

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 582/88. 198
T.A. No.

DATE OF DECISION 20.11.1989.

Smt. Sundri Sachdeva Applicant (s)

In person

Advocate for the Applicant (s)

Versus
UOI & Ors.

Respondent (s)

Shri P.H. Ramchandani, Advocate for the Respondent (s)
Sr. Standing Counsel

CORAM :

The Hon'ble Mr. P. Srinivasan, Member (A)

The Hon'ble Mr. T.S. Oberoi, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

[delivered by Hon'ble Shri P. Srinivasan, Member (A)]

The applicant before us entered service in the Civil Aviation Department of the Government of India on 8.8.1949 as a Telephone Operator. A certain Shri Kulwant Singh also entered service in the same Department as a Telephone Operator on 21.12.1949. It is not in dispute that Shri Kulwant Singh was junior to the applicant in the grade of Telephone Operator. The post immediately above that of Telephone Operator is that of Telephone Supervisor and the next promotion is to the post of Tele-communication Assistant. On 14.11.1975, the Regional Director (Delhi Region) addressed a letter to the Controller, Aeronautical Communication Station, New Delhi, as well as the officer in charge, Aeronautical Communication Station, Palam, intimating that there was a vacancy in the grade of Telephone Supervisor (T.S.) in the Headquarters office of the Director-General of Civil Aviation, New Delhi. The letter requested the

x P.D. 18

addressees to send names of Telephone Operators who wished to be considered for the said post of Telephone Supervisor. The letter also stated that it was proposed to prepare a panel of names for future vacancies in the grade of Telephone Supervisor and asked for a list of Telephone Operators who were willing to serve at any of the international airports with their applications and preference, if any, for the place of posting. It would appear that three of the Telephone Operators working in the Headquarters office expressed their willingness to be considered - two of them were senior to the applicant and the third - Shri Kulwant Singh - was junior to the applicant. Thereafter, a meeting of the Departmental Promotion Committee (D.P.C.) was held to consider the persons who had given their consent to be considered for promotion as Telephone Supervisor. The DPC cleared Shri Kulwant Singh for promotion even though he was at serial No. 3, i.e. the junior-most of the three persons who had communicated their willingness. Shri Kulwant Singh was accordingly appointed as Telephone Supervisor and he took charge of that post on 3.4.1976. The applicant did not at that time convey in writing her willingness to be considered. On the basis of his experience as Telephone Supervisor from 1976 onwards, Shri Kulwant Singh was promoted to the next higher post of Tele-communication Assistant with effect from 7.1.1983 and posted at the Delhi Airport. The applicant stated before us that immediately after the appointment of Shri Kulwant Singh as Telephone Supervisor in 1976, she registered her protest with her immediate superior pointing out that Shri Kulwant Singh was junior to her. According to her, this was an oral representation and she was told that her seniority as Telephone Operator would not be ignored. But as a matter of record, she made a representation in writing to the authorities for the first time on 17.1.1982, and followed

P. J. V.

9

this up with further representations when Shri Kulwant Singh was promoted to the next higher post of Tele-communication Assistant. She did not receive any reply to these representations but it appears that the respondents were inclined to consider her case for seniority above Shri Kulwant Singh in the grade of Telephone Supervisor. At this stage, Shri Kulwant Singh apprehended that he might be reverted from the post of Tele-communication Assistant on the ground that the applicant, who had meanwhile been promoted as Telephone Supervisor with effect from 4.1.1983, was senior to her as Telephone Operator and consequently also, as Telephone Supervisor. Therefore, Shri Kulwant Singh filed a suit seeking a permanent injunction restraining the authorities from declaring the applicant as senior to him in the cadre of Telephone Supervisor with retrospective effect and as a consequence, from reverting him from the post of Tele-communication Assistant. This suit was subsequently transferred to this Tribunal and was disposed of by a judgment dated 28.5.1987. A reference was made in the judgment to a statement made by the counsel for the Union of India that no decision had yet been taken in the matter of seniority of Shri Kulwant Singh vis-a-vis the applicant herein. This Tribunal, therefore, held that there was no basis for issuing an injunction of the kind prayed by Shri Kulwant Singh and that his suit was premature since the whole matter of his seniority vis-a-vis the applicant herein was still to be decided. Shri Kulwant Singh's suit, therefore, stood dismissed. Apparently, taking a cue from this judgment that the authorities were still actively considering the case of the applicant vis-a-vis Shri Kulwant Singh for their relative seniority in the grade of Telephone Supervisor, the applicant again sent representations to the authorities that she being senior to Shri Kulwant Singh as Telephone

D. S. B.

Operator, should have been promoted as Telephone Supervisor in 1976 instead of Shri Kulwant Singh, and as a consequence, that she should have been promoted as Telecommunication Assistant when Shri Kulwant Singh was promoted to that post. But even these representations did not produce any result and hence, this application. In substance, what the applicant wants is that she should be treated as having been promoted as Telephone Supervisor in 1976 itself, when Shri Kulwant Singh was promoted and also to the next higher post of Telecommunication Assistant from the date on which Shri Kulwant Singh was promoted and that she should be given all arrears of salary and allowances consequent on such promotion. Meanwhile, the applicant herself was promoted as Telephone Supervisor with effect from 4.1.1983. She was also given promotion to the next higher post as Telecommunication Assistant by an order dated 11.6.1986 and posted to Madras but she declined to accept this promotion on the ground that she should be posted in Delhi and Shri Kulwant Singh, who was junior to her, should have been transferred to Madras. Even on an earlier occasion, when orders were passed promoting her as Telecommunication Assistant at Bombay, she declined the promotion for the same reason.

2. The applicant submits that the procedure adopted by the Department in 1975 of calling for volunteers among Telephone Operators for promotion to the post of Telephone Supervisor, was illegal. Promotion to posts of Telephone Supervisor should have been made on the basis of seniority among the Telephone Operators in the Delhi Region. She did not convey her willingness for being considered for promotion at that time because she was aware that two of her seniors had already expressed their willingness and she felt that she had no

P. S. T.S.

chance of promotion. As it happened, the authorities superseded the two persons who were senior to her and appointed Shri Kulwant Singh as Telephone Supervisor in 1976. She did not immediately make any written representation because she had been orally assured that eventually her seniority in the grade of Telephone Operator would be respected. In 1982, when Shri Kulwant Singh was about to be promoted as Telecommunication Assistant, even though she was senior to him, the applicant felt aggrieved and made a written representation when she found that oral representation made by her and assurances given by the authorities were of no value. As late as in 1987, when the suit filed by Shri Kulwant Singh was decided by this Tribunal, the authorities had stated that the question of her seniority vis-a-vis Shri Kulwant Singh in the grade of Telephone Supervisor was under active consideration and, therefore, she again represented that her seniority over Shri Kulwant Singh in the grade of Telephone Operator should be retained in the next grade of Telephone Supervisor and that she should be given promotion to the next grade of Telecommunication Assistant from the date on which Shri Kulwant Singh had been promoted. Even though the authorities apparently saw justice in the applicant's case, they had not stirred themselves into activity to give her due promotion and arrears of pay and allowances accordingly. The promotion given to her as Telecommunication Assistant was only an attempt to cover up the failure of the authorities to do justice to her because she was posted first to Bombay and then to Madras while she was entitled to be posted to Delhi, being senior to Shri Kulwant Singh

3. Shri P.H. Ramchandani, Sr. Standing Counsel for the respondents strongly objected to the claims of the applicant. In the first place, if the applicant was aggrieved with the promotion of Shri Kulwant Singh as Telephone Supervisor

P.H. Ramchandani

in 1976, this application was badly delayed. Even her representation to the authorities against Shri Kulwant Singh's promotion was made more than six years later in 1982. It was too late in the day to entertain her claim at that time itself. Now, nearly 13 years later, this Tribunal should not unsettle matters which have remained settled for a long time. The applicant should have impleaded Shri Kulwant Singh as a party but she not having done so, the application is liable to be dismissed for non-joinder of parties. Moreover, the authorities did take up the exercise of reviewing promotions to the posts of Telephone Supervisor from 1976 onwards on the basis of seniority in the grade of Telephone Operator, ^{from} instead of making selection/ among volunteers, as was done in 1976. It was found that not only was the applicant senior to Shri Kulwant Singh but there were 13 others who were senior to the applicant. The vacancy of Telephone Supervisor in 1976 would, therefore, go to the senior-most of the 13 Telephone Operators above the applicant. If subsequent vacancies of Telephone Supervisor were to be filled according to seniority, the turn of the applicant for such promotion would come only in 1985 while she had actually been promoted in January, 1983. Thus, if review of promotions from 1976 onwards were to be undertaken, the applicant would actually lose in the bargain. Since Shri Kulwant Singh had actually held the post of Telephone Supervisor from 1976 and that of Telecommunication Assistant from 1983 and has by now retired from service, he can not, in any case, be reverted retrospectively from the posts to which he had been promoted, rightly or wrongly. Thus, even if the contention of the applicant be upheld that promotions to posts of Telephone Supervisor from 1976 onwards should have been made on the basis of seniority and not from among willing Telephone Operators, the applicant will

P. D. S.

not derive any benefit. For this reason also, the application deserved to be dismissed

4. We have considered the matter carefully.

We do not think that there is much merit in the objection based on delay. It is evident that the respondents were actively considering the claim of the applicant to seniority over Shri Kulwant Singh in the grade of Telephone Supervisor up to 1987, as can be seen from the order of this Tribunal disposing of Shri Kulwant Singh's suit. In fact, Shri Ramchandani produced the records of the respondent-authorities which show that the claim of the applicant for seniority over Shri Kulwant Singh and the question of holding review DPC for considering promotions to the posts of Telephone Supervisors from 1976 onwards, have been under active consideration till now and the issue is very much alive. We, therefore, reject the contention of Shri Ramchandani that this application should be rejected as badly delayed.

5. As for the objection that the application is not maintainable for non-joinder of proper parties, we have already noticed that Shri Kulwant Singh has retired from service. Whatever may be decided in this application, the interests of Shri Kulwant Singh cannot now be adversely affected and his promotions granted in the past cannot be undone. We have necessarily to decide this application without, in any way, affecting the interests of Shri Kulwant Singh adversely. Therefore, this objection is also rejected.

6. Now coming to the merits of the application, it is evident from the fact that the Department of

Civil Aviation have been considering holding of review DPC meeting for promotion to the post of Telephone Supervisor from 1976 onwards, that they admit, by implication, that such promotion should have been made not from volunteers among Telephone Operators but from the grade of Telephone Operators

P. S. S.

on the basis of seniority. Therefore, apparently passing over seniors to appoint Shri Kulwant Singh in 1976 only because the seniors had not expressed their willingness to be considered, does not appear to have been a proper procedure. But as pointed out by Shri Ramchandani, if seniority be the criterion for promotion, all persons senior to Shri Kulwant Singh should have been considered for promotion in 1976 and there were 13 of them who were senior even to the applicant. If therefore promotions had been made on the basis of seniority to vacancies of Telephone Supervisor arising from time to time in and after 1976 and persons so promoted had not declined promotion, the turn of the applicant would have come only in 1985 which was later than the date on which she was actually promoted. But is it really necessary at this stage to consider the cases of all persons senior to the applicant from 1976 onwards? None of them has so far protested against his or her supersession by Shri Kulwant Singh and this fact cannot be overlooked. In view of their acquiescence in their supersession for all these years, the conclusion is inescapable that they were not interested in promotion at all. We may here refer to a statement made in the reply of the respondents that many Telephone Operators were unwilling to be promoted as Telephone Supervisors because they would earn more by way of overtime allowance in the lower post. But not ^{By} challenging Shri Kulwant Singh's promotion for over thirteen years they have forfeited whatever right they may have had at the time and it is, therefore, not necessary to consider their cases for promotion now. This leaves only the case of the applicant who was admittedly senior to Kulwant Singh and who has been agitating for promotion all along. We are, therefore, of the view that the case of the applicant for promotion as Telephone Supervisor with effect

P. D. 18

from 1976 should be considered by holding a review meeting of the DPC and if she is found fit for promotion from that date, her case for promotion to still higher posts should also be considered from the date from which she would have been eligible for such promotion. If in this manner, she is found fit for promotion as Telephone Supervisor in 1976 and to the next higher post when Shri Kulwant Singh was so promoted, she should be given notional promotion to both the posts from those dates. We are not inclined to grant her arrears of salary and allowances on account of such promotion because she took up the matter of her promotion as Telephone Supervisor more than six years after Shri Kulwant Singh was promoted. However, the applicant should be given notional promotion if, as stated above, she is found fit for such promotion from the dates from which Shri Kulwant Singh was promoted, and her pay on the date of her retirement should be refixed on that basis and all her retirement benefits should be re-calculated and paid to her accordingly. In our opinion, this would meet the ends of justice.

7. To sum up, we pass the following orders:-

(i) The case of the applicant for promotion as Telephone Supervisor in 1976 when Shri Kulwant Singh was promoted should be considered by holding a review meeting of the DPC ignoring all those who were senior to her. If she is found fit for promotion, she should be given notional promotion from the date from which Shri Kulwant Singh was promoted.

(ii) If the applicant is granted notional promotion as above from 1976, when Shri Kulwant Singh was promoted, she should be considered for promotion to the next higher post also from the date from which Shri Kulwant Singh was promoted, and if found fit, she should be given notional promotion to that post/ from

P. S. G.

that date.

(iii) If the applicant is granted notional promotion as Telephone Supervisor and Telecommunication Assistant in accordance with (i) and (ii) above, her pay on the date of retirement should be re-calculated as if she had been actually promoted and all retirement benefits due to her should be re-calculated and paid to her accordingly, within three months from the date of receipt of this order.

(iv) We make it clear that no arrears of salary and allowances will be payable to the applicant for the period till her superannuation.

(v) Parties to bear their own costs.

20.11.89
(T.S. Oberoi)
Member (J)

P. Srinivasan
(P. Srinivasan)
Member (A)

20.11.1989.