

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL
BENCH
N E W D E L H I

<u>OA No. 1601/89</u>	* 199
<u>MP No. 1922/30</u>	
<u>Shri Prem Prakash</u>	Petitioner
<u>Shri B.S Mainee</u>	<u>Advocate for the applicant.</u>
Versus	
<u>Union of India & Ors.</u>	<u>Respondent.</u>
<u>Shri. Inderjit Sharma</u>	<u>Advocate for the Respondents.</u>

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The Hon'ble Mr. M.M Mathur, Member (A)
The Hon'ble Mr. S.R Sagar, Judicial Member.

JUDGMENT
(of the Bench delivered by Hon'ble Mr. S.R Sagar,
Judicial Member)

The applicant who was T.C.M (Grade III) in Northern Railway since 2-8-71 and was subsequently promoted as T.C.M Grade II in the year 1976, joined as a Telephone Operator in 1981. As a result of restructuring of the cadre in 1983, the applicant was not given his due promotion in the next higher grade of Senior Telephone Operator, hence he has moved this application under Section 19 of the Administrative Tribunals Act, (herein^{after} referred to as "Act") for the following reliefs-;



RELIEF SOUGHT

1. That this Hon'ble Tribunal may be pleased to quash the impugned orders and direct the respondents to reserve the second post of Head Telephone Operator grade Rs. 550-750, for SC candidates.
2. That this Hon'ble Tribunal may be further pleased to direct the respondents to call applicant also for the selection post of Head Telephone Operator scale Rs. 550-750, which is going to be held on 21-8-1989.
3. That this Hon'ble Tribunal may be further pleased to direct the respondents to give the benefit of promotion to the applicant to the grade of Rs. 425-700 w.e.f. 1-8-82, the date from which, the posts of Telephone ^{operators} were upgraded and both the upgraded posts in scale Rs. 425-700 were filled up by promoting general category candidates ignoring the applicant, who was the senior most candidate for promotion against the upgraded post.
4. That this Hon'ble Tribunal may be further pleased to direct the respondents to fix the pay of the applicant in grade Rs. 425-700, from 1-8-82 and pay him arrears also.
5. That any other or further order, which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case, may also be passed in favour of the applicant.
6. That the costs of the proceedings may also be awarded in favour of the applicant

Briefly stated the facts of the case are that the applicant Shri. Prem Brakash joined the service in Northern Railway on 2-8-71 in Tele-communication and later on joined as a Telephone Operator in 1981 Grade Rs. 260-400. There was a large scale restructuring of the cadre in 1983 and as a result of restructuring of the cadre two posts of Senior Telephone Operators in Grade Rs. 425-700 and one post of Telephone Operator in Grade (Rs. 330-560) were upgraded. In accordance with the Railway Board Orders, upgraded posts were to be filled up only by scrutiny of records. The applicant was the senior most Telephone Operator and, therefore, he ought to have been promoted against one of the two upgraded posts in the scale Rs. 425-700 as one of the two posts was to be reserved for the SC employee in accordance with the rostering.

But the respondents instead of considering the applicant for promotion on one of the said posts the same were given to the General category employees. The applicant made representations dated 8-9-83 and 15-2-84 which went unheeded. His final representation dated 12-6-89 was, however, replied by the respondents vide their letter dated 31-7-89 (Ann. A-7). The respondents have rejected the applicants last representation dated 12-6-89. Besides the above, respondent No. 1 is going to hold a selection for the post of Head Telephone Operator Grade Rs. 550-750 and has asked Sh. Bhanwar Lal Senior Telephone Operator Grade Rs. 425-700 to attend the selection ignoring the claim of the applicant, hence this application.

The application has been contested by the respondents. Admitting the factual position, they have mainly contended

that two posts of Senior Telephone Operators in scale Rs. 425-700 and one post of Telephone Operator Grade Rs. 330-560 were upgraded w.e.f. 1-8-83 but subsequently one post of Senior Telephone Operator Grade Rs. 425-700 was withdrawn by the General Manager (P) New Delhi vide his letter dated 20-1-84 and thus there remained one post of Senior Telephone Operster at Bikaner Division (Ann. R.1). The respondents have admitted that the applicant was the Senior most SC Telephone Operator in grade Rs. 260-400 as on 1-8-83. They have contended that the post of Senior Telephone Operator was non-selection post which was filled up from the Senior most Telephone Operator working in Grade Rs. 330-560. As there remained only one post of Senior Telephone Operator the applicant could not be promoted on that post. They have further contended that the representation dated 8-9-83 and ¹⁵⁻²⁻⁸⁴~~10-2-84~~ said to have been submitted by the applicant were not received by the respondents hence no question of their reply arose. The representation dated 12-6-89 was replied vide letter dated 31-7-89. Under the present Rules, the applicant is not eligible to appear for selection to the post of Head Telephone Operator and, therefore, no question of calling the applicant for that selection arises.

According to the Rules, minimum period of service for eligibility for promotion within Group 'C' should be two years in the immediate lower grade irrespective of whether the employees belong to reserved community or not.

The applicant is neither working nor has rendered two years service in the immediate grade of Rs. 425-700, he is not eligible for selection to the post of Head Telephone Operator. There is no question of filling up the second post of Head Telephone Operator by a scheduled caste candidate. On upgradation of the post the applicant was posted in the grade of Rs. 330-560. Since the applicant was not eligible for promotion in Grade Rs. 425-700 as there was only one post in that grade the same post went to General Category.

We have heard arguments of the Learned Counsel for the parties. The Learned Counsel for the respondents has vehemently argued on the point of limitation. He has argued that the matter of promotion relates to the year 1983 which can not be reopened now after lapse of so many years. The Learned Counsel for the applicant has drawn our attention to Para 3 of the application which is regarding limitation and wherein the applicant has declared that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985. He has drawn our attention to the reply of the respondents to this para. We have seen the reply wherein the respondents have admitted para 3. This admission of the respondents does not leave any room for argument otherwise on the point of limitation.

However, it is admitted that last representation dated 12-6-89 was received in the Office of the respondents and that the same was considered and rejected by the respondents.

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by the respondents vide their letter dated 31-7-89.

Thus cause of action arose on the date on which the last representation was considered and rejected.

From this point of view the application is within time.

In this connection the Learned Counsel for applicant has cited A.T.R 1988, CAT I. Sh. Bhawan Lal V/s U.O.I and others. ~~One~~ One of the points involved in that case was regarding period of limitation and it was to be considered as to whether after rejection of an earlier representation further representation would enlarge or not the period of limitation. The Principal Bench in that case observed as follows:-

" While it is true that limitation is to run from the date of rejection of a representation, the same will not hold good where the Department concerned chooses to entertain a further representation and considers the same, on merits before disposing of the same. Since it is, in any case, open to the Department concerned to consider a matter at any stage and redress the grievance or grant the relief, even though earlier representations have been rejected, it would be inequitable and unfair to dismiss an application on the ground of limitation with reference to the date of earlier rejection where the concerned Department has itself chosen, may be at a higher level, to entertain and examine the matter afresh on merits and rejected it. "

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It is clear from the above that the contention of the respondents counsel that the application is barred by the time can not be accepted. As regards the cases, (1975) 1, Supreme Court Cases 152, Sh. P.S Sada Shiv Swamy V/s State of Tamilnadu and (1973) (2) S.L.R Jagdish Narayan V/s State of Bihar (SC) 521, cited on behalf of the respondents are distinguishable and are not applicable in the present case. There is nothing in either of the said cases to show that representation was ever made by ^{any} ~~any~~ of the applicants at any early stage or say after expiry of period of limitation and that representation was considered and rejected by the Department and in such position the cause of action would have been held not to have arisen on the date the last representation was considered and rejected. Both these cases are, therefore, of no help to the respondents.

Consequently it is hereby held that the application is not barred by time.

As regards the questions of promotion of the applicant in grade Rs. 425-700 and calling him for selection in the grade Rs. 550-750 are concerned, it may be stated that admittedly there was a large scale re-structuring of the cadre in 1983. For proper appreciation of the position the letter dated 10-8-83 (Ann. A-2) is extracted Below:-

Northern Railway
Bikanar Division

No. PST/561 E S&T/Restructuring
T.C.I./BKN C/= DAO(PF and Asst)
D.S.T.E 1.S.T.E/R.E, i.s./S7T

Dated :- 10-8-83

Sub:- Promotion and transfer of telephone operators.

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It is a result of restructuring of cadre of telephone operators two posts of Senior Telephone Operators ⁱⁿ ~~in~~ grade Rs. 425-700(RS) and one post of Telephone Operator in grade Rs. 330-560(RS) have been sanctioned. The following staff are promoted against these posts.

SL. No.	Name	Present grade & Station	Station on promotion	Pay & grade on occupation		
				GRADE	Pay on 1-8-82	Pay on 1-8-83
1.	Sh. Sher Mohd.	330-560 BKN	BKN	425-700	580/-	515/-
2.	Sh. Bhanwar Lal	330-560 BKN	BKN	425-700	425/-	with immediate effect.
3.	Sh. Ganesh Ch. Mudgil	260-400 BE	RS	330-560	330/-	340/-
4.	Sh. Mirza Mohiddin	260-400 BKN	BKN	330-560	330/-	with immediate effect
5.	Sh. Prem Prakash (S/C)	260-400 RS	RS	330-560	340/-	with immediate effect.

Item No. 1 and 6 who have been promoted from 1.8.82 will not get arrears from 1.8.82 to 31-7-83 as this is a performance fixation. Their pay as fixed on 1-8-82 may be charged. Promotion of Item No. 2 and 4 is purely on ad-hoc basis as they have been promoted against ^{reserved} ~~vacancy~~ vacancy of SC and ST respectively.

for Divl. Personnel Officer,
Northern Railway/Bikaner.

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The above will show that ^{two} posts of Senior Telephone Operators in grade Rs. 425-700 and one post of Telephone Operator in grade Rs. 330-560 were upgraded ^{and filled} vide order dated 10-8-83.

The note written below the said order and extracted above will show that promotion of Item No. 2 and 4 was purely on ad-hoc basis as they had been promoted against the reserved vacancy of SC and ST respectively. Item No. 2 will show that Sh. Bhanwar Lal was promoted to the next higher grade of Rs. 425-700. Item No. 4 will show that Sh. Mirza Mohiuddin was promoted to the next higher grade of Rs. 330-560. According to the said note the promotion of Sh. Bhanwar Lal was on the post reserved for SC and the promotion of Sh. Mirza Mohiuddin was on the post reserved for ST- Here we are not required to consider anything about the post reserved for ST. We are concerned with the post reserved for SC. Admittedly Sh. Bhanwar Lal was not SC candidate. It follows from this that the post reserved for SC in the grade Rs. 425-700 was not filled up by SC staff. The pleadings of the parties do not show that at the time of the said promotions SC employees were not available and therefore, non SC employee was promoted in the said post. Conversely it is the case of the applicant and also the admission of the respondents that the applicant was the senior most SC Telephone Operator at that time. The applicant should have, therefore, been considered about his eligibility. The contention of the respondents as contained in their reply is that though two posts of Senior Telephone Operators in scale of Rs. 425-700 were upgraded w.e.f. 1-8-83, but subsequently one post of Senior Telephone Operator was withdrawn by the General Manager and thus, there remained one post of Senior Telephone Operator at Bikaner Division. However, it is clear from the averments made in the reply of the respondents that at the relevant time in August 1983, there were

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were two, posts of Senior Telephone Operators one of which was reserved for SC. Naturally, therefore, the SC Telephone Operator available at that time had a right to be considered. Learned Counsel for the respondents has also agreed during the course of his arguments that the applicant being the senior most SC employee should have been considered for promotion in the next higher grade of Rs. 425-700, ⁱⁿ accordance with the Rules then in force. The Learned Counsel for the respondents has vehemently argued that the basis of consideration for promotion should be the immediate grade below and ^{as} the applicant was two grades below the next higher grade in question, he was not eligible to be considered. He has referred to the Rules contained (Ann. R-2) of the reply. It is, however, admitted by the Learned Counsel for the parties that prior to the Rules as contained in the said Ann. R-2 staff two grades below could be considered for promotion. That being so the applicant who was two grades below at that time was eligible for being considered for promotion to the next higher grade of Rs. 425-700.

The Learned Counsel for the respondents has vehemently argued that though there were two posts at that time but one of those posts

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was withdrawn subsequently in 1984. According to him there remained only one post. But presently it is clear that post which remained as a result of the order passed subsequently ⁱⁿ January 1984 is still occupied by the said Sh. Bhanwar Lal. We have already shown hereto-fore that as per Ann. A-2 the post occupied by Sh. Bhanwar Lal is the post reserved for SC. This post does not appear to have been de-reserved at any point of time subsequent to the promotion of Sh. Bhanwar Lal on this post. However, in view of what has been said and discussed above the position has become quite clear that the applicant was eligible to be considered for promotion in grade Rs. 425-700 ^{in August 1983}. According to the respondents themselves, it was a non selection post and, therefore, it was to be filled up in accordance with the seniority on the basis of scrutiny of the service records.

In view of the above, we feel inclined that the applicant should have been considered for promotion in the next higher grade of Rs. 425-700 against the reserved vacancy in August 1983. Accordingly, the respondents are hereby directed to consider the applicant for promotion against the reserved vacancy of Senior Telephone Operator in the scale of Rs. 425-700 as was available in August 1983 and if he is found to be fit for promotion he should be promoted accordingly w.e.f. due date with all consequential benefits and ^{the date} on which he actually joins as Senior Telephone Operator his pay should be fixed accordingly but he shall not be entitled to any arrears of pay/allowances for the period he has not performed any duties against that post.

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These directions shall be complied with by the respondents within ~~the~~ period of three months from the date of receipt of this order.

Now arises the question of calling the applicant for the selection post of Head Telephone Operator in scale Rs. 550-750. Admittedly the vacancy of that post has arisen in 1989. Admittedly earlier Rules regarding promotion within Group 'C' have since been revised in 1987 (Ann. R-2).

According to revised rules the zone of consideration for promotion to selection post is required to be given to the immediate lower grade, and in that grade minimum period of service for eligibility for promotion shall be two years.

The conditions regarding minimum service was also explained in the said Rules ⁱⁿ ~~at~~ Ann. R-2 of the reply. It is laid down that the condition regarding minimum service has to be fulfilled at the time of actual promotion. Thus an employee who is in the immediate lower grade can be considered for selection in the next higher grade ^{but} ~~by~~ he shall, if he succeeds, actually be promoted only if the condition regarding minimum service in the immediate lower grade has been fulfilled by him. Since the applicant is not in the immediate lower grade at present he is not entitled to be considered for selection in the next higher grade of Rs. 550-750.

His eligibility for being considered for selection in the said post would depend upon his promotion on the post of Senior Telephone Operator. The question of his promotion on the post of Senior Telephone Operator as directed by us is to be considered by the respondents and, therefore, we hold that ~~the~~ ^{the} applicant if promoted on the post of Senior Telephone Operator

would become eligible for selection to the post of Head Telephone Operator in the scale of Rs. 550-750.

At the request of the counsel for the Parties we have heard this application on merit and at admission stage. The application is admitted and disposed of accordingly. The M.P too stands disposed of accordingly. There will be no orders as to costs.

(Hon'ble M.M Mathur) 7/11/90
Member (A)

(Hon'ble S.R Sagar) 8.11.90
Judicial Member