

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

OA NO. 3434/2001

This the 10th day of September, 2002

HON'BLE SH. KULDIP SINGH, MEMBER (J)

HON'BLE SH. M.P. SINGH, MEMBER (A)

Shri Suresh Chand Gupta
S/o Shri Harprasad Gupta
(promoted as Assistant Engineer
vide order dated 21.10.1998)
Posted as Junior Engineer /JTO
General Manager (W-I), Maya Puri,
Mahanagar Telephone Nigam Limited (MTNL)
New Delhi. ..Applicant

And Resident of

C-33, Kiran Garden
Uttam Nagar,
New Delhi-110059.

(By Advocate: Sh. M.K. Bhardwaj)

Versus

Union of India Through

1. The Secretary
Department of Telecom,
Ministry of Communication,
Government of India,
Sanchar Bhawan,
New Delhi.
2. The Chief General Manager,
Mahanagar Telephone Nigam Limited,
Khurshid lal Bhawan,
New Delhi-50.
3. The Director (Staff)
Sanchar Bhawan,
New Delhi.

..Respondents

(By Advocate: Sh. Piyush Sharma)

ORDER (ORAL)

By Sh. Kuldip Singh, Member (J)

Applicant has a grievance that he was promoted as Assistant Engineer vide order dated 21.10.1998 and was shown as Assistant Engineer in the seniority list of Assistant Engineers dated 28.3.2001 at Sl.No.2347. However, he was aggrieved of the fact that he was not posted as Assistant

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Engineer. He further submits that certain juniors to him have already been posted as Assistant Engineers.

2. Applicant further alleges that one Sh. P.J. Pandey was promoted vide office order dated 5.1.2001 who is much junior to the applicant and is of 1982 batch with reference to gradation list of Junior Engineers. Applicant further alleges that in the year 1990 he appeared in the examination for the post of Assistant Engineer (TES Group 'B'/Sub-Divisional Engineer and he qualified the said examination in the year 1990 itself and having qualified the examination, the applicant had become eligible for promotion to the post of TES Gr. 'B' and despite the fact that on 23.10.1998 the department had issued the promotion order of the applicant alongwith 227 other Junior Engineers for the post of Assistant Engineer, the name of the applicant is shown at Sl. No. 227.

3. Applicant further claims that he has submitted his joining report to the Assistant General Manager (A) Headquarter, Office of CGM, MTNL, New Delhi as Assistant Engineer through proper channel, i.e. General Manager Office, Maya Puri, but unfortunately, the applicant had not ^{been} assigned the duties of Assistant Engineer on administrative ground and was given assurance that the efforts are being made to assign duties to Assistant Engineers. It is also stated that all others who were promoted alongwith the applicant have been given posting orders and in order to challenge the inaction on the part of the respondents, applicant submitted that the ~~then~~ inaction on the part of the respondents is harming the interest of the applicant.

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4. The OA is contested by the respondents. Respondents in their counter affidavit pleaded that the OA is barred by time. Since the applicant has claimed that he should be given posting as Assistant Engineer and consequential benefits w.e.f. 21.10.1998 but the order was issued about 3 years back so the OA is barred by time. However, in para 2 of the preliminary objection, respondents have stated that the applicant has to be first declared having been promoted as Assistant Engineer and then only he will be given a posting and the applicant cannot consider himself to be Assistant Engineer so in the absence of any promotion to the post of Assistant Engineer, no posting can be given within the MTNL as MTNL is not within the jurisdiction of this Hon'ble Tribunal so applicant is not entitled to the post of Assistant Engineer.

5. We have heard the learned counsel for the parties and gone through the record. Counsel for the applicant referred to promotion order dated 23.10.98 vide which certain Junior Telecom Officers were promoted and were appointed as TES Group 'B'. Applicant has also referred to representation dated 7.2.2000 claiming that he be given posting as TES Group 'B'. Counsel appearing for the respondents submitted that as per the promotion order the applicant was supposed to report for duty to AGM (Admn.) immediately for further posting as SDE. So now he cannot claim that he should be given a posting as SDE. In reply, counsel for applicant states that since the applicant was never relieved from the post on which he was working so there was no question of reporting to AGM (Admn.) immediately for further posting. Besides that it is submitted that applicant had been making representations to this effect and despite the representations the applicant has not been

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given promotion. Since similarly situated another person has filed an OA, namely, Sh. P.J.Pandey which was allowed and in compliance of the order of the Tribunal in OA-1438/99, department has given him posting as TES and applicant has filed the OA thereafter.

6. Learned counsel for respondents have also tried to make out the case that since applicant has not reported for duty then promotion order stood cancelled/withdrawn. However, the counsel for the respondents was unable to place on record any order showing that promotion ^{was} ~~was~~ given to the applicant has been withdrawn/cancelled by ^{any} ~~the~~ order passed by DOT. In these circumstances, we have no option to believe the applicant that who had been working as JTO and who has qualified the examination for promotion to the post of TES Group 'B' service is entitled for being posted as SDE though he had not reported to AGM (Admn.) for the reasons that he had not been relieved from the post where he was working as JTO.

7. In these circumstances, we find that this OA deserves to be allowed and we direct the respondents to give a posting to the applicant as TES Group 'B' service with effect from the date his immediate juniors S/Shir S.R.Sharma and G.Rajagopala were given the posting. These directions may be complied within a period of 2 months from the date of receipt of a copy of this order. No costs.

(M.P. SINGH)
Member (A)

(KULDIP SINGH)
Member (J)

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