

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

O.A.No. 156/1986 198 6  
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DATE OF DECISION 10.7.1987

Shri G.K.Pillai, Applicant/s.

— Advocate for the Applicant/s.

Versus

Union of India and others Respondent/s.

Mr. M.I.Sethna, Advocate for the Respondent(s).

CORAM:

The Hon'ble Vice-Chairman, Shri B.C.Gadgil,  
The Hon'ble Member(A), Shri J.G.Rajadhyaksha.

1. Whether Reporters of local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not ?
3. Whether to be ciurculated to all Benches?

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.156/86.

Shri G.K.Pillai,  
2/26, Juhu darshan,  
New D.N.Nagar,  
Andheri(W),  
Bombay-400 058.

...Applicant.

V/s.

1. Union of India,
2. The Director General,  
Department of Telecommunication.
3. The General Manager, Pune Telephones.
4. The Deputy General Manager (Admn.),  
Pune Telephones.

...Respondents.

Coram: Hon'ble Vice-Chairman, Shri B.C.Gadgil,  
Hon'ble Member(A), Shri J.G.Rajadhyaksha.

Appearances:

Applicant in person.  
Mr.M.I.Sethna for  
Respondents.

JUDGMENT:

(Per B.C.Gadgil, Vice-Chairman).

Dated: 10.7.1987.

The applicant who is an employee with the Department of Telecommunication claims that he should have been given certain short term promotions. In a nutshell, his case is that he joined the service as Junior Engineer with Pune Telephones in 1971. In 1973 he was sent on deputation as Instructor, Regional Telecom Training Centre, Bombay. In 1981 he was promoted as a Selection Grade Junior Engineer. However, before such promotion the department has granted Selection Grade to a number of Junior Engineers for short term periods. Amongst those Junior Engineers who were so granted temporary promotions are the employees who are junior to the applicant. One Shri C.V.Sangle is immediately below the applicant in the seniority list. On 5th of December,

DEPARTMENT OF THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
NEW DELHI, MARCH, 1946.

Official Application No. 156/86.

RE: Mr. D. S. S. Dutt  
S. S. Dutt & Sons  
12, Shivaji Road  
Mumbai - 4.

RE: Mr. D. S. S. Dutt

1981 the department passed a composite order granting Non-Functional Selection Grade to various juniors on purely temporary and ad hoc basis. Exhibit 'F' is that order. It appears that whenever there was a short term vacancy in the Selection Grade, junior employees have been granted such promotions. As far as the present application is concerned it is clear that Shri Sangle has been granted such promotion between 1978 to 1981. It is not necessary to give the exact dates of occasions when Shri Sangle has been given these promotions. Suffice it to say that in all on 11 occasions, Shri Sangle was given promotions for varying number of days viz. 30, 15, 34, 294, 15, 41, 206, 22, 23, 58, 33. In this way Shri Sangle was given promotion for a total period of more than 700 days under the rules, these temporary promotions are tagged for getting increments in the Selection Grade and consequently Shri Sangle got 2 increments for such ad hoc promotions. The grievance of the applicant is that these promotions should have been granted to him, even though he was working as an Instructor at Bombay. According to him these promotions are Non-Functional Selection Grades and do not involve any additional duties or responsibilities. His another contention is that at any rate he should have been given promotions by applying the rule commonly known as 'Next Below Rule'.

2. The Respondents opposed the claim by filing their reply. It was contended that the applicant was not available at Pune or within the Geographical limits of Pune Telephone Organisation, when Shri Sangle was given ad hoc promotions from time to time. It is alleged that such short term promotions are known as Local Officiating Promotions and they are given to those persons who are immediately available. On these grounds the claim was opposed.

3. We have heard the applicant and also Mr.M.I.Sethna for the Respondents. It cannot be disputed that the promotions mentioned above were short term promotions arising out of the occurrence of short term vacancies. It is true that even such short term promotions should go on the basis of seniority. However, the administrative convenience cannot be lost sight of, while making such promotions. During the relevant period the applicant was working as an Instructor at Bombay. It is very difficult to accept the contention of the applicant that a vacancy ranging from a month onwards has to be filled in by calling back the applicant from his deputation and then again sending him on deputation after the short term vacancy was over. We are not inclined to accept the contention of the applicant that such an exercise ~~was accepted~~ to be followed by the department while filling short term vacancies as mentioned above.

4. Another contention of the applicant is that these short term vacancies were Non-Functional Promotions and that therefore, it was not necessary that the applicant should be available within the jurisdiction of Pune Telephones for enjoying promotions. The applicant contends that he could have continued as an Instructor at Bombay and the Department could have given him promotions for such short term vacancies without calling him back. It is contended that this was possible as no changes of duties were necessary for enjoying Non-Functional Promotions. In our opinion, Promotion-Functional or Non-Functional would not make any difference. After all, these are short term promotions and obviously they are to be given to the persons who are actually working within the jurisdiction of Pune Telephones at the relevant time. The claim of the applicant for getting such promotions in place of Shri Sangle is just not well founded and consequently, it is liable to be rejected.

5. The applicant however, appears to be on a little

strong grounds, when he relies upon the 'Next Below Rule'. It is true that there is no specific rule known as Next Below Rule. However, the Government has issued instructions from time to time as to how the said rule should be worked out. The intention of that rule is that an Officer out of his regular line should not forfeit any acting promotion which he would have otherwise received, had he remained in his regular line. At the same time fortuitous acting short term promotions of Junior Officers would not give rise to claim under the Next Below Rule. The matter is further clarified by the Government. Exhibit 'R' (page.3 of the compilation) dated 30.6.1979 are instructions issued by the Government in 1963 and 1971, ~~for~~ e.g. instructions dt. 10th August, 1971 show that the benefit of officiating promotion under the Next Below Rule should be allowed only against promotions in a cadre of vacancies more than 90 days and the period of 90 days is not to be counted on the basis of chain of vacancies. Number of days covered by the various temporary and ad hoc promotions granted to Shri Sangle as mentioned in paragraph No.1 above would show that only on two occasions there were <sup>of long lemons</sup> vacancies, once 294 days, and another vacancy of 206 days. The other vacancies, being for a period of less than 90 days will not permit the application of Next Below Rule. Consequently, the applicant would be entitled to promotion for 500 days i.e. 294 and 206 days and on that basis he would be entitled to one increment in the Selection Grade.

6. Thus, the application partly succeeds. The Respondents are directed to grant proforma promotion to the applicant for 500 days i.e. for period from 1.6.1979 to 2.3.1980 and 1.7.1980 to 22.1.1981 and to pay the salary and other emoluments on the basis of this promotion. The

The Respondents are also directed to grant all permissible increments on the basis of this promotion. Parties to bear their own costs of this application.

*B.C.Gadgil*

(B.C.GADGIL)  
VICE - CHAIRMAN

*(S.G.RAJADHYAKSHA)*  
(S.G.RAJADHYAKSHA)  
MEMBER(A)