

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1022 of 1998.

Dated this Friday the 28th day of June, 2002.

Shri N. Anantha Subramaniam ..... Applicant.

Shri S.S. Karkera ..... Advocate for the  
Applicant.

**VERSUS**

Union of India & Another. ..... Respondents.

Shri V.S. Masurkar ..... Advocate for the  
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri Shankar Raju, Member (J).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library ? No Yes.

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

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Hon'ble Shri Shankar Raju, Member (J).

N. Anantha Subramaniam,  
AD (MIS),  
O/o. CGMT, Maharashtra Circle,  
Mumbai.  
Residing at - 303, Shri Sushant  
Co.Op. Housing Society,  
Near Kidland High School,  
Kopar Road, Dombivali (W),  
Dist. Thane.

... Applicant.

(By Advocate Shri S. S. Karkera)

VERSUS

1. Union of India through  
The Director General,  
Department of Telecom,  
Sanchar Bhavan,  
Ashoka Road,  
New Delhi.
2. Chief General Manager,  
Maharashtra Telecom Circle,  
Telecom Bldg. No. 2, 8th floor,  
M.G. Road, Fountain,  
Mumbai - 400 002.

... Respondents.

(By Advocate Shri V. S. Masurkar)

O R D E R

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case comes up to the Tribunal  
seeking the reliefs as follows :

- "(A) This Hon'ble Tribunal be pleased to call  
for record of the case of the applicant  
and after examining legality and  
propriety thereof, be pleased to quash  
and set aside the orders dated 24/2/98  
and dated 30/7/97 (Ex. 'A-1' and 'A-2').

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- (B) This Hon'ble Tribunal be pleased to direct the Respondents to count period from 17/9/86 to 7/2/88 as qualifying service for granting benefit under lateral promotion scheme and grant benefit under the said scheme.
- (C) This Hon'ble Tribunal be pleased to hold and declare period from 17/9/86 to 7/2/88 as qualifying period, in which the applicants worked in the post of ASTT/JTD.
- (D) Pass any such other just and appropriate order and/or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."

2. The facts of the case, as gleaned from the records, and from the arguments made by Learned Counsel on both sides show that the Applicant is really aggrieved in that, the Respondents have not agreed to count his service from 07.09.1986 for the purpose of providing him with the benefit of the lateral advancement Scheme, after completion of twelve years of service. Instead, the 12 years are sought to be taken into effect from 08.02.1988.

3. From the records it appears that, from the former date i.e. 17.09.1986, the Applicant was appointed as ASTT on ad hoc basis whereas on the later date i.e. 08.02.1988 his appointment was regularised, so the question to be decided is, whether the period of ad hoc service between these two dates should be counted for calculating for the purpose of completion of twelve years, as envisaged in the Scheme of Lateral Advancement, a copy of which is placed at Exhibit A-6, page 20 in the Paper Book.

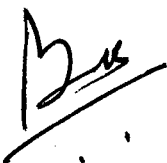
4. We have perused all papers in the case carefully and have heard the Learned Counsel on both sides, who have taken us to the



facts, the relevant documents and the rules. Learned Counsel, Shri S. S. Karkera appeared for the Applicant and Learned Counsel, Shri V. S. Masurkar, represented the Respondents.

5. Learned Counsel for the Applicant, Shri Karkera, made the point that, in fact, seniority has already been provided to the Applicant w.e.f. 1985, as could be seen from the list at page 48. Nevertheless, the date of appointment in the same gradation/seniority list is taken as 27.02.1988. Learned Counsel also urged while pointing out the chronology that the merger of grade came in 1994 and in fact, the seniority list in the merged grade of ASTT and JTO came to be issued only in 1988. Hence, the Applicant is before us in good time. This argument was made to counteract the plea of limitation, delay and laches. Learned Counsel for the Applicant stated that for the year 1988 being taken for seniority, he had no objection but the period of 12 years under the lateral scheme must count from 1986. He argued that the styling of the promotion as "ad hoc" was merely a labelling, and that, in fact the promotion had all the ingredients of a regular promotion. This was the main stand taken by Applicant's Counsel, who expounded it strenuously.

6. Learned Counsel for the Respondents had resisted the claims of the Applicant and argued at some length taking assistance of the Written Statement. It was pointed out that Applicant was posted on regular basis w.e.f. 08.02.1988 only and this was done depending on availability of clear vacancies (para 21 of the reply). Thus, the point about availability of vacancies was also argued by Counsel for Respondents. He also



made the point that the benefit of lateral promotion was granted to ASTT's on completion of 12 years from the date of appointment and that the period of ad hoc service could not be counted. The Department had no clear vacancy, as alleged. It was argued that Applicant was posted only as officiating ASTT in a temporary vacancy arising due to officiating promotion of Sr. ASTT's. This is, in fact, stated in para 11 of the Written Statement of Respondents.

7. After considering all the arguments made by both sides, and going through the records, we recapitulate that the Applicant who entered service in 1979 was, indeed, provided the post of ASTT in 1986, through the order, of which a copy is available at Exhibit A-4, page 18. It is indeed mentioned here that he was "appointed to officiating as Assistant Superintendent Telegraph Traffic Locally". It is important to note the subsequent order dated 15.02.1988, copy at exhibit A-5. To ascertain whether the first order was, indeed, an ad hoc promotion or only carried the label of ad hoc, we examine this with reference to the law settled by Hon'ble Apex Court. In short, it has been held that in order to establish whether a promotion was really ad hoc or only styled so, it is important to see this in the background of the rules applicable, procedure followed for promotion and indeed, the stipulation in the order. Now, as stated above, the second order of 15.02.1988 clearly states that the Applicant, amongst another, who was "awaiting absorption as ASTT" is appointed as ASTT. This shows that the second order is clearly an order of regularisation, which implies that the first one was

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not. Here it must be immediately said that one point of grievance could be said to have arisen on 15.12.1988. If this is a point of grievance, then the Applicant is clearly hit by delay and laches. But we shall proceed further on merits of the case. It is seen that the post of ASTT and that of J.T.O. was merged in 1994. Even assuming that the seniority list did not affect the Applicant until his representation was rejected and thus granting him the benefit, that he is not hit by the law of limitation, we have to nevertheless see whether the Applicant can indeed claim the benefits sought through some rule/facts of the case.

8. The reason as to why we cannot regard the appointment in 1986 as anything but ad hoc have been discussed above. Now once this promotion in 1986 is ad hoc, it cannot obviously count for providing the benefit, as envisaged in the 1990 scheme. We have read the scheme as available at page 20. Obviously, the completion of 12 years of service clearly means 12 years of regular service. The contention of the Applicant's Learned Counsel that regular service has not been written is neither here nor there. Unless otherwise stated, the requirement of number of years of service obviously implies regular service. Basically, it is a settled law that ad hoc service will not provide such benefits, in any case.

9. It must be recalled that even in the seniority, the date of appointment is taken to be in 1988. The argument of the Learned Counsel for applicant that this date is alright for the purpose of seniority but a different date could be given for

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lateral promotion scheme is certainly not accepted. This kind of argument cannot be acceptable in the facts and circumstances discussed. It would create complications besides clearly being against the rules.

10. In view of the above discussions, it is clear that the Applicant has not been able to make out a case for our interference in the matter before us. The O.A. therefore deserves to fail and is hereby dismissed with no order as to costs.

S. Raju

(SHANKAR RAJU)  
MEMBER (J).

OS\*

B. N. Bahadur

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