

I/9

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR**

Date of Decision : 25.7.2003

O.A. No.178/2001.

Lokesh Nariyan Sharma S/o Shri Kishan Lal Sharma Aged about 55 years, resident of village Shhpura District Bhilwara. Official Address : Junior Telecom Officer (JTO) Shahpura Telecom Exchange, District Bhilwara.

... Applicant.

V e r s u s

1. Union of India through Secretary, Ministry of Tele Communication Department of Telecom, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecommunication, Rajasthan Telecom Circle, Jaipur.
3. General Manager of Telecom (South) Udaipur.
4. Telecom District Engineer, Bhilwara.

...RESPONDENTS.

Mr. Kamal Dave, counsel for the applicant.
Mr. Vinit Mathur, counsel for the respondents.

CORAM

Hon'ble Mr.Justice G.L.Gupta, Vice-Chairman,
Hon'ble Mr. R.K.Upadhyaya, Administrative Member.

: O R D E R :

(Per Mr.Justice G.L.Gupta)

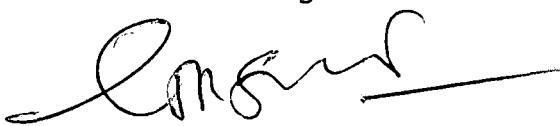
The applicant seeks directions to the respondents to allow him lateral advancement from the date the applicant was entitled to it.



2. The applicant joined as JTO, Chittorgarh as a direct recruit in June, 1979. He did not get promotion. In the year 1990, the Lateral Advancement Scheme of JTO was introduced. The Scheme provided that a JTO who completed 12 years of service since the date of recruitment as on 1.1.1990 could be given the higher scale of pay of Rs.2000-3500. The applicant, however, was not given the benefit of the Scheme because of the pendency of departmental proceedings against him.

2.1 The say of the applicant is that he had completed 12 years of service in July, 1991 and made representations for the grant of the benefit of that Scheme, but it was denied to him. It is stated that the applicant was served a charge sheet, but the same was dropped and a fresh charge sheet was served upon him on 16.10.1990 and the inquiry was completed on 28.1.1999, whereunder a penalty of reduction to the lower stage of scale of pay for a period of one year was imposed. In the appeal some relief was given to the applicant. It is stated that the inquiry remained pending for a number of years and persons junior to the applicant were given the benefit of the Scheme and therefore, he is entitled to benefit of the scale from the date, his juniors were given the benefit.

3. In the counter, it is admitted that the applicant had completed 12 years of service in the year 1991 and became eligible to be considered for the benefit of the Scheme. It is stated that the same was not given to him due to the pendency of the disciplinary proceedings against him. It is averred that the charge sheet had been served upon the applicant, but the



same was dropped because of some technical reasons, and a fresh charge sheet was issued on 6.7.1999 which was finalised on 26th August, 2000. It is stated that the applicant has been granted the benefit of Lateral Advancement Scheme on the basis of the recommendations of the DPC with effect from 23.8.2000. It is the case for the respondents that the applicant's case was considered by the various DPCs held between 1991 and 2000, but, he was found unfit. As regards the delay in the conduct of the enquiry it is stated that the applicant did not co-operate in the enquiry.

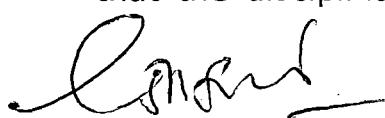
4. In the Rejoinder, the applicant has stated that he had fully co-operated in the inquiry and he has suffered a lot because of the pendency of the charge sheet for a number of years.

5. In the additional reply, the respondents have stated that the case of the applicant was considered in all the four DPCs which met in the years 1992, 1993, 1997 and 2000, but the applicant could not be cleared because of the pendency of the disciplinary proceedings and now he has been allowed the benefit of the Lateral Advancement Scheme w.e.f. 23.8.2000. The details of the inquiry have been given, wherein it is seen that the Defence Assistant was not present on a number of dates and the inquiry had to be postponed.

6. The applicant has filed additional affidavit controverting the facts stated in the additional reply.

7. We have heard the learned counsel for the parties and perused various documents placed on record.

8. The contention of the learned counsel for the applicant is that the disciplinary proceedings remained pending against the



applicant for a number of years for which the applicant was not responsible and therefore, he should be allowed the benefit of the Scheme from 1991. He pointed out that the charges were dropped and again a fresh charge sheet was issued.

9. On the other hand, the learned counsel for the respondents contends that if the applicant was aggrieved by the order of fresh charge sheet, he ought to have challenged the same at that time. Now, when the enquiry has culminated in the imposition of penalty and the appeal of the applicant has also been decided by the Appellate Authority, the applicant cannot have any grievance with regard to the delay in the inquiry, Mr. Mathur contends. His contention is that if the applicant was aggrieved by the delay caused in the disciplinary proceedings, he should have approached the Court earlier. He canvasses that the applicants' case was considered in all the DPCs but he was found unfit and therefore, he cannot be given the benefit of the Scheme from the earlier date.

10. We find force in the arguments of the learned counsel for the respondents. If the applicant was aggrieved by the issuance of fresh charge sheet, he should have approached the Court at that time. In any case, the last charge sheet was given in July, 1999 and the same was finalised within 13 months i.e. in August, 2000. Therefore, there is no delay in the conduct of the inquiry. The earlier charge sheet was dropped. If the applicant thought that no fresh charge sheet could be given in July, 1999, he ought to have challenged the same at that time. Now he cannot be heard to say that because of the delay in the conduct of the inquiry, he has suffered a lot.



11. The applicant could have only right of consideration for the grant of benefit of the Scheme. It was provided in the Scheme itself that the benefit would be given subject to fitness and vigilance clearance. Since the applicant was facing disciplinary proceedings, he could not be found fit by the DPCs held earlier. The respondents have now granted the benefit of the Scheme to the applicant after the finalisation of the disciplinary proceedings. In our opinion, the applicant has no case to succeed.

12. Consequently, this O.A. is dismissed being devoid of merits is dismissed. No order as to costs.



R.K.Upadhyaya
(R.K.UPADHYAYA)
ADMINISTRATIVE MEMBER

G.L.Gupta
(G.L.GUPTA)
VICE-CHAIRMAN

Svs.

Rec'd from
Supt. of Police

1/2/57
1/2/57

Part II and III destroyed
in my presence on 21.3.57
under the supervision of
Section Officer (I) as per
order dated 13.12.56

Section Officer (Received)