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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD
Wednesday the twenty first day of June.

ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

:PRESENT:

THE HON'BLE MR. B. N. JAYASIMHA: VICE-CHAIRMAN
AND

THE HON'BLE MR. D. SURYA RAO: MEMBER (JUDGE)
AND

THE HON'BLE MR. D. K. CHAKRAVORTY: MEMBER (ADMIN.)
AND

THE HON'BLE MR. C. NARASIMHA MURTHY: MEMBER (JUDGE).

TRANSFERRED / ORIGINAL / MISCELLANEOUS / PLEA / PETITION / APPLICATION
NO 558 OF 1987.

BETWEEN:-

P. Kamleshwar Rao

.....Applicants

(Applicants in T.A.O.A
No. 558 OF 1987
on the file of the
Tribunal).

AND

1. The Union of India, Rep. by
the Director General,
Telecommunications,
Sanchar Bhavan, New Delhi - 110001.

2. the General Manager,
Telecommunications,
Triveni Complex, Abids,
Hyderabad - 500001.

.....Respondents
(Respondents in -do-)

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ORIGINAL APPLICATION NO. 558 of 1987

(Judgment of the bench delivered by Shri B.N.Jayasimha,
Hon'ble Vice Chairman)

1. The applicant herein has filed this application under section 19 of the Administrative Tribunals Act, aggrieved by the orders dated 16-4-1987 and 12-6-1987 issued by the Director General, Telecommunications, New Delhi, under which several of his juniors have been promoted and he has been over-looked.
2. The applicant states that he was originally appointed as Engineering Supervisor in P & T Department with effect from 5-10-1960 and later promoted to Telegraph Engineering Service, Group 'B' as Assistant Engineer on his passing Departmental Telegraph Engineering Service, Class II Examination, held in 1972. He was confirmed as Assistant Engineer with effect from 1-3-1979. He became eligible for promotion to the Telegraph Engineering Service, Group 'A' as per rule 182 of the P & T Manual, Volume IV. The selections have been made by the duly constituted Departmental Promotion Committee from Group 'B' to Group 'A'. In the seniority list published by the Department, corrected up to 1st February, 1985, his serial number

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is 56. The Departmental Promotion Committee which met in the year 1984 superceded him as senior seen from the promotional order issued under Memo No. 12-1/84-STG-1 dated 10-10-1984. He submitted a representation dated 31-10-1984, but he has not received any reply since the date of filing this application. He was not informed the reasons for passing over his name which he could only notice from promotions orders dated 16-4-1987 and 12-6-1987. He was again passed over for promotion in the Departmental Promotion Committee held in 1987.

Several of his juniors/who were far below in the seniority list were promoted in the years 1984 and 1987 thus denying him the said promotion even though he officiated as Divisional Engineer for a period of nearly two years as most suitable officer selected for the purpose in accordance with rule 188 of P & T

Manyal Volume IV

3. The applicant states that his record of service was quite good and nothing adverse if any noted was communicated to him all these years. His earlier promotion to Telegraph Engineering Service, Group 'B' in 1973 stands testimony to his good record of service. He further states that in his officiating service as Divisional Engineer from 16-1-1983 to 1-11-1984, he has not received any adverse comments

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on his work. He was found most suitable as a senior officer and accordingly he was selected for officiating promotion as Divisional Engineer as per rule 188 of P & T Manual Vol IV and on this ground ~~only~~ alone he should have got regular selection as Divisional Engineer. He, therefore, states that there is no justification for denying him the regular selection as the Divisional Engineer and such denial is violative of Articles 14 and 16 of the Constitution.

4. We have heard the learned counsel for the applicant Sri J.V.Lakshmana Rao and Shri E.Madan Mohan Rao, Addl.C.G.S.C. who has also produced the proceedings of the DPC held in 1987 for promotion from TES gr.'B' to ITS Gr.'A'.

5- Shri Lakshmana Rao's main contention is according to that under Rule 188 of P & T Manual, Volume IV when a long vacancy occurs and there is no Asst. Divisional Engineer, Telegraphs, qualified to hold that charge, the most suitable officer in the grade of Asst.Engineer, Telephones and Asst.Electrical Engineer will be selected to fill the vacancy ^{and}, since the applicant was found suitable and selected as per rule 188 above cited, in a long vacancy occurred in a Divisional Charge, the DPC could not have overlooked

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him. On the other hand, Shri Madan Mohan Rao contends that since posts of ITS are operational posts, those cannot be kept vacant for a long time till an officer, approved for appointment to this post by a regularly constituted DPC on an All India Level, becomes eligible. Hence, the Heads of Circles have been authorised to make purely local and adhoc officiating arrangement on circle seniority basis. The applicant has officiated in ITS Group 'A' for some time only as a stop gap arrangement and he cannot have any claim for regular promotion on the basis of such adhoc officiating arrangements. The applicant cannot have any claim for promotion on regular basis simply because he was promoted on officiating basis on the basis of his local seniority. ~~selection is a selection post.~~
The selection for regular promotion is done on All India basis considering all eligible officers in the cadre of Assistant Engineers. The DPC has made a comparative assessment of all the eligible Officers and categorised them as 'outstanding', 'Very Good' and 'Good'. The applicant was given the grading "Good".

6. We have considered these contentions and also perused the records/proceedings of the DPC. The said proceedings show that the applicant was graded only

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'Good' and ^a the number of persons ^{who} were graded as 'Very Good' were placed above him. In the result, the applicant did not come within the range of promotion and the persons ^{who} were graded 'very good' went above him. The Departmental Promotion Committee consisted of Member of Union Public Service Commission as Chairman, ^{Member} Telecommunication ~~Board~~, Ministry of Communications as Member; and Deputy Director General(T) of Department of Telecommunications, Ministry of Telecommunications as Member. In R.S.Das Vs. Union of India and others (AIR 1987 SC 593), the Supreme Court has observed that "...The machinery designed for preparation of select list under the regulations for promotion to All-India Service ensures objective and impartial selection. The Selection Committee is constituted by high ranking responsible officers presided over by Chairman or a member of the Union Public Service Commission. There is no reason to hold that they would not act in fair and impartial manner in making selection. If at all the selection is made in arbitrary manner the Courts have ample power to strike it down and that is an adequate safeguard against arbitrary exercise of power." It was also observed that "...The Committee is not free to categorise officers at its sweet will. Under

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Regn.5 the Committee has to categorise officers on the basis of their service records into four categories. The categorisation is objectively made on the material available in the service records of the officers. There is hardly any scope for applying ~~is~~ different standards or criteria at different times as the service records namely the character roll entries would indicate the category of the officers as adjudged by the authority recording annual confidential remarks." The procedure adopted in the present case is similar to the procedure envisaged in the selection of State Civil Officers to the Indian Administrative Service. As already mentioned, it is to be noted that in this case also the Departmental Promotion Committee is presided by a Member of the Union Public Service Commission as Chairman. The Selection Committee has categorised all the officers into one or the other grades on a perusal of the annual confidential reports. In these circumstances, and following the decisions in DASS's case, we find no infirmity in the selection made.

7. In the result, the application is dismissed.

The parties shall bear their own costs. (dictated in open court)

B.N.Jayashimha
(B.N.JAYASIMHA)
Vice Chairman

J.Narasimha Murthy
(J.NARASIMHA MURTHY)
Member (Judl.)

dt. 21st day of June, 1989.

SQH*

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S. Venkateswaran
Deputy Registrar