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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. NO. 1120/89

New Delhi, 12.8.1994

CORAM :

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Bhushan Lal Arora,
Sr. Manager (Commercial),
Telecommunications Consultant
India Ltd., Chiranjiv Tower,
43 Nehru Place, New Delhi.
R/C 33/9, Railway Colony,
Kishanganj, Delhi-7.

... Applicant

By Sr. Advocate Shri S. C. Gupta with
Shri L. R. Goel, Adv.

Versus

1. Union of India through
Secretary Telecommunications,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi - 110001.
2. Dy. Director General (T.F.),
Sanchar Bhawan,
20, Ashoka Road,
New Delhi.
3. Shri S. C. Garg,
Director (TF),
Sanchar Bhawan,
20, Ashoka Road,
New Delhi.
4. Shri D. K. Gupta,
Project Director,
Telecom Factory Deona,
Divn. Tromlay Road,
Bombay-400088.

... Respondents

By Advocate Shri Madhav Panikar

O R D E R -

Shri S. R. Adige, Member (A) -

In this application, Shri Bhushan Lal Arora,
Sr. Manager (Commercial), Telecom Factories Organi-
sation (for short TFO), Ministry of Communications

has prayed that orders dated 15.11.1988 (Ann.-B) and dated 15.3.1989 (Ann.-E) be quashed and he be restored to his original seniority as on 1.12.1984, being declared senior to respondents No. 3 and 4.

2. The applicant joined the Telecom Factories Organisation (TFO) as a direct recruit in 1975 as Assistant Manager in the junior time scale. At that stage, respondents No. 3 and 4 who were also direct recruits, were admittedly senior to him. In 1979, he was promoted as a Senior Engineer (senior time scale) on the basis of seniority-cum-fitness, and here too, respondents 3 and 4 were senior to him. The applicant states that the next promotion was to the post of Junior Administrative Grade (JAG) and was made on the basis of selection on merits. In 1984, a DPC was constituted and after considering all the eligible candidates in the zone of consideration, the DPC drew-up a select list in which the applicant found place and was promoted on regular basis on 1.12.1984 (Ann.-A) while respondents 3 and 4 were not selected and were, therefore, not appointed. After having put in nearly four years of regular and continuous service in JAG, the applicant states that suddenly by O.M. dated 15.11.1988 respondents 3 and 4 were granted notional promotion to the JAG from the date the applicant was promoted and at the same time the period of regular service which the applicant had put in from 1.12.1984 was treated as purely temporary and ad hoc, which the applicant contends was wholly illegal. The applicant states

(11)

that on 16.12.1988 he represented against the action taken by the respondents who thereupon issued another O.M. dated 15.3.1989 wherein the applicant has been shown with a note saying that he would be granted pro forma promotion with effect from the date his junior takes over.

3. The respondents in their reply have contended that the action taken by them is fully in accordance with law, and is in implementation of the judgment of the Tribunal in T.A. 476/85 arising out of C.W. No. 794/79 - A. N. Krishnan & Anr. vs. Union of India & Ors. They have stated that the application is devoid of merit and is, therefore, fit to be rejected.

4. It appears that posts of Assistant Managers (junior time scale) in the TFO are filled through two sources, namely, direct recruits and promotees. The Tribunal in its judgment in the said case quashed the seniority lists dated 1/4.5.1978 and 10.7.1978 and directed that these seniority lists should be revised as in 1978 by keeping promotees who were promoted as Assistant Managers before 5.2.1972 enbloc above the direct recruits who were appointed as Assistant Managers after 5.2.1977. So far as the petitioners therein who were promoted after 5.2.1972 were concerned, their seniority vis-a-vis direct recruits appointed after 5.2.1972 was to be determined on the basis of the 1971 Rules read with Home Ministry's O.M. of 23.12.1959 and was to be subject to the various relevant rulings of the Hon'ble Supreme Court governing such cases. The seniority list so revised was to be circulated and objections invited and after disposal of those objections, a review DPC was to be held on the basis

of the revised seniority list. Those of the petitioners in that case who were found suitable for promotion to the next higher grade were to be promoted notionally from the date their juniors in the revised seniority list whether direct recruits or promotees were so promoted. However, in order to avoid dislocation of work, it was ordered that there would be no reversion of any officers who had already been promoted to higher grades, but the petitioners and others who were thus notionally promoted would be given financial compensation with regard to such promotions w.e.f. the date their juniors were actually promoted to those grades.

5. Admittedly, the applicant was junior to respondents No. 3 and 4 in the grade of Assistant Manager as also in the grade of Senior Engineers. The respondents state that in compliance with the Tribunal's directions, they held a review DPC in the grade of Senior Engineers in accordance with the DPAR's O.M. dated 26.3.1980 in which Assistant Managers who form the feeder grade for promotion to the grade of Senior Engineers (senior timescale) were considered on the basis of seniority-cum-fitness. They have pointed out that the said O.M. dated 26.3.1980 laid down that the review DPC could change neither the grading of an officer earlier considered, nor zone of consideration, nor the number of vacancies. All the eligible officers from the revised seniority list were found fit for promotion by the review DPC and they were promoted from the dates their juniors were promoted.

6. From the level of Senior Engineer, the next rung of promotion was to that of JAG. This was a selection post, to be filled up on the basis of the recommendations of the DPC, headed by a UPSC Member. Copy of the 1984 DPC minutes as well as the 1988 and 1989 review DPC minutes held in consequence of the directions in Krishnan's case (supra) have been furnished to us by the respondents.

7. From these documents it appears that the 1984 DPC considered the vacancies yearwise for 1983 and 1984. For 1983 there was one vacancy, and five persons were considered all of whom had 'good' assessment and the seniormost, Shri U. N. Bhatt, was selected. For 1984, there were three vacancies, and eight persons were considered. Ultimately, sl. No.2, Shri Himbron (ST) 'good'; sl. No.5, Shri Gana 'very good'; and sl. No.6, the applicant herein 'very good', were selected. Respondents 3 and 4 who were senior to the applicant were also considered but as their assessment was only 'good', they were not selected. Then came the judgment in Krishnan's case (supra). The seniority list was revised in the light of that judgment and a review DPC was held in July, 1988 to fill up the one 1983 vacancy, the three 1984 vacancies and also four 1985 vacancies which had arisen after the 1984 DPC had met. The procedure prescribed in DPA's O.M. dated 26.3.1980 was kept in mind. The result was that Shri Gana, who had secured a place in the 1984 panel in the original DPC, gained seniority as a result of revision of the seniority list and as his assessment

was 'very good', he displaced Shri Bhatt against the 1983 vacancies. Similarly, for the three 1984 vacancies eleven persons were considered including respondent No.3 (sl. No.8); respondent No.4 (sl. No.9), and the applicant (sl. No.11). Shri Himbrom continued to occupy the reserved vacancy, but consequent to the revision of seniority, as sl. No.5, Shri Ambekar and sl. No.6, Shri Mukherji had gained in seniority and their assessment was 'very good', they were selected for the posts earlier held by Shri Gana and the applicant. Similarly, for the four 1985 vacancies, 16 names were considered including respondent No.3 (sl. No.8), respondent No.4 (sl. No.9) and the applicant (sl. No.11). However, as for that year sl. No.1, Shri Bhatt; sl. No.7, Shri Aggarwal; sl. No.8, Shri Garg (respondent No.3); and sl. No.9, Shri Gupta (respondent No.4) secured 'very good' assessment, they occupied the four vacancies, as they were senior to the applicant although he, at sl. No.11 had also secured 'very good' assessment. Furthermore, as they were to be promoted from the date their junior was to be promoted as per the judgment in Krishnan's case (supra), they were given notional promotion w.e.f. 1.12.1984, the date the applicant had been promoted. No vacancies appear to have been reported in 1986 and 1987. In 1988 one vacancy was reported which was filled up by sl. No.1, Shri Bhatt who was senior to the applicant at sl. No.2, both of whom had secured 'very good' assessment. In 1989, four vacancies were reported and the applicant whose assessment was 'very good' secured one of them.

As the Tribunal in Krishnan's case (supra) had directed that no reversions should be made, the period from 1.12.1984 till the date the applicant was regularly promoted on the 1989 DPC's recommendations, was treated as ad hoc promotion.

8. Shri Gupta for the applicant has argued that Krishnan's case pertains only to the promotee Asstt. Managers while the applicant as well as respondents No.3 and 4 are direct recruits, and hence, their inter se seniority should remain unaffected by the judgment. He has also argued that as the applicant was regularly promoted to JAG in 1984 itself through a properly constituted DPC on the basis of selection through merit, and his regular service as JAG commenced from that date, he cannot after four years of regular service, be treated as on ad hoc service for that period.

9. It is clear from the materials on record that in the background of the judgment in Krishnan's case these arguments have no force. While the controversy in Krishnan's case no doubt arose out of the seniority of promotees vis-a-vis that of direct recruits, the directions given in that judgment to prepare a revised seniority list of Assistant Managers and hold review DPCs for higher posts including that of JAG, could be implemented only in the manner outlined in paragraph 7. above, having regard to the contents of DPA's O.M. dated 26.3.1980.

10. We, therefore, see no infirmity in the impugned orders and are satisfied that they have been passed in compliance with the judgment in Krishnan's case (supra) and are fully in consonance with the directions contained in that judgment. This application, therefore, fails and is dismissed. No costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

S. R. Adige
(S. R. Adige)
Member (A)

/as/