

41

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA.814/2004

In

MA. 450/2008

MA.764/2008

New Delhi this the 28th day of August, 2008.

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Dr. Veena Chhotray, Member (A)

Shri Ramesh Lal Kanda
Alias Ramesh Lal
Ex.Sr. Technician, TEC
R/o A-4/C-40,
Janakpuri, New Delhi-11 00 58

.....Applicant

(By Advocate: Sh. M.L.Chawla)

Versus

1. Union of India
Through Secretary,
Department of Telecommunication
Sanchar Bhawan, New Delhi.
2. Chairman
Department of Telecommunication
Sanchar Bhawan, New Delhi.
3. Additional Director General (Administration)
Department of Telecommunication
Sanchar Bhawan, New Delhi. ...Respondents.

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

ORDER

By Hon'ble Dr. Veena Chhotray, Member (A)

The OA.814/2004 is being reconsidered under an order of remand by Hon'ble Delhi High Court in WP[C] NO. 11244-46/2006 vide its order dated 28.11.2007. Briefly the

27

background is that the applicant, who had retired on 28.2.2001 as a Senior Technician in Department of Telecommunication (DOT), had through this OA challenged the DOT order dated 16.02.2004. Vide this order the respondents had given one Shri S.S.Tara, said to be his junior, one Time Bound Promotion (OTBP) in the pay scale of Rs.2000-3200 (Pre-revised)/ Rs.6500-10500(revised) w.e.f. 1.11.1995. The applicant, on the other hand, had been promoted in grade IV of the OTBP Scheme (the same scale of Rs.6500-10500) w.e.f. 01.8.2000. The prayer in the OA was to allow the applicant promotion w.e.f. 1.11.1995 like his junior Shri S.S.Tara with all consequential benefits. The OA was allowed vide the Tribunal Principal Bench's order dated 25.10.2005. On an appeal against it by the respondents in Delhi High Court, the above order of the Tribunal was set aside and the case remanded for reconsideration.

2. The respondents' stand before the Tribunal was that the applicant while working as a Junior Mechanic (Junior Technician) w.e.f. 23.06.1962 had applied for appointment as a Senior Technician. He had been appointed in that capacity as a Direct Recruit w.e.f. 04.11.1965. He was treated as a Direct Recruit at par with outsiders from open market and therefore while calculating his seniority in the grade of Senior

Mechanic, his service rendered as a Junior Mechanic had not been taken into account. On the other hand, Shri S.S.Tara had been appointed as a Junior Mechanic on 11.06.1962 and had continued as such. On that basis in the combined seniority list of Senior/ Junior Mechanics as on .09.09.1992 issued vide order dated 04.07.2001 the applicant had been shown junior to Shri S.S. Tara.

3. In the initial OA, as regards the mode of his appointment as a Senior Technician, the applicant's contention was also the same as mentioned above. The Tribunal accepted the contention before it about the applicant having been appointed as a Senior Technician against Direct Recruitment quota. It, however considered the relevant order of department of Telecommunication (DOT) (No.C-18015/1/98-Admn.II dated 30.12.1998) by which benefits of the OTBP Scheme were extended to the technician cadre. The following relevant provisions were considered:-

(a) All the Junior/Senior Technicians who have completed 16 years of service in either grade or in both grades combined together may be placed in the OTBP scale of Rs. 1400-2300/- (pre-revised) w.e.f. 9.9.1992 subject to assessment by a DPC. For those Technicians who are already in the grade of Rs. 1400-2300/- as on 9.9.1992 OTBP will not be applicable.

(b) They may also be considered for grant of the pay scale of Rs. 1640-2900 (pre-revised) on completion of 26 years of serve in Junior/Senior Technician Grade or in

both the grades combined together. The officials who complete 26 years of service on 1.1.1996 or afterwards may be placed in the revised pay scale of Rs.5500-175-9000. Grant of Rs. 1640-2900/Rs. 5500-9000 grade should also be subject to assessment by a DPC.....

(Emphasis supplied)

It was observed by the Tribunal that the above circular, for the purposes of determining the required service of 16 years or 26 years does not distinguish between Direct Recruits and promotee technicians. Therefore it was held that the applicant was entitled to avail benefits of his past service rendered as a Junior Technician for the purposes of the OTBP Scheme.

4. In the appeal against this order the Hon'ble High Court did not agree with the reasons given by the Tribunal to grant benefits to the applicant under the present OA. It also did not accept at its face value the contentions regarding the appointment of the applicant as a Senior Technician against the Direct Recruitment Quota. Taking note of the relevant Recruitment Rules which prescribed appointment to the Sr. Technician's post in the following manner:

"50% by direct recruitment and 50%by promotion through a limited departmental competitive examination from amongst the junior Mechanics".

(Emphasis supplied)

The Hon'ble Court distinguished the implications of both the alternate modus operandi for appointment as Sr. Technicians. It was stated that in case of the former the posts would be

MS

advertised and outsiders would also have a right to apply; though the existing departmental candidates could also compete, as per the Recruitment Rules, alongwith the outsiders. However, in case of promotion, only the departmental candidates would appear in a Limited Departmental Competitive Examination alongwith other eligible employees. The Hon'ble High Court also made it clear that in case of Direct Recruitment the point of reference for counting seniority for OTBP would be from the date of appointment as a Senior Mechanic.

Further it was mentioned that their observations were being made on the premises that the respondent had been appointed as Senior Technician under Direct Recruitment Quota, as that was the basis of the impugned judgment. Setting aside the judgment of the Tribunal the following directions were given:-

"However, in the interest of justice, we remand the matter back to the Tribunal to enable the Respondent to seek amendment in the OA by incorporating the averments that his appointment to the post of Senior Technician was by way of promotion and therefore, he was entitled to the benefit of OTBP.

Parties shall appear before the Tribunal on 07th January 2008. It goes without saying that application that may made by the Respondent for amendment shall be considered by the Tribunal on its own merit without influenced by the order of this court".

✓

5. Accordingly, a MA No.450/08 in OA.814/2004 was filed with a prayer to amend original para 4.2 of the OA with the averments that the applicant had been appointed as a Sr. Technician against promotion quota. The original contention in 4.2 and the amended version as per this MA are as under:-

Original version

4.2. That the applicant while working as Junior Mechanic appeared for test/interview for appointment as Sr. Technician and was selected and appointed as Sr. Technician w.e.f. 04.11.1965 on which post he continued till his retirement. This selection was made from departmental candidates without the element of promotion. This appointment was treated as direct appointment on par with the outsider from open market. This appointment letter alongwith call for interview is annexed and marked as Annexure A-3

Amended version

4.2 That the applicant while working as Junior Mechanic appeared for test/interview for appointment as Sr. Technician and was selected and appointed as Sr. Technician w.e.f. 04.11.1965 on which post he continued till his retirement. This selection of two persons was made from amongst Departmental candidates and two persons were recruited from open market. The names of four Sr. Technicians viz. S/Shri R.L. Kanda, Pran Nath (departmental) and Shri J.P.Sachdeva and Jugal Kishore Gupta (DR quota). The letter of appointment of applicant together with letter for interview is annexed and marked as Annexure A-3 copy which has been further strengthened by Annex.A-14 copy annexed with MA for amendment.

After hearing both the counsels and noting that the respondents did not have any objection to it, the MA was

allowed with a view to give the applicant an opportunity to prove his case in the manner considered best by him.

6. While the other averments in the original OA remain the same, it has now been contended by the applicant that his appointment as a Senior Technician was by way of promotion. In support, mainly two-fold arguments have been given. It is stated that even though he had applied as a candidate from open market against DR quota, as he did not meet the requisite eligible condition for the same on ground of insufficiency of 5 years service and lacking requisite experience, he was considered as a departmental candidate against 50% promotion quota. The second and the related submission is that of the four persons recruited the applicant and one other Shri Pran Nath were against departmental quota, while Shri J.P. Sachdeva and Shri J.K. Gupta were against the DR quota. To support this argument two letters dated 18.09.2001 from the DOT to the DDGT and dated 21.09.2001 from the DDGT to the DOT alongwith photo copies of some notes in file have been enclosed. Admitting that there is no mention of the mode of selection in his service book, a reference to the senioritylist and relevant entries therein has also been given.

7. The respondents have reiterated their earlier stand. Responding to the averment made in the present MA, the learned counsel would at the out set submit that the order of the Hon'ble High Court does not give any directions for allowing the amendment proposed by the applicant. On the other hand, the matter has been remanded by the Hon'ble High Court to the Tribunal so as to enable the applicant to seek permission of the Tribunal to amend the averments made by him in the OA. This is to be considered by the Tribunal on its own merits.

The learned counsel would further point out that in the original OA the contention of the applicant was that he had been appointed as a Senior Mechanic by way of Direct Recruitment. In the present MA no new ground or documents to substantiate his claim for appointment by promotion are set to have been submitted. The admission in this MA regarding having applied as an Open Market candidate and the plea that since he did not meet the prescribed eligibility condition for DR and was therefore considered against the promotion quota are said to be contradictory.

Restating the facts, the written statement as para 3 asserts as here under:-

119

The fact of the matter, on the basis of available records, is that the Respondent was appointed as Senior Technician on 04.11.1965 against the quota earmarked for direct recruitment. That he had applied for the post as a candidate from the open market against a quota of direct recruitment, that he was interviewed to assess his suitability, that he was asked to submit a medical certificate of fitness from the prescribed medical authority, are all indicative of the fact that his candidature was considered for direct recruitment and not for promotion.

Rebutting the contention on promotion, the learned counsel would refer to the applicant's appointment as a Junior Mechanic in quasi-permanent capacity from 1.7.1965 which would not entitle to him for consideration for promotion to a higher post. In the same breath, he would also marshal the argument regarding the temporary nature of the appointment in question as a Senior Technician foreclosing any possibility of promotion behind it.

8. Against the above backdrop, the onus was on the applicant to prove that he had been appointed as a Senior Technician by way of promotion. Even in the present MA it has been admitted that the applicant had applied as an open market candidate for consideration against DR quota. The contention regarding his appointment instead being on promotion quota as he did not fulfill the required eligibility condition for DR is an 'interpretation by exclusion' and the plea is not tenable. There is no proof of a DPC or any being

2

10

held instead, there was only an interview. The enclosed letters & extracted file notings do not help the point at issue. The relevant entry in the service book shows that the appointment as a Senior Technician was made in a temporary capacity, liable to be terminated with a month's notice. The relevant portion is extracted here under:-

*Indian Posts and Telegraphs Department
Office of the Director General of Posts and Telegraphs*

*Memo.No.502/5/65-Admn.
Dated at New Delhi 16th. Nov., 1965*

*"The Deputy Director(T.R.C.) is pleased to appoint Sarvashri Ramesh Lal and Pran Nath, **as a temporary Senior Mechanic in this office** in the scale of Rs.150-50175-6-205RB-7-240, with effect from 4.11.1965. He will also be entitled to draw Dearness and other allowances at the rates admissible under and subject to the conditions laid down in the Rules and Orders governing the grant of such allowances in force from time to time.*

2. The terms or the appointment are as follows:-

- i) The **appointment is temporary and will not confer any title to permanent employment.**
- ii) The appointment **may be terminated at any time by a month's notice given** by either side viz, the appointee or the appointing authority, without assigning any reasons. The appointing authority, **however, reserves the right of terminating the services of the appointee forthwith or before the expiration of the stipulated period of notice** by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

2

- iii) *Other conditions of service will be governed by the relevant rules and orders in force from time to time.*

(Emphasis supplied)

In service jurisprudence, the language of this order does not seem to be typically as in a case of promotion which may be on 'ad-hoc' or 'officiating' but not 'temporary' basis. Besides there is no mention in the order regarding the fact of the persons having been appointed on promotion. The argument of the respondents about the quasi-permanent the status of the applicant as a Junior Mechanic not making him entitled for promotion to a higher post also has a merit. Reference to the seniority list circulated vide order dated 9.9.1992 is of no help either.

Thus we do not find any basis to change the original view taken in this matter about the applicant having been appointed against the post of Senior Technician by way of direct recruitment. This would also in turn take away his claim for antedating the promotion on the ground of parity with the claimed Junior Sh. S.Tara.


✓




9. The Hon'ble High Court in its aforesaid order has made it clear that in case of direct recruitment the seniority will be counted afresh as a new entrant in service.

".....in such a case, the incumbent who may be an existing employee once appointed as senior technician is to be treated as new entrant into the service. The qualifying period of 26 years for grant of OTBP has to be considered in this perspective and therefore such a person should have 26 years service from the date he is appointed as Senior Technician by way of direct recruitment. This, of course, is subject to the further condition that he is amongst 10% senior most senior counted".

10. Thus the claim for counting the applicant's seniority right from his date of appointment as a Junior Mechanic will not hold good. We, therefore, do not find any merit in the case. For the forgoing reasons the OA is disallowed. The parties will bear their own cost.


(Dr. Veena Chhotray)
Member (A)


(Shanker Raju)
Member (J)

mk