

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:973/1995
975/1995 & 976/1995
DATED THE 20TH DAY OF JUNE, 2001

CORAM: HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

R.B.Prajapati,
Working as Higher Grade
Draftsman in the Office
of D.E.P. Project Survey,
Telephone Square, Dadar(W),
Bombay - 400 028. ... Applicant in OA 975/95

By Advocate Smt. V. S. Masurkar

v/s.

1. Union of India,
through Secretary,
Ministry of Communication,
910, Sanchar Bhavan,
New Delhi.
2. Director General,
Department of Telecommunication,
Ministry of Communication,
S.T.G.-II section,
Sanchar Bhavan,
New Delhi.
3. Chief General Manager,
Telecommunication,
Maharashtra Circle,
2nd Floor, GPO Building,
Bombay - 400 001.

4. Assistant General Manager (Stn),
Office of Chief General Manager,
Telecom, Maharashtra Circle,
Bombay - 400 001.

5. O.H.Kachwa,
working as D'man Grade-I,
O/O/Director Microwaive Project,
M/W Building,
CTO Compound,
Nagpur - 440 001. ... Respondent No.1 to 5 only
in OA 976/95.

6. M.N.Nehere,
Working as D'man Grade-I,
General Manager,
Telecom, Pune.

7. Shri V.J.Pawaskar,
Working as D'man Grade-I,
in the office of
Divisional Engineer Telecomm,
City Division,
Mohta Market, 4th Floor,
Bombay. ... Respondents 1 to 7 in OA
973/95 and 975/95.

(ORAL)(ORDER)

Per Smt. Shanta Shastry, Member(A)

The subject matter in these three OAs ~~are~~ one and the same i.e. late promotion and fixation of seniority. The applicants were appointed as Lower Grade Draftsman and later on promoted to Higher Grade Draftsman have prayed for the following reliefs:-

8.a. that this Hon'ble Tribunal be pleased to give mandatory direction to the respondents No.1 to 4 to consider the applicant for promotion to the post of Higher Grade Draftsman as per his seniority in Lower Grade Draftsman i.e. prior to promotion of respondent No.6 i.e. prior to 10/12/1973 and to show respondents No.5 and 6 junior to the applicant in accordance with their date of entry in service.

8.b. that this Hon'ble Tribunal be pleased to hold the adhoc promotion order dated 7/9/94 giving adhoc promotions to the post of Draftsman Gr-I to the respondent No.5 and 6 without considering the case of the applicant in that regard is illegal.

8.c. that the respondents be directed to consider the applicant for promotion to the post of Draftsman Grade-I with retrospective effect from 12/6/78 or any other as deemed fit by this Hon'ble Tribunal.

8.d. that respondents be directed to work out arrears of wages of applicant from the retrospective date of his promotion to the post of higher Grade Draftsman till 25/7/78 when the applicant was actually promoted to the said post and further to calculate difference in increment and other allowance and pay the entire amount worked out as aforesaid with interest thereon at the rate of 21% per annum.

8.e. the respondents be directed to workout the arrears and pay of applicant to Draftsman Grade-I on his retrospective promotion and to pay the same with interest at the rate of 21% per annum to the applicant.

8.f. In the alternative the respondents No.1 to 4 be directed to workout notional date of promotion of applicant to the Higher Grade Draftsman and draftsman Grade-I and be pleased to give arrears of wages for one year prior to filing of this application with interest thereon at the rate of 21% per annum.

8.g. Such other and further reliefs be granted as the nature and circumstances of the case may permit.

8.h. Cost of this application be provided for.

2. The applicants had also sought interim relief pending hearing and final disposal of the OAs, that the respondents be restrained from confirming the promotion of Respondent Nos.5 and 6 to the post of Draftsman Grade-I. Interim relief was granted.

However, the same was vacated vide order dated 8/3/96.

3..... The main contention of the applicant is though they were appointed prior to the private respondents in each of the OAs, the private respondents were granted promotion to the post of Higher Grade Draftsman much before the ~~applicants~~ and the gradation list had not been published earlier. It was published only in 1993 showing the position as on 1/7/92 and it was further amended lowering the seniority of Respondent No.5 in OA-973/95.

3. The Lower Grade Draftsman are eligible for being considered for the Higher Grade Draftsman's post after completion of 5 years. Similarly, after completion of 4 years in the Higher Draftsman Grade, they become eligible for promotion to the post of Dratsman Grade-I. The applicants have drawn our attention to the seniority list of 1/1/77, 1/7/87 and 1/7/92. In the seniority list of 1/1/77 of the Lower Grade Draftsman the position of the applicants according to them was shown rightly. In this seniority list, the applicants in the OA Nos.973/95, 975/95 and 976/95 were shown at Sr.Nos.7,6 and 9 respectively. The private respondents namely Shri Kachwa and Shri Nehere were shown below these applicant. In the seniority list of 1987, there were two groups one was Higher Grade Draftsman and the other was officiating Higher Grade Draftsman. In the category of officiating Higher Grade Draftsman, the respondent shri Nehere was shown above the applicants at Sr.No.10 and the respondent no.6 in OA 973/95 was shown at Sr.No.14 below the applicants in OAs 973/95 and 975/95. Further, in the circle gradation list of 1992, both Shri Nehere and Shri Kachwa, Respondent Nos.5 and 6 of OA - 973/95 have been shown above the applicants. This list was further amended and in the amended list, Shri Kachwa's position has been brought down to Sr.No.11(a) as against Sr.No.9 in the earlier list, i.e. he has been shown below applicant of OA 975/95 but above applicant of 973/95. The learned counsel for applicants also drew our attention about variation in the dates of entries in the department and entry in higher grade of the applicants as well as private respondents. According to this seniority list, the private respondents Nehere who

was earlier shown to have been promoted to the higher grade w.e.f. 1/11/73 is now shown to have been promoted w.e.f. 10/12/73. In the case of Shri Kachwa, against 22/9/75 he has been shown to have been promoted w.e.f. 15/12/75. The applicants in OA Nos. 973/95 and 975/95 have been granted promotions w.e.f. 9/8/76 and 25/7/78 respectively. The only contention of the applicants is since they joined the department earlier than the private respondents, it was not proper to have placed the private respondents above them by granting them promotions to the Higher Grade Draftsman.

4. The respondents submit that the seniority list/circle gradation list has to be published every five years and gradation list of Lower Grade Draftsman was accordingly circulated way back in 1977, thereafter in 1982, July 87 and again in July, 92. The applicants are promoted locally based on their unit seniority. The applicants working in the Bomaby Circle got their promotion later than those who were working in the Telecom District of Nagpur and Pune. This is based upon the available vacancies locally. The circle gradation list is published only for the information of the employees in case they want to make any representation against the discrepancies. These applicants were fully aware of the P&T Manual Volume-IV yet they did not agree to make any representation nor did they attack the Gradation lists published as far back as in 1977, 1982, 1987. For the first time they represented in 1994 after a lapse of nearly 12 years. The applicants were appointed on Circle/Unit basis and each unit is an independent unit. Though the Respondents 5 and 6 in OA 973/95 were promoted in 1973, the applicants did not make

any representation. According to the respondents therefore the application of the applicants suffers from delay and laches and also the prayer of the applicant relates to a period when this Tribunal had no jurisdiction in the matter. Therefore also the application deserves to be dismissed. The learned counsel for the respondents also stated that it is well settled that settled position cannot be disturbed after a long lapse of period. The learned counsel relied on the judgement in the case of K.K.Govil V/s. Union of India & Ors. reported in 1990(14)ATC 595. It was held in this case that seniority list drawn in 1966-69 cannot be challenged on the basis of orders issued in 1996 and such claims are time barred. In this judgement, the Principal Bench of the Tribunal had relied on several other judgements of Supreme Court in the case of S.S.Rathore V/s. State of M.P. 1989(11)ATC 913, K.R.Mudgal V/s. R.P.singh (1986)4 SCC 531, etc.

5. The learned counsel for the applicants however insisted that their appointment having been made by Circle Head, the gradation list should have shown them as senior according to their dates of appointment and based on that they should have been promoted to Higher Grade Draftsman post much before the private respondents. The applicants were however could not explain as to why they could not challenge the promotions of the juniors earlier. The learned counsel stated that the applicants came to know about this only in 1993 and also they had no cause of action prior to that day as their seniority was disturbed in 1992 only. Further, the learned counsel also produced a communication dated 17/9/93 regarding revision of pay-scales of Draftsman in the Department of Telecom (Telecom Wing). According

to this, the Draftsman are to be treated as single cadre and therefore also unitwise seniority should not have been taken into consideration while promoting the applicants juniors to the post of Higher Grade Draftsman.

6. We have heard the rival contentions and have perused the pleadings. In our considered view, there is nothing to show that the action of the respondents in treating the seniority of the applicants based on the promotions etc granted to them in their units is wrong. The communication dated 17/9/92, was with reference to parity of pay scales with those of the CPWD. It is also seen that the seniority of applicant in OA 973/95 was disturbed in 1987 itself. The seniority list of 1982 is not produced, therefore it is not possible to know whether the seniority had been disturbed in 1982 itself. Even if we take the gradation list of 1987, when the seniority of applicant was disturbed, then the applications of the applicants are definitely time barred as the cause of action had arisen then. They have not challenged that seniority list. However, the applicants knew their dates of promotions. They have not agitated about that also. In view of this we feel that there is no case. Infact the applicants are not disputing their dates of promotions, they are only disputing the dates of promotions given to their juniors and since all these promotions were made unit wise we accept the respondent's statement that the variation in the dates of promotion is due to availability of vacancies locally in the respective units. Therefore, on merits we do not see any solid ground to interfere with the seniority list of 1992 as well as promotions granted to private respondents ahead of the applicants. As rightly pointed out by

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respondents, the OA suffers from delay and laches and there is no application for condonation of delay or any satisfactory explanation for condonation of delay. As already pointed out there are several judgements of Supreme Court wherein it has been held that if a person chooses to sleep over his right for a long time, the Courts cannot come to their help. [Ex. Captain Harish Uppal vs. Union of India & Ors. JT 1994(3) SC 126.]

7. We therefore hold that the OA is liable to be dismissed even on the ground of limitation, delay and laches. Accordingly, all the three OAs are dismissed. No costs.

(SHANTA SHAstry)
MEMBER(A)

(ASHOK AGARWAL)
CHAIRMAN

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