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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Date of order:- 11-07-2001

O.A. No. 317/99

Bhagwan Das son of Shri Vishan Das, aged about 57 years, resident of Qtr. No.5 Telecom Colony Sector 5 Hiran Magri Udaipur at present employed on the post of HG Telegraph Master in the office of Central Telegraph Office, Udaipur.

APPLICANT.



VERSUS

1. Union of India through Secretary to Govt. Of India, Min. of Communication, Department of Telecom, Sanchar Bhawan, 20, Ashoka Road, New Delhi.
2. General Manager Telecom District, Udaipur Panchavati, Distt-Udaipur.
3. Chief General Manager Telecom, Rajasthan Circle, Jaipur.
4. Shri D.R. Meena, TDA (T) Gr. IV, Zonal Telegraph Office, Opp. MB College, Udaipur.

RESPONDENTS.

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Mr. J.K. Kaushik, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.

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Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

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(Signature)

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ORDER

(per Hon'ble Mr. Justice B.S. Raikote)

The applicant has prayed for quashing of Annexure A/1 dated 08.03.99 by which his claim for grant of due benefits under 10 per cent Biennial Cadre Review Scheme (BCR Scheme, for short) to the post of Grade-IV in the grade of Rs.2000-3200 is denied. The applicant further prays that the respondents may be directed to extend the benefit under 10 per cent BCR Scheme to the applicant at par with his next junior, as per the rules in force.

2. The applicant stated that he was appointed on the post of Telegraphist vide order dated 15.12.1964 and thereafter, he earned some promotions and he became HG Telegraph Master w.e.f. 01.01.92. He stated that his name is at serial No.19 in the Basic Gradation List of Basic Cadre Telegraphist working in Ajmer, T.T. Division as on 01.07.93 and on that grade, the name of the respondent No.4 (D.R. Meena) is at serial No. 33. Thus, the private respondent No.4, (D.R. Meena) was junior to the applicant in the basic cadre. But he has been accorded the benefit of 10 per cent BCR Scheme to Grade-IV in the pay scale of Rs.2000-3200 and the applicant is also entitled to the same benefit. The applicant further contended that the principle of roster reservation does not apply on such upgradation under 10 per cent BCR Scheme. Therefore, promoting private respondent No.4, who was junior to him, under the such scheme and not promoting the applicant would be arbitrary, illegal and violative of Articles 14 and 16 of the Constitution. It was in those

circumstances, he made a representation to the respondent vide Annexure A/7 dated 4.8.98 and a further reminder vide Annexure A/8 29.12.98, but the respondents have rejected his representation vide impugned letter dated 8.3.99 (Annexure A/1). The order at Annexure A/1 is illegal, arbitrary and is liable to be set aside.

3. By filing reply, the respondents have denied the case of the applicant. They have stated that the respondent No.4 Shri D.R. Meena was earlier at Banswara, and he was transferred to SSA, Udaipur at his own request on 16.10.97. But prior to his transfer to Udaipur, he was already promoted to Grade-IV w.e.f. 13.10.95. They have also stated that before 1.7.98 only four officials were working under the BCR Grade-III in SSA, Udaipur, therefore, there was no Grade-IV post which was justified at Udaipur. Thereafter, number of officials of BCR Grade-III increased to more than five, one post of Grade-IV was justified in SSA, Udaipur. But the respondent No.4 (D.R. Meena) was posted and he was working in Grade-IV, further promotions from Grade-III to Grade-IV was not justified. They have also stated that the respondent No.4 Shri D.R. Meena was upgraded on division basis under ST Reservation Roster before he was transferred from Banswara SSA, to Udaipur SSA. Since D.R. Meena was already working on Grade-IV, the applicant cannot be promoted on the vacancy arising by the promotion of one Shri V.K. Bhavsar. They have also stated that respondent No.4 was promoted under roster reservation quota by the DPC on 13.5.95 being ST candidate, and no junior to the applicant in the general category has been promoted. Therefore, the applicant has no case.

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4. We have heard the learned counsel for the parties and perused the records.

5. The fact that Shri D.R. Meena, private respondent No.4, as per the seniority list of the Basic Cadre Telegraphist in Ajmer TT Division as on 01.07.93 vide Annexure A/2, is junior to the applicant is not denied. From the perusal of the Basic Gradation List, we found that the applicant is at serial No.19 and the name of the respondent No.4 is at serial No.33. Thus, the fact that the respondent No.4 is junior to the applicant is not disputed. It is a further contention of the respondent that private respondent No.4 (D.R. Meena) was promoted by granting upgradation under 10 per cent quota of BCR Scheme under roster reservation. But the contention of the learned counsel for the applicant is that as per the judgment of CAT Ahmedabad Bench dated 11.04.97 in OA No.623/96, the principle of roster reservation did not apply to the 10 per cent BCR Upgradation Scheme. Therefore the applicant's case as against respondent No.4 for promotion by upgradation under 10 per cent BCR Scheme should have been accepted by the department. We find from the letter Annexure A/5 dated 13.12.95 of the Government of India, department of Telecom, there was also a similar judgment of CAT, Principal Bench, New Delhi, in OA No.1455/91, decided on 07.07.1992, directing promotion to 10 per cent posts in the scale of Rs.2000-3200 strictly in accordance with the seniority in the basic cadre subject to fulfilment of other conditions of the BCR Scheme, regarding those who had completed 26 years of service in the basic grade (including higher grades) and the same judgment has been upheld by Hon'ble the

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Supreme Court. In the light of the said judgment only, the department issued the letter Annexure A/5 dated 13.12.95. The relevant portion of the said letter dated 13.12.95 (Annexure A/5) is extracted, as under:-

" The Hon'ble CAT vide its judgment, dated 7.7.92 directed that the promotion to 10% posts in the scale of Rs.2,000-3,200 would have to be based on seniority in the basic cadres subject to fulfilment of other conditions of the BCR, viz., those who are regular employees as on 1.1.90 and had completed 26 years of service in the basic grade (including higher grades). The DoT filed an SLP against the said judgment and the Hon'ble Supreme Court vide their order, dated 9.9.93, upheld the judgment of CAT, Principal Bench, New Delhi. Similar applications had also been filed before other CAT Benches in the country and in those cases as well, the judgments in line with the judgment of Principal Bench, New Delhi had been given.

Review of the existing procedure of promotion to Grade-IV (now designated as Chief Section Supervisor) under BCR Scheme has been under consideration in view of the judgment of Principal Bench, New Delhi upheld by the Supreme Court. It has now been decided in supersession of earlier instructions that promotion to the said Grade-IV may be given from amongst officials in Grade-III on the basis of their seniority in the basic Grade. The promotions would be subject to fitness determined by the DPC as usual.

The case of promotion to the said Grade-IV in the scale of Rs.2000-3200 against 10% posts under the BCR Scheme may be reviewed and the same may be regulated accordingly restricting the number of officials thus promoted strictly to 10% of the posts placed in Grade-III (Scale of Rs.1600-2600) as provided in the BCR Scheme."

6. In the representation, the applicant has specifically pointed out to the authority that according to the judgment of CAT Ahmedabad Bench in OA No.623/96 dated 11.04.97, the principle of roster reservation did not apply to the 10 per cent BCR Upgradation Scheme. This position is not disputed by the respondent in the reply except saying that the department has applied roster reservation while promoting



the respondents No.4 (D.R. Meena) under 10 per cent quota of BCR Upgradation Scheme. In view of this position of law, the private respondent No.4 could not have been promoted under the said Scheme applying roster reservation to Grade-IV w.e.f. 13.05.95. The scheme specifically provides such promotion under BCR Upgradation ~~as~~ strictly in accordance with the basic grade seniority. If that is so, the applicant is senior to the respondent No.4 (D.R. Meena) in the Basic Gradation List vide Annexure A/2. Therefore, we are constrained to hold that not promoting the applicant under the BCR Upgradation Scheme w.e.f. the date his junior was promoted, is illegal. We also add that it is not a divisional-wise seniority that applies for such promotion under BCR Scheme, but it is based on the seniority in the basic cadre. As already stated above, in the basic gradation list (Annexure A/2), the applicant is senior to the private respondent No.4. Therefore, the applicant is entitled to be promoted to Grade-IV w.e.f. the date Shri D.R. Meena (private respondent No.4) was promoted to the Grade-IV.

6 The other aspect of the contention of the respondents is that in SSA Udaipur, on the basis of the strength in Grade-III, there is a provision for upgradation of one post from Grade-III to Grade-IV, but on that post private respondent No.4 (D.R. Meena) was already working and therefore, no vacancy was available for the promotion of the applicant to Grade-IV under that scheme. This contention of is also liable to be rejected because the letter No.22-6/ 94-TE-II dated 10.5.96 of the Government of India Department

of Telecom filed in the case of Annexure A/6, which provides that the officials were already promoted in Grade-IV may not be reverted for the purpose of promotion under 10 per cent BCR Upgradation Scheme on the basis of basic cadre seniority. But the posts could be created, in excess of 10 per cent under BCR Scheme and such created posts are required to be adjusted against the justified posts in future and till such excess posts are adjusted, no promotion would be further made in Grade-IV in that unit till the total number of posts in Grade-IV comes back to the prescribed limit of 10 per cent post of BCR. In view of this position, we are of the opinion, that the respondent No.4 (D.R. Meena) was though promoted wrongly need not be reverted in order to accommodate the applicant, in view of the judgment of Hon'ble the Supreme Court in Ajit Singh II, (1999 SCC (L&S) 1239). In this judgment the Apex Court has ruled that the reserved candidates promoted in excess of reservation principle prior to 1.4.97 need not be reverted. In this case, private respondent No.4 was promoted to Grade-IV contrary to roster principle on 13.10.95 and hence may not be reverted, and may be retained on ad hoc basis. In view of the above, we are of the view that the applicant is entitled to promotion to Grade-IV w.e.f. the date his junior Shri D.R. Meena (Private respondent No.4) was promoted by giving him seniority over and above, the respondent No.4. The applicant himself has stated in his representation that CAT, Ahmedabad Bench, has not granted any arrears to the applicant in that OA No.623/96 decided on 11.4.97. Having regard to this position of law, the applicant is not entitled to any arrear. However, he would be entitled to stepping up of his pay and the same be brought to the stage of pay scale that has been accorded to the private respondent No.4 (D.R. Meena). Accordingly, we pass the order as under:-

"Application is allowed. The respondents are



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directed to promote by upgradation, the applicant under 10 per cent BCR Scheme to Grade-IV w.e.f. the date, the respondent No.4 (D.R. Meena) has been promoted by according notional seniority to the applicant over and above, the respondent No.4. The applicant's pay may be stepped up and shall be brought to the stage that is accorded to Shri D.R. Meena (private respondent No.4), but the applicant would not be entitled to any arrears on this count.

No costs."

Gopal Singh
(Gopal Singh)
Admn. Member

BSR
(Justice B.S. Raikote)
Vice Chairman

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R/COPY
W/STX

R/COPY
on 19/17
SAC Ad.

Part II and III destroyed
in my presence on 15/5/82
under the supervision of
SAC Ad. as per
order No. 13/32
NAGA
Section Officer (Records)