

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
J A I P U R.

T.A. No. 342/86

Date of order
11.12.1992

RAMJI DASS

... Applicant

Mr. P.V. Calla

... Counsel for the applicant.

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UNION OF INDIA & OTHERS....

Respondents.

Mr. V.S. Gurjar

... Counsel for the respondents

CORAM :

THE HON'BLE MR. JUSTICE D.L. MEHTA, VICE CHAIRMAN
THE HON'BLE MR. B.B. MAHAJAN, ADMN. MEMBER.

PER THE HON'BLE MR. B.B. MAHAJAN, ADMN. MEMBER :-

Ramjidas Maheshwari had filed a writ petition in the Rajasthan High Court praying that the respondents may be directed to call upon the petitioner to exercise the option in terms of Rule 477 of P & T Manual in the year 1972, 1974 and 1975 as and when the reorganisation/bifurcation of circles/divisions/units took place and to consider him for promotion against the next post obtaining in all units at the respective time and the promotion be accorded to him from the earlier date on which his juniors were so considered in all or any of the units notwithstanding the fact of reorganisation/bifurcation. The petition has been transferred to the Tribunal under Section 29 of the Administrative Tribunals Act.

2. The case of the applicant is that he was appointed as a Clerk in the office of Accounts Officer, Telephone Revenue Rajasthan, Jaipur and joined on 16.8.1962.

Vide order dated 3.9.66 Exhibit-1, the AOTR was split up and its staff was shifted to 3 Engineering Divisions viz Ajmer ~~Telegraphs~~ Telegraphs Division, Jodhpur Telegraphs Division and Jaipur Telephones Division. Thereafter on 21.11.66 the Jaipur Telegraph Division was further bifurcated and split up into 2 Divisions namely Jaipur Phones Division and Jaipur Telegraphs Division and the original AOTR thus got split into 4. All the officials were called to exercise their option as to the unit they proposed to opt. The applicant exercised his option for Jaipur Telephones unit w.e.f. 1.4.67. The option was accepted and the applicant came under the jurisdiction of the Divisional Engineer Phones. The seniority of the staff however continued to be common under the Post Master General, Rajasthan Circle, Jaipur. W.E.f. 25.1.72, the office of the Divisional Engineer Phones was upgraded to the status of District Manager, Telephones Jaipur and it became separate independent circle. The seniority of the staff working in this new circle thus got separated from the seniority of the staff who were working in other Division falling under the Post Master General Rajasthan Circle. At that stage no options were called from the staff. Representations were made but the same was rejected. With effect from 11.9.74, a separate Circle known as General Manager Telecommunication Rajasthan Circle, Jaipur came into existence. The telecommunication portion of the Rajasthan Circle except the DMT, Jaipur came under General Manager Telecommunication severance all connections from the office of PMG, Rajasthan Circle, Jaipur. The cases for promotion were considered and promotions were accorded from amongst the members of the staff working under General Manager, Telecommunication and the staff working with D.M., Telephones were left out. The promotions were thereafter given on the basis of separate seniority in the Telecommunication Circle excluding DMT. On 30.5.1975 the independent DMT minor Circle Jaipur was put under the control of the G.M. Telecommunication Circle, Rajasthan, Jaipur. The contention of the application is that as a result his chances of promotion got affected. Some of the officials in the erstwhile AOTR who were junior to the petitioner consequently got promotion to the higher post of LSG earlier and the applicant could get this promotion only on 3.5.79. The contention of the petitioner was that

since no option had been given to the staff, he should have been considered for promotion in the vacancy whenever it accrued under the GMT, in accordance with the instructions contained in DGP&T letter dated 30.7.75. During the pendency of the writ petition the general policy question was considered by the DGP&T New Delhi who vide communication dated 3.4.81, decided that "since no option was given to the staff at the time of formation of Jaipur Telephone District, the concerned staff on remerger with the Rajasthan Circle be given notional seniority to restore the status quo ante, at the ~~xxxxxx~~ time of formation of the Jaipur District. Subsequently vide memo dated 3.7.81, the General Manager Telephone Rajasthan Circle, Jaipur issued orders regarding revision and refixation of seniority, allowing notional fixation under FR 27 in respect of Clerks.

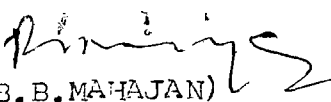
3. We have heard the counsel for the parties. The plea of the learned counsel for the applicant is that since no option had been allowed to the staff at the time of up grading of Jaipur Telephone Division as a circle, he had been denied promotion as ISC in his term and his juniors in the erstwhile AORT's office had been promoted. He argued that the applicant is, therefore, entitled to promotion from the date his juniors as per the original seniority in the AOTR with all consequential benefits and not merely the notional seniority. We have perused the copy of the order of the Tribunal dated 16.9.92 in TA No. 1781/86 Rameshwar Dayal Sharma Vs UOI and TA No. 1766/86 Godul Chand Vs UOI, in which cases of certain others employees of erstwhile AORT's office were considered. We had found that it would be fair and equitable that the applicants should also be allowed notional fixation in accordance with the order of DGP&T dated 3.4.81 as has been done in other similarly situated employees vide the GM's letter dated 3.7.81 and the respondents were directed to allow the benefit ~~xx~~ of DGP&T instruction dated 3.4.81 to the applicant in those TAs in accordance with rules, with the stipulation that they would not be entitled to any benefit prior to 3.7.1981 as a result of refixation


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of seniority. The learned counsel for the applicant has stated that in the present case the applicant should be allowed the benefit from the date the promotion became due in accordance with the seniority to be re-fixed as he had filed the writ petition ~~xx~~ without declare in the year 1977. The learned counsel for the respondents has drawn attention to the facts mentioned in the reply to the writ petition filed on 25.10.78 at page 3 where it has been stated that the applicant was offered promotion as Selection Grade Clerk in the combined circle vide order dated 15.9.77 and posted at Bikaner. He however declined the promotion because of his personal interests at Jaipur. It was stated therein that with this the petitioner as per rules has become junior to all those who have joined on promotion as also those who might be given promotion upto six months from the date of refusal of promotion by the petitioner. The applicant in the rejoinder has raised objection to his promotion made on 15.9.77 which involved his posting at Bikaner. However, it is not mentioned that these point was raised in any representation submitted to the authorities against that promotion order. The copy of any representation, if made against that promotion order had also not been filed alongwith the rejoinder. It had also not been mentioned in the amended writ petition that the promotion was declined on those grounds, although this fact had been mentioned in the reply by the respondents before the amended writ petition was filed. In the circumstances, we are inclined to accept the contention of the respondents that the applicant had declined the promotion order dated 15.9.77 for his personal reasons. Having refused promotion on the ground that it involves shifting from Jaipur, he is estopped from claiming promotion throughout the Circle which may involve promotion out side Jaipur.

4. We accordingly direct that the benefit of DGP&T instruction dated 3.4.81 may also be extended to the applicant in accordance with the rules as has been done

in the case of other similarly situated employees. ^{they stated that pay of the applicant}
The counsel for the applicant in the scale of LSG has not been fixed after his promotion on 3.5.79 although he is continuing on that post from that date. If it is so, we direct that the pay of the applicant in the scale of LSG may be fixed according to rules w.e.f. 3.5.79, with all consequential benefits. Counsel for the petitioner further submits that final seniority list of the Clerks has not been published so far. When the final seniority list is published, if the applicant is aggrieved from the final seniority list, he will have a right to submit representations against the same according to rules as he had not submitted objection to the provisional seniority list because of the pending T.A. With these observations, the T.A. is disposed of. The parties to bear their own costs.


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


(D.L. MEHTA)
Vice Chairman

Shashi/