

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 483/96

Date of Decision : 3<sup>rd</sup> November 2000

K.A.Mohite Applicant.

Shri S.P.Kulkarni Advocate for the  
Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri S.S.Karkera for Advocate for the  
Shri P.M.Pradhan Respondents.

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt. Shanta Shastry, Member (A)

- (i) To be referred to the Reporter or not ? YES
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library

YES  
S.L.JAIN -  
(S.L.JAIN)  
MEMBER (J)

mrj\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.483/96

Dated this the 3<sup>rd</sup> day of November, 2000.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt. Shanta Shastry, Member (A)

Krishna Arjuna Mohite,  
R/o. "Gharkul", 172,  
Shukrawarpeth,  
At P.O. Phaltan,  
Dist. Satara-415 523.

... Applicant

By Advocate Shri S.P.Kulkarni

V/S.

Union of India through

1. Telecom District Manager,  
Department of Telecom,  
Telephone Building,  
Dist. Satara-415 002.
2. Divisional Engineer  
(Administration),  
O/o. Telecom District Manager,  
Satara.
3. Chief General Manager,  
Telecom, Maharashtra Circle,  
Old G.P.O. Building,  
2nd Floor, Near C.S.T.(V.T.),  
Central Railway,  
Fort, Mumbai.
4. General Manager Telecom,  
Department of Telecom,  
Tarabai Park,  
Telephone Bhawan,  
Kolhapur H.O.-416 003.

... Respondents

By Advocate Shri S.S.Karkera  
for Shri P.M.Pradhan

..2/-

PL-8712 -

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking declaration that order dated 9.3.1996 promoting applicant in Grade IV Rs.2000-3200 from 1.2.1996 as arbitrary, illegal being violative of Article 14 of the Constitution, direction to the respondents to hold and declare that the applicant is promoted from 24.8.1994 - the date from which Shri Y.M.Bodus, V.G.Jog - juniors to the applicant were promoted with all consequential benefits including monetary benefits along with refixation of pay, pension, pensionary benefits and costs amounting to Rs.1500/-.

2. The applicant entered service as Telephone Operator in erstwhile P & T Department on 25.12.1960 (Telecom Wing). Thereafter he was promoted as Telephone Supervisor and then to grade III from 1.2.1992 vide STBP Scheme. Being aggrieved about the date of promotion, the applicant filed O.A.No.1178/93 which was decided on 21.2.1995. As a result of the aforesaid order, the applicant was given promotion in Grade III from 26.10.1992 in supersession of earlier date 1.7.1992 on 9.3.1996.

3. The applicant filed OA.NO.1178/93 before Central Administrative Tribunal, Bombay Bench which was decided along with other OAs. on 21.9.1995 with the following directions :-

*J.L.Jain*

..3/-

" (a) A Review DPC shall be held and it shall consider whether the employee concerned had rendered 26 years' satisfactory service. If he had done so, irrespective of whether the date fell before or after the scheme came into effect, i.e. before 1.10.1991, the Review DPC shall consider the records of the service of the Applicant only for those 26 years and determine the eligibility of the applicant for being granted the benefit of the Biennial Cadre Review on that basis. Should there be any other material apart from this against the employee concerned, the Review DPC will be free to take them into consideration for determining the eligibility of the applicant for the benefit of the BCR Scheme.

(b) The impugned orders passed in these cases are set aside and the respondents are directed to constitute Review DPC and take steps accordingly within four months from the date of communication of the order. No other point is decided in the present application. No order as to costs.

(c) The Review DPC should consider the applicant only once in terms of the directions stated above and if it appears that the benefit to which he will be entitled on the basis of service in question were given, the benefit already given to the applicant in the present case will stand."

4. The applicant states that Department of Telecom issued order vide Ex.'B' to undertake review and promoted senior officials to Grade III from the date they came within 10% quota. The applicant's case having been decided regarding his date of promotion to Grade III from 26.10.1992 vide order dated 9.3.1996 against 7.7.1992 given earlier, an illegality has further occurred in giving promotion to Grade IV from 1.2.1996 instead of 24.8.1994. The applicant claims that he being senior to Y.M.Bodus, he ought to have been promoted to Grade IV earlier to his junior Y.M.Bodus. In view of scheme of upgradation of 10% of the post/strength of officials placed in higher grade was given

*J.M.*

effect vide No. 27-4-187-TE-II dated 7.1.1994/18.2.1994. The Principal Bench, CAT, New Delhi decided on 7.7.1992 that 10% posts in Grade IV would have to be based on/filled on seniority in basic cadres, SLP against which is also dismissed.

5. Due to wrong modalities followed in placing Grade II officials in Grade III as per STBP Scheme, the applicant was assigned/promoted to Grade III from 1.7.1992 though due from 26.10.1990. As a result of order, his seniority/promotion was restored to 26.10.1992 vide memo dated 9.3.1996. Hence his promotion to grade IV ought to be given on the basis of resorted seniority in Grade III and at least on par with his juniors Y.M.Bodas & V.G.Jog from 24.8.1994. The applicant represented against the order dated 9.3.1996 and filed the OA. on 30.4.1996.

6. The respondents have resisted the claim and alleged that the application is not maintainable in law as the applicant is claiming promotion under 10% BCR Grade IV with effect from 25.8.1994 from the date of promotion of his juniors which is to be effected by conducting the D.P.C. and after selection by the said DPC. The said promotion was not given to the applicant since there was an adverse entry in the year 1988-89. The case of the applicant was reviewed in the year 1995 after taking into consideration of the 5 years service records for the years 1989-90 to 1994-95 and he was promoted to grade IV post (10% quota of BCR with effect from 1.2.1996 which is as per rules. It is also alleged that the OA. is premature as the applicant failed to exhaust the departmental remedies available to him. Hence prayed for dismissal of the OA. along with costs.

*[Handwritten signature]*

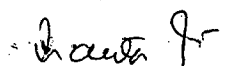
..5/-

7. In view of the fact that OA. is admitted on 17.6.1996 without notice to the respondents, the applicant has been superannuated on 30.4.1996 and the OA. came for hearing on 4.10.2000, we are not inclined to dispose of the OA. on the technical plea that the applicant failed to avail the departmental remedies available to him.

8. In view of Annexure 'B' dated 18.12.1995 Circular No. 22-6/94-TE-II para 3 issued by Govt. of India, Ministry of Communication, Department of Telecom, Sanchar Bhavan, New Delhi "The promotion would be subject to fitness determined by the D.P.C. as usual". In the light of the above principle, when the applicant's ~~is~~ ACR for the year 1988-89 was carrying adverse entry, which is not rebutted, the promotion of the Y.M.Bodas, in respect of whom the applicant claims to be his junior, who is reverted by the impugned order dated 9.3.1996, the cause which subsisted earlier, now comes to <sup>be</sup> <sub>an</sub> extinguished. Therefore, there remains no grievance for the applicant.

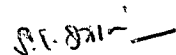
9. Copy of the order of Principal Bench, New Delhi dated 7.7.1992 not brought on record <sup>at</sup> which lays down the proposition that 10% posts in Grade IV would have to be based/filled on seniority in basic cadres. Therefore, we are unable to accept the said reasoning particularly in view of Circular dated 18.12.1995 referred above, when the applicant's case came for consideration thereafter.

10. Hence, OA. has no merit, it is liable to be dismissed and is dismissed accordingly with no order as to costs.



(SMT. SHANTA SHASTRY)

MEMBER (A)



(S.L. JAIN)

MEMBER (J)