

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 708/96.

Dt. of Decision : 02-09-98.

B. Mallikarjuna

..Applicant.

Vs

1. The Telecom District Manager,
Anantapur.
2. The Chief General Manager, Telecom,
A.P.Circle, Deersanchar Bhavan,
Nampally Station Road, Hyderabad.
3. The Superintendent, I/c.Central
Telegraph Office, Anantapur.
4. The Union of India, rep. by the
Secretary to the Dept. of Telecomm-
unication, New Delhi.

..Respondents.

Counsel for the applicant

: Mr.K.Venkateswara Rao

Counsel for the respondents

: Mr.V.Rajeswara Rao, Addl.CGSC.

CORAM:-

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

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ORDER

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

Heard Mr.K.Venkateswara Rao, learned counsel for the applicant and Mr.V.Rajeswara Rao, learned counsel for the respondents.

2. The applicant in this OA belongs to SC community and he was appointed as Telegraphman in Group-D service w.e.f., 18-9-82. He was confirmed in that post on 1-3-87. It is stated that the applicant had passed SSC in the year 1984. But it is not stated that he passed the examination ~~in~~ compartmentally. The applicant submitted a representation to the Sr. Superintendent Telegraph office, Kurnool Division, Kurnool on 8-7-95 enclosing a copy of the SSC memo for promoting ^{him} ~~in~~ the Group-C category under the incentive scheme. That was replied by the R-3 by his letter No.SH-309/28 dated 18-7-85 that he is eligible for promotion under the incentive scheme only after putting 6 years of continuous service and hence he may renew his application after 6 years of service. In view of that it is also stated that his representation had been with-held in the office of R-3. The applicant was informed by the Asst. Superintendent Telegraph Office, Ananthapur on 12-4-89 enclosing a copy of the ^{letter} Director of Telecom, Tirupathi dated 31-3-89 stating that the Headquarters has not considered the case of the applicant for promotion under the incentive scheme in letter No.TA/STA/9-14/1-5/II dt. 14-3-89 since he had passed the SSC ~~in~~ compartmentally which is a bar ^{for} ~~in~~ promotion under the scheme. Against that order the applicant filed a representation to R-2 dated Nil. (Annexure R-4 to the reply) contending that the reply of CPE, Hyderabad that he is not eligible for promotion under the scheme as he had passed the SSC examination ~~in~~ compartmentally ^{is} incorrect since there is no such mention in the condition laid down. But 50% of marks ^{in the aggregate} ~~and aggregate~~ should be obtained which is waived for SC. In that context he

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requested for consideration of his case for promotion to Group-C as Clerk under the incentive scheme. But he was informed vide letter No.E-4/Cl.IV/96-97 dated 21-5-96 (Annexure-I) that he is not eligible since he has passed the SSC examination ~~in~~ compartmentally.

3. Aggrieved by the above the applicant has filed this OA to set aside the letter No.E.4/Cl.IV/96-97 dt. 21-5-96 and for a consequential declaration that the applicant is entitled for promotion under incentive scheme as Telecom Office Assistant etc. with all consequential benefits.

4. In the reply the promotion of the departmental lower grade official to the cadres of clerks under incentive scheme is enclosed as Annexure R-1 to the reply. In this O.M. it is not stated clearly that ^{only} those who passed the SSC whether ^{belong} to SC or ST in one attempt and not compartmentally. However a clarification has been given to that letter No.202-36/86-STN dated 30th July, 1986 (Annexure-V to the OA) wherein it is stated that passing of matriculation examination compartmentally is a bar for promotion under incentive scheme. The respondents submit that in view of the clarification the applicant is not entitled for promotion.

5. The applicant submitted his representation in 1985 and that was disposed of by R-3 way back in 1985 itself. Hence, the respondents submit that the OA is barred by limitation as the applicant has not challenged that letter within the allowable period. But we find that he has challenged the letter dated 21-5-96 of the CGMT and this OA was filed challenging the same on 12-6-96. Hence, the OA may not be dismissed on limitation as he has challenged the letter of CGMT which was issued on 21-5-96. However, we feel that the OA is to be disposed of on merits rather than on the technical question of limitation.

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One eligible for promotion under the incentive scheme.

6. The applicant filed his representation for promotion under incentive scheme in 1985. At that time he had not completed 6 years of service in Group-D. He had completed 6 years of service only 1988 if his date of entry as Telegraphman is taken into account or in the year 1993 ^{by} his date of confirmation in the said ^{employment} post is taken. The clarificatory letter was dated 30-7-86. Hence, when the applicant was eligible for consideration either in 1988 or 1993 this letter dated 30-7-86 was in force. Hence, the applicant should have challenged this letter for getting any relief. Having not challenged that letter and only challenge ⁱⁿ the letter of R-2 which is based on the letter dated 30-7-86 ^{the applicant can never get any relief}. Hence, a proper challenge to the letter dated 30-7-86 is essential for deciding this case.

7. In the prayer column the applicant submits that he challenged the letter of R-2 dated 21-5-96 read with the letter dated 30-7-86. But such a challenge cannot be taken as a ~~proper~~ challenge as an office order to be challenged requires lot of material before challenging the same. The only reason given ^{by} for him to challenge the letter of 30-7-86 is on the ground that in Postal service there is no such stipulation barring compartmentally passing ^{ed} ~~such candidate~~ such candidate ^{to be promoted} under the incentive scheme. For that he has filed the letter No.BI/LCO/Promotion dated 13-8-90 (Annexure-IV) which is relevant letter of the Postal Department. The applicant belongs to Telecom Department. It is not necessary that the instructions of the Postal department should hold good in the Telecom department also even if both the departments are under one Ministry. The type of work and other activities of the postal department may be different and on that basis the letter dated 13-8-90 would have been issued. The letter does ^{clearly} not indicate that there is no bar for promotion under incentive scheme for compartmentally passed candidate. The relevant para in the letter dated 13-8-90 reads as follows:-

"The official should have obtained not less than 50% of marks (aggregate) in Matric or its equivalent examination. This condition in respect of SC/ST officials is waived."

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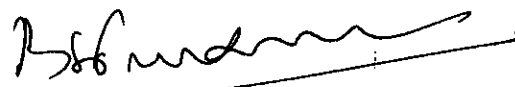
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^{also}
This para does not indicate that the compartmentally SSC passed Group-D staff are eligible for promotion under the incentive scheme though the learned counsel for the applicant submits that in Postal department compartmentally passed staff are eligible for promotion. It only states that minimum marks required for OC candidate is 50% (aggregate) and that is waived for SC/ST official.

8. In view of what is stated above, we find no merit in this OA. Hence, the OA is dismissed. No costs.

9. The learned counsel for the applicant submitted that he was mis-lead by R-3, by not indicating in his reply that the compartmentally passed staff are not eligible for promotion under the incentive scheme. If ^{R-3} he had stated so, he would have ^{not} ~~needed~~ ^{not} ~~once~~ ^{not} ~~again~~ again for SSC examination and got himself qualified in the first instance. Because of the improper reply on the part of R-3 he was put to a dis-advantage.

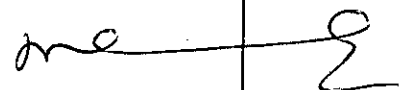
10. We sympathise with the applicant for the same. But such a contention may not give the necessary relief to the applicant. However, we ~~xxx~~ will advise the departmental authority to be more careful in future while issuing a reply to the representation. No costs.



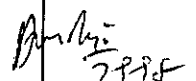
(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)

Dated : The 2nd Sept. 1998.
(Dictated in the Open Court)

SPR



(R. RANGARAJAN)
MEMBER (ADMN.)


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Copy to:

1. The Telecom District Manager, ~~XXXXXXXXXXXX~~ Ananthapur.
2. The Chief General Manager, Telecom, A.P. Circle, Doursanchar Bhavan, Nampally Station Road, Hyderabad.
3. The Superintendent, I/C Central Telegraph Office, Ananthapur.
4. The Secretary to Dept. of Telecommunications, New Delhi.
5. One copy to Mr. K. Venkateswara Rao, Advocate, CAT, Hyderabad.
6. One copy to Mr. W. Rajeswara Rao, Addl. CGSC, CAT, Hyderabad.
7. One copy to D.R(A), CAT, Hyderabad.
8. One duplicate copy.

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11/9/98

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II COURT

TYPED BY
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CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M(J)

DATED: 21/9/98

ORDER/JUDGMENT

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

in

C.A.NO.

708/96

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

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