

File 18

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH.

O.A.No.20/2002 & M.A.No.10/2002

October 26, 2004

**CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR.G.R.PATWARDHAN, MEMBER (ADM.)**

K.L.Parihar son of Shri Laxman Parihar, aged about 45 years, resident of C/o Shri Navrat Mal Chauhan, Near Bus Stand, Sadari, Distt. Pali-Marwar, at present employed on the post of JTO in the office of Telephone Exchange, Sadari, Distt. Pali, Marwar.

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Applicant

By : Mr.B.Khan, Advocate.

Versus



1. Union of India through Secretary to Govt. of India, Min. of Communication, Deptt. of Telecom, Sanchar Bhawan, New Delhi.
2. Member Telecom Commission, Govt. of India, Min. of Communication, Deptt. of Telecom, Sanchar Bhawan, New Delhi.
3. Chief General Manager Telecom, Rajasthan Circle, Jaipur.
4. Shri Ravi Shankar TES Group B through General Manager, Maintenance, North Telecom Region, Jalandhar (Punjab).
(Name deleted by order dated 8.10.2003).
5. Shri Chadran N, TES Group B, Through Chief General Manager Telecom and Development, Jabalpur (MP).

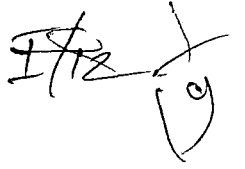
By : None.

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Respondents

ORDER (oral)

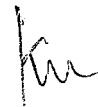
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PER KULDIP SINGH, VC

The applicant has filed this O.A. assailing an order dated 26.4.2000 (Annexure A-1), passed by the respondent No.1 by which certain Junior Telecom Officers (JTOs) have been promoted to Telecom Engineering Service (TES) Group B, ignoring his name.

2. The impugned order was passed on 26.4.2000 and the present Original Application has been filed on 18.1.2002. The applicant himself states the O.A. to be barred by time. However, he has filed a Miscellaneous Application No.10/2002, for condonation of delay. In M. A. he has submitted that though the O.A. should have been filed by 10.11.2001 in terms of provisions of Section 21 of the Administrative Tribunals Act, 1985 but the same could not be filed by him for reasons beyond his control and it could be filed only on 18.1.2002 and thus there is a minor delay of 2 months in filing this O.A. The reasons for the delay as explained by the applicant are that he had been waiting for disposal of his representation and he was given an impression that his promotion had been withheld due to pendency of some vigilance case and because of some criminal prosecution. However, he learnt in the month of June, 2001 that the vigilance case was over on 21.11.2000 and the Court had accepted final report. But subsequent to that he was issued a charge sheet dated 21.6.2001 on the same set of facts on which the criminal case was instituted and the Court had accepted final



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report. The applicant before the Tribunal challenged the said charge sheet and the same was also quashed by order-dated 14.12.2001 in O.A.No.179/2001. Thus, all the hurdles had been cleared but since certain juniors to the applicant had been promoted so he kept on collecting their particulars and he had also made a representation seeking promotion and the process of seeking the particulars of those juniors who had been promoted had taken certain time which resulted into delay of about 2 months in filing the present Original Application. Respondents have filed a reply to the M.A. It is stated that none of the juniors to the applicant had been given promotion by the impugned order dated 26.4.2000. It is stated that since the applicant was not falling within the zone of consideration for promotion and because of pendency of criminal case, could not be granted promotion. We have considered the matter. From the facts as explained in the M.A. seeking condonation of delay, we find that the delay in filing the present O.A. is only minor and that also has been sufficiently explained and thus, we condone the delay and allow the M.A. and proceed to consider the O.A. on merits.



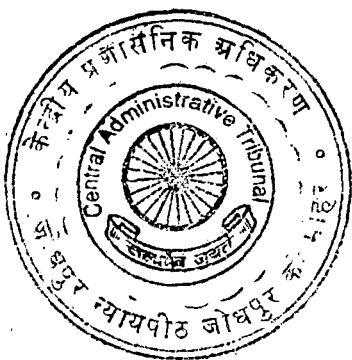
3. The main ground taken by the applicant in O.A. to challenge the impugned order of promotion (Annexure A-1) is that he is senior and was falling within the consideration zone for promotion to the post of TES Group B, as per the eligibility list for promotion which was issued by the Department vide letter

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dated 3.1.2000. The applicant claims that his name was placed at Sr.No.5716 whereas his next juniors, respondents No.4 and 5 were placed at Sr. No. 5742 and 5738 respectively. He also annexed the extract of said seniority list at Annexure A-3. The applicant also pleads that since the vigilance case had been dropped by the vigilance department itself and since the subsequent charge sheet issued on the same set of facts had also been quashed by this Tribunal by the judgement dated 14.12.2001, the applicant had become entitled for release of his promotion order.

4. The respondents have contested the O.A. and they have filed a reply taking the plea that the eligibility list issued vide letter dated 3.1.2000 was in fact a provisional all India eligibility list of JTO's for holding of DPC for promotion to TES Group B. Respondents No.4 and 5 were placed in the final eligibility list on yearly pro-rata basis and in the final eligibility list the applicant was allowed final all India eligibility No.5891 and respondents No.4 was placed at Sr.No.5620 and Respondent No.5 was placed at Sr.No.5643. Thus, it is clear that as per letter dated 5.4.1994, Respondents No.4 and 5 stood above the applicant. The DPC was held in March/April, 2004 in which the JTO's and the merged ASTT's upto the eligibility No.5803 were promoted vide order dated 26.4.2000. None of the juniors to the applicant have been promoted in the order-dated 26.4.2000. Therefore, in these circumstances, the contention of applicant in this regard is liable



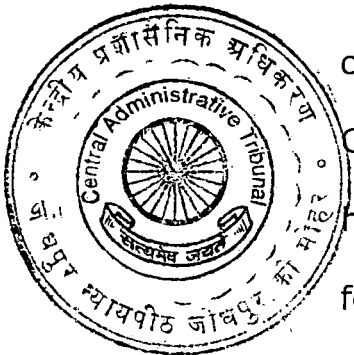
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to be rejected. This position was contrived by the applicant by filing a rejoinder wherein he has stated that the eligibility list dated 3.1.2000 (Annexure A-3) was circulated by the time the said cadre had already merged. The said list was circulated on all India eligibility list. If any subsequent lists were in force, the respondents, particularly subsequent to the filing of the rejoinder, could have certainly produced it. No such seniority list is available nor produced by the respondents after the eligibility-list dated 26.4.2000.

5. Name of the respondent No.4 was deleted from the array of parties on request of applicant, as he was not able to trace out his correct address, by order dated 8.10.2003.

6. Since none appeared for the respondents despite pass-over, we proceeded to dispose of the case under rule 16 of the Central Administrative Tribunal (Procedure) Rules, 1987. We have perused the record of the case and heard learned counsel for the applicant.



7. During the course of arguments learned counsel for the applicant has placed on record all India eligibility list of Junior Telecom officers, which also contains letter dated 3.1.2000 vide which the same was circulated, for holding DPC for promotion TES Group 'B'. Though the letter mentions that this provisional all India list is prepared on the basis of information furnished by various Telecom Circles but the same is said to be have been issued as per the yearly recruitment rules of JTOs. On perusal of

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the list we find that the name of the applicant is mentioned at Sr.No.5716 and the name of his juniors are at Sr.No.5738 and 5742. Though the respondents in their reply had alleged that a subsequent list was circulated wherein the name of the applicant was down graded to his alleged juniors who were upgraded to Sr.No.5620 and 5643, as per letter dated 5.4.1994. However, despite filing of rejoinder by the applicant and taking a specific objection that no such revised list was issued, the respondents have failed to produce any such alleged list having been issued by them on record nor it is mentioned as to whether anybody else has raised an objection to the list circulated vide letter dated 3.1.2000 which was specifically issued for holding DPC for promotion to TES Group B. Thus from this list it is clear that the applicant is senior to the Respondents No.4 and 5 who have been given promotion vide impugned order. Hence we are of the considered view that the applicant is also entitled to be considered for promotion from the date his juniors have been promoted. We may further mention that the respondents in their reply have also clearly mentioned that the promotion of the applicant was not withheld because of charge sheet or criminal prosecution but the applicant was not considered since he could not fall within the consideration zone as per his position in the seniority/eligibility list.



8. Since the respondents have failed to produce any subsequent eligibility list subsequent to one relied upon by the

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applicant in which he is certainly senior to respondents No.4 and 5, we are of the view that O.A.merits acceptance. Accordingly, we allow the O.A. and direct the respondents to conduct a review DPC and consider the case of the applicant, if any of his juniors have been promoted to the TES Group 'B' Service and if found fit and eligible, they are further directed to give him promotion from the same date his juniors have been so promoted with all the consequential benefits. These directions should be complied with within a period of three months from the date of receipt of certified copy of this order. No costs.


(G.R.PATWARDHAN)
Member (A)


(KULDIP SINGH)
Vice Chairman

October 26, 2004.

HC*

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