

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 323/97

Transfer Application No.

Date of Decision

17/12/97

Amarjeet Singh

Petitioner/s

Shri G.K.Masand instructed by Shri
A.I.Bhatkar

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar

Advocate for
the Respondents

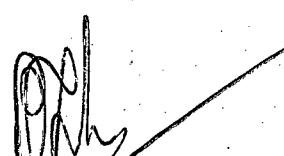
CORAM :

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 ?


(P.P.SRIVASTAVA)

MEMBER (A)


(R.G.VAIDYANATHA)
VICE CHAIRMAN

Ys
No

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.323/97

Prayman this the 17th day of December 1997

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

Amarjeet Singh
C/o Shri A.I.Bhatkar,
Advocate, 4/13,
Mohamed Hussain Chawl,
Opp.Antop Hill Post Office,
Shaikh Mistry Road, Mumbai.

By Advocate Shri G.K.Masand
instructed by Shri A.I.Bhatkar ... Applicant

V/S.

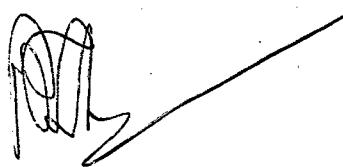
1. Union of India through
the Secretary, Deptt. of
Telecommunication,
Ministry of Telecommunication,
Sanchar Bhavan, 20 Ashoka Road,
New Delhi.
2. The Chairman, Telecom Commission,
Dept. of Telecom, Govt. of India,
Sanchar Bhavan, 20 Ashoka Road,
New Delhi.
3. The Chief General Manager,
M.T.N.L. Telephone House,
Prabhadevi, V.S.Marg,
Mumbai.

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

ORDER

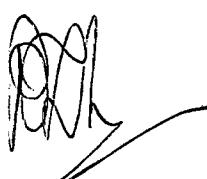
(Per: Shri P.P.Srivastava, Member (A))

The applicant joined the Department of Telecom as Assistant Executive Engineer (Civil) Group 'A' in 1980 as a direct recruit through the combined Engineering Services Examination conducted by the Union Public Service Commission. The applicant was promoted as Executive Engineer (Civil) in Senior Time Scale on 19.1.1989. The applicant has submitted that he is eligible to be considered for the post of Junior Administrative Grade in the pay scale of Rs.3700-5000. The eligibility condition is 5 years regular service



in the Senior Time Scale for being eligible for the post of Superintending Engineer. Since the applicant has completed 5 years of regular service in January, 1994, he is entitled to be considered for the post of Superintending Engineer. The applicant has further brought out that respondent administration issued promotion order from Executive Engineer to the post of Superintending Engineer on adhoc basis on 8.11.1995. In this promotion order many of the junior officers to the applicant have been promoted as Superintending Engineer. The applicant has further brought out that respondents have further issued order dated 13.2.1997 under which three more officers have been promoted in the grade of Superintending Engineer on adhoc basis in which () two officers promoted were junior to the applicant. () Aggrieved by this promotion order of the juniors to the applicant, the applicant has filed this OA. and has challenged (his) supersession in this OA. and has sought the relief that the respondents be directed to promote the applicant as Superintending Engineer on adhoc basis from the date his immediate junior has been promoted and award consequential benefits to the applicant.

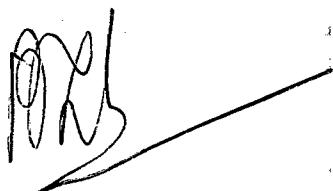
2. The respondents have filed a reply. The respondents have brought out that the applicant cannot challenge the order of promotion issued on 8.11.1995 as the application is filed in 1997 and is not within the time limit. The respondents have also brought out that in both the orders dated 8.11.1995 and 13.2.1997 the officers who have been promoted are not before the Tribunal and on this ground also no order can be passed which will adversely affect those employees who were promoted by the administration by the above orders.



The respondents have further brought out that the adhoc promotions were required to be made as the seniority question was under dispute in courts and the adhoc promotions have been made by the administration on the basis of seniority-cum-fitness in terms of D.O.P & T.O.M. NO. 28036/8/87-Estt(B) dtd. 30.3.1988. The respondents have brought out that the case of the applicant was considered by the screening committee both in November, 1995 as well as in November, 1996 and in both the screening committee the applicant has been found unfit. Since the screening committee has not found the applicant as fit, the applicant cannot make any grievance and he has no legal claim to the promotion as Superintending Engineer.

3. At the time of hearing, the respondents have produced the selection proceedings of November, 1995 and November, 1996.

4. The learned counsel for the applicant has argued that the applicant has never been communicated any adverse remarks and therefore he should be considered for promotion and promoted on ad hoc basis according to his seniority as there is nothing adverse in the record of service since he has never been communicated any adverse remarks. The learned counsel for the applicant has further argued that in case of adhoc promotion the Bench Mark fixed in the rules for regular promotion cannot be the criteria. The 1d. counsel for the applicant has further submitted that although the Bench Mark for this post on regular basis is "Very Good" but while making promotion on adhoc basis the case of the applicant will be considered on seniority-cum-fitness and since

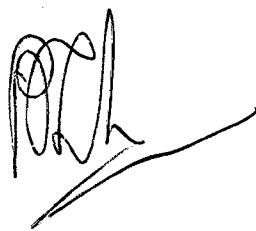


the applicant is senior and nothing adverse is communicated to him, therefore, he is presumed to be fit. On the other hand, learned counsel for the respondents has argued that in terms of the rules, the case of the applicant is required to be considered as per seniority for adhoc promotion. Nowhere the rule for adhoc promotion order dated 30.3.1988 ~~lays~~ down that the Bench Mark can be diluted while deciding the fitness of the applicant for adhoc promotion.

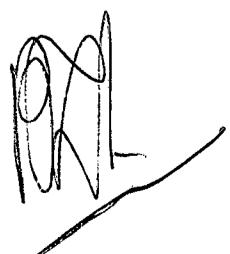
5. After hearing learned counsel for both the sides on this issue, we are of the view that the controversy to be considered in this OA. is that in terms of the rules whether it is permissible for the DPC to decide the fitness of the applicant for adhoc promotion by adopting Bench Mark which in this case is "Very Good", the Bench Mark which is applicable for regular promotion. The relevant portion of the rule dated 30.3.1988 reads as under :-

"Para 4 (iii) where ad hoc appointment is by promotion of the officer in the feeder grade, it may be done on the basis of seniority-cum-fitness basis even where promotion is by selection method as under —

- (a) Ad hoc promotions may be made only after proper screening by the appointing authority of the records of the officer.
- (b) Only those officers who fulfil the eligibility conditions prescribed in the recruitment rules should be considered for ad hoc appointments. If, however, there are no eligible officers, necessary relaxation should be obtained from the competent authority in exceptional circumstances.
- (c) The claims of Scheduled Castes and Scheduled Tribes in ad hoc promotions shall be considered in accordance with the guidelines contained in the Deptt. of Personnel and A.R., Office memorandum No.36011/14/83-Estt.(S.C.T.) dated 30.4.1983 and 30.9.1983.



Reading of this rule shows that the adhoc promotion is required to be made on the basis of seniority-cum-regular fitness even when the promotion is by selection method. In Para 4 (iii) (b) it is brought out that only those officers who fulfil the eligibility conditions prescribed in the recruitment rules shall be considered for ad hoc appointments. Nowhere in the rules the question of Bench Mark has been considered. The reading of the rule of the Circular dated 30.3.1988 shows that the administration is not prohibited from applying the Bench Mark while considering adhoc promotion. Even otherwise, it stands to reason that when promotion is being made on adhoc basis, it is to man~~the~~ the post and therefore the competency of the employee who is to be promoted is required to be considered on the basis of ~~same~~ criteria which is applicable for regular promotion unless otherwise provided in the rules. Therefore, in our opinion, respondent administration would be well within the frame work of rules in applying the Bench Mark criteria which is applicable for regular promotion even in the case where adhoc promotion is required to be made unless the rules provide otherwise. In this case, the Bench Mark for promotion to Superintending Engineer is "Very Good" and the respondent administration would be entitled to consider the claim of the applicant and others according to the seniority on the basis of their competency by applying the Bench Mark of "Very Good" for promotion. Thus, the officers who are ~~judged as~~ "Very Good" on the basis of their record of service would be considered as fit and those who were not upto the Bench Mark even though their record of service may show no adverse remarks cannot be promoted if they fail to come up to the Bench Mark. We, therefore, do not see



any infirmity in the DPC proceedings held for adhoc promotion both in 1995 and 1996 which led to the issue of promotion orders dated 8.11.1995 and 13.2.1997.

6. The learned counsel for the applicant has relied on a decision of this Tribunal in OA NO.138/91 decided on 29.11.1995 Kantilal Madhavjibhai Hirani vs. Union of India & Ors. decided by Ahmedabad Bench reported in ATJ 1996 (1) p. 232. The learned counsel for the applicant has argued that in this judgement a similar issue was considered by the Tribunal. The Tribunal has held that promotion to a post on seniority-cum-fitness would imply that unless there is anything adverse or reports are poor making the officer unfit (i.e. having positive demerits), the officer gets promotion to the higher post. We have gone through the judgement. In this case the applicant had worked in the post to which he was to be promoted on adhoc basis and was allowed to cross the efficiency bar in that grade and there was no adverse remarks in the C.R. for the last five years. Considering the facts and circumstances of that case the Tribunal had come to the conclusion that "We have reason to believe that the applicant's case was not considered in proper prospective by the D.P.C. and they were unduly influenced by the fact of censure awarded to the applicant." The observations made by the Tribunal
"Promotion to a post on seniority-cum-fitness would imply that unless there is anything adverse or reports are poor making the officer unfit (i.e. having positive demerit), the officer gets promotion to the higher post" are to be read in this context. This is not a general proposition which has been laid down by the Tribunal.

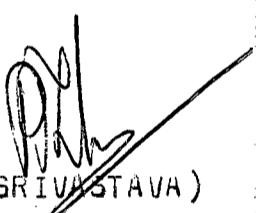


It is an observation made in the facts and circumstances of the case.

The issue raised in the present OA. is that whether the Bench Mark which is provided for regular promotion can be considered on adhoc basis was not issue in that OA. We are, therefore, of the opinion that the observations made in the OA. ^{relied upon} ~~by~~ learned counsel for the applicant do not apply to the facts and circumstances of the present case.

7. Since we have decided the issue on merit, we are not commenting on the question of limitation and delay in filing this OA. as far as the promotion orders which were issued in 1995~~4~~ are concerned. We are also not commenting on the issue concerning grant of relief in the absence of parties which may be affected by this.

8. The OA. is, therefore, without merit and is liable to be dismissed and is accordingly dismissed. There will be no orders as to the costs.


(P.P. SRIVASTAVA)
MEMBER (A)


(R.G. VAIDYANATHA) 17/12
VICE CHAIRMAN

mrj.