

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.455/94.

DATE OF DECISION : 06-07-1999.

P.B.Kulkarni & J.P.Tare

...Applicants

Shri B.Dattamoorthy,

...Advocate
for applicants

Vs.

Union of India & Others.

...Respondent(s)

Shri P.M.Pradhan.

...Advocate for
Respondent(s)

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

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

ND

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

ND


(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.
ORIGINAL APPLICATION NO. 455/94.

, this the 6th day of July 1999.

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

1. P.B.Kulkarni,
Senior Telegraph Master,
Central Telegraph Office,
Bombay.

2. J.P.Tare,
5 Aditya Apartments,
Vadavli Section,
Ambernath (East)
Maharashtra - 421 501.

...Applicants.

(By Advocate Shri B.Dattamoorthy)

Vs.

1. Union of India (through R-2)
2. Chief General Manager, Telecom,
Maharashtra Circle, GPO Bldg., Bombay.

3. Chief Supdt. CTO, Bombay.

...Respondents.

(By Advocate Shri P.M.Pradhan)

: 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. Respondents have filed reply. We have heard Mr.B.Dattamoorthy, counsel for the applicant and Mr.S.S.Karkera on behalf of Mr.P.M.Pradhan, counsel for the Respondents.

2. Few facts, which are necessary for the disposal of the application, are as follows.

The applicant joined the Telecom Department as Telegraphists, which is the entry grade or basic grade or grade - I. Then there is promotion to Grade - II, Grade - III and Grade - IV. The fourth grade consists of only 10% of the posts of Gr.III in a higher scale. It is also provided under the rules that ^{promotion to} in Gr.IV should be on the basis of seniority in the basic grade viz. Gr.I. The applicants are seniormost officials in the basic grade or entry grade. They have been superceded or

...2.

overlooked in giving promotion to Gr.IV. Now the government has issued promotion order dt. 13.1.1994 given to other officials overlooking the seniority of the applicants and for direction to the respondents to promote the applicants to Gr.IV with all consequential benefits and they also want some of the Government Orders to be quashed.

3. Though the main relief in the O.A. is that promotion to Gr.IV should be on the basis of seniority in the basic grade, now there is no dispute on that point.

The matter is also covered by a decision of the Principal Bench of this Tribunal in the case of Smt.Santosh Kapoor and Ors. Vs. Union of India dt. 7.7.1992 in OA 145/91, which is at page 9 of the paper book. The Judgment clearly shows that Gr.III has a pay scale of Rs.1600-2660. Out of this 10% posts, to be in Gr.IV and the Tribunal has held that basis for the selection Gr.IV is the seniority in the basic grade. It is also not disputed that this judgment of the Principal Bench came to be confirmed by the Supreme Court.

Then, we have the Government Order at page 31 of the paper book dt. 13.12.1995. It clearly mentions that in view of the Judgment of the Principal Bench in OA 1455/91 mentioned above and confirmed by the Supreme Court by order dt. 9.9.1993, the department is now issuing revised orders to the effect that for promotion to Gr.IV seniority of the basic grade should alone be the criteria. There are also others orders dt.17.1.1996, 1.3.1996 and 10.5.1996 at pages 32, 33 and 35 of the paper book which show that the government is implementing the directions of the Principal Bench of the Tribunal and confirmed by the Supreme

Court. Hence, as on to day there is no dispute that Gr.IV should be filled up on the basis of seniority in the basic grade or entry grade. Hence, the applicants are entitled to that relief.

4. The other contention of the learned counsel for the applicants is that for this grade IV which consists only 10% posts of Grade-III in a higher scale of pay, reservation policy should not be applied since it is only an upgradation of Gr.III to the extent of 10% posts. The learned counsel for the respondents contended that even for upgraded posts reservation should be applied.

Applicant's counsel relied on an unreported Judgment of the Ahmedabad Bench of this Tribunal dt. 11.4.1997 in 623/96 where the Bench has held, after referring to Supreme Court decision in Ashok Kumar Srivastava's case, that reservation policy will not apply to upgraded posts.

On the other hand, respondents counsel invited our attention to a decision of the Apex Court in K.Manikraj Vs. UOI, (1997 (2) SC SLJ 49), where the Supreme Court has observed that reservation policy will apply even to upgraded posts.

In our view, it is not necessary to express any final opinion of ours on the disputed question, since the Government itself has agreed to implement the Judgment of the Ahmedabad Bench of the Tribunal.

5. The learned counsel for the applicants' placed before us a copy of the Government Order dt. 11.1.1999 issued by the Department of Telecom of Government of India to all Heads of

Telecom Circles in India. The Circular reads as follows:

Sub: Procedure for promotion to Gr.IV(Rs.2000-3200)
against 10% posts in the BCR Scheme.

.....

Attention is invited to this office letter of even no. dt. 22.8.1997 vide which a copy of the orders dt. 11.4.1997 delivered by the Central Administrative Tribunal, Ahmedabad Bench in OA No.623/96 with MA 660/96 was circulated with a direction to follow these orders for any promotion to Grade IV with effect from 11.4.1997.

The matter has been examined. It is further clarified that the aforesaid orders of the CAT, Ahmedabad Bench, as per with roster will not apply for promotion from BCR to Grade - IV may be followed. This office order of even number dt. 22.8.1997 and 1.3.1996 stand modified to this extent.

This will be, however, subject to the outcome of writ petition filed in the Gujarat High Court which is still pending for adjudication.

This may be treated as most urgent".

Then we have one more Circular dt. 22.8.1997 which reads

as follows :

Sub: Procedure for promotion to Gr. (IV)
(Rs.2000-3200, against 10% Posts in
the BCR Scheme.

.....

Kindly refer to this office letter of even number dated 1.3.1996 on the above subject wherein it was clarified that the normal rules of reservation would apply to promotion in Grade IV.

Hon'ble CAT Ahmedabad vide its Judgment dt. 11.04.1997 in O.A. No.623/96 with MA/660/96 has passed an order that reservation roster will not apply in this case. A copy of the order is enclosed herewith.

Accordingly, you are hereby directed to follow these orders for any promotion to Grade IV with effect from 11.04.1997.

This will be, however, subject to the outcome of Writ Petition being filed in Gujarat High Court against the CAT Order.

This may be treated as MOST URGENT."

In both the Circulars mentioned above, the government has taken a policy decision to implement the judgment of the Ahmedabad Bench of the Tribunal in OA 623/96 viz. that reservation roster will not apply for promotion from BCR to Gr.IV. The only condition put by the Government is that this



direction is subject to the outcome of writ petition filed in the Gujarat High Court which is still pending. In other words, the Government has decided to implement the decision of the Ahmedabad Bench of the Tribunal subject to the orders that may be passed by the High Court in Writ Petition filed by the Government challenging the order of the Ahmedabad Bench of the Tribunal.

Hence as on to day the Government has committed itself to implement the directions of the Ahmedabad Bench of the Tribunal that reservation will not apply to the 10% upgraded posts in Gr.III which is called as Gr.IV, subject to the decision of the Gujarat High Court in the Writ Petition. Hence, no further direction is necessary by this Tribunal, since government itself has agreed to follow the directions of the Ahmedabad Bench of the Tribunal.

6. As far as the consequential reliefs are concerned, we feel that applicants should get notional fixation of pay from retrospective date when they were due for promotion to the upgraded post on the basis of seniority, but they will be entitled to get actual monetary benefits from the date of filing of this OA.

7. In the result, the application is allowed as follows.

(1) It is hereby reiterated that promotion to Gr.IV should be on the basis of basic grade seniority as has been already accepted and reiterated in the Government Orders dt. 13.12.1995, 17.1.1996, 1.3.1996 and 10.5.1996.

(2) The Respondents are therefore, directed to consider the claim of the two applicants P.B.Kulkarni and J.P. Tare for promotion to Gr.IV on the basis of their

seniority in the basic grade as per rules. If the applicants are found fit for promotion on the basis of their seniority and as per rules then they should give retrospective notional promotion from the time their immediate junior was given promotion to Gr.IV and pay should be fixed in the promotion post notionally and increments granted from time to till the date of filing of this OA viz. 21.3.1994. However, the applicants are entitled to actual monetary benefits from 1.4.1994 and onwards.

- (3) While considering the claim of the applicants for promotion to Gr.IV, the respondents should not apply the reservation policy as conceded by the Government in their two circulars dt. 11.1.1999 and 22.8.1997 subject to the decision of the Gujarat High Court in pending writ petition.
- (4) The respondents should comply with this order within a period of four months from the date of receipt of copy of this order.


(D.S. BAWEJA)

MEMBER(A)


(R.G. VAIDYANATHA)

VICE-CHAIRMAN

B.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P. NO.: 04 of 2000 IN O.A. NO.: 455/94.

Dated this Thursday, the 7th day of June, 2001.

CORAM : Hon'ble Shri Justice B. Dikshit, Vice-Chairman.
Hon'ble Shri B. N. Bahadur, Member (A).

1. P. B. Kulkarni
2. J. P. Tare ... Applicants.
(By Advocate Shri B. Dattamoorthy)

VERSUS

1. R. Sundaresan,
Chief General Manager,
Telecom, Maharashtra
Circle, Mumbai - 1.
2. K. G. Mathew,
Chief Superintendent,
Central Telegraph Office,
Mumbai - 400 001. ... Respondents.
(By Advocate Shri V. S. Masurkar)

TRIBUNAL'S ORDER :

Heard Shri B. Dattamoorthy for the Applicants and Shri V.
S. Masurkar for the Contemnors.

2. On 30.04.2001 this Court directed R. Sundaresan, Chief General Manager, Telecom, Maharashtra Circle and Shri K. G. Mathew, Chief Superintendent, Central Telegraph Office, Mumbai, to appear in person. The alleged contemnors are present in the Court. It is pointed out by the Learned Counsel for Respondents

B. Dattamoorthy

that the order has been complied with. The Learned Counsel for the applicants does not dispute this position. However, he has prayed for awarding of the cost. It is not disputed that the officers have been posted as C.G.M. and as Chief Superintendent hardly a year back. During their tenure they have complied with the order of this Tribunal and under such circumstances, the notice is discharged.

3. The contempt petition is accordingly disposed of. No costs.

B. N. Bahadur

(B.N. BAHADUR)
MEMBER (A).

B. Dikshit

(B. DIKSHIT)
VICE-CHAIRMAN.

OS*

Order/Judgement despatched
to Applicant/Respondent(s)
on 14/6/2001

(K)

18/6/2001