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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.1045/92

Date of decision:- 30-04-93

Sh.Bhagwati Prasad

..

Applicant

versus

Union of India
through
Secretary,
Ministry of Telecommunication
& ors.

..

Respondents

CORAM: THE HON'BLE MR.J.P.SHARMA, MEMBER(J)
THE HON'BLE MR.S.R.ADIGE, MEMBER(A)

For the Applicant

.. Sh.O.P.Khokha, Counsel.

For the Respondents

.. Sh.M.L.Verma, Counsel.

JUDGEMENT

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

The applicant, a Junior Tecommunication Officer, has filed this application on being aggrieved by that the fact that he has not been promoted as Assistant Engineer while a junior to him, Shri B.M.Sharma, who qualified in the Departmental Examination in the year 1989 has been promoted to the rank of Assistant Engineer vide order dated 11.05.90. The applicant has now been promoted as Assistant Engineer with effect from 4.8.92 though he has passed the Departmental Qualifying Examination in the year 1985. The applicant has sought for the following reliefs:-

- (a) to hold that the applicant is entitled for promotion to the post of Assistant Engineer in view of passing the Departmental Qualifying Examination held in the year 1985.
- (b) to direct the respondents to grant promotion to the applicant from retrospective effect from the date a junior to him Sh.B.M. Sharma has been promoted to the rank of Assistant Engineer.
- (c) to declare that the denial of promotion to the applicant during his period of suspension from 9.11.89 to 5.9.90 without issue

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of show cause notice and framing of Article of charges is unconstitutional and malafide.

- (d) to direct the respondents to pay the applicant his admissible salary and allowances for the period of suspension along with 12% interest.

2. The respondents have contested this application and took the plea that the application is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. The applicant was working as Junior Telecommunication Officer and was kept under suspension from 9.11.89 to 5.9.90 and his conduct was being probed by the DOT Directorate. These orders were, however, revoked subsequently after due consideration. It has also been stated that none above the applicant nor below him has been promoted in the said Satellite Circle. The applicant belongs to Delhi Telephone Circle and his seniority is as per circle gradation list of that circle. Each circle maintains its own seniority list on the basis of which local officiating chances are given to the Junior Telecom Officers. The seniority of the applicant cannot be compared with that of Shri B.M.Sharma who belongs to U.P. circle. Thus Shri B.M.Sharma has been given local promotion depending upon the vacancies available in that circle. Since the applicant has been posted as Assistant Engineer RABMN, Sikandrabad with effect from 4.8.92 and has been given promotion as he has become senior to Sh.B.M.Sharma in that circle, the applicant has no case.

3. We have heard the learned counsel for both the parties at length. The learned counsel for the respondents, during the course of the arguments, produced for the perusal of the Bench

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the Office Memorandum dated 31.03.93 by which the learned Additional Standing Counsel, representing the Government was informed that the applicant was suspended because of certain irregularities which were found in the discharge of the duties with effect from 9.11.89 and the suspension order was revoked on 5.9.90. The Central Vigilance Commission recommended disciplinary proceedings against the applicant. In the meantime, the applicant ceased to work in the Satellite Project. So, the matter was referred to the Telecom

Directorate for necessary action and advise. The learned counsel for the applicant, however, contended that the applicant till today has not been served with any memorandum of charges. Nor he has been served with a show cause notice to submit any explanation with regard to the alleged irregularities referred to in the OM filed during the course of the arguments. In view of this fact, it is argued by the learned counsel for the applicant that the respondents cannot withhold the promotion of the applicant and referred to the latest authority of the Supreme Court in Union of India & ors. Vs. K.V. Jankiraman (1991(2) SCALE 423). The respondents' counsel during the course of the arguments could not substantiate the fact that the applicant has since been served with the memorandum of chargesheet. In the reply filed by the respondents, there is no categorical averment that the applicant has been served with the memorandum of chargesheet. Though the applicant was kept under suspension in November, 1989 only on account of certain irregularities alleged to have been committed and being probed by the DOT Directorate but the said suspension order was revoked in September, 1990. It does not go

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to show that the charges have been framed and served to the applicant during this period. On the other hand, it has been contended by the learned counsel for the respondents that none above the applicant nor anyone below him has been promoted in the Satellite Circle as Assistant Engineer from the post of Junior Telecom. Officer. Regarding the argument of the applicant's counsel that Sh.B.M.Sharma who belongs to U.P. Circle has since been promoted and admittedly Sh.B.M.Sharma is junior to the applicant. So, the applicant cannot be ignored for getting his due promotion in order of all India seniority. In order to substantiate this contention, the learned counsel for the applicant has referred to All India Eligibility List of Junior Engineers and the name of the applicant Shri Bhagwati Prasad at Sl.No.2630 and his eligibility number is 11604 while that of Sh.B.M.Sharma is 17982. It goes to show that the applicant is senior to Shri B.M.Sharma. It is also admitted by the learned counsel for the respondents that the applicant has been eligible for promotion to the post of Assistant Engineer on regular basis but in view of the report of the Central Vigilance Commission on proposed enquiry for certain irregularities committed by the applicant, the promotion has not been given. In fact, the applicant has since been promoted by the respondents with effect from 4.8.92. When the respondents have taken this stand of promoting the applicant then there should be some basis not to give him promotion in his turn if he is otherwise fit for promotion. In fact, when the applicant had been reinstated after revocation of the suspension order in Sept.

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1990, then his case should have been considered for giving him promotion but the respondents have not considered him for the post of Assistant Engineer. The learned counsel for the applicant referred to the promotions, postings and transfers in TES Group 'B' effected by the order dated 4.9.90 and it goes to show that Shri B.M.Sharma, Junior Telcom Officer had been promoted as Assistant Engineer against a vacant post. The contention of the learned counsel for the respondents that Shri B.M.Sharma was promoted on circle seniority basis cannot be accepted in view of the aforesaid order dated 4.9.90. The learned counsel for the applicant has also filed during the course of the arguments Memorandum dated 25.4.90. Annexure 1 to the aforesaid order goes to show that Sh.B.M. Sharma, Staff No.10512 belonging to U.P. circle has been promoted and has been posted at GMM ND. Thus the promotion of Sh.B.M.Sharma cannot be said to be on the basis of the circle seniority and the argument of the learned counsel for the respondents, therefore, cannot be accepted.

4. In view of the above facts and circumstances, there is nothing on record to show as to why the promotion was not given to the applicant in his turn on the basis of All India Seniority.

5. The learned counsel for the applicant referred to a number of authorities on discrimination as well as on violation of the principles of natural justice and the Fundamental Rules of equality enshrined in Articles 14 & 16 of the Constitution. However, these authorities cited by the learned counsel for the applicant

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have not been specifically cited and read out to only citations being referred to. In any case, the case of the applicant is covered by a number of decisions given by the various Benches of the Central Administrative Tribunal. The applicant has himself filed a decision on a bunch of OAs decided by the Principal Bench on 22.04.91(Sh.S.Venkateswara Shenoi & ors Vs. Union of India through the Secretary, Telecommunications & ors.)(Annexure XIII). Necessary conclusion arrived in paragraph 24 of the said judgement is reproduced below:-

" 24. In the light of the foregoing discussion, the applications and MPs filed thereunder are disposed of with following findings, orders and directions:-

- (1) Subject to what is stated in (2) below, we hold that the decision of the Allahabad Bench dated 20.02.1985 in the cases of Parmanand Lal and Brij Mohan and the judgements of the Tribunal following the said decision lay down good law and constitute good precedents to be followed in similar cases. We reject the contentions of the interveners to the contrary and further hold that having urged before the Supreme Court their various contentions and their SLP having been dismissed by the Supreme Court, they cannot re-agitate the matter before us. We, therefore, dismiss MP Nos. 3396, 3397, 3493 and 3494 of 1991 in OA 2407 of 1988 as being devoid of any merit.
- (2) We hold that the applicants are entitled to the benefit of the Judgement of the Allahabad High Court dated 20.02.1985 except that in the event of re-fixation of seniority and notional promotion with retrospective effect, they would be entitled only to re-fixation of their present pay which should not be less than that of those who were immediately below them and that they would not be entitled to back wages. We order and direct accordingly.
- (3) We hold that in case the redrawing of the seniority list results in reversion of officers who had been duly promoted already their interests should be safeguarded at least to the extent of protecting the pay actually

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being drawn by them, in case creation of the requisite number of supernumerary posts to accommodate them in their present posts is not found to be feasible. We order and direct accordingly.

- (4) While effecting promotions, the respondents shall give due regard to the provisions for reservation in favour of Scheduled Castes/ Scheduled Tribes. MP No.195 of 1992 in OA 2407 of 1988 and MP Nos.957,958,965 and 966 of 1992 in MP No.195 of 1992 are disposed of with these observations. "

6. We also gave repeated opportunities to the learned counsel for the respondents to apprise the Bench of any disciplinary proceeding contemplated or actually pending against the applicant but nothing has been placed before the Bench and finally the case has been reserved for judgement. When burden lay heavily on the respondents on the fact that the promotion of the applicant has been withheld because of certain irregularities alleged to have been committed by the applicant while working in the Satellite Circle and that burden is not discharged it can easily be inferred that the withholding of promotion is not justified in the absence of any disciplinary proceedings.

7. Having given a careful consideration, we are of the opinion that the applicant should be given promotion as Assistant Engineer with effect from the date his junior Sh.B.M.Sharma had been promoted and the date of promotion of the applicant, 4.8.92 is antedated to April 1990. The respondents are directed to revise the pay of the applicant and pay him the arrears of salary within a period of three months from the date

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of receipt of a copy of this order. In the circumstances, the parties are left to bear their own costs.

S.R. Adige
(S.R. ADIGE)
MEMBER(A)

J.P. Sharma
(J.P. SHARMA)
MEMBER(J)
30.4.95

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