

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A.

O.A.NO.: 286 of 1996.

DATE OF DECISION : 2-<sup>JULY</sup>~~JULY~~-99.

Subhendu Palit, aged 62 years, son of Late B.Palit, resident of mohalla D.V.C.Road, P.S.Gardanibagh, Town and District : Patna.

.....APPLICANT.

Applicant appeared in person.

-Vrs-

1. Union of India through Director General, Department of Telecom, Sanchar Bhawan, 20-Ashok Road, New Delhi-110 001.
2. The Chief General Manager [Telecommunications], Bihar Circle, Meghdoot Bhavan, Patna.
3. Assistant General Manager [Administration], office of the Chief General Manager [Telecommunications], Bihar Circle, Meghdoot Bhavan, Patna.
4. Accounts Officer [Telecom Accounts], G.P.O. Building, Patna-800 001.

.....RESPONDENTS.

By Advocate : Shri V.M.K.Sinha, SSC.

C O R A M

HON'BLE MR. JUSTICE S.NARAYAN, VICE-CHAIRMAN.

O R D E R

S.NARAYAN, V.C.:- This is an application under Section 19 of the A.T.Act, 1985, wherein, the applicant has sought for reliefs, in sum and substance, for grant of pecuniary benefits of pay and allowances on account of adhoc promotion to the post of Deputy Office Superintendent either against the substantive vacancy or on creation of a supernumerary post during the period from 6th May, 1991 to 29th October, 1991, with consequential fixation of pension and other retiral benefits.

2. The applicant, being the seniormost Sectional Supervisor, got a chance of adhoc promotion

to the post of Deputy Office Superintendent in the chain of vacancy created on promotion of one Shri A.Minz and others, who all ranked senior to him [the applicant] and, accordingly, he got the promotion as such, by an order, dated 7th November, 1990 [Annexure-A/1] of the Assistant General Manager [Administration] [Respondent no.3]. He [the applicant] proceeded on leave w.e.f. 11th March, 1991, when the next junior to him, Shri B.N.P.Sinha, Sectional Supervisor, was directed to officiate in his place by the order, dated 11th March, 1991, of the respondent no.3 [Annexure-A/2]. Subsequently, on account of reversion of the above named, Shri A.Minz and some others, the applicant also, while on leave, was reverted to his original post of Sectional Supervisor w.e.f. 5th May, 1991, vide order, dated 6th May, 1991, of respondent no.3 [Annexure-A/3]. There was no grievance on the part of the applicant on this reversion, inasmuch as, it all happened because of the reversion of some of his seniors, including Shri A.Minz, from the post of their respective promotions. There was, however, yet another chain of promotion to which some seniors to the applicant, including Mr. Minz, were taken back to their earlier promoted post and, therefore, a question arose of entitlement of the applicant as well in that very chain of promotion and from this event of promotion, there was a so-called set-back for the applicant.

3. On the subsequent <sup>event</sup> ~~action~~ of chain of promotion given to the seniors, including Mr. Minz, the applicant, who was then on leave, was not given promotion to the post of Deputy Office Superintendent



rather, it was his next junior, Shri B.N.P.Sinha, who was <sup>then</sup> officiating him during the leave period, was promoted by order, dated 13th May, 1991, of the respondent no.3, vide Annexure-A/4. After the expiry of leave, when the applicant reported for duty on 10th July, 1991, he was compelled to join as Sectional Superintendent by denying promotion to the post of Deputy Office Superintendent from which he had been reverted during the course of his leave on account of reversion of his seniors and to which, according to him, he had become entitled because of his seniors already been promoted again. The applicant was, however, subsequently promoted by way of restoration to the post of Deputy Office Superintendent w.e.f. 30th October, 1991, when Mr. B.N.P.Sinha was reverted to the post of Sectional Officer. Be it noted here that the applicant retired while working on the promoted post of Deputy Office Superintendent on 29th February, 1992. The applicant had, therefore, grievance of losing the benefit of adhoc promotion for the period from 6th May to 29th October, 1991. He also claims enhanced pension which might have fallen due on account of the promotion to which he was legally entitled.

4. For the sake of more clarity, the reliefs sought for in this O.A. may be quoted herein below :-

"[a] For a direction against the letter no.TA/BA Com/885, dated 01.12.1992 issued under the signature of respondent no.4 whereby the pension of the applicant was reduced from Rs.1170/- as sanctioned vide Memo No.BA/Pen/68/93, dated 03.03.92 by the Chief General Manager, Telecom, to Rs.1163/-

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[b] For a direction to implement the order, dated 27th July, 1994, issued by respondent no.3 by which the applicant was conferred promotion on supernumerary post of Deputy Office Superintendent for the period from 6.5.91 to 9.7.91 and also for a direction to treat the applicant as holding the post of Deputy Office Superintendent from 10.07.91 to 29.10.1991 continuously and to fix and pay pension and other retiral benefits to the applicant as if the applicant was continuous holding the post of Deputy Office Superintendent without any break between 10.07.91 to 29.10.1991.

[c] For a direction to respondents to pay arrears of salary to the applicant attached to the post of Deputy Office Superintendent for the period from 10.07.1991 to 29.10.1991 and differences of other retiral benefits treating him as holding the post of Deputy Office Superintendent also for the period between 10.07.1991 to 29.10.1991."

5. The official respondents filed written statement contending, inter alia, that the applicant's pension has been rightly fixed according to law and that he was not entitled to promotion to the post of Deputy Office Superintendent during the period from 6th May, 1991 to 9th July, 1991, during which period he was on leave, and also during the period from 10th July, 1991 to 29th October, 1991, during the period when he worked only as Sectional Supervisor on return from his leave.

6. Before we go into the merits of the case, it becomes very much relevant to take note of an event, dated 27th July, 1994, which took place after about more than two years of the applicant's retirement and

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as per which the official respondents are supposed to have conceded to the claim of the applicant to some extent. It was none-else than the respondent no.3, i.e. the Assistant General Manager [Administration], Bihar Circle, Patna, who, by Memo No.ST/56-1/82-Part, dated 27th July, 1994 [Annexure-A/3], gave promotion to the applicant against one supernumerary post of Deputy Office Superintendent for the period from 6th May, 1991 to 9th July, 1991. An extract of the order is given herein below :-

"Shri S.Palit, officiating Dy. Office Supdt. [now reitred] was reverted to the substantive grade w.e.f. 06.05.91 vide this office memo no.ST/6-5/84/DPC, dated 03.05.1991 is hereby promoted against one supernumrary post of Deputy Office Supdt. in the pay scale of Rs 2000-3200 for the period from 06.05.91 to 09.07.91 issued vide this office memo no.ST/56-1/82, part dated 27.07.1994."

7. The above order of promotion passed in favour of the applicant assumes all the more importance because as contended in the instant O.A., it was passed during the course of the pendency of an earlier O.A. filed by the applicant ventilating almost the same grievances as per O.A. No.331/94. Be it noted that the O.A. 331/94, filed almost for the same purpose, was dismissed as withdrawn by an order, dated 14th May, 1995, by this Tribunal. The order speaks that the learned counsel for the applicant submitted that the grievances are going to be settled departmentally and, therefore, there was a necessity to seek permission to withdraw the said O.A. If this order is co-related with the order, dated 27th July, 1994, of the respondent no.3 [Annexure-A/13], it would certainly

give a clear impression in one's mind that in order to settle the claim of the applicant without intervention of this Tribunal, the official respondents did issue an order of promotion as per Annexure-A/13, and under the oral assurance given by and on behalf of the official respondents, as clearly asserted in paragraph 4.18 of the instant O.A., the applicant did prefer to withdraw the earlier O.A. But the question arises, as to what ultimately happened subsequent to an order of promotion, dated 27th July, 1994 [Annexure-A/13], and the withdrawal of the earlier O.A. 331/94. In this context it goes without saying that the order, dated 27th July, 1994 [Annexure-A/13] was admittedly not given effect to by the official respondents on the plea as raised in the written statement of the instant O.A., that the said order was pointed out by the Accounts authority of the respondents to be not proper vide paras 22 & 24 of the written statement. The fact, however, remains that the promotional order, dated 27th July, 1994 [Annexure-A/13] has neither been cancelled nor its affect has been done away with by any subsequent order.

8. The facts and circumstances, as noticed in the preceding paragraph, would most certainly speak nothing else than that the applicant's claim was not dealt with properly rather, the action on the part of the official respondents was violative of the fundamentals of fair play. Why, after all, an official authority should go for such a game to issue a letter of promotion, like Annexure-a/13, just to ensure withdrawal of a pending case before this Tribunal and, subsequent to the event of withdrawal, the effect of



the order, as per Annexure-A/13 be ~~held~~ <sup>held with field</sup> and denied orally. This Tribunal would never appreciate this sort of happening.

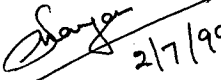
9. Even on the score, whether the order of promotion, dated 27th July, 1994 [Annexure-A/13], passed during the pendency of the earlier O.A. No.331/94, was a valid one or not, it would be most appropriate to place on record that this order was passed by none-else than the respondent no.3, who had earlier passed the effective order of promotion to the applicant and some others as per order, dated 7th November, 1990 [Annexure-A/1], and who had also passed the order of reversion, dated 6th May, 1991 [Annexure-A/3] with regard to the applicant. If these orders [Annexures-A/1 & A/3] could be deemed to be valid one, why not his order, dated 27th July, 1994, containing Annexure-A/13, be also treated good and valid on the same footing. One would, therefore, definitely arrive at a <sup>-in-</sup>irre<sup>st</sup>able conclusion that the order, dated 27th July, 1994, was good and valid order and it had the same authenticity of an administrative order as that of the earlier orders, containing Annexures-A/1 & A/3. The order has thus, got to be given effect to with all consequential pecuniary reliefs which may flow out of it.

10. As to the applicant's claim with regard to the promotional benefit for the period from 10th July, 1991 to 29th October, 1991, when he joined duty on the post of Sectional Supervisor after return from leave, I do not think, it would be in fitness of things to <sup>an issue again</sup> raise for fresh consideration in the instant O.A. for the simple reason that the applicant practically

conceded by way of full and final settlement of all his claims as per order of promotion, dated 27th July, 1994 [Annexure-A/13], subsequent to which he allowed his earlier O.A. No.331/94 be dismissed as withdrawn by an order, dated 14th September, 1995, of this Tribunal. In order to lay a fresh claim for that period the applicant may have the hurdle also of law of limitation.

11. Before parting with the discussion, it may also be pointed out that with regard to deduction of pension to the extent of Rs.7/- only, by an order, dated 3rd March, 1992, of the official respondents, there were no arithmetical calculation furnished by the either side to examine that aspect of the matter. It is, however, clear that if the applicant is entitled to some more amount of pension by way of giving effect to his promotional order, dated 27th July, 1994 [Annexure-A/13], that has got to be made available to him by the official respondents.

For the reasons, aforesaid, this O.A. must succeed in part and, accordingly, it is allowed with a direction upon the respondents to give a binding effect to the order, dated 27th July, 1994 [Annexure-A/13], and thereby to provide all pecuniary benefits, including that of pension and other retiral benefits arising out of the same. There shall be, however, no order as to costs.

  
[S.NARAYAN]  
VICE-CHAIRMAN.