

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 397/94

Transfer Application No.

Date of Decision

2/1/95

Bansi Rambhau Dhame

Petitioner/s

Shri A.G.Abhyankar

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar

Advocate for
the Respondents

CORAM :


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

Hon'ble Shri. P.P.Srivastava, Member (A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

No

No


(P.P.SRIVASTAVA)

MEMBER (A)


(R.G.VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 397/94

Pronounced this the 20th day of January 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

Bansi Rambhau Dhame

By Advocate Shri A.G.Abhyankar

... Applicant

V/S.

1. Union of India
through the Secretary,
Deptt. of Telecommunications,
Ministry of Communications,
Sanchar Bhavan, 20 Ashoka Road,
New Delhi.
2. The Chairman
Deptt. of Telecommunications,
Sanchar Bhavan, New Delhi.
3. The Senior Deputy Director General,
(Building and Works) Civil Wing,
Sanchar Bhavan, New Delhi.
4. The Chief Engineer (Civil),
Telecom West Zone,
Sion Post Office Bld.III Floor,
Sion, Bombay.
5. Shri K.V.Srinivasan,
Executive Engineer,
Telecom Civil Division,
K.S.H.B.Building, 6th Floor,
Pumampilly Nagar,
Ernakulam, Cochin-682 016.

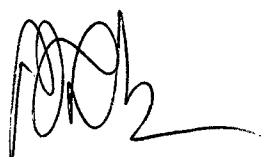
By Advocate Shri V.S.Masurkar
C.G.S.C.

... Respondents

O R D E R


(Per: Shri P.P.Srivastava, Member (A))

The applicant joined the Telecom Department in 1963 as Section Officer. He was promoted as Assistant Engineer on adhoc basis which was regularised on 20.3.1978 and the regularisation was effective from 17.4.1972. The private respondent No. 5 was posted as Assistant Engineer on adhoc basis on 9.8.1972



and regularised w.e.f. 9.8.1972 by orders passed on 20.3.1978. The applicant's case is that he is senior to Respondent No. 5 in the seniority list of Assistant Engineers and has been shown senior in the seniority list. The applicant has further brought out that as a result of various Tribunals judgement the seniority list was revised and the final seniority list was published on 11.5.1993. In that list private Respondent No. 5 has been shown at Sr.No. 97 while the applicant is at Sr.No. 94. Therefore, the applicant is clearly senior to Respondent No. 5. Again in the seniority list dated 10.12.1993 the applicant was at Sr.No. 119 while the private Respondent No. 5 was at Sr.No. 131. Thus, it will be seen that private respondent No. 5 is always junior to the applicant.

2. The applicant learnt that Respondent No. 5 was promoted as Executive Engineer from 1978 ignoring the claim of the applicant. The applicant has claimed that this promotion of Respondent No. 5 was malafide discrimination against the applicant and hence he has approached this Tribunal through the present OA. and has sought the relief for directing the official respondents, i.e Respondents No. 1 to 4 to ^{promote him to} the next higher post of Executive Engineer when his junior, i.e. private Respondent No. 5 was promoted on adhoc or regular basis as Executive Engineer. The applicant has also prayed that the official respondents be directed to fix the pay of the applicant on the basis of such retrospective promotion so that applicant's pay shall at no point of time be less than that of his junior K.V.Srinivasan, the Respondent No. 5. The applicant has also claimed payment of all

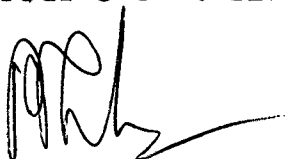


consequent arrears arising out of such fixation.

The other prayer concerning transfer of the applicant to a distant station outside the state has not been pressed by the applicant at the time of hearing.

3. The respondents have filed a reply.

Firstly, the respondents have taken a legal ground that the private Respondent No. 5 was promoted in 1978. In terms of Section 21(2)(a) of the Administrative Tribunal Act, 1985 an application against an order made before three years immediately preceeding the setting up of the CAT is not only time barred, but also this Tribunal has no jurisdiction to try and entertain this application. The respondents have also brought out that the cause of action arose in the year 1978 when private respondent and others were promoted from time to time and the applicant cannot take the plea that he did not know the position of Respondent No. 5 earlier. Therefore, the respondents have taken the ground that the application is also barred by delay and laches. The respondents have further brought out that prior to the issue of the seniority list in 1987, posts in the grade of Executive Engineer were required to be filled in due to expansion of cadre, therefore, it was decided to promote AEs who had put in 6 years working experience in the grade and had passed the departmental examination, in the order of their seniority. Respondent No. 5 K.Srinivasan had fulfilled all the requirements and therefore he was one of the promotees on adhoc basis in 1978. It is also brought out by the respondents that some of the senior officers could not be promoted to the Executive Engineer grade because of their ineligibility as they did not fulfill



the condition for adhoc promotion. The regular promotion could not be considered because the seniority list has not been finalised and there were court cases concerning the seniority list. The official respondents have further brought out that private respondent No. 5 had fulfilled all the conditions prescribed for promotion and that his adhoc promotion was known to all the officers concerned including the applicant and the applicant cannot pretend ignorance about his promotion after a period of 16 months. The respondents have also brought out that the applicant has challenged his promotion in another OA NO.1208/92 and prior to the issue of seniority list of AEs in December, 1993. In that OA, in the year 1992 he could have challenged his adhoc promotion of Executive Engineer which he did not do so and therefore he cannot challenge it now in another OA, with reference to private Respondent No. 5 who was promoted way back in 1978.

4. As far as merit is concerned, the respondent administration has brought out that the adhoc promotions were required to be made in the exigencies of service and no stepping up can be granted on the basis of adhoc promotion which has been upheld by the Hon'ble Supreme Court in their decision reported in the case of Union of India vs. R.Swaminathan , 1997 (2) S.C.SLJ 387.

5. We have heard both the parties. Learned counsel for the applicant has argued that the applicant waited for the finalisation of the seniority list before challenging the promotion of Respondent No. 5 and he was not aware of the promotion of Respondent No. 5 and



when he came to know about adhoc promotion of Respondent No. 5 as Executive Engineer from 1978 after perusing the 1993 seniority list, he has challenged the seniority and, therefore, there is no delay and laches as far as limitation is concerned. Non-promotion of the applicant is a continuing process and he is continuously suffering and therefore it should be treated as continuing cause of action and only question of arrears would be decided on the basis of limitation but the claim of the applicant cannot be ignored on the ground of limitation.

6. As far as the merit of the case is concerned, the ld. counsel for the applicant has argued that the applicant should have been promoted before the Respondent No. 5 as he is senior in all the seniority list as has been shown by him in the OA, which fact has not been disputed by the respondent administration. Ignoring the claim of the applicant, therefore, cannot be justified and he is entitled to promotion from the date his junior, i.e. Respondent No. 5 was promoted. The ld. counsel for the applicant has further argued that although the promotion has been called on adhoc basis, but in fact it has been continued for long and therefore cannot be called adhoc promotion at least for the purpose of granting of pay with reference to his juniors.

7. Learned counsel for the respondents has argued that the claim of the applicant besides being barred by limitation, also suffers from delay and laches. This Tribunal has no jurisdiction as the



claim of the applicant has arisen in 1978 and since the Tribunal can deal with the cases 3 years prior to its formation in 1985, the Tribunal has no jurisdiction in this case. As far as merit is concerned, ld. counsel for the respondents has argued that the issue of stepping up of pay in the case of adhoc promotion stands finally settled in terms of the Hon'ble Supreme Court judgement quoted above in the case of Union of India vs. R. Swaminathan, 1997(2) S.C. SLJ 387. The ld. counsel for the respondents has also brought to the notice of the Tribunal a Full Bench decision in the case of B.L. Somayajulu & Ors. vs. The Telecom Commission & Ors. reported in 1997(1) A.T.J. p. 1, wherein the Full Bench has decided that "a claim for stepping up can be made only on the basis of a legal right and not on pervasive notions of equity or equality, unrelated to the context of statutory law." In Para 5 the Full Bench has observed as under :-

"5. To our mind, every claim must be based on an enforceable legal right. A right arises by conferment, not by comparison. Broad notions of equity cannot be equated or assimilated to legal rights. There is also the further question whether the Tribunal can exercise a jurisdiction in equity. We are inclined to think that a jurisdiction in equity does not inhere in the Tribunal."

Learned counsel for the respondents has argued that in view of the clear position of the law laid down by the Full Bench, the applicant is not entitled to any stepping up of pay as he has not been able to bring out any rule or law under which he is entitled. In fact, under the rules for upgradation, the applicant's claim is not sustainable.



8. After hearing both the parties, we are of the view that since Respondent No. 5 was promoted on adhoc basis in the exigency of service, the claim of the applicant was not covered by the rules as there is no provision of granting stepping up of pay when the junior is promoted on adhoc basis. This issue stands finalised in terms of the Hon'ble Supreme Court decision in the case of Union of India vs. R.Waminathan. The case is also covered by the Full Bench judgement as quoted above. As far as delay is concerned, we are of the view that the private Respondent No. 5 was promoted in 1978 and the applicant has ample opportunity to come to the Tribunal on the basis of seniority list and could have sought legal remedy before. He has come in 1994, which, in our opinion, is barred by not only limitation but also by delay and laches. On this ground also we do not find any merit in the OA. We are not considering the issue concerning jurisdiction as we have decided the case on merit.

9. In the result, the OA. is dismissed.

There will be no orders as to costs.



(P.P.SRIVASTAVA)

MEMBER (A)



(R.G.VAIDYANATHA)

VICE CHAIRMAN

mrj.