

क.प्र.अ. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत नि: शुल्क 100

I/9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 01/2002 with MA 01/2002
T.A. No.

DATE OF DECISION 15-11-02

Petitioner

S.P.Punglia

Advocate for the Petitioner(s)

Mr.B.Khan

Versus

Union of India & Ors.

Respondent

Advocate for the Respondent(s)

Mr.B.L.Bishnoi



CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr. Gopal Singh, Adm.Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Gopal Singh)
Member (A)

(G.L.Gupta)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

* * *

Date of Decision: 15.11.02

OA 01/2002 with MA 01/2002

S.P.Punglia, JTO O/o SDE Transmission, Telephone Exchange, Chittorgarh.

... Applicant

Versus

1. Union of India through Secretary, Min.of Communication, Deptt.of Telecom, Sanchar Bhawan, New Delhi.
2. Member Telecom Commission, Min.of Communication, Deptt.of Telecom, Sanchar Bhawan, New Delhi.
3. Chief General Manager Telecom, Rajasthan Circle, Jaipur.
4. Shri S.K.Yogi, SDE O/o Telecom District Manager, Chittorgarh.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.GOPAL SINGH, ADM.MEMBER

For the Applicant

... Mr.B.Khan

For the Respondents

... Mr.B.L.Bishnoi

O R D E RPER MR.JUSTICE G.L.GUPTA

The applicant, at the time of filing this OA, was Junior Telecom Officer (JTO). A list of eligible candidates for promotion to the post of TES Group-B was promulgated vide letter dated 3.1.2000, wherein the name of the applicant appeared at S.No.3577. The case for the applicant is that the respondents have issued orders of promotion of respondent No.4, whose name figured at S.No.3588, vide order dated 26.4.2000 (Ann.A/1), ignoring the claim of the applicant. It is averred that persons junior to the applicant were allowed promotion but the applicant was denied his due promotion. It is further stated that the applicant made representation dated 29.4.2000 (Ann.A/4) against his supersession but the same has not been decided as yet. The further case for the applicant is that a charge-sheet was issued to him vide memo dated 10.5.2001, which is a subsequent event and it could not have the affect on his promotion in the year 2000. It is prayed that the applicant be given promotion from the date person junior to him was given promotion to the post of TES Group-B.

MA 01/2002 has been filed for condonation of delay.

2. In the counter, the respondents have averred that the eligibility list (Ann.A/2) was the provisional only and the final eligibility list



for promotion to the post of TES Group-B was prepared in which the name of the applicant was placed at S.No.3707. It is stated that because of the disciplinary proceedings initiated against the applicant, his name was kept in sealed cover in the DPC meeting held in November/December, 2001.

3. In the rejoinder, the applicant has stated that no adverse material was communicated to him on the basis of which he could have been debarred for promotion.

4. We have heard the learned counsel for the parties and perused the documents placed on record. The learned counsel for the respondents has made available the ACRs of the applicant for the years 1991-92 to 1997-98.

5. The supersession took place when the order dated 24.4.2000 was issued. The applicant filed representation (Ann.A/4) on 29.4.2000. The same was not disposed of by the respondents. There is delay of about two months in filing the OA. For the reasons stated in the MA, the delay is condoned.

6. It is now admitted position that the applicant was senior to respondent No.4 when he (respondent No.4) was given promotion vide order Ann.A/1 and was given posting on the higher post vide communication dated 1.5.2000. It is not the case for the respondents that at the time the DPC considered the name of the applicant there was any adverse material against him. Even it is not stated that some departmental inquiry was contemplated against the applicant at that time.

7. A vague averment has been made in the counter that the applicant was not found fit for promotion on the basis of his performance as recorded in his ACRs.

8. We have gone through the ACRs of the applicant. The applicant was rated as 'very good' officer in one year and 'good' officer in two years and 'average' officer in three years. In the year 1997-98 he was rated as 'good' officer by the reporting officer but the reviewing authority rated him as 'average' officer.

9. The promotion to the post of TES Group-B is required to be made on the basis of seniority-cum-fitness. It is a non-selection post. Where the promotion is required to be made only on the basis of seniority-cum-fitness, an employee cannot be superseded on the basis of 'average' ACR.



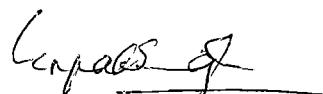
'Average' ACR cannot be treated to be adverse while considering promotion on the basis of seniority-cum-fitness.

10. The learned counsel for the respondents was not in a position to justify the supersession of the applicant on the basis of the ACRs for the years 1991-92 to 1997-98.

11. When the case of the applicant for promotion to the post of TES Group-B was considered in the year 2000, it appears, the ACR for the year 1998-99 had not attained finality. As a matter of fact, in the cases of all the candidates, the ACR for the year 1998-99 was not considered. It has to be accepted that the subsequent act of the respondents in issuing the charge-sheet to the applicant vide memo dated 10.5.2001 could not come in the way of promotion of the applicant.

12. Having gone through the ACRs of the applicant, we are satisfied that the respondents have committed grave error in superseding him for promotion to the post of TES Group-B. The OA deserves to be allowed.

13. Consequently, the OA is allowed. The respondents are directed to consider the case of the applicant for promotion to the post of TES Group-B from the date any person junior to him was given promotion. Appropriate orders in this regard be passed within a period of two months from the date of communication of this order. The applicant shall be entitled to get Rs.1000/- (Rs.one thousand only) as costs from the respondents. MA stands disposed of.


(GOPAL SINGH)
MEMBER (A)


(G.L.GUPTA)
VICE CHAIRMAN