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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**Original Application No. 308/2010 Along with
Misc. Application No. 170/2010**

(Date of Hearing 28.03.2012)

Date of decision: 09.04.2012.

CORAM:

**HON'BLE DR. K.B.S. RAJAN, MEMBER (J) &
HON'BLE MR. B.K. SINHA, MEMBER (A)**

Kr. Man Singh Chouhan S/o Shri Ratan Singh aged about 68 years, Resident of Plot No. 121, K-5-C Scheme, Near Lal Mandir, Khatipura, Jaipur, retired on superannuation from the post of Chief Section Supervisor, GMTD, Sriganganagar.

..... Applicant

By Mr. J.K. Mishra, Advocate, for the applicant.

Versus

1. Union of India through The Secretary to Government of India, Ministry of Communication & Info-technology, Department of Telecom, Sanchar Bhawan, New Delhi.
2. The Chief General Manager, Telecom, Rajasthan Circle, Jaipur(Raj).
3. The General Manager, Telecom District, Sriganganagar (Raj).
4. The Assistant General Engineer (Admn.), O/o the P.G.M.T.D., Jaipur (Raj).

..... Respondents

By Mr. D.S. Sodha for Mr. Kuldeep Mathur, Advocate, for the Respondent No.1.
None for other Respondents.

ORDER

Per Dr. K.B. S. RAJAN JUDICIAL MEMBER

The applicant who joined the post of T.S. Time Clerk in 1962 was promoted as LSG in 1975 and entered in substantive grade of LSG w.e.f. 1.3.1986. In the LSG list, his name figures at Sl.No. 180. He had been superannuated on 31.03.2001 after his promotion as Chief Section Supervisor in the grade of Rs. 6500-10500 w.e.f. 1.12.1999.

2. On coming to note of the fact that some individuals rank junior to the applicant, having been granted the promotion in BCR Grade IV (10%) w.e.f. 17.01.1995 vide Annex.A/1 order dated 7.7.2006. The

applicant gathered information to the effect that these individuals have been promoted after some juniors had filed OA No. 64/2000 before the Jaipur Bench which was allowed on 25.04.2003 vide Annex.A/4. The decision of this Tribunal vide Annex.A/4 was taken-up before the Hon'ble High Court in Writ Petition No. 1739 of 2004 which has however dismissed as an identical matter was earlier dismissed vide Writ Petition No.3072 of 2003. The above dismissal of the Writ Petition up-holding the order of the Tribunal resulted in issue of order dated 7.7.2006 in which two juniors to the applicant had been granted promotion w.e.f. 17.1.1995. The applicant claims similar benefits as his juniors had been accorded. He has therefore sought for the following reliefs :-

- "i) That the impugned order Annexure A/2 dated 7.12.07 may be declared illegal and the same may be quashed.**
- (ii) That the respondents may be directed to consider the case of applicant for promotion to the post of grade-IV (10% BCR) Scale Rs. 6500-10500 w.e.f. 17.01.1995 and if found fit, grant him the due promotion at par with his next junior and allow all consequential benefits including arrears of difference of pay and allowances, revision of pensionary benefits etc. The arrears on account of the grant of said promotion may be paid to the applicant along with interest at market rate. The impugned order dated 07.06.2006 Annexure A/1 may be ordered to be modified accordingly.**
- (iii) Any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.**
- (iv) That the costs of this Original Application may be awarded"**

3. The respondents have contested the O.A. According to them the applicant has no case because he do not belong to the same unit as others who have been given the benefit of the CAT order. The applicant was working in Sriganganagar SSA whereas, the persons whose names figured in Annex.A/1 order dated 7.7.2006 were

belong to Jaipur SSA. The fact that prior to 8.6.1993 the seniority of time scale clerks was maintained at Circle Level, but after 8.6.1993 the same has been maintained at SSA level has also been highlighted in the reply. Although Annex.A/1 promotion in the BCR Grade IV (10%) has been given on circle level vide Department of Telecommunication letter dated 16.10.1990, promotion to BCR Grade IV has been decentralized vide DOT letter dated 18.01.1994. After the issue of these orders BCR Grade IV (10%) has been given on SSA level vide Annexure R-4. As the applicant belongs to a different SSA Unit he cannot compare his case with the so called juniors of another unit.

4. The applicant has filed his rejoinder reiterating his points as contained in the O.A.

5. The applicant has also filed a Misc. Application No. 170/2010 seeking condonation of delay and the main reason has been that in view of the fact that he had already retired from service, he could not have easy access to any details and immediately on collecting information he has moved this application. The applicant has also referred to the fact that SLP in respect of the aforesaid judgment of the Hon'ble High Court of Rajasthan was also pending before the Hon'ble Apex Court. The respondents have, in reply to the aforesaid Misc. Application for condonation of delay, contended that the applicant has failed to give proper, much less satisfactory explanation for filing the OA after delay of more than three years.

6. Counsel for the applicant argued that the respondents having promoted juniors to the applicant under BCR Grade IV 10% quota, there is no justification for denying such promotion to the applicant. As regards different units at SSA level, as contended by the

respondents, counsel for the applicant submitted that TBOP or BCR benefits are granted on the basis of seniority at basic level and as such the applicant being senior to two other individuals as contained in Annex.A/1 order dated 7.7.2006, the applicant is also entitled to such benefits. In addition, the counsel for the applicant submitted that since the applicant already stood retired all that he would get is certain increase in his pensionary benefits and other promotional benefits. Counsel for the respondents resisted the O.A. on the ground of limitation and also contended that the order dated 7.7.2006 cannot be extended to the case of the applicant as he falls in a different zone. He has further submitted that in any event the benefit cannot go three years anterior to the date of filing of the O.A.

7. Arguments were heard and documents perused. Under normal circumstances when a junior is promoted ignoring the claim of his senior the senior has a right to claim parity with his junior. One of the cardinal principles of service jurisprudence as held by the Hon'ble Apex Court in the case of **Bal Kishan Vs. Delhi Administration** reported in 1989 Suppl. (2) SCC 351 is as under :-

"In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralizing effect in service apart from being contrary to the Article 16 (1) of the Constitution."

8. However, it is pertinent to mention here that the seniority maintained at SSA level the BCR benefits are available on the basis

of seniority at SSA level vide Annex. R/4 order dated 19.1.1994. This order at Annex.R/4 has not been challenged. Comparison should, thus, be made only within SSA cadre. Though the applicant has denied in ground (D) that the circular issued by the Government of India reflects that promotion were to be given on circle level and not SSA level and he has not been able to substantiate his contention with documentary evidence. The applicant retired from Sriganaganagar SSA. He could very well compare his case with reference to any individual of that SSA. The applicant being a retired person, perhaps may not be able to ascertain the information required by him. As it is easy for the respondents to ascertain from their records as to whether any of the junior to the applicant were granted promotion under 10% BCR grade IV with that SSA and if so they are bound to consider the case of the applicant for grant of the said BCR promotion on notional basis and accord him the benefit of pension only. On the other hand, no junior to the applicant at SSA Sriganaganagar has been appointed under the BCR Grade IV (10%) on promotion, the applicant be informed accordingly. With the above direction the OA is disposed of. This order be complied with within a period of three months from the date of communication of this order.


(B.K. Sinha)
MEMBER (A)


(Dr. K.B.S. Rajan)
MEMBER (J)

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