

(21)
OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 15th day of March 2001

Original Application no. 1429 of 1997.

Hon'ble Mr. S.K.I. Naqvi, Member-J

Hon'ble Maj Gen K.K. Srivastava, Member-A

Ms. Sumitra Devi, D/o Sri Basdeo Ram,
R/o C/o Devanand Jaiswal, Kakarmatta, D.L.W.,
VARANASI.

... Applicant

C/A Sri A.K. Dave

Versus

1. Union of India through General Manager,
Department of Tele Communication,
Govt. of India,
VARANASI.
2. Director of Tele Comm-unication,
Govt. of India,
Sanchar Bhawan,
NEW DELHI.
3. Assistant General Manager Administration,
Office of General Manager Telecom,
Distt. VARANASI.

... Respondents

C/Rs. Sri A. Stahlekar

SAC
...2/-

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O R D E R (Oral)

Hon'ble Mr. SKI Naqvi, Member-J.

The applicant Ms. Sumitra Devi, was appointed as Time Scale Clerk in ¹⁹⁷⁷~~1987~~ in the respondents establishment. She was given benefit of one time bound promotion in 1989, which as per applicant's case was due to her in 1987 after having completed 10 years of service and being member of reserved community. The second promotion was given to her in 1994 after having completed 17 years of service and this promotion after 17 years was also because of reservation quota. For General candidates this period is 26 years. The applicant was given this benefit w.e.f. 01.01.1995 and as soon as she got this second promotion, she became eligible to promotion for upgraded post under BCR 10% scheme, that too on the basis of her being a member of ST Community and at roster point. But this promotion was delayed and given effect on 01.07.97 but was withdrawn vide impugned order dated 4.12.97, copy of which has been annexed as annexure A-1, which is in pursuance of order by Ahmedabad Bench of this Tribunal in OA 623 of 1996 delivered on 11.04.97. The applicant has come up impugning this order on ^{& Two Counts} ~~second~~ point. The first point is, that it has been passed without giving opportunity of hearing to the applicant and ^{(a. Secondly} also on the ground that, if she was allowed promotion at due time i.e. on 01.01.1995, she would not have been put to adverse effect of this judgment in her service conditions and she has sought relief to the effect that the impugned order be quashed and the respondents be directed to allow

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her promotion and seniority w.e.f. 01.01.1995 with consequential benefits.

2. The respondents have contested the case and filed counter affidavit.

3. Heard learned counsel for the rival contesting parties and perused the record.

4. So far as the question of notice or opportunity of being heard is concerned the impugned order has not been passed by way of any punishment or for any other reasons, but for enforcement of law of the land coming through two judgments of the Tribunal and also law laid down by Hon'ble Supreme Court and, therefore, applying principle as laid down in 1996 (7) SCC 118 State of M.P. ^{& Ors} Vs. Shyama Pardhi & Ors, the impugned order cannot be assailed on the ground that it was passed without affording opportunity of being heard.

5. The other ground taken by the applicant if is that she was promoted in the year 1995, when it was due to her, she would not have been reverted as the referred judgment is not with retrospective effect. Because of delayed promotion she had to see this day. The applicant has explained this point with this position in para 4.10 of the OA, which has been replied by the respondents in the CA and the position has been clarified

...4/-

Succ

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that at that point of time, the applicant was not amongst the eligible candidates for promotion. We are concerned ^{with} the legal position as applicable at the relevant time and cannot go in retrospective ^{See} to assume ^{at that time in 1995} had it been so legal position, ^{See} or would have been otherwise with its implication, the fact that the applicant was actually promoted on 01.07.1997 and the legal position as referred above came into effect right from the date of judgment delivered on 11.4.97 i.e. prior to the date of promotion of the applicant and thereby, she should not have been promoted in view of law prevailing at that time and the order issued against the law ^{See} as applicable ^{See} has been rectified by the impugned order.

6. Learned counsel for the applicant drew our attention towards the decision in ^{O.A.} 1005/99 rendered by this Bench of Tribunal on 07.08.2000 and also the law cited in 1999(17)LCD4191. But we find the legal controversy involved in these matters was different from the present one, where the case of Shyama Pardhi & Ors (supra) is squarely applicable.

7. For the above we find the relief sought for in this OA cannot be provided and the OA is dismissed accordingly. No order as to costs.

Member-A

Member-J

/pc/