

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

Tr. Application No.514/86

1. Madhukar Narayanrao Kulkarni,  
Telephone Operator,  
(Now Junior Supervisor),  
Telephone Exchange,  
YECOMAL

& 5 OTHERS.

.. Applicants.

V/s.

1. Union of India, through  
the Director General of Posts  
and Telegraphs, Dak Tar Bhavan,  
NEW DELHI.

2. Post Master General,  
Maharashtra Circle,  
BOMBAY.

3. General Manager,  
Telecommunications,  
Posts and Telegraphs,  
BOMBAY.

.. Respondents.

Coram : Hon'ble Member(A) Shri Ajay Johri  
Hon'ble Member(J) Shri M.B. Mujumdar.

Appearances :

Mr. Nandanwar, Advocate  
for the applicant.

Mr. S.R. Atre, Advocate  
(for Mr. P.M. Pradhan)  
for the respondents.

JUDGMENT

DATE : 29.7.88

(PER : Hon'ble Member(A) Shri Ajay Johri)

This petition has been received on transfer from the Bombay High Court, Nagpur Bench under Section 29 of the Administrative Tribunal Act, 1985. The petitioners in this application were appointed as Telephone Operators under the respondents- A phased programme for giving promotions to the Telephone Operators at 10% of their total strength was created by the respondents. These 10% promotions were to be made to the post of lower selection grade monitor. This post is filled on circle basis and the promotions are made taking into account the seniority on circle basis. On 25.11.1969

certain promotions were ordered by the respondents. These promotions were challenged by a Special Civil Application No. 1267/69 before the Bombay High Court, Nagpur Bench. A stay was granted to the promotion order issued on 25.11.1969. But in 1971 this stay order was modified and the respondents were allowed to make promotions in officiating capacity after giving understanding to the promotees that they have no right to the said promotion and that they were only provisionally promoted subject to the final decision in that petition. According to the petitioners after the modifications of the stay order, the respondents should have made promotions on circle basis but they made the same on divisional basis. The Special Civil Application was finally dismissed by a judgment dated 14.7.1975 whereafter the respondents made regular promotions to the post of LSG monitors on circle basis. Against the promotions made on divisional basis the petitioners had represented in 1974 but they were advised in February 1975 through their unions that the respondents had made divisionwise promotion to avoid complications and administrative difficulties in the background of the seniority list being itself the subject of the Special Civil Application pending before the Nagpur Bench of the Bombay High Court. The result of making adhoc promotions on division basis was that when regular promotions were made those juniors to the petitioners who were promoted on adhoc basis on ~~38~~ division were naturally given advantage of their ~~38~~ their officiating period in the fixation of their pay on regular promotion. There was another change in the situation and that was that instead of the scheme of 10% promotion, with effect from 1.6.1974, the scheme was revised to 20% promotions. While making the promotions in the revised scheme the respondents did not take steps to also regularise promotions in accordance with the 1969 scheme where 10% promotions had to be made. It is the petitioners' case that had the promotions been made from 1969 to 1974 according to the entitlement of the persons on circle basis this anomaly of

juniors drawing more pay than the seniors on their regularisation w.e.f. 1.6.1974 as ordered by the respondents on 13.4.1976 would not have taken place. Through this petition therefore a prayer has been made by the petitioners that a direction be issued to the respondents to revise the promotion order issued by them on 13.4.1976 so that the petitioners are considered promoted from the dates from which they were entitled to promotions as if the Special Civil Application No. 1269/69 was not filed, instead of giving their promotion from 1.6.1974 and to give them all consequential benefits as well as to step up the pay of the petitioners to a figure equal to the pay of juniors.

2. In their reply to the petition, the respondents have said that they could not have made promotions on circle basis as the gradation list was under challenge in the Special Civil Application and a stay was granted by the Bombay High Court, Nagpur Bench where all promotions were stayed. When the modification to the stay order was made by the High Court, the prayer made for modification was in the background that certain temporary promotions on adhoc basis on the divisions were required to be made pending the final disposal of the petition. Since the modification of the stay order was based on the prayer for making adhoc promotions on divisional basis they could not make any promotions on circle basis. It has not been denied by them that representations were received but they have mentioned in the reply that they had followed the orders passed by the High Court and the promotions made by them on divisional basis were strictly in terms of the prayer made by them for the modification of the stay order. The respondents have also relied on the judgment of the Hon'ble Supreme Court dated 4.7.1972 Civil Appeal No. 1845 and 1846/68 pertaining to the fixation of the seniority of the employees in Post and Telegraphs Department including telephone operators which entailed upon the administration the revision of the entire list. According to them the revised gradation list which was

prepared by them after the scheme of 20% came into existence and the Court case <sup>3/5</sup> decided was done taking into account this direction of the Hon'ble Supreme Court. According to the respondents there was no discrimination in making local adhoc division-wise promotions. They have also challenged the prayer made by the petitioners in regard to stepping up of their pay which has been fixed in accordance with FR.22(c). According to them the anomaly of juniors drawing more pay than the seniors was not the result of application of FR.22(c).

3. We have heard learned counsels for both the parties. The main contention raised by the learned counsel for the petitioners was that when the local promotions were made on the modification of the stay order, the circle seniority was ignored and therefore the petitioners should not be penalised by being allowed to draw less pay than the juniors who got the advantage of local officiating arrangement on division basis at that time. This contention was repelled by the learned counsel for the respondents on the ground that when they made the application for modification of stay, they had made a specific mention that they wanted to make promotions on the divisions basis and therefore they made local officiating arrangements only on divisional basis. When the question came for making regular promotions, the petitioners' seniority was not disturbed by this arrangement and since the pay on promotion had been fixed on the basis of FR.22(c) the petitioners have no case for revision of their pay vis-a-vis their juniors. Nothing else was pressed before us.

4. In regard to adhoc promotions, the clarification issued by the Postal Department in 1981 said that the adhoc promotions/appointments on long term basis, ~~since~~ they deprive the rightful persons of their promotion for long period and also tend to create a vested interest for adhoc promotee, ~~should~~ should not be continued and all possible steps should be taken to ensure that, as far as possible, they are made only in respect of short term vacancies or where it becomes necessary in the interest of service but efforts are to be made to keep

such arrangement to the barest minimum number and not to continue them for long time.

5. Rule 50 of the Post and Telegraphs Manual Vol. IV also gives directions on the filling of temporary vacancies. It lays down that in a cadre in which promotions is made from officials working in the same office or station, officiating arrangements in cases of vacancies of not more than one month's duration may be confined to the officials in the section or branch of the office or in the sub-office where the vacancy occurs even if this involves the supersessions of a senior qualified official available elsewhere in the cadre by a junior official who is actually appointed to act where as in the case of promotions made from officials working in different stations, sub-divisions or divisions in a circle a distinction should be made between vacancies of not more than one month's duration and vacancies of more than one month's duration but not of more than four month's duration. For short <sup>by term</sup> vacancies the rule already provides that the officiating arrangement may be confined to the locally available officials. While in the case of vacancies of slightly longer duration also the same arrangement may be made but there is a proviso that in special circumstances in which above procedure cannot be followed or is not desirable from administrative point of view, the sanctioning authority may at his discretion make acting arrangements according to administrative requirements.

6. It is not under dispute that adhoc officiating promotions are to be made only against short term vacancies, or when the senior most man available in the cadre is not readily available for joining the post or when duly selected hands are not available and a senior person from far off distant place cannot be conveniently brought. Therefore there is nothing wrong in local arrangements of temporary nature even ignoring the seniors but when such arrangements tend to

last for a long time, it becomes essential to provide the senior most person in the cadre first and if the person according to the seniority refuses only then a local arrangement may be made.

7. We, however, find that when after the stay was modified by the Bombay High Court, the respondents made local officiating arrangements in the various divisions against the 10% quota, the persons who were senior on circle basis never agitated the issue immediately and they woke up only in 1974 by making the ~~ad hoc~~ <sup>31</sup> representation. If they were prepared to move on officiating promotion being made on adhoc basis pending finalisation of the petition in the High Court they should have said so in 1971. Even when the case was decided by the Bombay High Court, they only represented against the fixation of their pays after they were regularly promoted. According to them ~~they~~ <sup>32</sup> never came to know that certain local officiating arrangements had been made by the respondents in other divisions till the gradation list was circulated which indicated the fixation of the pay of the juniors at a higher stage. We feel that the right course of action for the petitioners was to claim for their right for promotion even against adhoc promotions which were likely to last for a long time at the relevant time and the prayer being made now by them in this petition regarding stepping up of their pay equal to that of the juniors as well as for the revision of the promotion order issued on 13.4.1976 giving effect to ~~33~~ promotions from the respective dates from which they were entitled, if the Special Civil Application was not filed, do not have much force.

8. The learned counsel for the applicant has placed reliance on AIR 1974 Supreme Court 259 R.S. Deodhar vs. the State of Maharashtra where the Hon'ble Supreme Court had held

that promotion to state-wise post from divisional cadre made on the basis on divisional select lists amounts to denial of equality of opportunity to incumbents holding the same posts but on divisional basis to a statewide higher post. In the relied on case prior to the reorganisation of the States which took place on 1st November, 1955 the petitioners were confirmed Tahsildars in the State of Hyderabad. The rules of recruitment to the posts of Tehsildar which prevailed in the erstwhile State of Hyderabad provided that 1/3rd number of posts was to be filled by promotion from the lower ranks while the remaining 2/3rd by direct recruitment. The petitioners belonged to the latter category. The next higher cadre was that of Dy. Collectors and the recruitment to that cadre was governed by a notification issued by the Rajpramukh of Hyderabad. It provided that all the vacancies of the cadre of Deputy Collectors shall be filled only by promotion by selection from the cadre of Tehsildars. When the new state of Bombay was formed with territories drawn from various States, the service personnel from these different places came to the new state of Bombay. Therefore certain equation of posts had to be done. There were different rules for recruitment for the post of Deputy Collector. There was a cadre of Mamlatdars which post was of divisional cadre and the dispute was about seniority and promotion. The ratio of the relied on case is not applicable where there is no dispute in regard to the fact that LSG monitors are <sup>✓</sup> circle controlled post where seniority is made from amongst telephone operators on the various divisions and promotions are made on the basis of combined seniority. There is no dispute here in regard to the seniority of the LSG monitors. We, therefore, do not think that this case helps the petitioners in any way.

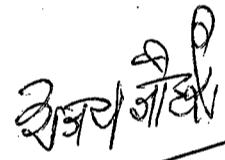
9. After the decision of the court case and the replacement of 10% scheme by the 20% scheme of filling up of

posts on promotion the petitioners have also been promoted and there exists no dispute about their seniority. The only claim that they are now raising is that on account of the respondents having made local officiating promotions in 1971, they are suffering on account of the fact that on promotions they are drawing a lower salary than some of their juniors who had been promoted on divisional basis in 1971. On promotion the pays of the employees are fixed in terms of FR.22(c) and the Government of India's instructions issued on 4.2.1966 on the subject of stepping up of pay in the case of senior drawing less pay on promotion than his juniors clearly laydown that three conditions have to be satisfied if any stepping up has to be done. These conditions are that (a) both the junior and senior belong to the same cadre and the post to which they are promoted should be identical, (b) the scale of pays of the lower and higher grade posts should also be identical and (c) the anomaly should be directed as a result of application of FR.22(c) i.e. if even in the lower post the junior officer has drawn from time to time a higher rate of pay than the senior the above provisions will not be invoked to step up the pay of the senior. When officiating arrangement was made on division basis and it continued for a long time it was natural that those who were put on officiating promotion pending decision of the case by the High Court will also drew increments in the promoted post and therefore they came to draw more salary than some of those seniors who were on other divisions where perhaps posts were not available for promotion against the then 10% quota. We thus do not find that there has been any violation of the fundamental rules in the fixation of the salary of the petitioners on their regular promotion in 1976.

10. We have already rejected the contentions raised by the learned counsel that the petitioners should have been

considered promoted on circle basis in 1971 when the respondents made promotions on divisional basis. The petitioners claim that they should be entitled to promotion from their due dates is also not tenable on the grounds that at the appropriate time the petitioners did not raise the issue. This Silence on their part could have been due to their ignorance of the fact that certain promotions were ordered by the respondents on other divisions or could also be due to the fact that at that time they did not want to agitate the matter because that would have dislocated them as they would have had to move to other stations if they wanted <sup>an ad hoc, uncertain</sup> to avail of the officiating arrangements.

11. On the above grounds we do not find any merit in this application and therefore we dismiss the same with costs on parties.

  
( AJAY JOHRI )  
MEMBER (A)

  
( M.B. MUJUMDAR )  
MEMBER (J)