

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 149/93

Date of Decision:

M.K.Manilal Sharma

Applicant.

Shri G.K.Masand

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.C.Kotiankar

Advocate for  
Respondent(s)

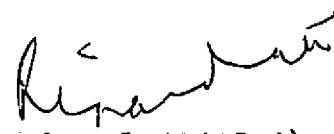
CORAM:

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

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

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to  other Benches of the Tribunal?

  
(R.G.VAIDYANATHA)  
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 149/93.

-----, this the 30 day of June 1999.

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

M.K.Manilal Sharma,  
Telecom Officer,  
Quarter No.B-20 at Mulund  
(West),  
Bombay - 400 080.

... Applicant.

(By Advocate Shri G.K.Masand)

V/s.

1. Union of India through the  
Secretary to the GOI,  
Department of Telecommunication,  
Sanchar Bhavan, 20 Ashoka Rd,  
New Delhi-110 001.

2. Director General (Telecom)  
Sanchar Bhavan, 20 Ashoka Road,  
New Delhi - 110 001.

3. Chief General Manager,  
M.T.N.L., Telephone House,  
V.S.Marg, Bombay - 400 028. ... Respondents.

(By Advocate Shri R.C.Kotiankar)

: O R D E R :

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

This is an application under section 19 of the  
Administrative Tribunals Act, 1985. The respondents have  
filed reply. We have heard the learned counsel  
appearing on both sides.

2. Few facts, which are necessary for the disposal of  
this O.A. are as follows.

The applicant joined Telecom Service as a Telephone  
Operator. He was promoted as a Junior Engineer which is  
re-designated as Junior Telecom Officer. For the next  
promotion he passed the departmental qualifying examination  
in July, 1974. Then, he was promoted as Selection Grade  
Junior Engineer on 1.4.1976. Later, on ad-hoc basis he  
was promoted to Group 'B' post in Telegraph Engineering  
Service in 1978 which came to be regularised in 1986.

Since the applicant passed the qualifying examination  
in July, 1974 and in view of the Judgment of the Allahabad  
High Court, Supreme Court and other Benches of the Tribunal  
his seniority should count from July, 1974 and he was

...2.



entitled to be promoted in 1976-77 when his junior got promotion. According to him he should get seniority in between the names of N.K.Ram Krishna and R.P.Srivastav. But, the seniority list of 1992 does not show the name of the applicant. He has, therefore, approached this Tribunal praying for a declaration that he is entitled to be promoted from 1977 and other consequential reliefs.

3. The respondents have stated that applicant's seniority was considered on the basis of passing the examination in July, 1974 and he was considered for promotion in 1980-81 and subsequent years, but he was not found suitable for promotion by the DPC till 1986 when he was cleared by the DPC and he was given regular promotion from 1986 onwards. It is therefore, stated that the applicant is not entitled to any of the reliefs prayed for.

4. The applicant's main grievance is that there were adverse remarks against the applicant in 1973-74 and again in 1977-78, but these adverse remarks were got expunged by the Competent Authority, but probably this has not been placed before the DPC. The learned counsel for the respondents has placed before us all the relevant DPCs from 1980 and onwards. We find that the applicant's name has been considered in the DPC for the first time in 1980. All the relevant ACRs were placed before the DPC which included the orders of the Competent Authority expunging the adverse remarks for 1973-74 and 1977-78. There is also a note in the concerned ACR about the remark being expunged. That means all the ACRs were placed before the DPC including the orders of expunging the adverse remarks.

The post in question is a selection post. That means the best persons must be selected from the zone of consideration. The applicant has been considered by the DPC. On the basis of the entries in the ACRs, the DPC has given gradings for all the officers like 'good' 'very good' etc. Then, the DPC has selected all the candidates who got the grading 'very good', since the applicant's grading was 'good' he could not get in since there were many persons with 'very good' grading. There are many officials above the applicant's name with grading 'good', but not promoted and all officials with grading 'very good', above names of applicant and below his name in the eligibility list have been selected. Therefore, we do not find any illegality

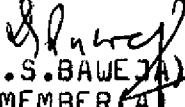
 ...3.

in not giving promotion to the applicant ~~from~~ <sup>during</sup> 1980-85. The DPC has not taken into consideration the adverse remarks since the order expunging them have been placed before the DPC including a note in the ACR, that adverse remarks are expunged. Since it was a selection post, the applicant could not be selected due to many officials above him and below him having a higher grading viz. 'very good'. This Tribunal cannot sit in appeal over the findings of the DPC. Since the DPC has followed the correct procedure and has taken into consideration all relevant materials and has based its selection with grading given by it, we do not find any illegality or irregularity in the non-selection of applicant for promotion from 1980-85.

5. In 1986 DPC we find that the applicant got grading as 'very good' and on that basis, he has been promoted. Therefore, the DPC has applied consistent method for selection right from 1980 to 1986. It may be, the relevant ACRs prior to 1986 have given a higher grading to applicant and that is how he came to be selected in 1986 for regular promotion. His earlier non-selection was due to his grading on the basis of ACRs which have been done correctly by the DPC.

We may also note that the applicant has retired from the service during the pendency of this OA on 31.5.1995. We do not find any merit in the application and it deserves to be dismissed.

6. In the result, the O.A. fails and is hereby dismissed. No order as to costs.

  
(D.S. BAWEJA)  
MEMBER (A)

  
Reported 20/10/95  
(R.G. VAIDYANATHA)  
VICE-CHAIRMAN