

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 800/98

Date of Decision: 18.6.2004

Shri Chandrakant

Applicant

Shri S.V. Marne

Advocate for Applicant/s

Versus

Union of India & Ors.

Respondents

Shri V.S. Masurkar.

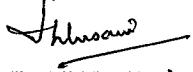
Advocate for Respondents

CORAM

HON'BLE SHRI ANAND KUMAR BHATT
HON'BLE SHRI MUZAFFAR HUSAIN

MEMBER (A)
MEMBER (J)

1. To be referred to the Report or not
2. Whether it nees to be circulated to other Benches of the Tribunal?
3. Library.


(MUZAFFAR HUSAIN)

MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 800/98

THIS THE 18TH DAY OF JUNE, 2004

CORAM: HON'BLE SHRI ANAND KUMAR BHATT. MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN. MEMBER (J)

Shri Chandrakant,
S/o Poshatti Chilwar,
Residing at B-5/8, Meeranagar,
Koregaon Park, Pune-411 001. Applicant

In Person

Versus

1. Secretary, Govt. of India,
Department of Telecom,
Sanchar Bhavan, 20 Ashoka
Road, New Delhi-110 001.

2. Chief General Manager,
Telecom Maharashtra Circle,
8th Floor, Fountain Telecom
Building No.2, Mumbai-400 001.

3. Principal General Manager,
Pune Telecom District,
Pune-411 002. Respondents

By Advocate Shri V.S. Masurkar.

O R D E R
Hon'ble Shri Muzaffar Husain. Member (J)

Aggrieved by the letter dated 21.01.1998 of
Respondent No.2 communicating decision dated 01.12.1997
on his representation dated 14.10.1998 claiming BCR 10%
promotion to the post of TOA (G) Grade IV from
01.01.1997. applicant has approached this Tribunal under
Section 19 of the Administrative Tribunals Act, 1985
with the following reliefs:
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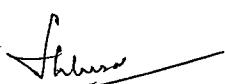
i) The applicant be promoted to the post of Chief
Section Supervisor w.e.f. 01.01.1991, the date
from which Junior official Shri B.M. Avchat
was promoted.

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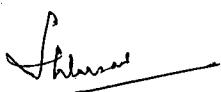
- ii) Applicant be paid arrears w.e.f. 01.01.1991 due to refixation of pay consequent on such promotion.
- iii) Applicant's pension, retirement benefits and other benefits be revised and arrears paid.
- iv) Applicant be paid expenses including travelling expenses incurred in filing this application, which may be decided by Hon'ble Court.

2. According to the applicant he was working as Section Supervisor in the office of DET Pune at the time of formation of Pune SSA on 01.4.1987. He was allotted and transferred to GMT Pune in the interest of service promoted to the post of Senior Section Supervisor with effect from 26.10.1990 and to the post of Chief Section Supervisor with effect from 01.01.1993. He retired with effect from 31.01.1998 on superannuation. Prior to retirement he was working as Personnel Officer in the office of CGMT on local officiating basis with effect from 05.8.1997. The scheme of BCR and BCR 10% was introduced with effect from 26.10.1990. Later promotion order for placing the official in the BCR 10% with effect from 01.7.1992 and 01.01.1993 were issued on circle basis by CGMT Mumbai. From 08.6.1993 orders are again being issued on SSA level. On formation of Pune SSA with effect from 01.4.1987 seniority of Section Supervisors working in former DET Pune was merged in the seniority of Section Supervisors of Pune Telephone District by GMT Pune, but this was not done correctly. Applicant was denied BCR 10% promotion from due date due to incorrect gradation list prepared by GMT Pune. Gradation list was however maintained correctly by CGMT



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Mumbai on the basis of recruitment year. The applicant stands at serial number 123 of Circle Gradation list of Section Supervisors of Maharashtra Circle as on 01.7.1987 and 01.7.1992 whereas Shri B.M. Avchat of same Unit i.e. GMT Pune stands at serial number 126 A of said list. Even though Shri B.M. Avchat stands junior to the applicant, he was promoted to BCR 10% post w.e.f. 01.01.1991 by GMT Pune, whereas the applicant got promotion to said post with effect from 01.01.1993. On several representations by the applicant and on realising the mistake, GMT Pune has recommended promotion of the applicant with retrospective effect as per letter dated 22.8.1994 addressed to CGMT Mumbai. No action was taken by Circle Office to convey decision. The case of the applicant was again taken up by GMT Pune that the CGMT vide letter dated 31.7.1997 and it was advised to review all promotions to Grade IV from commencement of the scheme with effect from 26.10.1990 as per instructions contained in DOPT letter dated 13.12.1995 and allowed promotion to eligible officials on the basis of seniority in basic grade. It was also advised to protect reversion of officials already promoted. As the decision was not proper, the applicant brought the discrepancy to the notice of CGMT Mumbai vide representation dated 20.11.1997. But no reply was received by the applicant to his representation, reminder was issued on 14.01.1998. In the reply, CGMT Mumbai vide letter dated 27.01.1998 simply supplied



letter dated 01.12.1997 addressed to PGM Pune Telecom as a decision of the case. Being not satisfied by the reply of Respondent No.2 the applicant preferred an appeal dated 26.02.1998 to Respondent No.1, no reply is however received by the applicant even after six months hence this OA.

3. The applicant has also filed MP No.712/98 for condonation of delay, wherein it has been stated that the applicant has represented his case regarding seniority and promotion since December 1991 and it was informed by GMT Pune (Respondent No.3) that the case has been referred to Respondent No.2 and decision would be communicated on receipt of reply. The decision communicated to applicant by Respondent No.2 on 21.7.1998, and appeal was preferred to Respondent No.1 on 26.02.1998 and the case is filed in the Tribunal on 03.9.1998.

4. The respondents have resisted the claim on merit as well as on point of limitation.

5. We have heard learned counsel for the parties and perused material placed on record.

6. The applicant who is appearing in person has contended that prior to 13.12.1995 promotion to 10% BCR were allowed on the basis of seniority in higher grade



i.e. Senior Section Supervisor/Section Supervisor. On issue of circular dated 13.12.1995 gradation list for promotion is changed and based on the basis of seniority in basic cadre instead of higher grade and same has been made applicable from commencement of the scheme i.e. from 26.10.1990. However, as per DOPT letter dated 13.02.1997 (Annexure A7) officials already promoted to BCR 10% post prior to 13.12.1995 have been protected from reversion by creating supernumerary post as required from person to person basis. The applicant would have been promoted from 01.01.1991 and would have been protected from reversion had the gradation list been maintained correct by GMT Pune. The applicant was deprived of promotion from due date only because of fault on the part of administration. Learned counsel for the respondents contended that consequent upon the merger of DET Pune with GMT Pune and formation of Pune SSA on 01.4.1987, GMT Pune has fixed seniority of the officials as per existing order on the subject and promoted to BCR III based on divisional gradation list with effect from 26.10.1990. The gradation list was not supplied to officials and it is final for all purpose. Being junior in the divisional gradation list of GMT Pune, the official could not be considered for BCR Grade IV (10%) promotion upto the crucial date i.e. 01.01.1992. he has also contended that the gradation list of Pune communication District was prepared on the basis of date of confirmation of the official in the



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cadre. Since the applicant as not confirmed he was placed below the officials of GMT Pune in the gradation list. Shri B.M. Avchat was promoted on the basis of gradation list of GMT Pune whereas the applicant was promoted on the basis of circle gradation list of CGMT Mumbai. These two gradation lists cannot be compared as Pune Telecom District was functioning independently. He has also contended that circle gradation list has no relevance to the divisional gradation list, based on which Shri B.M. Avchat being senior in the divisional gradation list was given promotion with effect from 01.01.1991 by GMT Pune. It is not denied by the respondents that the applicant was working as Section Supervisor (S) in the office of DET Pune at the time formation of Pune SSA and further on formation of Pune SSA he was allotted and transferred to GMT Pune in the interest of service. It is also not denied that he was promoted to BCR Grade III with effect from 26.10.1990. It is seen that the gradation list of Pune Communication was prepared on the basis of date of confirmation and applicant being junior was not confirmed placed below the officials of GMT Pune in gradation list. The applicant had not challenged the gradation list at any point of time. If he was aggrieved with the wrong maintenance of gradation list, he should have represented against the gradation list or challenged it before appropriate forum. Therefore, he cannot raise the contention in this OA that the gradation list was

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wrongly maintained by the respondents. It is also seen that Shri B.M. Avchat was promoted on the basis of gradation list of GMT Pune and applicant was promoted on the basis of circle gradation list of CGMT which has no relevance to the divisional gradation list. Based on the gradation list Shri B.M. Avchat being senior, was given promotion with effect from 01.01.1991. Since the promotion of Shri B.M. Avchat under 10% BCR based on GMT Pune and not according to circle gradation list of CGMT of Mumbai. Without challenging the gradation list, applicant cannot raise such a grievance at this stage.

7. Applicant has also contended that a decision was taken by the Chairman i.e. CGMT Mumbai against item 27 of RCM Meeting held on 24.7.97 to settle past cases of grade IV promotion as per orders issued from time to time. CGMT Mumbai is however refusing to implement his own orders, which is improper. Learned counsel for respondents contended that the decision of Chairman was to award promotion as due from time to time and promote officials from their due date from 1990 onwards based on the orders issued from time to time. Therefore contention of the applicant regarding decision of Chairman against item No. 27 of RCM meeting held on 24.7.1997 to settle his case as per order existing prior to 13.12.1995 on the basis of seniority in higher grade is not correct. Since decision applied to cases of promotion due from time to time and promote the



officials from their due dates. It has no relevance with the case of the applicant.

8. Applicant also raised contention that Shri B.M. Avchat though junior was promoted as per seniority in higher grade and protected from reversion. Applicant further contended that he became senior in Section Supervisor by virtue of 1/3rd quota qualifying examination and is junior in the basic cadre. Action on the part of the administration to apply revised order of basic grade seniority directly without correcting the first mistake as per old orders causes harm and disadvantage to him. He has also contended that the order issued by DOPT have been misinterpreted by administration without realising the fact that though the orders have taken care to safeguard the officials who have already been promoted are not meant to harm any official. Learned counsel for the respondents stated that at the time of passing 1/3rd quota qualifying examination, official was working under DET Pune and was on circle gradation list of circle office, Mumbai. The applicant was not in the gradation list of Pune on 01.4.1987 on formation of SSA Pune. The seniority was to be fixed according to the existing order prevailing at that point of time and only date of confirmation was the criteria. He has also contended that basic cadre of Shri B.M. Avchat and applicant is T/S Clerk at the time of appointment date of entry in the cadre of T/S clerk



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of Shri B.M. Avchat was 06.5.1959 and that of applicant was 04.10.1961 hence the applicant cannot be compared and has no right for promotion in 10% BCR prior to Shri B.M. Avchat as he is junior to him in the basic cadre. It is not denied that the applicant was junior to Shri B.M. Avchat in the basic cadre and according to DoT letters on the subject, the promotion in 10% of BCR shall be given according to the seniority in the basic cadre. Therefore, the applicant cannot claim parity with Shri B.M. Avchat and the contention raised by the applicant has no substance.

9. The applicant is seeking the relief of promotion to the post of Section Supervisor against BCR 10% with effect from 01.01.1991 from which his junior Shri B.M. Avchat was promoted and also claimed consequential benefits. It appears from the record that the applicant retired on superannuation on 31.01.1998 and he has filed this OA on 03.9.1998. The cause of action accrued to the applicant in the year 1991 when his so called junior Shri B.M. Avchat was promoted. Applicant has filed MP No.712/98 for condonation of delay in filing this OA on the ground that he made representation on 10.12.1991, it was replied by the respondents on 21.9.1992. he again made representation on 04.10.1994, it was replied by the respondents on 21.12.1994 and lastly he made representation on 14.01.1998 which was replied by letter dated 27.7.1998



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and he preferred appeal on 20.6.1998 and after waiting for six months he preferred this OA. In view of the fact mentioned above, the cause of action firstly arose in the year 1991 when his junior was promoted. He simply made two representations one on 10.12.1991 and second on 04.10.1994 but the reply given for these two representations does not disclose any decision on the representations. Therefore, the applicant should have approached to the Tribunal after waiting for one and half year of the first representation, but he made repeated representations. The Apex Court in the case of S.S. Rathore Vs. State of M.P. AIR 1990 SC 10 has held

"In the case of a service dispute the cause of action must be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen.

This principle has no application when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

Thus, it appears that the applicant has not moved any application before this Tribunal within the prescribed time after cause of action arose in 1991. However, he chose to make repeated representations which cannot



enlarge the period of limitation. The delay in filing this OA has not been sufficiently explained. Therefore, the OA is barred by limitation, delay and latches.

10. For the reasons stated above, the OA has no merit and also barred by limitation and suffers from delay and latches. Thus, liable to be dismissed, accordingly dismissed, no order as to costs.

Muzaffar Husain

(MUZAFFAR HUSAIN)
MEMBER (J)

Anand Kumar Bhatt

(ANAND KUMAR BHATT)
MEMBER (A)

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Central Administrative Tribunal
Mumbai Bench

Review Petition No.35/04
in
Original Application No.800/98

Dated this Friday the 6th Day of August, 2004.

Coram : Hon'ble Shri Anand Kumar Bhatt, Member (A)
Hon'ble Shri Muzaffar Husain, Member (J).

Shri C.P. Chilwar .. Petitioner

Vs.

Secretary, Deptt. of Telecom & 2 ors. .. Respondents.

Order on Review Petition by Circulation
Hon'ble Shri Muzaffar Husain, Member (J).

The applicant has filed this Review Petition to review the judgment and order dated 18.6.2004.

2. The petitioner has made out the following grounds.

(i) At the time of hearing on admission the plea of limitation was raised and O.A. was admitted. Now it is dismissed on the same ground of limitation and, therefore, this discrepancy.

(ii) In para 8 of the order page 8 "learned counsel for the respondents stated that at the time of passing 1/3 quota qualifying examination, official was working under DET Pune and was on circle gradation list of circle office, Mumbai". This statement is not correct. The applicant was working in DMT, Pune (PGMT Pune) at the time of passing 1/3 rd quota for qualifying examination. The applicant has clarified the matter in detail in Para 'C' of Rejoinder.

3. We have heard the learned conse1 for

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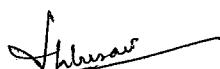
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the petitioner as well as the respondents and perused the record. As regards first contention of the learned counsel for applicant is concerned no doubt the case was admitted. The order sheet dated 7.5.1999 reads as under:-

"The OA is admitted subject to questions of limitation delay and latches and subject to orders on application for condonation of delay namely MP 712/98. Both OA and MP to be heard at the time of final hearing. When the pleadings are complete, OA be kept in the list of final hearing cases."

The perusal of the order goes to show that the OA was admitted subject to question of limitation, delay and latches and subject to the order on MP for condonation of delay. It cannot be said that the OA was admitted by condoning the delay. The point of limitation considered at length by the Tribunal and every point raised by the applicant in his MP No.712/98 was considered and the case was not found fit for condonation of delay, in view of the fact that cause of action firstly arose in the year 1991 when the junior to the applicant was promoted. The applicant in his review petition has tried to explain such delay again which is not permissible in review petition.

4. The second point raised by the petitioner is that in para 8 of the Tribunal's order, it is stated that "Learned Counsel for the respondents stated that at the time of passing 1/3rd quota qualifying examination official was working under DET Pune and was on Circle Gradation list of Circle Office Mumbai." According to



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applicant this statement is not correct. Applicant was working in DMT Pune (PGMT Pune) at the time of passing 1/3rd quota qualifying exam. Applicant has clarified the matter in detail in Para (C) of Rejoinder. No doubt the applicant in his rejoinder has stated that he was in District Manager Telephones, Pune (P.G.M.T., Pune) from which he was transferred to Goa on 28.11.1977 on promotion as LSG, Clerk. The applicant is transferred back to same unit on 31.3.1988 in the interest of service. During this period many officials including Shri B.M. Avchat were promoted as Section Supervisor in GMT Pune. But it has not been denied that the applicant was not in gradation list of Pune on 1.4.1987 on formation of SSA Pune. It has also not denied that the applicant was junior to Shri B.M. Avchat in the basic cadre. Therefore, the applicant cannot claim the parity with Shri B.M. Avchat. The averments of the respondents is that at the time of passing 1/3rd quota qualifying examination official was working under DET Pune and was on Circle Gradation List of Circle Office, Mumbai and further clarification of the applicant in para (C) of the rejoinder that he was working in DMT, Pune (PGMT, Pune) and from where he was transferred to Goa will not make any substantial change, as the applicant was junior to Shri B.M. Avchat in the basic cadre.

5. Thus it appears that there is no error apparent on the face of record as required under Order 47 Rule 1 CPC. The alleged errors stated by the petitioner in his review petition are not at all error of law or fact but a

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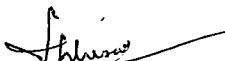
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simple prayer to take different view than the view taken by the Tribunal in its order dated 18.6.2004.

6. The scope of review under Section 22 (3)(f) of the Administrative Tribunals Act 1985 is very limited. It restrict only to the grounds mentioned under Order 47 Rule 1 CPC. It precludes the reassessment of fact and law for recalling earlier order passed on merit, unless there is a discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be brought by him at the time when the judgment was made, or on account of some error apparent on the face of the record or for any sufficient reason. The Hon'ble Apex Court in Ajit Kumar Rath Vs. State of Orissa & Ors 1999 (9) Supreme 321 has held:

"Section 22(3)(f) indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the fact of the record or for any other sufficient reason. A review cannot be claimed or a sked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error or law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47 would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

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The Hon'ble Supreme Court in Subhash Vs. State of Maharashtra 2002 SC 2537 has observed in para 3 as under:

".....there is no justification for the Tribunal to have reviewed the matter once over again, particularly, when the scope of review is very much limited under Section 22 (3)(f) of the Administrative Tribunals Act, 1985 as is vested in a Civil Court under the Code of Civil Procedure. The Tribunal could have interfered in the matter if the error pointed out, is plain and apparent. But the Tribunal proceeded to re-examine the matter as if it is an original application before it. This is not the scope of review."

6. In our view there is no error apparent on the face of the record and there is no discovery of the new facts within the meaning of Order 47 Rule 1 CPC. The grounds taken in the Review Petition are beyond the scope of Order 47 Rule 1 CPC, therefore, we find that there is no merit in the Review Petition. In the result the review petition is dismissed by circulation. No order as to costs.

Husain 6/8/04
(Muzaffar Husain)
Member (J)

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Member (A).

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*Order Issued
on 12/8/04
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