

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR.

T.A.NO. 652/86 : Date of order 18.3.93
Mumtazuddin Khan : Applicant
Mr.Prahlad Singh : Counsel for applicant

VERSUS

U.O.I. & Ors. : Respondent.
Mr.V.S.Gurjar : Counsel for respondents

CORAM:

Hon'ble Mr.B.B.Mahajan, Administrative Member
Hon'ble Mr.Gopal Krishna, Member (Judl.)

Per Hon'ble Mr.B.B.Mahajan, Administrative Member.

Mumtazuddin Khan had filed a writ petition in the Raj. High Court, for direction to Respondent to assign him the seniority in the Cadre of Telephone Operator w.e.f. the date of his initial appointment on the post of Lineman Telephone Operator, and to quash the seniority list in which the officials appointed after him had been assigned seniority over him. The petition has been transferred to the Tribunal U.Sec. 29 of the ATs Act.

The applicant was appointed as Lineman Telephone Operator, in the office of the Div. Engineer Telegraphs, Jaipur Div, Jaipur, vide order dated 21.7.56 (Annex.2) w.e.f.8.5.56, in the pay scale of Rs.35-1-50 with special pay of Rs.5 per month. In the seniority list of T.Os as on 1.7.82 (Annexure 18) his date

of entry into the Deptt. had however, been shown as 8.5.63 and he has been allowed seniority on that basis. He has claimed seniority from the date of his initial appointment on 8.5.56. The respondents have stated in the reply that the applicant was initially appointed as a Lineman and was appointed as T.O. only w.e.f. 8.5.63 and he has therefore, been correctly allowed seniority from that date. They have also taken the plea that seniority was to be determined from the date of confirmation.

None is present on behalf of respondents today although the case was listed for hearing. None has been appearing on behalf of the respondents after 16.7.92. We have heard the counsel for the applicant and gone through the record.

The learned counsel for the applicant has referred to the letter of the D.G. P&T dated 28.2.61 reproduced as Annex.5 to the petition. It has been stated in those orders that the Ex-State (Bhopal) posts of Sr. Operator which was originally equated to the post of Lineman Operator in the pay scale of Rs. 35-1-50 plus special pay of Rs.5/- shall be re-equated to the post of T.O. in the scale of pay of Rs.60-170 revised scale of Rs. 110-240 in the Deptt. It had also been provided in para 3 of these orders that they shall have effect from 1st June 1949 for purpose of categorisation. It was further provided that this period will also count for seniority, pension, fixation of pay etc.

He has argued that in view of these orders the post of Lineman T.O. to which the applicant was appointed w.e.f. 8.5.56 stood equated to the post of T.O. and the service rendered by the applicant in that post w.e.f. 8.5.56 would count for purpose of seniority in the Cadre of T.O. He was also referred to the orders contained in Director General P&T New Delhi letter dated 7.10.72 (Annex.6). In para 3(i) of this letter it is stated that the general principle contained in the Ministry of Home Affairs Office Memorandum dated 22.12.59 i.e. seniority in a grade according to the date of confirmation in that grade on regular basis before 22.12.59. In para 3 (ii) of this letter it was provide that those who are appointed before 22.12.59 in such grades on regular basis are embloe senior to those appointed to those grades on or after 22.12.59. The inter-se seniority of those belonging to former groups is to be fixed on the basis of length of service in that or equivalent grade irrespective of the date of their confirmation as prescribed in MHA's O.M. dated 22.6.69. "In the light of those orders the seniority of the applicant who had been appointed on regular basis on 8.5.56 has to be determined on the basis of length of his service in the group of Lineman/Telephone Operator.

The respondents have in para 8 of the reply stated that the contention of the applicant that the post of Lineman T.O. have been re-equated with the post of T.O. in the revised pay scale

is wholly mis-conceived and untenable. They have, however, not explained as to how the plea is mis-conceived or untenable in view of the copy of letter dated 28.2.61 produced by the applicant as Annexure 5 to the petition, they have also stated in para 9 of the reply that seniority in a particular grade has to be fixed on the basis of date of confirmation. They have not supported this contention with reference to any rule or instructions while reference to any rule or instructions while the applicant has filed a copy of DG P&T letter dated 7.10.72 which clearly shows & shows that in the case of persons like the applicant who were appointed prior to 22.12.59, the seniority was to be fixed on the basis of length of service.

In view of the above discussion there is force in the contention of the applicant that his seniority has been wrongly assigned. Normally persons who would be adversely affected by assignment of Higher seniority to the applicant should have been impleaded as respondents. However, the learned counsel for the applicant has stated that the applicant is due to retire on 13 April 93 and the assignment of higher seniority to him would not, therefore, adversely effect any person.

In view of the above we allow this application and direct that the respondents should assign correct seniority to the applicant in the cadre of T.O.s as on 1.7.82 on the basis of his appointment to the post of T.O. w.e.f. 8.5.56.

He shall be entitled to all consequential benefits. *However,*
where it involves an official who was previously
shown Sr. to him such an official shall not be reverted
and the applicant shall be promoted only on ~~netional~~
basis from the date any official Jr. to the applicant
on the basis of the revised seniority was promoted
and ~~supernumerary~~ ^{supernumerary} post may be created for the purpose
of such promotion.

Parties to bear their own costs.

G. Krishna
(GOPAL KRISHNA)
Judl. Member

B. B. Mahajan
(B. B. MAHAJAN)
Adm. Member

Anil