

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 472/91

Date of Decision: 8.06.99

J.I.Hirwani

Applicant.

Advocate for Applicant.

Versus

Union of India & Anr.

Respondent(s)

Shri P.M.Pradhan

Advocate for Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice-Chairman,

Hon'ble Shri. D.S.Baweja, Member(A).

(1) To be referred to the Reporter or not? NO

(2) Whether it needs to be circulated to other Benches of the Tribunal? NO

R.G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.472/91

TUESDAY THIS THE 8th DAY OF JUNE, 1999.

Coram : Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member (A).

J.I.Hirwani,
203, Satyamala Apartment,
Opp. Nirankari Satsang Hall,
Ulhasnagar.

...Applicant.

V/s.

1. The Union of India,
through the Director General
Department of Telecommunications,
Sanchar Bhavan,
New Delhi - 110 001.

2. The Chief General Manager,
Telecommunications,
Maharashtra Circle,
G.P.O. Compound, Fort,
Bombay - 400 001.
(By Advocate Mr.P.M.Pradhan)


...Respondents.

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

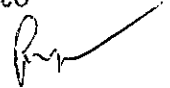
This is an application filed under section 19 of the Administrative Tribunals Act, 1985. We have heard the applicant who appeared in person and Mr.P.M.Pradhan, learned counsel for the respondents.

2. The applicant was originally appointed as a Junior Engineer in the Telecom Department. He passed the qualifying examination for the next promotion in 1974. He came to be promoted as Assistant Engineer subsequently. In the cadre of Junior Engineers, the applicant was senior to two other officials

...2. 

Brij Mohan and P.N.Lal. It appears, those two officials viz. Brij Mohan and P.N.Lal filed writ petitions in the Allahabad High Court, which allowed the same and gave a direction that their seniority should be fixed on the basis of their year of passing the qualifying examination for promotion. As per para 206 of the P & T Manual, those officials who passed the examination in the previous year will be ranked seniors to those who passed the examination in subsequent years. Since applicant was senior to Brij Mohan, he must rank senior to those two officials. But, in view of the Judgment of the Allahabad High Court those two officials are now kept above the applicant in the seniority list. According to the applicant he is entitled to get seniority over those two officials based on the reasoning of the Allahabad High Court Judgment. As a consequence, the applicant claims that he is also entitled to promotion as Assistant Engineer from 1977 as has been done in respect of Brij Mohan and P.N.Lal and consequently he is entitled for next promotion after the expiry of 12 years from 1977. Therefore, the applicant prays that his seniority should be fixed over and above Brij Mohan and P.N.Lal on the basis of the principles laid down by the Judgment of the Allahabad High Court and on the basis of the said seniority the applicant is entitled to fixation of pay, further promotion and other reliefs.

3. Though, in the reply the respondents have pleaded at length to show that the applicant is not entitled to seniority over and above Brij Mohan and P.N.Lal, it is not necessary to



consider those allegations since during the pendency of the OA the department has conceded and passed an order giving seniority to the applicant over and above Brij Mohan and P.N.Lal.

It is stated that applicant is not entitled to any arrears of pay on the basis of his getting seniority as per the principles laid down by the Allahabad High Court Judgment. The applicant is not entitled to any of the benefits on the basis of the Judgment of the Allahabad High Court.

4. In this case, the main prayer of the applicant is that he must get seniority above Brij Mohan and P.N.Lal. Now, the Department has conceded this prayer of the applicant and in the revised seniority list he has been placed above those two persons. Therefore, now it is common ground that as on to day the applicant has got seniority above those two persons. In fact, the applicant himself has admitted this fact at the time of arguments and he has also shown this fact in his representation dt. 17.6.1993 where he has admitted that the revised seniority list has placed him above Brij Mohan and Others (vide his representation which is filed along with applicant's Rejoinder dt. 8.10.1997). This point is also clarified in the letter of the Assistant General Manager dt. 17.1.1993 where it is clearly mentioned that the applicant has been given seniority above Brij Mohan and is given the deemed date of promotion from 18.7.1979 as Assistant Engineer, whereas Brij Mohan is given deemed date of promotion from 29.8.1983 (vide the said letter which is also annexed to the applicant's Rejoinder dt. 8.10.1997).

Therefore, the prayer regarding seniority does not now survive since the department has conceded applicant's claim for

seniority above Brij Mohan.

5. The applicant's next prayer is that he must be given deemed promotion from 1977 and not from 1979. We find that this prayer of the applicant is fully justified. In Brij Mohan's case, the Allahabad High Court has held that passing qualifying examination in an earlier year gives seniority over the officials who passed examination in the subsequent years. The Judgment of the Allahabad High Court is produced at page 13 of the paper book. This Judgment has been confirmed by the Supreme Court as per the order dt. 8.4.1986 which is at page 22 of the paper book.

Some of the officials had also filed number of applications in the Principal Bench and they came to be disposed of by a common order which is at page 13 of applicant's M.P. 479/96. The Principal Bench Judgment is dt.22.4.1992 in OA 2407/88 and connected cases. The Principal Bench has held that the Allahabad High Court Judgment in Brij Mohan's case and other cases should be followed in similar cases. Therefore, the Principal Bench gave a direction that all the officials should be given seniority on the basis of the principle laid down by the Allahabad High Court in Brij Mohan's case.

The applicant passed the qualifying examination in 1974. His juniors were promoted as Assistant Engineer in 1977, the applicant has now been given seniority over Brij Mohan and others. Therefore, the applicant must also get deemed date of promotion back-dated to the same date as the date of promotion of juniors. Mr.Brij Mohan got promotion as Assistant Engineer on 5.7.1977. Since now applicant is placed above Brij Mohan in the seniority list, his promotion should also be back-dated to

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5.7.1977 by applying the principle of deemed promotion.

Therefore, we hold that applicant should be deemed to have been promoted w.e.f. 5.7.1977 as Assistant Engineer.

6. As a result of the applicant's promotion being back-dated the applicant is entitled to fixation of pay in the promotional post from that date. Therefore, the respondents should re-fix the pay of the applicant in the promotional post as Assistant Engineer on 5.7.1977 and then the pay should be re-fixed after deemed earning of increments from time to time. In our view, this exercise may not help the applicant financially since by January, 1986 due to bunching of cadres or bunching of scales, many officials will get the same scale of pay.

The applicant submitted that he is entitled to arrears of pay as a result of re-fixation of pay from 5.7.1977 and onwards. The learned counsel for the respondents contended that due to distance of time, the arrears of pay should not be allowed. After hearing both sides, we find that even the Principal Bench though has granted seniority and re-fixation of pay did not grant arrears of pay. Then, further we find that the said order of the Principal Bench was challenged before the Supreme Court. Even the Supreme Court in Civil Appeal No.1814/93 and connected cases has upheld the Judgment of the Principal Bench which had declined to grant arrears of pay as a result of re-fixation of pay, seniority etc. The reason given is that this exercise involved about ten thousand officials and if all of them should get re-fixation and consequent arrears, it would be an enormous burden on the State. Therefore, the Principal Bench has rightly rejected the claim for arrears and it has been upheld by the

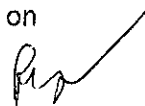
K.R.

Supreme Court. The applicant himself has produced the said Judgment of the Supreme Court which is annexed with the M.P.479/96.

While granting re-fixation of pay to the applicant, we are not granting any arrears of pay to the applicant on this account.

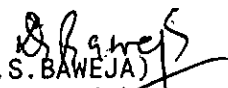
7. The next and the last prayer of the applicant is that when he is entitled to deemed promotion from 1977, he is entitled to the next promotion as Senior Assistant Engineer after the lapse of 12 years from 1977 which means that he should get his further promotion from 1989. It was also brought to our notice that the applicant has since been promoted as Senior Assistant Engineer in 1993. Now, the applicant wants that it should be back-dated to 1989. The learned counsel for the respondents strongly opposed this submission of the applicant on the ground that one must have 12 years actual regular service as Assistant Engineer to get further promotion as Senior Assistant Engineer and such a promotion cannot be granted in a case of deemed promotion.


After noticing the two rival contentions, we find that after getting promotion as Senior Assistant Engineer in 1993, the applicant has already filed OA 829/94 for the same relief that his promotion as Senior A.E. should be granted to him after the expiry of 12 years. Since a specific OA has already been filed for this identical prayer, we do not want to express any opinion on this point. We will hear the parties in OA 829/94 and pass necessary orders. We may also note that this OA 829/94 is already on final hearing board and is kept for final hearing on



22.6.1999, which is hardly three weeks from now. Hence, that question is left open.

8. In the result, the O.A. is allowed partly as follows:
- (1) The prayer of the applicant for being given seniority over Brij Mohan and P.N.Lal does not survive now since respondents have already conceded his prayer and have granted seniority to the applicant above Brij Mohan and P.N. Lal.
 - (2) The respondents are directed to back-date the deemed promotion of applicant as Assistant Engineer to 6.5.1977 when junior Brij Mohan got that promotion.
 - (3) As a result of back-dating the applicant's promotion as Assistant Engineer to 6.5.1977, the respondents should re-fix the applicant's pay as Assistant Engineer on 6.5.1977 and grant him usual increments from time to time and on that basis the applicant's present pay should be determined.
 - (4) Notwithstanding the re-fixation of pay from 6.5.1977 the applicant's prayer for arrears of monetary benefits on this account is hereby rejected.
 - (5) However, after re-fixing the pay of the applicant as stated earlier and if the applicant is entitled to any enhancement of pay as on to day, then the applicant is entitled to the said benefit prospectively from to day and onwards.
 - (6) The claim of the applicant for back-dating his promotion as Senior Assistant Engineer is left open and the same will be considered in OA 829/94 which is filed by him and which is pending in this Tribunal.
 - (7) In the circumstances of the case, there will be no order as to costs.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN 876159

B.