

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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C.A. No. 1156/93

New Delhi this the 30th day of Jul, 99

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

1. Junior Telecom Officers' Association (India) through its General Secretary Shri G.L. Jogi, 7/55 Ramesh Nagar, New Delhi-110 015.
2. Shri Ajeet Singh, Son of Shri Roop Ram, working as Junior Telecom Officer in the Office of D.E (A/T) (Cable) (S), E-28, Naraina, New Delhi.

Resident of R-2/B-115, Raj Nagar,
Palam Colony,
New Delhi.

3. Shri Vijay Kumar, S/o Shri Basu Deo, A-67 Bentex Tower, Naraina, New Delhi-110 028. R/o H.No. V-737, Street No. 9, Vijay Park, Moujpur, Delhi-110 053

Applicant

(By Advocate: Shri E.X. Joseph)

Versus

1. Union of India through the Secretary to the Government, Ministry of Communications, Department of Telecommunications, Sanchar Bhawan, Ashok Road, New Delhi-110 001.
2. The Telecom. Commission through its Member (Services), Sanchar Bhawan, Ashok Road, New Delhi-110 001.
3. The Secretary to the Government, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, North Block, Central Secretariat, New Delhi-110 001.

Respondents

(By Advocate: Shri V.K. Rao)

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ORDER

Hon'ble Mr. V. Ramakrishnan, VC (A)

The applicants in this O.A. have challenged the action of the respondents in not providing reservation for Scheduled Caste/Scheduled Tribe in respect of Lateral Advancement of JTOs to the higher grade after completion of 12 years of service.

2. We have heard Mr. E.X. Joseph, learned counsel for the applicant and Mr. V.K. Rao, learned counsel for the respondents.

3. The Department of Telecom introduced a Scheme under which the Junior Telecom Officers who have completed 12 years service since the date of appointment in the cadre of Engineering Supervisor/Junior Engineer JTO as on 1.1.1990 and onwards will be placed in the higher scale of Rs. 2000-3500/- subject to fitness and vigilance clearance. This Scheme is circulated by a letter dated 26.6.1990 as at Annexure A-3. This letter inter-alia states that placement in the higher scale is on non functional basis and does not amount to promotion and as such, reservation for the SC/ST will not apply. The applicants have contended that in a similar situation, the Hon'ble Supreme Court of India in the case of P&T SC/ST Employees' Welfare Association (Regd.) & Ors. Vs. The Union of India & Ors. AIR 1989 SC 139 had taken note of the new policy of promotion in the P&T Department for Time-Bound one promotion and directed that the Department to confer some additional advantage on the

employees belonging to SC/STs commensurate with similar advantages which were being enjoyed by the SC/ST in the Govt. of India. They submit that in the context of the direction of the Hon'ble Supreme Court in the case of the P&T SC/ST Employees' Association (Supra), the action of the Department in refusing to make any reservation for the SC/STs cannot be sustained and a direction should be given to them to provide for the same. They have also challenged the action of the respondents in rejecting the representation of the JTO Association to provide for reservations.

4. Mr. Joseph, counsel for the applicant submits that the provision for reservation for SC/STs is done as per the Constitutional mandate. The apex Court has held that in respect of the promotion under the Time Bound one Promotion Scheme, the reservation for SC/STs should be provided for and even eligibility period has to be curtailed for this category, i.e. as against the normal requirement of 16 years of service for general category, SC/STs may be promoted to the cadre on completion of 12 years of service. The Department also has made provision for reservation while making promotion to the Senior Assistant Engineers to TES Group 'B', on completion of specific years of service, as is clear from the letter of August 1982 as at Annexure A-8. Mr. Joseph says that promotion to the level of Senior Assistant Engineers stands on the same footing as Lateral Advancement of JTOs and it does not involve any change in the nature of duties. He refers in this connection to the copy of the U.O. note dated 16.4.1992 from the Department

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of Personnel & Training to the Department of Telecom as at Annexure A-8. He says that it is provided in para 2(v) that on Lateral placement in the scale of Rs. 2000-3500/- under the Scheme pay will be fixed under the provisions of FR-22-(1)(a)(I). This benefit is available under FR 22 only when assumption of higher duties and responsibilities involved. He contends that the plea of the respondents that it is an automatic placement on completion of 12 years of service without change in responsibilities is not correct. He argues that even if it does not involve additional responsibilities, reservation should be given to SC/STs on the analogy of the practice followed in the case of Time Bound ~~One~~ Promotion Scheme and also the Scheme for promotion to the Senior Assistant Engineer ~~and~~ ⁱⁿ TES Group 'B'. For these reasons Mr. Joseph says that the D.A. should be allowed and in fact even the eligibility period should be reduced for SC/STs.

5. Mr. V.K. Rao, counsel for the respondents resists the D.A. He says that the Lateral ~~Announcement~~ ^{Advancement} Scheme does not presuppose any promotion. The Scheme had been formulated only with a view to remove stagnation at the level of JTOs and to place them in the scale of Rs.2000-3500/- after 12 years of service which is also the scale of TES Group 'B'. The Scheme does not talk of any promotion but refers to lateral advancement and there is no vertical movement. It also makes it clear that even on placement in the higher scale under the Scheme, the Official will continue to perform the duties of JTO and that this placement is on non-functional basis and does not

amount to promotion. He says that it is now well settled by the Supreme Court that reservation cannot be applied for upgradation which does not involve any promotion. The provisions for reservation already exist as per the roster at the level of the JTDs and in the absence of any additional posts, reservation will not apply. He refers in this connection to the decision of the Supreme Court in the case of R.K. Sabharwal Vs. State of Punjab JT 1995(2) SC 351. He further states that reservation for SC/STs is available when the officials are regularly promoted to TES Group 'B' which is a promotional post involving higher responsibilities and where provision for reservation will be relevant. He also brings out that the benefit of pay fixation under FR-22-I(a)(I) does not change the position that the lateral advancement is not a promotion. In fact, the clause itself provides that on further promotion to TES Group 'B' the official will continue to draw the pay in the same scale without re-fixation. He says that this would show that the re-fixation of pay under FR-22-I(a)(I) is an additional concession and this does not in any way change the position that on placement in the higher scale under the Lateral Advancement Scheme, the JTD will continue to perform the same duties as before. He reiterates his contention^{that} as it is not a promotion and merely an upgradation, reservation will not apply.

6. We have carefully considered the submissions of the learned counsel. Mr. Joseph has referred to the fixation of pay under FR-22-I(a)(I). His main reliance

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is, however, on the directions of the Hon'ble Supreme Court in the case of P&T SC/ST employees' Welfare Association referred to supra. He says that when the reservation is applied to Time Bound Promotion in Group 'C' category, the same should apply in the present case also. We have carefully gone through the observations of the Supreme Court in this case. In Para 4 it is brought out that the Scheme of Reservation of posts of SC/STs in vogue in case of promotion from the lower grades to the higher grade 'C' they are done on the basis of seniority-cum-fitness (Emphasis supplied). Supreme Court has gone on to observe that the claim made by the petitioner therein was fully justified in view of the fact that similar advantage is being enjoyed by persons belonging to SC/STs in other departments. In other words in the case before the Supreme Court, what was discussed was promotion and not mere upgradation and that in other departments the SC/ST get certain benefits which cannot be denied to them only by the Telecom Department. The law relating to the reservation of posts for SC/STs has been laid down in clear terms by the Hon'ble Supreme Court in a number of cases such as R. K. Sabharwal. The Hon'ble Supreme Court has held in Sabharwal's case that the percentage of reservation is in respect of the appointment to the posts in a cadre. In the present case the Lateral Advancement Scheme has been introduced to improve the service prospects of JTOs and subject to fitness and vigilance clearance, all such persons who completed 12 years of service will be given Lateral Advancement from the date following the date of

completion of 12 years service. Para 8 of the Scheme also says that it is on the basis of matching saving and ~~for~~ every 5 JTOs ~~who~~ get higher scale, one JTO's post will be brought under reduction. In other words no additional posts are created in the higher scale under this Scheme and there is no separate cadre in this case. ~~There is~~ There is already reservation in the cadre of the JTOs for the SC/STs. When they are further promoted to TES Group 'B', the question of reservation will again be relevant as it is a different cadre and post, therein carry higher responsibilities and there is provision for reservation in the cadre of TES Group 'B'. The lateral advancement of JTOs to the scale of Rs. 2000-3500/- does not result in creation of a separate cadre and the question of reservation could not apply. The persons who were nominated to the higher grade do not leave behind their earlier posts vacant which can be filled up by somebody else.

7. From the Scheme of Lateral Advancement it is clear that there is no promotion but only upgradation of the existing posts when held by persons who have put in 12 years of service and these are given higher pay scale. The question that arises is whether reservation is permissible in such a situation, **of upgradation**. The Jabalpur Bench of this Tribunal in the case of Ashok Kumar Srivastava Vs Union of India, 1987 (4) ATC 385 had laid down that the upgradation of Admos and DMOs involves neither a selection nor a promotion and reservation also cannot be applied to the upgraded posts. We may also mention that another

Bench of this Tribunal in the case of V.K. Sirothia Vs. Union of India had held that reservation will not arise in respect of upgraded posts. The Union of India approached the Hon'ble Supreme Court in Civil Appeal No. 3622/95 and the Tribunal's order was confirmed by the Supreme Court. We may reproduce the order of the Supreme Court:-

"Heard counsel on both sides. Finding of the Tribunal that "the so called promotion as a result of re-distribution of posts is not promotion attracting reservation", on the facts of the case appears to be based on good reasonings. On facts of restructuring of the cadres, therefore, the question of reservation will not arise. We do not find any grounds to interfere with the order of the Tribunal. The Civil Appeal is dismissed. No Costs".

The Bangalore Bench in the case of R. Pinto and Ors. Vs. Government of India & Ors. and the Ministry of Defence had also considered the matter in detail and it held that upgradation does not amount to promotion and reservation will not apply (O.A. 458/90 decided on 30th December 1991). An SLP filed against this order was dismissed by Supreme Court on 17.7.1992.

8. In the light of this position, we have to hold that reservation will not apply in the Lateral Advancement when only upgradation as distinct from promotion is involved. The fact that pay fixation

is to be done under FR-22-I(a)(I) does not make it a case of promotion. As pointed out by the counsel for the respondents it is only an additional concession to the officials.

9. In the light of the foregoing discussion we hold that the Scheme for Lateral Advancement as at Annexure A-3 is clearly in the nature of upgradation and not promotion and as such reservation for SC/STs will not be permissible in respect of the same. We see no reason to interfere with para 2.(vii) of the Scheme which states that:-

"The placement in higher scale of Rs.2000-3500/- is on non-functional basis and does not amount to promotion. Reservation for SC/STs will therefore not apply in this case".

10. The O.A. is without merit and is dismissed.
No order as to costs.

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

V. Ramakrishnan
3077/11 P.P.
(V. RAMAKRISHNAN)
VICE CHAIRMAN (A)

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