 6 and Smt. Leela Kumari, respondent No. 7 were promoted. In the DPC meeting held on 26.03.2012, the applicant along with Smt. Sikha Ghosh and Sri N.P. Sati were promoted to the grade of JWO.

However, the applicant along with Smt. Sikha Ghosh refused to accept the promotion on personal grounds.

12. In this context, the grounds cited by the applicant as narrated above is relevant. He had contended that since two posts/scales of Junior Engineer (W) and Junior Wireless Officer have been merged, he does not need to accept the promotion offered to him as his seniority stands in the merged scale/posts w.e.f. 01.01.2006. The effective date as claimed by him of 01.01.2006 is not factually correct as the Govt. order dated 17.01.2014 indicated that the effective date of merger of Junior Engineer (W) Junior Wireless Officer to be 29.08.2008.



13. It is true that as per the order of the Hon'ble Calcutta High Court dated 27.01.2015, the order of penalty of withholding one increment, the individual (applicant) would have been entitled to be considered by the review DPC to be effective from 19.11.2010 and promoted if found fit along with Smt. Anees Abraham. But unfortunately, due to specific reason given by him for rejecting the offer of promotion in the subsequent offer of promotion, we found that he has blanketed

himself for claiming to be considered for review DP to be promoted along with Anees Abraham.

14. As regards the issue that the posts/scales have been merged w.e.f. 28.08.2008, the Govt. of India, Ministry of Communications and IT in its order dated 17.01.2014, at para 3 indicated that – *“Till such time the new Recruitment Rules for JWOs are notified, the promotion in the revised/merged cadre would be made in terms of existing RRs for the post of JWO.”* This implies that if one is to be considered for promotion to the next higher post i.e. Engineer (Group ‘A’), such promotion shall especially be governed by existing Recruitment Rules of JWO to which the applicant yet to be promoted.



15. The respondents have also pointed out that private respondent Nos. 8 to 11 are directly recruited and their seniority have been fixed as per the guideline provided by the DoPT. As such, the applicant does not have any ground to claim seniority over them.

16. Keeping in view of the above, we are of the considered view that the applicant does not have any justified ground to claim seniority over the private

respondents including the respondent Nos. 4 to 7. Thus, the O.A. is found devoid of merit and accordingly, the same is hereby dismissed.

17. Interim order passed by this Tribunal on 20.09.2016 also stands vacated.

18. No order as to costs.



PB

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)