

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1060/94

13-12-95
Date of Decision:

P.N.Nandawar

Applicant.

Shri H.Y. Deo

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

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

Advocate for
Respondent(s)

CORAM:

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

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

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

D.S. Baweja
(D.S. BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1060/94

Dated this the 13th day of December 1999.

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

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

P.N.Nandanwar,
J.A.O. in Pune Telecom,
R/o. E-1/5, Shri Balamal Chawl
Behind Nava-Maharashtra Vidyalaya,
Pimpri, Pune.

... Applicant

By Advocate Shri H.Y.Deo

V/S.

1. Union of India
through The Chairman
Telecom Commission,
Telecommunication Dept.,
Sanchar Bhavan, Ashoka Road,
New Delhi.

2. The Chief General Manager,
Maharashtra Telecom Circle,
G.P.O. Building,
Bombay.

3. The General Manager,
Pune Telecom,
Telephone Bhavan,
Bajirao Road,
Pune.

... Respondents

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

O R D E R

(Per: Shri D.S.Baweja, Member (A))

The applicant has filed this OA. seeking the relief of promotion as Telecom Office Assistant Grade IV from 1.7.1992 when his junior has been promoted with payment of arrears of salary accordingly with 18% interest per annum.

2. The applicant at the time of filing the present OA. was working as officiating J.A.O. in Pune Telecom from May,1991. Before that he was working as Telecom Office Assistant Grade III from 26.10.1990. The applicant belongs to Scheduled Tribe category. The applicant submits that in the cadre of Telecom Office Assistant (TOA), there are four grades. Promotion to Grade II from Grade I is allowed after 16 years of service (10 years for Scheduled Caste/Tribe (SC/ST) categories) under One Time Bound Promotion (OTBP) scheme. Promotion to Grade III is thereafter after completion of 26 years (17 years for SC/ST categories) under Biennial Cadre Review (BCR) Scheme. 10% senior most working in Grade III are entitled to get promotion to Grade IV (Rs.2000-3200). For promotions to various grades, separate seniority lists are required to be maintained with separate 40% rosters for the reserved categories. However, the applicant alleges that 40 point rosters are not being maintained by the Department. The applicant submits further that upto June,1992, the promotions to Grade IV were done at the Divisional level by

the Pune Division and upto 1.3.1992, first sixteen officials (including SC/ST) as per seniority were promoted to Grade IV. The applicant's name appears at S.No.17 and therefore he had become due for promotion. After June,1992, promotions to Grade IV were transferred to Circle and promotions were to be done on the basis of Circle seniority. The Circle Head, i.e. Respondent No. 2 granted promotion to Grade IV to Shri Thanedar w.e.f. 1.7.1992 while Shri R.B.Sawant, Shri H.K.Jagtap and Shri S.P.Chilwar were promoted from 1.1.1993. All these four officials belonging to general category were junior to the applicant in the cadre of TOA Grade III even on the basis of general category seniority but the applicant has not been promoted. Applicant being ST candidate should have got promotion even earlier to them on the roster point No. 17 for the ST category. The applicant has not been conveyed any adverse remarks at any time. He also fulfils all the prescribed conditions as per the order dated 26.8.1991. The applicant accordingly made representation on 15.11.1993 against his non promotion which was rejected by the letter dated 25.11.1993. Thereafter, the applicant represented on 25.1.1994 to the higher authority. On not getting any response for the same, the present OA. has been filed on 19.9.1994.

3. The respondents have opposed the application through the written statement. The respondents submit that promotion under the BCR scheme is to be given according to the seniority in the basic cadre and duly recommended by the Departmental Promotion

Committee (DPC). The promotions are controlled by the Circle and under BCR Scheme, all officials have been given promotion based on the Circle gradation list of 1977. All the ⁴/₅ officials referred to by the applicant are senior to the applicant in the basic cadre as per 1977 seniority list and have been promoted as due as per seniority. The applicant is much junior to them and not entitled for promotion. The respondents further submit that 40% roster has been followed while giving promotions to Grade V at the Divisional as well as Circle level. The applicant has been subsequently promoted from 1.1.1995 against the roster point 17 for ST category. In the light of the submissions made in the ^{Written statement} OA, the respondents contend that OA. deserves to be dismissed.

4. The applicant filed a Misc. Application to bring on the record the seniority list as on 1.7.1992 of Telecom Office Assistants of Pune Telecom Division to show that the applicant is senior to Shri S.K.Thanedar who has been promoted to grade IV from 1.7.1992.

5. The applicant has not filed any rejoinder reply for the ^{Written statement}.

6. We have heard the arguments of Shri H.Y.Deo, learned counsel for the applicant and Shri S.S.Karkera for Shri P.M.Pradhan for the respondents.

7. The applicant during the pendency of the OA. has been already promoted to TOA Grade IV from 1.1.1995 against the roster point No. 17 for ST Category as brought out by the respondents in the written statement. There is no denial of the same as no rejoinder reply has been filed. However, during the hearing, the counsel of the applicant confirmed this promotion. Thus the issue to be gone into now is the claim of promotion as a general category employee to TOS Grade IV from 1.7.1992 when Shri S.K.Thanedar was promoted and alleged junior to the applicant. In this connection, the respondents have stated in the written statement that the promotions to the Grade IV under BCR Scheme are to be done on the basis of basic grade seniority. This criteria is not denied by the applicant. Therefore the short question which needs to be answered is whether the applicant is senior to the general category employees S/Shri V.R.Vise, S.K.Thanedar, R.B.Sawant, H.K.Jagtap and S.P.Chilwar (should be C.P.Chilwar) as claimed by him and who have been promoted earlier to applicant ignoring his case for promotion? The respondents have taken the stand that basic grade seniority in respect of TOS cadre on Circle basis was issued in 1977 and based on this seniority list, all promotions under BCR Scheme have been given. As per 1977 seniority list, the copy of which was made available during the hearing, the name of the applicant is at S.No.1070 while that of Shri S.K.Thanedar is at S.No.24. The S.Nos. of the other alleged juniors, i.e. S/Shri V.R.Vise, R.B.Sawant, H.K.Jagtap and S.P.Chilwar are at 313, 314, 315 and 338 respectively. The applicant has not filed any rejoinder reply to

the written statement as indicated earlier. Therefore, the submissions of the respondents with regard to 1977 have not been controverted. However, during the hearing, the counsel of the applicant contested this seniority list and drew our attention to seniority list brought on the record as Annexure-'A-5' through an amendment application. The counsel of the applicant submitted that the seniority list as on 1.7.1992 has been issued by the Telecom Pune and based on this seniority list, promotions had been earlier given. He further added that as per this seniority list, he has no grievance against S/Shri V.R.Vise, R.B.Sawant and H.K.Jagtap as they are senior to him though earlier in the OA. he had alleged that they were also junior to the applicant but other employees, namely, S/Shri S.K.Thanedar and C.P.Chilwar are junior to the applicant. In view of this, the counsel of the applicant argued that 1977 seniority list has no validity and since Shri S.K.Thanedar junior to the applicant has been promoted on 1.7.1992, he also deserves promotion to the TDA Grade V from 1.7.1992.

8. On careful perusal of the seniority list at Annexure-'A-5', we are not impressed by the arguments of the applicant. Firstly, as contested by the respondents in the written statement, this seniority list does not show as to when it was issued and what is the basis of this seniority list as there is no covering letter. Secondly, it is noted that this seniority list included the names of the employees in all the

four grades of TOS and no details have been given with regard to promotion in various grades. This seniority list even if accepted as a genuine for a moment cannot be relied upon as this indicates the seniority as per the promotion dates wherein SC & ST employees have been shown senior although their basic grade seniority is very low. Since the promotion to Grade IV under BCR Scheme is to be done on the basic grade seniority, a mere perusal of the Annexure-'A-5' will reveal that the applicant cannot be senior to S/Shri S.K.Thanedar and C.P.Chilwar whose dates of appointment in the basic grade are much earlier than that of applicant. Based on the dates of appointment, it is our considered view that the 1977 seniority list correctly reflects the seniority position on the basis of substantive appointment in the basic grade. The applicant at S.No. 1670 of the 1977 list is far below than the other employees alleged to be junior. The counsel for the applicant made a feeble attempt that 1977 does not correctly reflect the basic grade seniority as there had been cases of transfer to other Circles and that is not taken into account. We do not find any force in this contention in the absence of any specific details and non challenge of 1977 seniority list. With this analysis of the documentary evidence brought on the record by both the parties, we are unable to accept the contention of the applicant that he is senior to Shri S.K.Thanedar as a general category candidate. Once this finding is recorded, the relief prayed for by the applicant does not survive.

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9. The counsel for the applicant relied upon the order dated 6.7.1999 in OA.No.455/99 in the case of P.Kulkarni and another vs. Union of India. After going through this order, we find that this does not come to the rescue of applicant. In this case, the issue was with regard to the criterian to be followed for promotion under BCR scheme and whether the reservation will apply for SC & ST categories. This is not so in the present case where the matter under challenge is the promotion as per the seniority with reference to the promotion of ^{by alleged} the junior.

10. In the result, the OA. lacks merit and is accordingly dismissed. No order as to costs.

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

D.S.BAWEJA
(D.S.BAWEJA)
MEMBER (A)

mrj.