

(TV)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

.....

Date of order : 05.01.2000

O.A.NO. 310/1995

1. Banshi Lal, aged about 38 years, S/o Shri Tulsi Ram, by caste Bhati, R/o Opp. Pratap School, Behind Bhabhoot Bhawan, Jodhpur.
2. Dilip Singh, aged about 39 years, S/o Shri Prem Singh, by caste Gohil, R/o K-8, Kamla Nehru Nagar, Jodhpur.
3. Ashok Kumar aged about 36 years, S/o Shri Jata Shanker, by caste Vyas, R/o Plot No. 1017, Ist 'C' Road, Sardarpura, Jodhpur.

All the applicants are working as Lineman, under the Garrison Engineer (Army), Jodhpur.

.....Applicants.

VERSUS

1. The Union of India, through the Engineer-in-Chief (Army), Headquarters, New Delhi.
2. The Commander, Works Engineer, Headquarter 134, Works Engineer, C/o 56 A.P.O.

.....Respondents.

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Mr.M.S.Singhvi, Counsel for the applicants.
Mr.S.S.Purohit, Counsel for the respondents.

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CORAM :

Hon'ble Mr.A.K.Misra, Judicial Member

Hon'ble Mr.Gopal Singh, Administrative Member

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PER HON'BLE MR.A.K.MISRA :

The applicants had filed this O.A. with the prayer that the respondents be directed to give effect to the order of promotion of the applicants dated 27.1.87 in compliance of the order of the Tribunal dated 23.6.93 with all consequential benefits. The applicants have further prayed that the Circular

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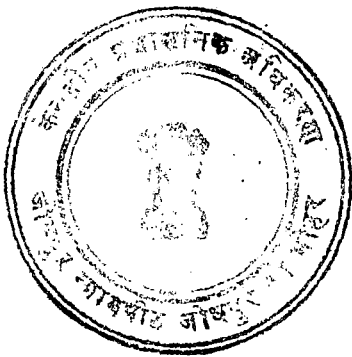
(15)

dated 6.6.86 (Annex.A/2) be declared illegal and be quashed. The respondents be directed to prepare integrated seniority list on the basis of service rendered by the persons in respect of the cadre for purposes of further promotions. Alternatively, the applicants had prayed that clubbing of cadres of Electricians and Linemen be declared illegal and the respondents be directed to promote Linemen considering them separate for purposes of implementation of re-structuring scheme.

2. Notice of the O.A. was given to the respondents who have filed their reply to which no rejoinder was filed.

3. We have heard the learned counsel for the parties and have gone through the record. For the better appreciation of the controversy in hand, facts in brief are narrated as under which are almost undisputed :

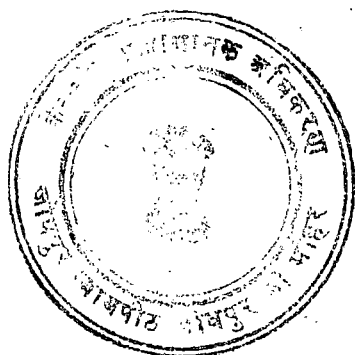
4. The applicants No. 1,2 and 3 were appointed as Linemen on 4.8.79, 12.9.80 and 17.9.80 respectively. Thereafter, they continued to work as Linemen. In the year 1985, respondent No. 1 categorised the industrial workers working in Military Engineering Services in three different categories i.e. Highly Skilled Grade-I, Highly Skilled Grade-II and Skilled Grade, vide their communication Annex.A/1. Thereafter, the applicants were ordered to be promoted to the posts of Highly Skilled Grade-II vide order dated 27.1.87 (Annex.A/3) issued by the respondent No.2. However, the promotion order was not given effect to and before the same could be complied another order cancelling the promotion of the applicants was passed by the respondent No. 2 on 7.9.87 (Annex.A/4). The order cancelling the promotion was challenged by the applicants by way of O.A. which was decided on



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23.6.93 (Annex.A/8). After the decision of the earlier O.A. no development had taken place, therefore, the present O.A. has been filed with the prayer as mentioned above.

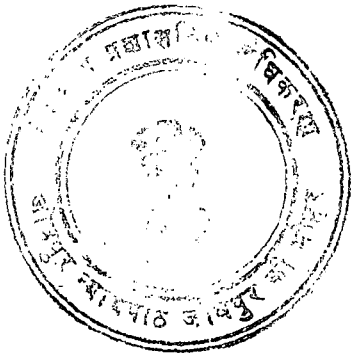
5. The applicants have challenged the in-action of the respondents on the ground that applicants were given promotion to the posts of Highly Skilled Grade-II which could not have been cancelled without affording an opportunity to the applicants of showing cause for such action. The applicants have become entitled to hold the promotional posts in view of the promotion order. The formula evolved by the respondents for promoting the Electricians on the re-structured up-graded posts is arbitrary and discriminatory. The applicants claimed seniority from the date of their induction in the parent cadre. Clubbing the post of Lineman and Electrician has also been challenged.



6. Both the learned counsel for the parties argued on the lines of their respective pleadings which we have duly considered. From the facts of the case it appears that the promotion order passed in favour of the applicants was not given effect to in view of subsequent guidelines and instructions, therefore, in our opinion the applicants, as of right, cannot claim to be promoted to the next higher post on the basis of the promotion order which was not given effect to. As per the re-structuring scheme the cadre of Electricians and Linemen was got merged and out of the total 15%, 20% and 65% were classified under the head Highly Skilled Grade-I, Highly Skilled Grade-II and Skilled Grade respectively. The promotion of the applicants were required to be regulated as per the guidelines contained in departmental communication on the subject in continuation to the re-structuring scheme dated 4.7.85.

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7. We have decided another case today in which the promotion orders were carried-out by the respective promotees and respondents action of reverting such promotees without notice was quashed in the earlier O.A. and the applicants of that O.A. ~~are~~ since then working on the promotional post continuously for more than 13-15 years and in view of that, their reversion order was directed not to be enforced against them. But no such circumstance exists in the present case in which promotion orders were not given effect to. If somebody is promoted to the next higher scale under some mistaken interpretation then such mistake can always be corrected before the orders of promotion are complied with. In the instant case also the promotion orders were cancelled apparently on discovery of mistake of issuing promotion orders earlier against the departmental guidelines before the same can be given effect to and, therefore, in our opinion no vested right had accrued to the applicants for claiming promotion to the next higher post on the basis of promotion orders issued earlier. Therefore, arguments advanced by the learned counsel for the applicants in this regard are hereby rejected.



8. The learned counsel for the applicants has argued that the directions given by the Tribunal in the earlier O.A. No. 525/88 on 23.6.93 were not carried out by the respondents, by issuing notice to the applicants for the proposed cancellation of promotion order, therefore, the applicants should be ordered to be promoted to the next higher post in view of the earlier promotion orders. We have considered this argument. In our opinion, when the promotion orders were not given effect to and the applicant had not joined on the promotional post there was no question of issuing any notice before passing the cancellation

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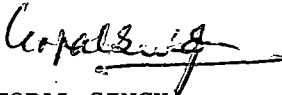
order of promotion. The promotion orders which were not given effect to for one reason or the other do not create any vested right in favour of the applicants and for this reason no fresh notice was required to be given to the applicants as claimed by the learned counsel for the applicants. Arguments in this regard are therefore rejected.

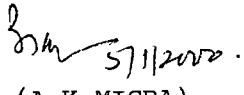
9. The applicants who were initially engaged in service as Lineman have claimed to be placed senior to the Electricians on merger of these two cadres as per the order dated 4.7.85 (Annex.A/1) but this question has been left open to be considered, examined and decided by the departmental authorities as per the departmental guidelines on the subject, in the O.A. decided by us today. Therefore, we cannot take a different view than the one we have taken today in another O.A. Therefore, we hope that the respondents would examine in detail in terms of various Government orders on the subject, the question of assigning seniority to the applicants. Hence, this aspect of applicants' argument is disposed of accordingly.



10. Therefore, the O.A. is disposed of with the observation that the matter of fixation of seniority, as claimed by the applicants, be examined ^{and decided} by the departmental authorities in terms of the departmental guidelines within a period of ⁶ ~~Six~~ months from the date of communication of this order. Applicants claim relating to enforcing the order of promotion dated 27.1.1987 (Annex.A/3), is rejected.

11. The parties are left to bear their own costs.


(GOPAL SINGH)
Adm.Member


(A.K.MISRA)
Judl.Member

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Rec'd in
Meyers
2/27/20
for S. Dymer
for (S.S. Dymer)
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Part II and III destroyed
in my presence on 25-9-26
under the supervision of
section officer () as per
order dated 23/8/26

Meyers
Section officer (Record)