

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

**HON'BLE MR. A. K. GAUR , MEMBER (J).
HON'BLE MR. D. C. LAKHA, MEMBER (A).**

ALLAHABAD this the 03rd day of November, 2009.

Original Application Number. 1529 OF 2004.

Indradev Kardan, aged about 67 years, S/o Late Shri Gyasi Ram, House No. 1164, Old Cantt., Sadar Bazar, Mathura.

.....Applicant.

VERSUS

1. Union of India through Secretary, Ministry of Telecommunication, New Delhi.
2. The Chief General Manager, Telecommunication U.P. (East) Telecom Circle, Lucknow- 226 001.
3. Dy. General Manager (Admin.) Office of the Chief General Manager, U.P. (East), Telecom Circle, Lucknow.

.....Respondents

Advocate for the applicant: Sri Rakesh Verma
Advocate for the Respondents : Sri D. S. Shukla

ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M)

Learned counsel for the applicant at the very our set submitted that in a similar and identical situation, Principal Bench of this Tribunal in O.A No. 1455/1991 (Smt. Santosh Kapoor & Ors. Vs. U.O.I & Ors.) has passed the following direction: -

"In the above view of the matter, we direct that the promotion to 10% posts in scale Rs. 2000-3200 would have to be based on seniority in basic cadre subject to fulfillment of other conditions in the BCR viz. those who were regular employee as on 1.1.90 and had completed 26 years of service in basic grades (including higher scales). The respondents

L

are directed to consider applicants accordingly from due dates with consequential benefits.”

2. Learned counsel for the applicant would contend that despite two basic requirements as stipulated in the judgments referred to above, the respondents while considering the case of the applicant rejected his claim by means of the impugned order dated 24.07.2004/Annexure A-I of O.A ,

3. Sri D.S. Shukla, Learned counsel for the respondents invited our attention to paragraph 29 of Counter Reply wherein it has been submitted that the order was passed by the respondents to promote the officials in compliance of the exparte order in O.A No. 226/1992 and O.A No. 498/1992 before filing of the Counter Affidavit and orders were confined to the parties of those O.As only. It has further been contended by the learned counsel for the respondents that the said decision does not lay down any law for general application and moreover the judgment of Principal Bench passed in O.A No. 1455/1991 (Smt. Santosh Kapoor & Ors. Vs. U.O.I & Ors.) was not implemented by the department of Telecom by that time. However, the judgment dated 07.07.1992 passed in Smt. Santosh Kapoor's case was upheld by the Hon'ble Supreme Court and the promotion made to BCR Grade-IV were reviewed and promotion to the Grade-IV were granted to the officials on the basis of seniority and basic grade. Learned counsel for the respondents further invited our attention to paragraphs 42 and 43 of the Counter Reply and repeated the same assertion as has been indicated earlier.

4. On the other hand learned counsel for the applicant submitted that those persons, whose case have been reviewed by the department became senior to the applicant although they are junior to the applicants and the

W

case of the applicant has been ignored by the competent authority. Learned Counsel for the applicant further submitted that this is a case of gross violation of principle of natural justice and fair play as the case of junior persons to the applicant have been reviewed and they have been granted benefits. According to the applicant he fulfills the twin conditions as provided in the Judgment of Smt. K. Kapoor. The observation of the competent authority that the applicant does not fulfill even the basic eligibility conditions for promotion to the BCR Grade IV on crucial date i.e. 01.01.1995 is imaginary and arbitrary. Learned counsel for the applicant would contend that the twin conditions as mentioned in the judgment rendered by Principal Bench of this Tribunal in the case of Smt. Santosh Kapoor are fully satisfied by the applicant. The said judgment is not a judgment in personem, but a judgment in rem. In support of his contention, learned counsel for the applicant placed reliance on the following decisions: -

A). K.C. Sharma Vs. U.O.I & Ors. - JT 1997(7)SC page 58

B). Amrit Lal Berry Vs. Collector, Central Excise - 1975 SCC (L&S) page 412.

5. Sri D.S. Shukla, Learned counsel for the respondents on the other hand submitted that the case of the applicant has already been examined by the respondents and he has not been found to be eligible for promotion to the BCR Grade-IV on the basis of seniority under basic grade within prescribed limit of 10%. Learned counsel for the respondents also produced before us an interim order passed by the Hon'ble Supreme Court in S.L.P. No. 10040/2009 - B.S.N.L and Ors. Vs. Yad Ram Rathore Anr, in which Hon'ble Supreme Court has stayed further proceedings before

✓

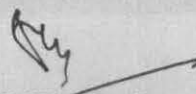
the Tribunal and submitted that since the order of the Tribunal has been stayed, there would be no justification in giving direction to the respondents to give benefit of the decision rendered by the Principal Bench of the Tribunal in the case of Smt. Santosh Kapoor.

6. We have heard Sri Rakesh Verma, learned counsel for the applicant and Sri D.S. shukla, learned counsel for the respondents at length.

7. Having given our thoughtful consideration to the pleas advanced by learned counsel for either side, we are satisfied that the applicant is entitled to get the similar benefit as has been granted, by the Principal Bench of this Tribunal in the case of Smt. Santosh Kapoor (referred to above) as the said judgment is not a judgment in personem but a judgment in rem.

8. In view of the observations made above the impugned order dated 24.07.2004 is hereby quashed and set aside and we allow the O.A in part to the extent, a direction is given to the respondents to pass appropriate orders giving benefit of judgment passed by the Principal Bench in accordance with rules, within a period of six months from the date of receipt of certified copy of this order,

9. Parties are directed to bear their own costs.


MEMBER- A.


MEMBER- J.

/Anand/