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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 375 OF 1997

Present : Hon'ble Mr. S. Biswas, Administrative Member
Hon'ble Mr. M.L.Chauhan, Judicial Member

Alok Bhusan Dasgupta,
Jr. Telecom Officer,
Burdwan Telephone Exchange,
R/o Deshbandhunagar, Burdwan

VS

1. Union of India through the
Secretary, M/o Communication,
Sanchar Bhavan, Parliament Street,
New Delhi-1
2. Chief General Manager, Telecom,
W.B.Telecom Circle,
1, Council House Street,
Calcutta-1
3. Divisional Engineer Telegraphs,
Burdwan Engineering Division,
Burdwan
4. Asst. General Manager (Staff),
Calcutta Telephones,
8, Bentick Street,
Calcutta-1

.... Respondents

For the applicant : Mr. B.R.Das, Counsel
Mr. B.P.Manna, Counsel

For the respondents : Mrs. U.Sanyal, Counsel

Heard on : 2.4.2002 : Order on : 9-4.2002

O R D E R

M.L.Chauhan, J.M.:

The applicant is aggrieved by the gradation list of Junior Telecom Officers circulated by the respondent No. 3 under office order dated 23.2.95 (annexure-A) whereby the year of allotment of the applicant was shown as 1989. He has prayed for assignment of his seniority in the grade of Jr. Telecom Officer showing his year of allotment as 1982.

2. The relevant facts may now be noticed.

The applicant was initially appointed as Telephone Inspector in the P & T Department on or about 22.6.70 and was posted in North East Telecom Circle. Thereafter, he sought inter-circle transfer to

Calcutta Telecom Circle which was accepted vide office order dt. 3.11.77 and he joined in the Cable Planning Section of Calcutta Telephones on 1.12.1977. However, such transfer was made under rule 38 of the P & T Manual, Vol. IV, copy of which has been annexed at annexure-B. Thereafter, the applicant was once again transferred from Calcutta Telephones to West Bengal Telecom Circle with the approval of the competent authority under rule 38 of the P & T Manual, Vol. IV on mutual basis with one Shri Gopinath Dey, who was working as Telephone Inspector at Katwa under Burdwan Telecom District vide office order dt. 19.4.80 (annexure-C) and pursuant to that order, the applicant joined the West Bengal Telecom Circle at Burdwan Telephone Exchange on 30.4.80. Since the transfer of the applicant was on mutual basis and since it was a case of inter-circle transfer, his seniority was fixed in the gradation list of Telephone Inspectors of West Bengal Telecom Circle as per provisions of rule 38 of P & T Manual, Vol. IV (relevant extract appended at annexure-X-5 to the reply). The applicant claims that his seniority as Telephone Inspector in West Bengal Circle should have been fixed w.e.f. 1.12.77, the date when he joined the Calcutta Telephone circle on transfer from North East Circle under rule 38 of P & T Manual, Vol. IV. It is his further case that although Shri Gopi Nath Dey with whom he sought mutual inter-circle transfer was recruited in the Deptt. in the year 1971, but has been assigned seniority as Telephone Inspector at Sl. No. 25 taking his year of appointment as 1974 whereas the applicant, who joined the Department as far back as in 1970 and came on transfer to Calcutta Telephone in 1977 cannot be considered as junior and his seniority should be assigned at least w.e.f. 1.12.77 when he joined the Calcutta Telephones on inter-circle transfer.

The further case of the applicant is that while he was working under respondent No. 2, he appeared in the departmental competitive examination for promotion to the cadre of Jr. Engineer/Jr. Telecom Officer against 10% quota in the year 1982. The said examination was held on 24-25.8.82 and the result was published on

16.2.83. In the result, the applicant was declared as qualified along with three other officials out of whom two had qualified in the first attempt while one Shri Subodh Kr. Patra had qualified at the second attempt. A copy of the result is also annexed with the petition as annexure-E. It is the grievance of the applicant that the persons junior to him, who had qualified in the competitive examination along with him, had been absorbed as JTO from earlier years, whereas he was absorbed as such in the year 1989. Thus, according to the applicant, the action of the respondent authorities in not allotting the vacancy which was available in 1982 to him for absorption as JTO is arbitrary and mala fide. He has, therefore, sought the relief that his year of allotment on the post of JTO should be declared as 1982 instead of 1989.

3. The respondents authorities have contested the case by filing a reply affidavit. The main case of the respondents is that the applicant cannot be assigned seniority w.e.f. 1.12.77 under rule 38 of the P & T Manual, Vol. IV as the petitioner was mutually transferred from Calcutta Telephones to West Bengal Telecom Circle and as such he has been assigned bottom seniority when he joined the W.B. Circle as on 30.4.80. It has been further stated that the applicant was inadvertently permitted to appear in the departmental competitive examination for promotion to the JTO against 10% quota held on 24-25.8.82, as according to them, the applicant did not put in requisite years of continuous satisfactory service in the cadre of Telephone Inspector in the W.B. Circle taking into account his date of joining as 30.4.80 and thus he was not eligible to appear in the said competitive examination in 1982. According to the respondents, a person should have put in requisite year of service in a circle/unit in which the promotional post exists and the service rendered by the applicant in other circles/units cannot be counted for the purpose of determining eligibility under the rules. The respondents have also relied upon the letters dt. 7.6.82 and 8.4.83 issued by the P & T Deptt. New Delhi whereby it has been clarified that service of an

official transferred under rule 38 of P&T Manual, Vol. IV for the purpose of appearing in the departmental examinations in the new recruiting circle/unit will count only from the date of joining that new circle/unit irrespective of the fact whether the transfer was with or without mutual exchange. It is further stated in the reply affidavit that though the applicant was not eligible to appear in the departmental competitive examination, still he was subsequently absorbed on the basis of the result of that examination after absorbing the other persons who had qualified along with him and were admittedly senior to him in the W.B.Circle. Thus, according to the respondents, no injustice has been done to the applicant.

4. We have heard the ld. counsel for the parties and have perused the documents placed on record.

5. Ld. counsel for the applicant has vehemently contended that as per provisions contained in the Recruitment & Promotion Rules for the post of Jr. Engineer/Jr. Telecom Officer, the applicant was eligible to appear in the competitive examination against 10% quota meant for promotion as JTO in the year 1982, even if he was assigned bottom seniority in the new Circle. The ld. counsel further contended that the recruitment rules do not contemplate that for the purpose of eligibility under 10% quota meant for competitive examination, service rendered by the applicant in the previous circles has to be wiped out and as such the clarification as given by the respondent authorities vide Annexures-X10 & X11 to the reply are against the statutory rules and amount to supplanting the statutory provisions. The ld. counsel for the applicant has also contended that the eligibility and seniority are two distinct and different factors and as such, seniority cannot form the basis for the purpose appearing in the competitive examination against 10% quota meant for promotion of Telephone Inspectors etc. to the post of JTO etc. He has relied on the decisions of the Apex Court in the case Scientific Adviser to Raksha Mantri & Anr -vs- V.M.Joseph, AIR 1998 SC 2318 and the decision of this Bench of the Tribunal in the case of Venkata

Reddy Boola -vs- Director of Education, A & N Admn., 1986 ATJ 340.


6. In order to appreciate the matter in controversy, it will be useful to consider the relevant provisions contained in the Junior Engineers (Recruitment) Rules, 1980, which govern the field. These Rules were notified vide notification dt. 26.12.80 and were to come into force on the date of their publication in the official gazette. A copy of the said Rules has been annexed at annexure-R8 of the reply affidavit. Rule 3 ibid provides for method of recruitment, age limit, qualifications etc and it stipulates that the method of recruitment, age limit, qualification and other matters relating to the said post shall be as specified in columns 5 to 13 of the Schedule to the Rules. Here we are concerned with ~~column~~ column 10 of the Schedule which deals with the method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and the percentage of vacancies to be filled by various methods. Item Nos. (iii) & (iv) of column 10 are reproduced hereunder :-

(iii) 10 per cent by promotion of Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators through a competitive Examination; and

(iv) 10 percent by promotion of Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators on seniority-cum-fitness basis through a separate qualifying test, the inter se seniority of the officials being decided on the basis of length of service in the grade.

Similarly, column 11 of this Schedule clarifies the various expressions used in column 10. Item No. (2) of this column reads as follows :-

"2. Against the quota of 10 percent referred to in item (iii) of column 10, Transmission Assistants, Auto Exchange Assistants, Telephone Inspectors and Wireless Operators, who have put in at least five or three, as the case may be, years of continuous satisfactory service in any of the aforesaid four cadres on the 1st July of the year of recruitment, will be eligible to appear at a competitive examination."

7. From a reading of the aforesaid statutory provisions of the Rules, it is clear that item No. (iv) of column 10 deals with  promotion from the feeder cadres and seniority plays a vital role in

making such promotion. On the other hand item No. (iii) of column 10 deals with promotion to be made through competitive examination under 10% quota and seniority is not a criteria or determining factor for making promotion against this quota. Further, item No. (2) of column 11 provides that only those persons will be eligible to appear at the competitive examination against 10% quota referred to item No. (iii) of column 10, who have put in at least 5 or 3 years, as the case may be, years of continuous satisfactory service in any one of the cadres mentioned therein. Admittedly, the applicant had put in the requisite years of service in the cadre of Telephone Inspector in the year 1982 when the competitive examination was held as he was initially appointed in the Deptt. in the year 1970 as Telephone Inspector. There is nothing in item No. 2 of column 11 that the service rendered by a person in a circle/unit where the vacancy has arisen shall only be counted for the purpose of eligibility against 10% quota referred to in item No. (iii) of column 10. Under such circumstances, we are of the views that the service rendered by the applicant as Telephone Inspector in earlier circles has to be counted for the purpose of determining his eligibility even though he may have been assigned bottom seniority in the new circle/unit where the vacancy is available. Thus, the stand taken by the respondents that the applicant was wrongly allowed to appear in the competitive examination against 10% quota under item No. (iii) of column 10 in the year 1982 is without any substance and has to be rejected because no administrative instructions can supersede the provisions of statutory rules, they can at best supplement or fill up the gap in the Rules.

8. Now the question which arises for consideration is as to how the persons who have qualified in the competitive examination in terms of item No. (iii) of column 10 of the Recruitment Rules should be absorbed and assigned year of recruitment in the gradation list of Jr. Telecom Officers in the event the vacancies available against this quota in a particular recruitment year are less than the persons who have qualified in the examination.

9. The stand taken by the respondent authorities is that the year of recruitment of persons who had qualified against 10% quota of vacancies for a particular recruitment year may change if the number of qualified candidates in that year including those, who had qualified in earlier examinations but not trained, exceeds the earmarked vacancies against 10% quota of the year and the year of recruitment of a qualified candidate means the year against which vacancy the candidate can be absorbed. For this purpose inter se seniority in a particular circle/unit where the vacancy has arisen is made the basis for making promotion. Keeping this principle in view, Shri R.N.Mukherjee was absorbed against the vacancy of 1983 as per his seniority and Shri Promode Ranjan Nath was absorbed against the vacancy of 1984. Similarly, Shri S.K.Patra, who had qualified at the second chance in the year 1983 was accommodated against the vacancy of 1984. From annexure-X18 dt. 17.9.83 to the reply we find that this is the result of 1983 examination against 10% quota in which Shri Patra qualified in paper-II as he failed in this paper in 1982 examination. In para 5 of this letter issued by the Asst. Director General, New Delhi it was directed that those candidates who had qualified in the examination held in May 1983 in Paper-II only shall be deemed to have qualified in the examination held in August 1982. It is on the basis of this order that Shri Patra was deemed to be a qualified candidate of the 1982 examination even though he cleared Paper-II in the subsequent year i.e. in 1983.

10. Now, admittedly the applicant also had qualified in the year 1982 along with the aforesaid three persons. The contention of the respondents is that even though the applicant was not eligible to sit in the qualifying examination for 10% quota held in August 1982, he was inadvertently allowed to appear in that examination and he qualified in the said examination. However, his candidature as successful candidate against the said examination was not denied and accordingly, the applicant was accommodated against 10% quota of vacancies available in the year 1989 without asking him to appear in

fresh examination. It is also stated that the applicant was offered for pre-appointment training in the cadre of JTO commencing on 21.1.91, but he discontinued the training on medical ground and he was subsequently sent for training w.e.f. 4.11.91 and on successful completion of training he was appointed as JTO w.e.f. 20.7.92. Had he not discontinued the training which commenced on 21.1.91, he could have been appointed 9 months earlier than 20.7.92. However, his year of recruitment was assigned as 1989 as per vacancy position against 10% quota on the basis of his success in 1982 examination.

11. From the above, it is quite evident that the appointment to the post of JTO was made strictly on the basis of seniority in West Bengal Circle since the number of vacancy available against 10% quota in a particular year was less than the number of candidates qualified in the examination. Considering the seniority position of the applicant in the feeder grade of Telephone Inspector in W.B. Circle, he was allotted year of recruitment as 1989. The fact that the applicant was wrongly allowed to appear in the competitive examination against 10% quota in the year 1982, did not weigh with the respondent authorities in giving him appointment as JTO according to his turn as is evident from the reply affidavit. Relevant part of the reply is quoted hereunder :-

" 24. It is stated that as per Rules, the applicant was not eligible to sit in the qualifying examination for 10% quota held on 24th and 25th August, 1982. But he was inadvertently allowed to sit in the said examination. However, as the applicant had qualified in the said examination, his candidature as a successful candidate against the said examination was not denied and accordingly the applicant was accommodated against 10% quota of vacancies available in the year of 1989 without asking him to appear afresh for the said examination. So, the question of denying the applicant due consideration in regard to his promotion to JTO cadre on the part of the respondents does not arise at all.

25. Since the applicant was actually not eligible to sit for the said examination, he was enlisted as qualified candidate but his training in the cadre of JE/JTO was held up until such time all the qualified candidates against qualifying quota senior to him were deputed for training. "


12. Thus, from the above, it is quite clear that the candidature of the applicant against the competitive examination in which he had qualified was not denied and the applicant was accommodated against 10% quota of vacancy which became available only in the year 1989, was allotted to him without asking him to appear in a fresh examination. It is also evident from the reply affidavit that the pre-appointment training of the applicant for the post of JTO was held up until such time all the qualified candidates senior to him were deputed for such training.

13. Thus, considering all, we are of the view that no prejudice has been caused to the applicant even if we hold that the stand of the respondent authorities that the applicant was not eligible to appear in the competitive examination against 10% quota held in 1982 as he did not put in requisite year of satisfactory service in the W.B. circle/unit, was without any substance.

14. Before parting with the case, we may also mention that the promotion of the applicant and others, who had qualified in the competitive examination against 10% quota depends upon their inter se seniority in the feeder grade in view of the fact that the number of vacancy available in a particular recruitment year was less than the total number of candidates qualified in the examination. Admittedly, the applicant joined the W.B.Circle as Telephone Inspector on mutual transfer basis with one Shri Gopinath Dey vide annexure-C dt. 19.4.80 and the applicant actually joined the W.B.Circle on 30.4.80 at Burdwan. The applicant has annexed at annexure-F to the application a seniority list of Telephone Inspectors etc. as on 1.4.88 wherein the position of the applicant has been shown at Sl. No. 12. In column 12 of this list it is mentioned that he joined under Rule 38 from CTD mutually with Shri Gopinath Roy, TI, TFD to CTD. Neither the applicant nor the respondents have brought on record full seniority list of Telephone Inspectors. Nowhere it is claimed by the applicant that he is senior as Telephone Inspector to those persons who have been allotted year of recruitment earlier than him against 10% quota.

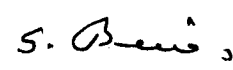
He has also not sought any relief regarding fixation of his seniority as Telephone Inspector in this OA. Moreover, the seniority list as annexed by the applicant himself for the post of Telephone Inspector is of 1988 and if he had any grievance about his placement in this seniority list, he ought to have agitated the matter earlier which he did not do. At this late stage, therefore, it is not possible for us to adjudicate the matter, especially when he has not impleaded any of the persons above whom he claims seniority as Telephone Inspector in W.B.Circle and when enough materials have not been brought on record by either side.

15. For the reasons stated above, we find no merit in this OA and it is accordingly dismissed. There will be no order as to costs.



(M.L. CHAUHAN)

MEMBER(J)



(S. BISWAS)

MEMBER(A)