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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.494/95

Date of Order: 14.8.96

BETWEEN:

Shaik Subhan

.. Applicant.

AND

1. The Chief Superintendent,
Central Telegraph Office,
Hyderabad.
2. The Senior Supdt. (Telegraph Traffic),
Store and Forward Message Switching
Systems, (SFMSS) Central Telegraph
Office, Secunderabad-3.
3. The General Manager, Telecommunications,
Hyderabad Area at Secunderabad -3.
4. The Chief General Manager, Telecom,
A.P.Circle, Hyderabad-1.
5. Shri K.Lakshminarayana,
Senior Telegraph Master
(T.O.A.(Tlg) Grade-III),
Store and Forward Message
Switching Systems (SFMSS)
at Central Telegraph Office,
Secunderabad.
6. The Union of India, rep. by
the Secretary, Department of Telecom,
Sanchar Bhavan, New Delhi - 110 001. .. Respondents.

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Counsel for the Applicant

.. Mr.TVVS.Murthy

Counsel for the Respondents

.. Mr.N.R.Devraj

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CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

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J U D G E M E N T

X Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.) X

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Heard Mr.T.V.V.S.Murthy, learned counsel for the
applicant and Mr.N.R.Devraj, learned standing counsel for
the respondents. Notice has been received by R-5. He was
called out found absent. Hence set ex-parte.



2. The applicant while working as Senior Telegraph Master Gr-III (SFMSS) C.T.O., Secunderabad was transferred and posted as Incharge T.O. SD-Malkajgiri by the impugned order No. S-9/IC/V.III/94/70 dated 8.1.95 (A-6). The applicant submits that he is not the junior most in Grade-III for transfer as Incharge T.O. to Malkajgiri and R-5 is junior to him. He relies on the letter No.53-2/93-TSP dated 31.12.93 to state that as per the policy decision only the junior most Gr-III T.O. has to be posted to work as Incharge Telegraph Office. He also relies on the letter of DOT vide letter No.TA/STB/14-5/BCR/Rlgs/II, dated 14.9.94 (A-9), to state that the basic criteria for fixing the seniority in Gr-III for Telegraph Master is the date of entry in Gr-III with 2 exceptions as stated in that letter. The applicant submits that he is senior to R-5 and hence transferring ^{him} as a Telegraph Incharge by the impugned order is contrary to the memo dated 31.12.93.

3. This OA is filed assailing the transfer order dt.8.1.95 and for a consequential direction to retain him as Senior Telegraph Master Gr-III at SFMSS, CTO, Secunderabad.

4. The whole question in this connection hinges on the relative seniority of the applicant vis-a-vis R-5. The respondents state that R-5 joined as Senior Telegraph Master Gr-III earlier to the applicant. Hence in terms of the seniority rule as enunciated by the DOT (Page-9) the Telegraph Master who joined earlier is senior to those who entered that grade later.

5. The first contention of the applicant is that the letter indicating the inter-se seniority in the Telegraph Master Gr-^{III} cadre as indicated at Annexure-9 of the letter of the DOT is to be read in conjunction with the provisos to para 2(b) of the letter. Though it is stated in the interim order in this OA dated 21.4.95 that the 2 exceptions are not

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relevant for consideration in this OA, the learned counsel for the applicant insisted that these 2 exceptions are very relevant. In view of the above these 2 exceptions are analysed first.

6. The first exception admittedly had no relevance to the issue. Hence there is no need to examine the first exception further-

7. In the second exception if a Gr-I Telegraph Master is promoted to Gr-II in the 1/3rd quota, the senior who is promoted to Gr-II in the normal course will regain his seniority in Gr-II on completion of 26/17 years of service. But in this case R-5 was promoted against 1/3rd quota to Gr-II. Both the applicant and R-5 were promoted to Gr-II in the normal course on the basis of their seniority-cum-suitability. Hence the second exception also has no relevance to this issue. Thus it is correctly noted in the interim order dated 21.4.91 in this OA that both the exceptions are not relevant.

8. The applicant submitted that he joined in Gr-I on 18.5.68 and R-5 joined in Gr-I on 20-8-73. Hence there can be no question that R-5 is senior to him. The applicant joined as Gr-II Telegraph Master on 17.8.83 but the date for promotion of R-5 to Gr-II is not known. It may be possible that R-5 could have superseded the applicant. In any case nothing can be said now in view of the fact that the date of promotion of R-5 is not known. The applicant was promoted to Gr-III Telegraph Master on 4.7.94 whereas R-5 was promoted to that post on 11.6.94. If the date of entry to Gr-III is taken for determining the inter-se seniority then as per their date of joining in Gr-III R-5 ranks senior to applicant in view of para 2(b) of the letter at A-9. But this point has to be further examined in the light of the following contentions made by the applicant.

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9. The applicant relies on the gradation list corrected upto 1.1.94 (A-5). On that basis he submits that the applicant is shown at Sl.No.57 in that combined gradation list of T.O.A. (T) Gr-I, II, III and IV corrected upto 1.1.94 whereas R-5 figures at Sl.No.95. He further adds that in view of the clear cut position of the applicant vis-a-vis R-5 in the gradation list referred to above there can be no doubt that in regard to the inter-se seniority of the applicant and R-5 in Grade-III.

10. The above gradation list was examined. In the gradation list the caption of the various columns are not indicated. Hence nothing can be said in regard to the various columns and the significance of these columns. It is also seen from the same list that the applicant under Col.No.7 is shown as TOA(T) Gr-III SFMSS SD and in Col.No.8 his rate of pay is noted as Rs.1760/- and under Col.9 his date is indicated as 1.11.93. Whereas in the case of R-5 the details under Col.No.7 reads as TOA (T) Gr-II DTO SDOT, under Col.No.8: his rate of pay is noted as Rs.1720/- and under Col.No.9 the date indicated is 1.8.93. From the above it is not very clear whether the gradation list is with respect to Gr-I, Gr-II or Gr-III. Hence this annexure cannot be taken for determining the inter-se seniority of the applicant and R-5.

11. The applicant further relies on the clarification given in regard to seniority in the biennial cadres and restructure of cadres in Group C&D issued by DOT vide No.27-4/87-TE-11 dated 18.3.92 (A-13). He submits that the clarification of 1(b) is to be taken note of for fixing the seniority. This para reads as below

"(b) Officials already in the pay scale of Rs.1400-2300 i.e. Gr.II scale before the introduction of OTBP scheme will rank enblock senior to all those who entered the pay scale of Rs.1400-2300 i.e. Grade-II after introduction of OTBP scheme. Such a provision is already available to them in para 22(b)(iii) of OTBP scheme Order No. 1-71/83-NCG dt. 17.12.83".

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12. As per this para the officials who are already in the grade of Rs.1400-2300 i.e. Grade-II scale will enblock rank senior to those who are promoted to that grade on the basis of OTBP scheme. The applicant submits that he is working as Gr-II from 17.8.83 earlier to the introduction of the BCR scheme which came into effect in November 1983. But it is not known whether R-5 also came to the Gr-II Telegraph Master earlier to the introduction of the OTBP scheme in view of the fact that the date of entry of R-5 to Gr-II is not known. Hence the seniority principle annunciated as above is also not very relevant for consideration of this case.

13. The applicant relies on the clarification ^{by D.O.T} enclosed as A-14 at Page-35 to the query "whether seniors who have not completed 26 years of service will become eligible for promotion because juniors have completed". To that query it is clarified that "only officials who have completed/will be completing 26 years of service or more on the crucial date for biennial cadre will be eligible. The applicant submits on that above basis, that he having joined as Gr-I earlier to R-5, he is senior to R-5 and hence when he was promoted to Gr-II he should be shown senior to R-5 in the seniority list of Gr-II Telegraph Master.

14. As indicated earlier the date of entry of R-5 to Gr-II is not known. It may be possible that R-5 could have been promoted to Gr-II earlier to the applicant either on technical reasons or superceding the applicant. Hence the date of entry of R-5 to Gr-II is of significance in this seniority dispute. The reason, if R-5 is promoted to Gr-II earlier, has to be ascertained. If R-5 is promoted to Gr-II earlier to the applicant due to the fact that he belongs to a reserve community or due to the fact that he had completed the qualifying service earlier to the applicant, which is not likely, then the applicant may ^{again} ~~reign~~ his seniority in Gr-II. But if the applicant was promoted later than the applicant due to his non selection to that grade then the question of giving any seniority to the applicant over and above R-5 in Gr-II may not

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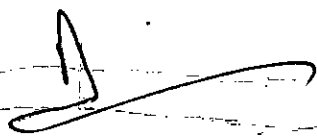
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arise. Similar check has also to be made in the case of promotion to Gr-III of the applicant and R-5. If the applicant is promoted to Gr-III later then the R-5 due to his unfitness for promotion then R-5 will rank senior to applicant. But if R-5 is promoted Gr-III Telegraph Master on technical grounds such as having completed the requisite qualifying service for a reserved candidate then the clarification as given in A-14 will have to be taken note of for fixing the inter-se seniority of the applicant vis-a-vis R-5, adhering to the law laid by the Appex Court in 1996 SCC (L&S) 540 (Ajit Singh and others Vs. State of Punjab and others) and in (1995) 31 ATC 813 (Union of India and others Vs. Virpal Singh Chauhan and others).

15. In view of the above it is for the respondents to examine the seniority issue of the applicant vis-a-vis R-5 in the light of the above discussion and decide the relative seniority of the applicant and R-5. In case the applicant is senior in Gr-III then he should be brought back to Secunderabad office. If on the other hand if R-5 is found to be senior to the applicant then the transfer order dated 8.1.95 (A-6) cannot be challenged.

16. In view of the above R-4 should re-examine the seniority dispute between the applicant and R-5 in the light of the above observations and decide the same within a period of 2 months from the date of receipt of a copy of this judgement. A detailed reply in this connection has to be send to the applicant after taking a final decision in this seniority dispute. If the seniority of the applicant on this basis of the above scrutiny by R-4 is established as senior to R-5 then he should be brought back to Secunderabad Telegraph office in the capacity of Gr-III Telegraph Master. If R-5 is found senior to the applicant as per the above scrutiny the transfer order stands good. If the applicant is going to be aggrieved by the decision of R-4 he is at liberty to approach the Tribunal as per extant law.



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17. The OA is ordered accordingly. No costs.



(R. RANGARAJAN)
Member (Admn.)

Dated: 14th August, 1996

(Dictated in Open Court)

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Ambr
10/8/96
Dy. Registrar (J)

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O.A.NO.494/95

Copy to:

1. The Chief Superintendent,
Central Telegraph Office,
Hyderabad.
2. The Senior Superintendent, (Telegraph Traffic)
Store and Forward Message Switching Systems,
(SFMSS) Central Telegraph Office,
Secunderabad.
3. The General Manager, Telecommunications,
Hyderabad Area at Secunderabad.
4. The Chief General Manager, Telecom,
A.P.Circle, Hyderabad.
5. Secretary, Dept. of Telecom,
Sanchar Bhavan, New Delhi.
6. One copy to Mr.T.V.V.S.Murthy, Advocate,
CAT, Hyderabad.
7. One copy to Mr.N.R.Devraj, Sr.CGSC.
CAT, Hyderabad.
8. One copy to Library, CAT, Hyderabad.
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YLKR

02/10/96

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED: 14/8/96

ORDER JUDGEMENT
R.A/C.P./M.A. NO.

in
O.A. NO. 494/95

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