

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

Original Application NO.612 of 2001

ALLAHABAD THIS THE 16TH DAY OF NOVEMBER 2006.

**HON'BLE MR. JUSTICE KHEM KARAN, V.C
HON'BLE MR. P.K. CHATTERJI, A.M**

M.I. Ansari (retired Telegraph Man C.T.O. Allahabad) son
of Jaliluddin, Residence 137 Meerapur, Allahabad.

.....Applicant

(By Advocate: Sri A.K. Mallick)

Versus.

1. Union of India through Secretary Ministry of
Communication, New Delhi.
2. Director, Department of Telecom, Sanchar Bhawan,
New Delhi.
3. Chief General Manager, Department of Telecom U.P.
Circle (East) Lucknow.
4. General Manager, Department of Telecom, Allahabad.


.....Respondents

(By Advocate: Sri S. Singh/Sri D.S. Shukla)

ORDER

By Mr. Justice Khem Karan, V.C

Heard Sri A.K. Mallick, learned counsel for the
applicant, Sri S. Singh, learned counsel for the
respondents and Sri D.S. Shukla, learned counsel for the
Bharat Sanchar Nigam Ltd.

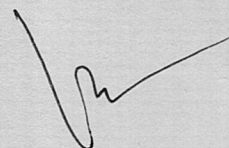


2. The applicant, who has retired from service of Telegraph Department of the Government of India, has filed this O.A. seeking the following relief(s):-

- "(a) Issue a writ, order or direction in the nature of certiorari implementing the order Annexure one to this application stepping up the pay to his junior.
- (b) Issue a writ, order or direction in the nature of mandamus commanding the respondents to grant the BCR promotion w.e.f. the date the applicant had completed the 26 years of service from Basic Cadre in the grade 4000-6000 (NEW) 950-1400 (old) w.e.f. 1.7.93 alongwith differences of pay and allowance 12% interest and consequential pensionary benefits.
- (c) Issue a writ, order or direction in the nature of mandamus commending the respondents to grant the phone mechanic promoting and the scale thereon as junior were promoted.
- (d) Issue any other and further orders which this Hon'ble Tribunal deems fit and proper under the circumstances of the case, to award the cost of the application to the applicant".

3. It appears that he and one Mishri Lal filed one Original Application No.1014/2000, Mishri Lal Vs. Union of India and others, aggrieved of retirement earlier to due date of their superannuation. This Tribunal disposed of that Original Application vide order dated 12.9.2000 (Copy of which is Annexure 1). Operative portion of that order is as under:-

"The application is allowed. The respondents are directed to pay salary to the applicants



for the period which falls short of sixty years and other benefits for which applicants may be entitled during this period for example increment and also for re-calculation of the pension if necessary".

4. The present Original Application has been filed for directing the respondents to implement the said order dated 12.9.2000 by stepping up his pay to the pay of his juniors, for grant of B.C.R. promotion and for promotion to the post of Phone Mechanic. It is stated that after early retirement of the applicant was set aside by the applicant, the respondents ought to have been given all these benefits in terms of that order of 12.9.2000.


5. The respondents have filed reply saying that since Original Application No. 613 of 2001 filed by Mishri Lal has been dismissed vide order dated 4.5.2001, so this O.A. of Shri Ansari also deserves to be dismissed. In O.A. NO.613 of 2001, the following reliefs were claimed:-

"(i) Issue a writ, order or direction in the nature of certiorari implementing the Govt. order annexure one and stepping up pay and allowances to remove anomalies.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to grant the Biennial Cadre Review (BCR in short) promoting after completion of 26 years of service from basic cadre in the grade 950-1400 old Rs.4000-6000 (new) to the applicant w.e.f. dated 1.7.1993 and pay the difference of the pay and allowances alongwith 12% interest and consequential pensionary benefits.

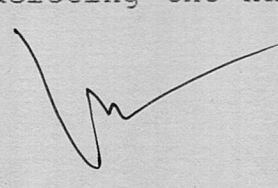
(iii) Issue any other and further orders which this Hon'ble Tribunal deem fit and proper under the circumstances of the case.

(iv) To award the cost of this application to the applicant".



This Tribunal dismissed Mishri Lal's O.A. NO.613 of 2001 on the ground that the same was barred by res-judicata and constructive res-judicata. Copy of that order is Annexure CA -1. They have also tried to say that it is true that the Department of Telegraph had introduced a promotional scheme in the year 1993 and in accordance with that Scheme, the applicant was promoted to the higher grade on completing 16 years of service (see para 10 of the reply). It is further stated in para 11 that in the year 1993 another promotional scheme named B.C.R. was introduced, according to which, officials having 26 years of regular service, were to be promoted to the next higher grade. They say that officials in Group 'D' could refuse promotion in B.C.R. in writing, if they so wanted to serve beyond 58 years of age. It is stated that since the applicant was willing to serve in the department till the age of 60 years, as such he refused his promotion under B.C.R. scheme. Copies of the applicant's refusal have been annexed as CA-2 and CA-3 to the reply. It is also stated in para 14 that in compliance of the earlier direction of the Tribunal, applicant has been paid difference of leave encashment amounting to Rs.702/- vide Draft No. J-506970 dated 19.10.2001 and his pensionary benefits have accordingly been revised. They say that the applicant is not entitled to the relief claimed.

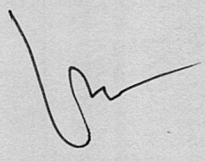
6. It appears that Bharat Sanchar Nigam Ltd. Filed one application No. 2108/06, praying for deleting the names of



respondents NO.1 and 2 namely Union of India and Director, Department of Telecommunication from the array of respondents. However, there was no request from B.S.N.L for impleading it or for substituting it in place of said respondents NO.1 and 2. We need not take into consideration whatever has been said by B.S.N.L. in this application nor we find good reason for deleting the names of respondents No.1 and 2. Applicant retired from service much before B.S.N.L make into existence.

7. Sri A.K. Mallick, learned counsel for the applicant has not been able to satisfy us as to how this original application can be filed for reliefs No.1 and 2, namely for securing the implementation of the earlier direction of the Tribunal and for getting B.C.R. promotions. He admits that in the earlier O.A. NO.1014/2000, one of the reliefs claimed by the applicant and another was with regard to the promotion to B.C.R. When that O.A. was finally disposed of, how this second O.A. is maintainable. It is also surprising that the original application is being filed, for securing implementation of the order of the Tribunal. So seeking of reliefs NO.1 and 2 is totally misconceived.

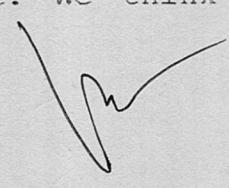
8. In so far as third Relief for promotion to the post of Phone Mechanic is concerned, no doubt the same was not sought in the earlier Original Application and is being sought here in this original Application. Learned counsel



for the respondents has argued that relief NO.3, is barred by constructive res-judicata as held by this Tribunal in subsequent original application of Mishri Lal. The reliefs sought by Mishri Lal in the second original application as reproduced in the reply, do not disclose that this relief for promotion to the post of Phone Mechanic was asked for, so that dismissal of original application of Mishri Lal can not be pressed into service so as to say O.A. for relief No.3 is barred by resjudicata.

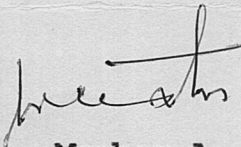
9. Non-promotion to the post of Phone Mechanic was distinct cause of action to one which, gave rise to the earlier original application No.1014/2000. We think it is difficult to say that the second original application in respect of relief NO.3 can be said to be barred by constructive res-judicata. So we think that the prayer for commanding the respondents to grant promotion to the applicant on the post of Phone Mechanic, can be considered here and if he makes out a case for any mandamus, the same could be issued.

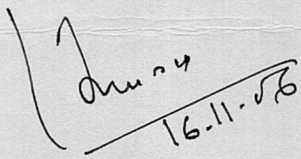
10. A perusal of the original application reveals that nothing material has been said in the context of this relief, for promotion to the post of Phone Mechanic, In other words, there are no sufficient averments to the effect that ~~eligible~~^{eligible} the applicant was for this promotion, that ^{he} passed suitability test, if any, or his junior, was promoted without considering his case. We think that in



absence of all these materials, it is difficult to grant relief NO.3 for commanding the respondents to consider the promotion to the post of Phone Mechanic.

11. In the result, the O.A. has to be dismissed and accordingly dismissed ^{sub 9} with no order as to costs.


Member-A


Vice-Chairman

Manish/-