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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT JAIPUR BENCH  
JAIPUR.

G.A.NO.1103/1992

Date of order: 21-2-1997

P.D.Sharma S/o Shri Ram Kishore Sharma,  
45 years, Section Supervisor (Operation)  
Telegraph Office, G.P.O.Building, Jaipur.

: Applicant

Versus

1. Union of India through Secretary to the Government of India, Ministry of Telecommunication, New Delhi.
2. The General Manager Telecommunication (Staff), Jaipur.
3. The Chief Superintendent, Central Telegraph Office, Jaipur.

: Respondents

Mr. P.V.Calla, counsel for the applicant  
Mr. M. Rafiq, counsel for respondents

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)  
HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL))

Through this application under Section 19 of the Administrative Tribunal's Act, 1985, which is his second attempt, the applicant has sought a direction against the respondents to promote him from the post of Telegraph Assistant to that of Section Supervisor (Operation) w.e.f. 1.2.1989 or from any date earlier to 16.7.1991 i.e. the date from which he has been given promotion in the next higher grade under One Time Bound Promotion (for short 'OTBP') Scheme implemented in the Department of Telecommunications. He has also claimed interest on the amount to which he would be entitled on this count.

2. Facts relevant for disposal of this application are that he was appointed as Signal Room Clerk w.e.f. 23.6.1967 which post was subsequently re-designated as Telegraph Assistant. Vide order dated 18.11.1987 the G.M.T. Rajasthan Circle, Jaipur promoted/appointed certain Telegraph Assistants under OTEP Scheme on the basis of the recommendations of the DPC and posted in Higher pay scale i.e. Rs. 1400-2300 as Section Supervisors on completion of their sixteen years of service with retrospective effect. It is the case of the applicant that his candidature was also considered by the DPC held during 1988-89 but it declared him "NOT FIT" for promotion in the year 1988-89 vide order dated 7.4.1989. Subsequently, vide order dated 5.8.1991 (Annex.A-2) the applicant was found fit for promotion by the DPC. Aggrieved by the order dated 7.4.1989 denying him promotion under the OTEP Scheme, he filed OA No.501/89 P.D.Sharma Vs. Union of India and others on 9.5.1989 in this Tribunal. In the said OA he prayed that 'the respondents be directed to promote him to the post of Section Supervisor (Operation) w.e.f. 7.4.1989 i.e. the date when his juniors were promoted.' That OA was contested by the respondents and it was disposed of by the Tribunal vide its order dated 29.11.1991 (Annex. A-3). It is the grievance of the applicant that although this Tribunal has directed in his earlier OA to promote the applicant earlier than 16.7.1991; the respondents with scant regard for the directions given by the Tribunal did not accord him promotion w.e.f. 1.2.1989, the date on which his period of punishment was over but intimated to him vide order dated 24.2.1992 (Annex.A-1) that he was found

'not fit' for promotion under OTBP Scheme from any earlier date prior to 16.7.1991. He made a detailed representation on 30.3.1992 (Annex.A-4) to the respondents which has been turned down by the respondents vide their communication dated 7.4.1992. He has now approached again to seek a direction against the respondents to promote him as Section Supervisor w.e.f. 1.2.1989 or at any date earlier to 16.7.1991.

3. The respondents have opposed this application by filing a written reply, to which no rejoinder has been filed. The stand of the respondents has been that in accordance with the provisions of OTBP Scheme (Annex.R-1) the applicant was also considered for promotion but was declared "NOT FIT" for promotion for the year 1988-89 as the penalty of "Reduction of Pay from Rs. 300/- to Rs. 260/- for a period of seven years w.e.f. 1.2.1982 for submitting forged mark-sheet", imposed upon the applicant vide order dated 30.1.1982, was current against him upto 31.1.1989. Hence, he was not promoted during the year 1988-89. It has also been averred that promotion under the OTBP Scheme on completion of sixteen years of service is not automatic but is based on assessment of fitness by the DFC. Further, after the direction of this Tribunal in the earlier CA, a Review DFC was held on 13.2.1992 but on the basis of the overall assessment of applicant's service record, he was not found fit for promotion under OTBP Scheme from any earlier date prior to 16.7.1991. It has, therefore, been urged that they have sincerely and fully complied with the directions given by the

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Tribunal in the earlier OA and thus the grievance of the applicant is without any foundation.

4. We have heard the learned counsel for the applicant Shri P.V.Calla and Shri M. Rafiq for the respondents at great length and have examined the record in great detail.

5. The only point for determination in this OA is whether after the direction given by this Tribunal in the earlier OA No.501/89 filed by the applicant, the applicant has to be accorded promotion to the Section Supervisor under OTBP Scheme after the penalty imposed upon him came to an end on 31.1.1989?

6. It has been vehemently argued by the learned counsel for the applicant that since in the earlier OA the Tribunal has observed that 'in the case of the applicant this date can be fixed as 1.2.1989 when his period of punishment was over', the respondents have no option but to accord him promotion w.e.f. 1.2.1989 and in any case from a date earlier to 16.7.1991 when he was actually granted promotion. It has also been urged by the learned counsel that since similarly situated persons like Shri K.C.Jain, Ghazi Lal and Nawal Kishore Sharma have been given promotion only after the punishment period was over, the applicant is also entitled to be given promotion w.e.f. 1.2.1989 after his period of punishment came to an end on 31.1.89. Another contention of the learned counsel has been

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that there being a finding by the Tribunal in the earlier OA that he has to be accorded promotion w.e.f. 1.2.1989 as having completed sixteen years of service; the respondents <sup>have</sup> ~~have~~ treated him unfairly and ~~have~~ thus frustrated the purpose of the direction given by the Tribunal in the earlier OA.

7. As against this, it has been argued by the learned counsel for the respondents that on the applicant; vide order dated 30.1.1982 a major penalty was imposed <sup>-ed</sup> and the punishment remain/ effective for seven years upto 1989. Besides this, minor penalty of Censure was also imposed upon the applicant in the year 1981, 1982, 1984, 1985 and 1987. Further, it has been argued that the respondents in compliance of the directions given by the Tribunal in the earlier OA, held a Review DPC on 13.2.1992 and on the basis of overall assessment of the service record of the applicant found him fit for promotion under the OTEP Scheme only w.e.f. 16.7.1991 and not from any earlier date prior to it. It has also been urged that under the OTEP Scheme before giving promotion, the entire record of the service of an eligible employee has to be considered by the DPC and promotion under this scheme is not automatic. Further this Tribunal, according to the learned counsel, has not directed that the DPC should consider the case of applicant's promotion only with reference to the currency of any punishment but it had to be made on the basis of an overall assessment of the service record of the applicant as laid down under the scheme. It has, therefore, been urged that there is no substance in this OA and it should be dismissed with costs.

8. We have given anxious thought to the able arguments addressed on behalf of both the sides.

9. It is necessary to reproduce the operative portion of the directions given by this Tribunal in the earlier OA 501/89 which is to the following effect:-

"The application is, therefore, disposed of with the directions that a review D.P.C. will be held for determining the question as to the earliest date from which the applicant can be promoted to the next higher grade. Parties will bear their own costs."

From a perusal of the above directions, it is abundantly clear that the Tribunal has directed the respondents to convene a Review DPC for determining the question as to the earliest date from which the applicant can be promoted to the next higher grade. From the pleadings of the parties in the present OA, it is not clear whether any DPCs were held annually during the year 1989-90, and 1990-91. In the earlier order of this Tribunal also such an observation has been made. In any view of the matter, after the direction was given by this Tribunal in the earlier OA No.501/89 which was disposed of by order dated 28.11.1991, the respondents convened a review DPC on 13.2.1992. As is evident from Para 5 of Annexure R-1 (which is an extract of OBP Scheme) and which reads as under:-

"5. Immediately on introduction of the scheme, the officials who have already completed 16 years of regular service in respective grades will be identified and action will be taken to hold departmental promotion committee meetings for their promotion. The DPC will assess the fitness of all officials who have completed or will complete 16 years of service. All formalities should be completed within a period of three months and promotions will be granted retrospectively from the date of effect of the scheme."

the DPC has to assess the fitness of all officials who have completed or would complete sixteen years of service

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on the due date. It is thus not only the completion of sixteen years of service which would automatically entitle an employee to get a promotion under the aforesaid OTBP Scheme but his assessment has also to be made to adjudge his suitability or fitness for promotion on the basis of his entire service record. In the instant case, it is made out that not only a major penalty was imposed upon the applicant in the year 1982, but minor penalties of Censure were also imposed upon him in the year 1981, 1982, 1984, 1985 and 1987. It is, therefore, on the basis of the service record of the applicant that the Review DPC which met on 13.2.1992 has arrived at the conclusion that the applicant cannot be accorded promotion from a date earlier than 16.7.1991. The respondents, therefore, have committed no fault in issuing the communication dated 24.2.1992 (Annex.A-1). Moreover, no allegations of any malafide or arbitrariness have been alleged by the applicant against the members of the Review DPC, nor such a plea could have been tenable in the eye of law. Hon'ble the Supreme Court has consistently taken a view that it is beyond the competence of a Tribunal to sit as an Appellate Court on the findings arrived at by the Expert Bodies of the Department like DPC.

10. Lastly, the contention advanced on behalf of the applicant to the effect that the respondents have no option but to accord promotion to the applicant w.e.f. 1.2.1989 does not carry any weight. The reason is that in the earlier OA No.501/89 filed by the applicant the Tribunal vide its order dated 29.11.1991 (Annex.A-3) has simply given a direction to the respondents to

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convene a review DFC for determining the question as to an earlier date from which the applicant can be promoted to the next higher grade and it did not debar the review DFC from assessing the candidature of the applicant in consonance with the directions given under the OTBP Scheme to assess his suitability also. Further more, as is evident from communication dated 7.4.1992 (Annex.A-1A) the Review DFC has found that adverse remarks exist in the ACRs of the applicant continuously from the year 1984-85 to 1987-88 which were duly communicated to him. It is after considering all the facts mentioned in this communication and on the basis of overall assessment of service record of the applicant, the Review DFC had given a recommendation of the applicant of being "NOT FIT" for promotion under OTBP Scheme from any earliest date i.e. prior to 16.7.1991. These recommendations were duly accepted by the G.M.T.(East), Jaipur and were conveyed to the applicant vide Annexure A-1 dated 24.2.1992. We, therefore, do not find any fault in any of the orders dated 24.2.1992 (Annex.A-1) or the communication dated 7.4.1992 (Annex.A-1A).

11. Consequently, while answering the issue raised in this OA in the negative, we are of the considered opinion that there is no merit in this OA which is hereby dismissed with no order as to costs.



(PATAN PRAKASH )  
MEMBER (J)



( O.P.SHARMA )  
MEMBER (A)