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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

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O.A. No. 479 OF 1987 XXXX
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DATE OF DECISION 8-4-1991

Chandrika Baxi,

Petitioner

Mr. M.D. Rana

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondents.

Mr. P.S. Chapaneri for
Mr. P.M. Raval

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

Chandrika Baxi,
Telephone Operator,
Telephones, Junagadh Division,
residing at Aradhana Apartment,
Gandhigram, Junagadh.

..... Applicant.

(Advocate: Mr. M.D. Rana)

Versus.

1. Union of India
(Notice to be served through
Ministry of Postal & Tele-Communication
(Telephones) Parliament Street,
New Delhi (Served through the Chairman)
2. The General Manager,
Ahmedabad Telephones, Gujarat
Circle, Near Gujarat High Court,
Ahmedabad. Respondents.

(Advocate: Mr. P.S. Chapaneri for
Mr. P.M. Raval)

JUDGMENT

O.A.NO. 479 OF 1987

Date: 8-4-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

This original application under section 19 of the Administrative Tribunals Act, 1985, now, after including of the relief clause, its amendment/ prays for granting the applicant promotion from 4.5.1984 instead of 12.1.1989, the date from which the promotion came to be given to the applicant.

2. It is clear from the copy of General Manager, Telecommunications, Gujarat Circle, Ahmedabad, office Memo No. SE/3-2/TEP/TD 126 dated 19.7.1984 (Ann. A-1) that on introduction of one time bound promotion and on recommendation of the departmental promotion committee meeting held on 26.8.1984, some telephone operators came to be promoted to the next higher grade of Rs. 425-640 from various dates starting from 30.11.83. This memo also mentioned the names

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of those not recommended for promotion, name of the operator whose case was kept in sealed cover and names of those operators whose cases could not be considered for promotion as "their CR files were either not available or incomplete" and the promise that "their cases will be decided by the DPC again on availability of complete CR files ". The applicant's name figured at Sr.No.3 of this list.

3. Apparently after vainly waiting for some more time after the above office memo, the applicant filed O.A. 179/86 in this Bench of the Tribunal. This O.A. was disposed of by the Tribunal order dated 10.10.1986 which is reproduced below :

"Mr.J.D.Ajmera learned advocate for the respondent appears. Although the case of the applicant came up before the DPC on various dates, it has not taken into account the case of the applicant as the service records were not produced before the DPC. We direct that the applicant should not suffer on account of delay in promotion for non-availability of service records before the DPC as the learned advocate Mr.Ajmera has stated that the service records alongwith the case can now be placed before the DPC. We therefore direct that the case be so placed before the Committee within 2 months of the date of the order and if the applicant is found otherwise fit, the benefit of promotion under time bound promotion scheme should be made available to her from the date on which she completed the qualifying period of service. We therefore direct that her case should have been decided alongwith 5 persons covered by the order in May, 1984 and she should therefore not be deprived of the promotion because of the orders not being passed in her case also in May, 1984. With these directions, the application stands disposed of with no order as to costs."

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4. The DPC which met on 5.12.1986 did not recommend the case of the applicant for promotion to next higher grade. Then in a DPC meeting held on 12.1.1989, the applicant came to be recommended for promotion and order dated 20.4.1989 giving her promotion from 12.1.89 was issued (Annex. A-4) The order states that "on completion of 16 years of service as telephone operators" those figuring in the order are promoted. The applicant's name figured last in this order at serial No.6 for promotion from 12.1.89. The five others whose names figured before the applicant have been promoted with effect from dates earlier than the applicant between 1987 and 1989.

5. The respondents chose to file no reply in over three years that passed between the filing of the application on 1.10.1987 and final hearing on 6.3.91 though on this ground adjournments were sought by the respondents' counsel and given by the Tribunal.

6. At the final hearing, applicant's counsel submitted that no adverse remarks were ever communicated to the applicant. However, she was once punished in a disciplinary inquiry before 1977 which order of punishment was quashed by the Civil Judge (S.D.) Junagadh when questioned.

7. The only submissions the respondents' counsel made at the final hearing is that with promotion sought from 4.5.1984, the application filed on 1.10.1987 is barred by limitation. The objection is not only utmost baseless it also ignores the fact that the present application in this Tribunal was preceeded by applicant's O.A.No. 179/86 which was

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disposed of by this Tribunal's order dated 10.10.86 reproduced above.

8. Neither the applicant nor the respondents placed before us the criteria for promotion in this case of time bound promotion to a higher pay scale in the same post. However, in such cases where promotion to a higher payscale in the same post is involved, seniority-cum-merit happens to be the criterion of suitability for promotion. As neither seniority nor merit have been disputed by the respondents by filing reply or making submission and as no-adverse-remarks-were-ever-communicated to the applicant also not disputed, the applicant's qualifying for promotion from the due date has remained undisputed. That the applicant was due for promotion with effect from 4.5.1984 is also not disputed. Again, her case for consideration for promotion postponed on the ground that her record was either not available or was incomplete could not work to her disadvantage so far as consideration of her case for seniority from the due date was concerned. To make upto-date record available to the departmental promotion committee is the duty of the respondents. With regard to DPC meeting on 5.12.86 not finding the applicant fit for promotion, with no adverse remarks communicated to the applicant undisputed and seniority-cum-merit as the basis of promotion to the higher scale of pay in the same post, no material has been brought to our notice by the respondents to show that the departmental promotion committee which met on 5.12.86 had legal and proper grounds and material for its such recommendation. Besides, the suitability of the

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applicant for promotion was required to be considered as from due date, namely 4.5.1984 and not from 5.12.86.

9. The application thus is destined to succeed and we hereby allow it with our following directions to respondent No.2, General Manager, Gujarat Telecom Circle, Ahmedabad.

(1) The General Manager Gujarat Telecom Circle, Ahmedabad is directed to promote the applicant from 4.5.1984 to the higher grade (Rs.1400-2300) within fifteen days from the date of receipt of a copy of this order by him.

(2) Consequential financial benefits arising on account of the above promotion with effect from 4.5.1984 and grant of regular annual increments shall be disbursed by the General Manager, Gujarat Telecom Circle to the applicant within a period of three months from the date of receipt of a copy of this order by him.

(3) The above arrears shall be computed for every calendar month separately. On each month's arrears shall be calculated interest at the rate of 12% upto 31.3.1991 and the total amount of such interest shall also be disbursed along with the arrears of salary and emoluments above directed.

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(4) The cost of this suit computed at
Rs. 1,000/- (Rupees one thousand only)
shall be paid by the respondent No. 2
to the applicant within three months
above directed.

R.C. Bhatt
(R.C. Bhatt)
Judicial Member

M. M. Singh
(M.M. Singh)
Admn. Member