

17

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order :03.8.2001

O.A. No. 09/2001

K.L. Khandia son of Shri Ghasi Ram Khandia by caste Khandia aged about 59 years resident of House No. 192, Main Sector, Shastri Nagar, Bhilwara, presently working as Sr. T.D.A. (T.G.) in the office of the G.M.T.D., Bhilwara.

... Applicant.

v e r s u s

1. Union of India through the Secretary to the Government of India, Department of Telecom, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecom, Rajasthan Circle, Jaipur - 8.
3. The General Manager, Telecom, District Ajmer.
4. The General Manager, Telecom District, Bhilwara.

... Respondents.

Mr. P.N. Jatti, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.

CORAM:

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

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

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

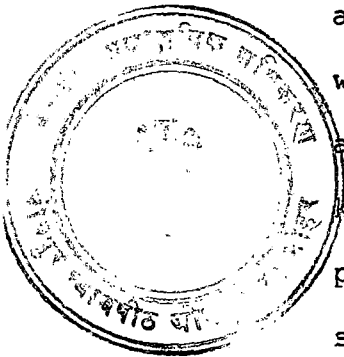
In this application filed by Shri Khandia under Section 19 of the Administrative Tribunals Act, 1985, the applicant prays for setting aside the impugned order at Annexure A/1 dated 23.02.2000. By this impugned order, the applicant was sought to be reverted from Grade I to Grade III on the ground that his earlier adhoc promotion to Grade I

18

was erroneous, and he was not eligible for promotion under 10% Biennial Cadre Review Scheme(BCR Scheme, for short).

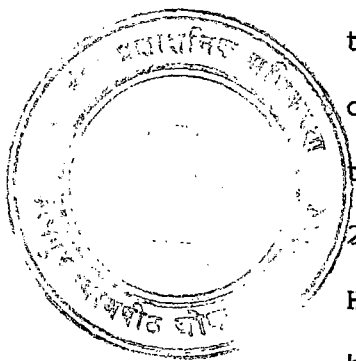
2. The applicant contended that he was promoted on the basis of Annexure A-3 dated 22.12.1993 from Grade III to Grade IV on the recommendations of Departmental Promotion Committee(DPC, for short), and the applicant was not promoted under reservation quota, his reversion vide Annexure A-1 is illegal. He also contended that the impugned order at Annexure A-1 was passed contrary to the natural justice, without affording an opportunity of hearing to the applicant, and on this ground also, Annexure A-1 is liable to be set aside.

3. By filing reply, respondents have denied the case of the applicant. Learned Counsel appearing for the respondents reiterated what has been stated in the reply statement, contending that the applicant was promoted earlier on the roster point under BCR Scheme, keeping in view the reservation principle. But as per the BCR Scheme, promotion shall be granted to 10% posts strictly on the basis of the seniority in the basic cadre, who were regular employees as on 01.01.1990 and who had completed 26 years of service in the basic grade. Therefore, the persons who were eligible for such promotion have been promoted as per the orders dated 08.09.1999 and 30.12.1999 of the Department of Telecom, New Delhi, on the basis of the review DPC. The persons who were senior to him were promoted under the said Scheme, keeping in view of the seniority at the basic grade. As a result, the persons who were ineligible, were to be reverted and accordingly, 4 persons were reverted vide impugned order at Annexure A-1 with pay protection. Therefore, the impugned order at Annexure A-1 does not call for any interference. The respondents also relied upon the letter of the Department of Telecom Services, Govt. of India, dated 30.12.1999 vide Annexure R-1, stating that such ineligible persons promoted under



[Handwritten signature]

that Scheme are liable to be reverted with pay protection and this has rightly been done in this case. Respondents also relied upon Annexure R-2 dated 13.12.1995, by which it is provided that those officials who had completed 26 years of service in basic grade as on 01.01.1990 are required to be promoted under 10% BCR Scheme from Grade-III to Grade-IV, strictly keeping their seniority in the basic grade, and in compliance of these orders only, the impugned order has been passed in respect of the applicant and, therefore, there is no illegality in the order Annexure A-1. The respondents also brought to our notice another order dated 08.09.1999 issued by the Department of Telecom, vide Annexure R-3 in which it is provided that Roster Reservation would not apply to the promotion under 10% BCR Scheme as per the judgment of Central Administrative Tribunal, Ahmedabad Bench in OA No. 623/1996, decided on 11.04.1997. Further, it was directed by the said Tribunal that the persons erroneously promoted either against supernumerary post created in pursuance of order no. 22.06/94/TE.II dated 13.02.1997 or through application of Reservation Roster as per the order no. 22.06/94/TE.II dated 01.03.1996 may be reverted with immediate effect. He submitted that in view of Annexure R-3, the department has no option but to revert the applicant.



4. Heard and perused the records. The fact that the applicant was promoted vide Annexure A-3 dated 23.12.1993, is not disputed. From reading of the said order it is clear that such promotion from Grade-III to Grade-IV was made under the BCR Scheme. The applicant was promoted as against the SC point. But as per the law declared by Central Administrative Tribunal, Ahmedabad Bench in OA No. 623/1996 decided on 11.04.1997, the Roster Reservation does not apply to the BCR Scheme. If that is so, the applicant's promotion under the BCR Scheme following Reservation Roster, was illegal and accordingly, the applicant was reverted vide impugned order at Annexure A-1 dated

[Handwritten signature]

23.02.2000. Under Annexure A-1, the promotion was granted to the eligible persons strictly in accordance with the Rules, keeping their seniority in the basic grade, who had completed 26 years of service, and the applicant was rightly sought to be reverted. Even for promotion under BCR Scheme, the list of eligible persons required to be processed through a DPC. Therefore, only because the applicant was recommended for promotion by the DPC vide Annexure A-3 dated 23.12.1993, it cannot be said that the applicant was promoted on his own merits without applying the reservation principle. As per the said order, it is further clear that the applicant was promoted on the roster point as belonging to SC, therefore, his promotion under BCR Scheme was on the basis of the roster reservation principle only, which according to the law laid down by Central Administrative Tribunal, Ahmedabad Bench in OA No. 1455/1991 decided on 17.07.1993, is illegal. It is also stated that the judgment of the Principal Bench taking similar view has been upheld by Hon'ble the Supreme Court.



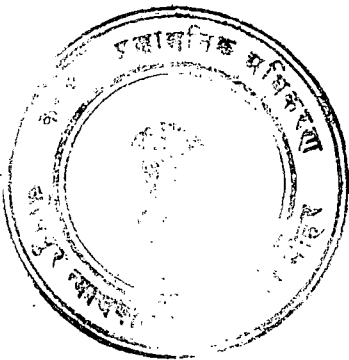
5. Now, the second consideration would be whether the applicant's reversion requires to be set aside or not. In view of the judgment of Hon'ble the Supreme Court in Ajit Singh-II [1999 SCC(L&S) 1239], the Apex Court has ruled that the reserved candidates promoted in excess of reservation principles prior to 01.04.1997 need not be reverted. But the respondents have brought to our notice the order dated 08.09.1999 (Annexure R-3), in which the principle of promotion/upgradation to BCR Scheme has been clarified in the light of the judgment of Central Administrative Tribunal, Ahmedabad Bench Supra. The relevant portion of the said letter is reproduced as under :-

"2. In view of the above orders regarding placement to Gr. IV, the following steps may be taken :-

[Handwritten signature]

(i) In pursuance of Order No. 27/4/87.TE.II dated 16.6.1997 the officials of restructured cadre wrongly promoted to Gr. IV by comparison with officials of old cadre placed in Gr. IV either against Supernumerary posts created in pursuance of Order No. 22.06.94.T.E.II dated 13.02.97 or through application of Reservation Roster as per order No. 22-6/94-TE.II dated 1.3.96, may be reverted with immediate effect.

(ii) To comply with the Ahmedabad CAT order circulated vide this office letter No. 22-06/94-T.E.II dated 22.08.97 review DPC may be conducted. All ineligible officials promoted to Gr. IV by application of Reservation Roster as mentioned in this office order of even no. dated 01.03.1996 may be reverted with immediate effect. All eligible officials may be placed in Gr. IV and their pay may be fixed notionally. However, no arrears will be payable to such officials approved by review DPC."



6. In the light of the above circular dated 08.09.1999, the applicant being an ineligible officer promoted to Grade IV is liable to be reverted. But the applicant was promoted under the BCR Scheme vide Annexure A-3 on 23.12.1993, and the same was prior to 01.04.1997, and the Hon'ble Supreme Court has ruled that the Reserved candidates promoted in excess of reservation principle prior to 01.04.1997 need not be reverted. In the light of the law declared by Hon'ble the Supreme Court, the applicant need not be reverted and in this view of the matter, the impugned order is liable to be set aside. The same principle we have already dealt with in our judgment dated 11.07.2001

[Handwritten signature]

in OA No. 317/1999 (Bhagwan Das Vs. U.O.I. & Ors), and those principles would also apply to the facts of the case on hand. Accordingly, we pass the order as under :-

"Application is partly allowed. The impugned order at Annexure A-1 dated 23.02.2000 so far it relates to reversion is set aside, though the applicant's promotion from Grade III to Grade IV under 10% BCR Scheme by applying roster principle was erroneous, yet he may be retained in Grade IV purely on ad-hoc basis and as a junior to his seniors in the basic grade, who have been promoted from Grade III to Grade IV by applying the 'catch up' principle as enunciated by Hon'ble the Supreme Court. It is further made clear that on the basis of such ad-hoc promotion, the applicant is not entitled to claim any seniority over his seniors in the basic grade. No costs."



(Signature)
(GOPAL SINGH)
Admn. Member

(Signature)
(MR. JUSTICE B.S. RAIKOTE)
Vice Chairman

c.v./P.C