

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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OA 705/87

Date of Decision : 23.10.92

Shri M.S. George

...Applicant

VS.

Union of India & Ors.

...Respondents

CORAM :

Hon'ble Shri P.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Sh. K.N. R. Pillai

For Respondent No.1

...Sh.P.H. Ramchandani

For Respondent No.2

...Sh.G.D. Shandari

1. Whether Reporters of local papers may be allowed to see the Judgement? y/s

2. To be referred to the Reporter or not? y/s

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant working as Superintendent (TO), Railway Board filed the present application, aggrieved by the order dt.21.8.1985 by which sanction was accorded upto 30.4.1987 to the temporary post of Telephone Supervisor-cum-Monitor in the pay scale of Rs.550-900 and for its inclusion in the cadre of Telephone Operators. By this order, sanction was also accorded to the post of Telephone Supervisor-cum-Monitor in the pay scale of Rs.700-900 (RS) upto 30.4.1987 or the date the junior most of the above in the Telephone Operator's cadre vacates his post, whichever date occurs earlier. The

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applicant has also assailed the order dt. 24.7.1986 (Annexure AII) by which Shri V.P. Verma, respondent No.2, who was working as officiating Superintendent Telephone Operator was appointed to the post of head Telephone Operator in the pay scale of Rs.425-700 (RS) from 23.8.1979 on proforms basis and as Chief Telephone Operator in the pay scale of Rs.550-750 (RS) w.e.f. 1.5.1985 by determining his lien in the general cadre of HRC/Assistant in the Railway Board's office from the same dates.

The applicant has claimed the relief for quashing the impugned orders dt. 21.8.1985 (Annexure AI) and 24.7.1986 (Annexure AII) with the direction that the seniority of the applicant vis-a-vis respondent No.2 has to be determined on the basis of the normal seniority rules by which the applicant, who is the proforms holder of the scale of Rs.700-900 from 1.8.1982 and actually working there from 1.8.1983 is senior to respondent No.2, who is holder of a lower post scale of Rs.550-900 (Telephone Supervisor-cum-Monitor).

Both the applicant and respondent No.2 originally belonged to general clerical cadre in the Railway Board's office. The applicant was appointed as LDC on 11.12.1961, while respondent No.2 was appointed on 18.10.1960. Rail Bhavan Housing the Railway Ministry was provided with a Trunk Board/PBX Exchange in 1962 and ex-cadre posts of Telephone

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Operators were created for this purpose. The applicant as well as respondent No.2 along with others were appointed as Telephone Operators w.e.f. 11.12.1962 and 7.12.1962 respectively. Respondent No.2 being senior was promoted to the post of Senior Telephone Operator on 14.8.1966. By the Office Order No.55/1979, the Recruitment Rules were framed and a selection was held to draw up a panel, who had qualified in the prescribed trade test being eligible on the basis of requisite qualifications and working experience as Telephone Operators. Both the applicant and respondent No.2 qualified for the said trade test and respondent No.2 was selected and posted as Telephone Supervisor-cum-Monitor w.e.f. 2.2.1971. When another post of Head Telephone Operator was sanctioned in 1973, the applicant being at Serial No.2 in the seniority list of Telephone Operators, was promoted against this post w.e.f. 7.3.1973. In 1976, respondent No.2 was placed in the higher grade of Rs.550-900 while working as Telephone Supervisor-cum-Monitor and he was also the senior most at that time. In 1977, a post of Chief Telephone Operator in the grade of Rs.550-750 was created and the applicant was posted to that post. The pay scale of the post of Telephone Supervisor-cum-Monitor was higher being Rs.550-900 and that of Chief Telephone Operator, grade was Rs.550-750. In 1979, Recruitment Rules in regard to the post of Telephone Operators were framed and circulated. However, no sanction regarding creation of separate cadre of Telephone Operators was issued and the staff notice for the purpose of obtaining options from

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the concerned staff of the Board Office was also not circulated. It is the case of the respondents that the post of Supervisor-cum-Monitor, which was the highest post in that cadre at that time, was not included in the cadre. However, the post of Telephone Supervisor-cum-Monitor was included in the Recruitment Rules circulated by the Office Order No.42/91 dt. 29.10.1991 in the pay scale of Rs.1640-2900 and recruitment to that post was to be made by promotion from Head Telephone Operator/Chief Telephone Operator. Before this, there was restructuring of the cadre of Telephone Operators and two posts of Superintendent (Telephone Operators) in the pay scale of Rs.700-900 were created. The applicant was promoted to that post w.e.f. 2.4.1977. At that time respondent No.2 was working on the post of Telephone Supervisor-cum-Monitor since 17.8.1976. While effecting the promotion of the applicant, another official, Shri M.Muthu Krishnan who was also junior to respondent No.2, for the post of Superintendent Telephone Operators, the name of respondent No.2 was not considered as his name was omitted inadvertently in the seniority list of Telephone Operators because the post of Telephone Supervisor-cum-Monitor was not included in the restructuring cadre. Respondent No.2 made certain representations against the same and so the order dt. 21.8.1985 was issued for including ex-cadre post of Telephone Supervisor-cum-Monitor in the cadre of Telephone Operators of the Railway Board. The case of the applicant, therefore, is that debarse the Rules of 1979 respondent No.2 has been

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brought in the cadre of Telephone Operators by virtue of the above order dt. 24.8.1985, encadring the ex-cadre post of Telephone Supervisor-cum-Monitor in the cadre of Telephone Operators. The grievance of the applicant is also that the respondents by the impugned order 24.7.1986 have given retrospectively notional appointment to respondent No.2 in a substantive capacity as Head Telephone Operator w.e.f. 23.8.1979 and as Chief Telephone Operator w.e.f. 1.5.1985, which was not in accordance with the extant Rules of 1979 in vogue at that time. The applicant, therefore, challenged the seniority of respondent No.2 also on the ground that he was borne on the clerical cadre of the Railway Board and was not doing the actual work assigned to the Telephone Operators nor he at any time has worked as Head Telephone Operator or Chief Telephone Operator, but he has actually been given notional appointment to both these posts w.e.f. the dates mentioned above. As such the appointment of respondent No.2 to the post of Superintendent Telephone Operators is illegal and unjust. It is also pleaded that even after the 1979 Rules came into effect, respondent No.2 was given benefit of Next Below Rule in his parent clerical cadre, and as such, he cannot be given double benefit, e.g., in his parent cadre as well as in the cadre of Telephone Operators.

We have heard the learned counsel for the parties including the learned counsel for the private respondent, Shri G.P. Ahandari. The short point involved in this case is

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whether respondent No.2 in any manner is senior to the applicant in the cadre of Telephone Operators or not. If we go strictly by the Rules of 1979, the applicant has been working as Telephone Operator since 7.12.1962 and as Senior Telephone Operator since September, 1969. He was also promoted to the post of Head Telephone Operator w.e.f. 7.3.1973 and as Chief Telephone Operator w.e.f. 2.4.1977 and as Superintendent Telephone Operator w.e.f. 1.8.1982. Respondent No.2, however, has been working on ex-cadre post of Telephone Supervisor-cum-Monitor w.e.f. 2.2.1971. This post of Telephone Supervisor-cum-Monitor is not included in the cadre of Telephone Operators as is evident from the Recruitment Rules of 1979. The seniority list of Telephone Operators as on 1.8.1980 shows that Shri M.S.George is at Serial No.1 in the seniority list in the cadre as Chief Telephone Operator followed by Shri M.Muthu Krishnan and the name of respondent No.2 does not appear in that seniority list. This seniority list was circulated vide Notice No.3/81 dt.5.2.1981. On the other hand, the learned counsel for respondent No.2 argued that the post of Telephone Supervisor-cum-Monitor was very much in the cadre of Telephone Operators because the duties assigned were installation of shifting of P&T telephones and other connected work. The incumbent to this post was to be drawn from Telephone Operators Grade I and it was in the grade of Rs.425-700 and the revised scale proposed was Rs.455-700. The learned counsel for the official respondent, however, argued that the

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applicant as well as respondent No.2 originally belonged to the clerical cadre of the Railway Board for the Rail Bnawan and have since been working as Trunk Board Operators. The post of Telephone Supervisor-cum-Monitor, though not included in the Rules of 1979 of Telephone Operators, but the procedure for its selection goes to show that only those who possess the telephone operation experience and qualified in the trade test in Trunk Board operations and after interview by the Selection Committee, are to be appointed, drawing the incumbents mainly from the Telephone Operators Grade 1. During the course of the arguments, an extract of the Board's meeting of July, 1985 has also been filed where the matter of respondent No.2, i.e., encroachment of Telephone Supervisor-cum-Monitor's post along with the incumbent in the cadre of Telephone Operators was considered. The Board has approved the same in the grade of Rs.700-900. The Board has also approved the seniority of respondent No.2 in the cadre of Telephone Operators, which appears to have been omitted in the seniority list circulated with office notice of 1981 referred to above. When the respondents have admitted their inadvertence and a one time omission of the name of respondent No.2 in the seniority list, the applicant cannot draw any advantage out of the same. In fact, the applicant was also of the clerical cadre of the Railway Board and entered into service as LDC much later than respondent No.2 and also got subsequent promotion in the grade of LDC as well as Assistant in the clerical cadre much after respondent No.2 was granted the same on the basis of MBR. It

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is also not disputed that respondent No.2 was also drawn to the Telephone Exchange of Rail Bhavan earlier to this applicant and was also promoted as Senior Telephone Operator earlier to the applicant and also likewise to the post of Chief Telephone Operator earlier to the applicant. It is because of the fact that respondent No.2 was selected for the post of Telephone Supervisor-cum-Monitor w.e.f. 2.2.1971 in the pay scale of Rs.250-330 which was subsequently revised to Rs.550-900 w.e.f. 17.8.1976. The applicant was subsequently promoted as Chief Telephone Operator in the grade of Rs.550-750, which was the lesser scale than the post of Telephone Supervisor-cum-Monitor. Thus it cannot be said that the claim of respondent No.2 as granted by the Railway Board was not justified for inclusion of his name in the seniority list of Telephone Operators on the basis of his continuous service, first in the clerical cadre of the Railway Board and subsequently as Telephone Operator in the Rail Bhavan. The applicant cannot take advantage of technicalities that the post of Telephone Supervisor-cum-Monitor was not incorporated in the cadre of Telephone Operators and respondent No.2 continued to work on ex-cadre post.

The case of the applicant is also that the channel of promotion of respondent No.2 was in the clerical cadre of Section Officer for which respondent No.2 also appeared. But that is besides the point. When the representation of respondent No.2 has been duly considered by the highest

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authority in the Railways and in fact in the counter filed by the respondents, they have admitted that the name of respondent No.2 was inadvertently left out from the seniority list of Telephone Operators, then respondent No.2 cannot be ignored with regard to his claim of seniority in the Telephone Operators' branch of the Railway Board. The respondents, therefore, have passed the impugned orders after considering the facts of the case and the special circumstances which have developed due to the omission of the name of respondent No.2 from the seniority list of the Telephone Operators in 1981. From another angle also, the post of Telephone Operator Grade-I is the feeder post for the post of Telephone Supervisor-cum-Monitor and respondent No.2 working on that post was senior at the time when he was appointed to that ex-cadre post in February, 1971. The applicant at that time was working as Senior Telephone Operator only.

In view of the above facts and circumstances, we find that the impugned orders do not call for any interference and the application is devoid of merit and is, therefore, dismissed leaving the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA) 23.10.92
MEMBER (A)

P. C. Jain 23/10/92
(P.C. JAIN)
MEMBER (A)