

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
 AT HYDERABAD

O.A.No. 304/97

Date of Order : 23.9.98

BETWEEN :

B.Kusuma Kumari

.. Application.

AND

1. The General Manager,  
 Telecom District, Hyderabad.  
 Department of Telecommunications,  
 Govt. of India, Hyderabad.
2. The Assistant General Manager,  
 Administration, O/o General  
 Manager, Telecommunications,  
 Hyderabad.

.. Respondents.

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Counsel for the Applicant

.. Mr.D.Linga Rao

Counsel for the Respondents

.. Mr.N.R.Devraj

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CORAM :

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

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

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O R D E R

X As per Hon'ble Shri B.S. Jai Parameshwar, Member (Judl.) X

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Mr.Balkishan Rao for Mr.D.Linga Rao, learned counsel for  
 the applicant and Mr.N.R.Devraj, learned standing counsel for  
 the respondents.

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2. The applicant herein was originally appointed as Telephone Operator after completion of training. She reported for duties on 2.5.88 in the office of Deputy Engineer, Trunks, Saifabad, Hyderabad. She sought for change of cadre to the Telecom Office Assistant and her request was agreed vide proceedings dated 28.5.90. On 14.10.96 she was promoted on officiating basis as Senior TOA. However by proceedings dated 13.1.97 (A-2) she was reverted cancelling her earlier promotion.

3. The applicant submitted representation dated 9.12.96. The respondents sent a reply dated 26.12.96 (A-1) informing her that her promotion was cancelled as she ~~was~~ <sup>had</sup> not passed the confirmation examination. She was further informed that she ~~was~~ <sup>would be</sup> deputed for training only after passing the confirmation examination.

4. The applicant has filed this OA challenging the impugned proceedings No. ST 107/SR.TOA/TRG/KW/2, dated 26.12.96 issued by General Manager, Telecom District, Hyderabad read with Proceedings No. SP-172/11/Sr.TOA, dated 13.1.97 issued by General Manager, Telecom District, Hyderabad and <sup>to</sup> quash the same by holding <sup>the</sup> applicant is entitled to maintain the seniority in the cadre of Telecom Office Assistant from the date of her appointment and consequently entitled for deputation for Senior Telecom Office Assistant Training for purpose of confirmation in that cadre on par with similarly situated persons who are also promoted as Senior Telecom Office Assistant by proceedings Dtd. 13.10.94.

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5. The respondents relying upon the instructions dated 21.2.95 have stated that passing of the confirmation test is also necessary for considering any candidate for promotion to TOA and further have stated that those of the candidates who were earlier promoted without passing the confirmation test were reverted.

6. They submit that in the case of the applicant she was promoted without considering whether she had passed the confirmation examination or not and accordingly her promotion was cancelled.

7. The learned counsel for the applicant relied upon the letter dated 28.8.90 wherein it is stated that an opportunity was given to the candidates for passing confirmation examination within three years from the date of their appointment in only six chances.

8. The main contention of the applicant in this OA is that the applicant came as a TOA from the cadre of Telephone Operator under Rule 38 of P&T Manual that rule does not indicate that the applicant is to pass the confirmation test for further promotion for TOA. She is not a direct recruitee TOA, and hence the question of insisting <sup>on her</sup> of passing the confirmation examination for the cadre of TOA does not arise.

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9. Rule 38 in Vol.IV of the P&T Manual is only for request  
from one cadre  
transfer to any cadre. This rule does not state that promotion  
from TOA to Senior TOA, confirmation examination is not necessary  
under Rule 38 of the P&T Manual Vol.IV it will not stand in the  
way of the respondents to deny her promotion to Sr.TOA if she  
has not passed the confirmation test in the cadre of TOA.  
Executive instructions available in regard to promotion to  
Sr.TOA from TOA will apply. The letter dated 21.2.95 clearly  
indicate that for promotion to Sr.TOA one should have got  
confirmed in the cadre of TOA. Hence the above contention has  
no legs to stand.

10. The applicant in this OA submits that some of the TOAs  
were promoted to Sr.TOA even without passing the confirmation  
examination. Hence the denial of promotion to Sr.TOA on the  
ground that she had not passed the confirmation test is unwarranted.  
The applicant only submits that her juniors are promoted as Sr.TOA  
without passing the confirmation test and she is similarly situated.  
There is no proof that her juniors who are promoted as Sr.TOA  
have not passed the confirmation test. Even if they had promoted  
as Sr.TOA is violation of letter dated 21.2.95 which is a case of  
error on the part of the respondents. Such an error cannot be  
quoted as a precedent. This is settled law. Hence this contention  
is also rejected.

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11. The respondents relying on the letter dated 21.2.95 submit that as she had not passed the confirmation test in the grade of TOA her promotion to Sr.TOA was erroneous and because of that she was reverted to TOA.

12. The applicant was promoted as Sr.TOA in the year 1994 - on 13.10.94, earlier to the issue of the letter dated 21.2.95. But the respondents brought to our notice another letter enclosed as Annexure to the reply to state that confirmation was essential for promotion even earlier in view of the said letter dated 9.3.81. We have perused that letter dated 9.3.81. It does not state that for promotion one should be confirmed. Normally promotion is based on the seniority. On the basis of seniority, one should be promoted provided the employee is fit and suitable. But there is no irregularity if the letter dated 9.3.81 clearly stipulates that for promotion to Sr.TOA apart from seniority-cum-fitness one should also be confirmed in the TOA cadre. But such instruction does not exist in the letter dated 9.3.81. The learned counsel for the respondents further adds that letter dated 21.2.95 is a clarification to the earlier letter dated 9.3.81. Hence non-mention regarding Sr.TOA <sup>therein</sup> cannot be considered as a promotion. Hence it has to be held that the letter dated 21.2.95 is a letter issued in connection with the promotion to Sr.TOA and as per that letter only those who had passed the confirmation test in the cadre of TOA can be promoted as Sr.TOA. As the applicant was promoted on 13.10.94 earlier to 21.2.95 it has to be seen whether she should be passed the confirmation test for promotion to Sr.TOA or not.

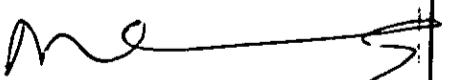
13. The promotion to higher post needs experience as well as the required examination in the lower grade. Though the letter dated 21.2.95 has been issued for promotion only if a TOA has passed the confirmation test it cannot be said that such an instruction is irregular or incorrect. We do agree that a Govt. servant should be efficient in discharging the duties. If the department feels that only a TOA who was passed the confirmation test is eligible for promotion to Sr.TOA, what cannot be said to be a perverse instruction. Hence we feel that the applicant should pass the confirmation test in TOA for promotion for regularising her services as Sr.TOA.

14. She had already been promoted earlier to 21.2.95. She should be continued as Sr.TOA on adhoc basis. She should be given atleast 2 more chances for getting herself qualified <sup>for promotion</sup> to the cadre of Sr.TOA. If she passes the confirmation test to be indicated by the respondents which will not be less than 2 chances, then she should be regularised from the date of passing the confirmation examination. If she fails to qualify in the confirmation test within the stipulated attempts, the respondents are at liberty to revert her to TOA.

15. With the above observations the OA is disposed of. No costs

  
( B.S. JAI-PARAMESHWAR )  
Member (Judl.)

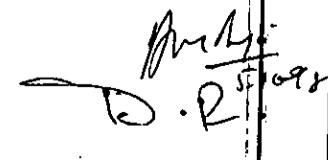
23.9.98

  
( R.RANGARAJAN )  
Member (Admn.)

Dated : 23rd September, 1998

(Dictated in Open Court)

sd

  
D.R. 23.9.98

DA.304/97

Copy to:-

1. The General Manager, Telecom District, Hyderabad, Department of Telecommunications, Govt. of India, Hyderabad.
2. The Assistant General Manager, Administration, O/o General Manager, Telecommunications, Hyderabad.
3. One copy to Mr. D.Linga Rao, Advocate, AT., Hyd.
4. One copy to Mr. N. Devaraj, Sr. CGSC., CAT., Hyd.
5. One copy to HBSJP M(J), CAT., Hyd.
6. One copy to D.R.(A), CAT., Hyd.
7. One duplicate copy.

srr

16/9/98 (X) II COURT

TYPED BY  
COMPIRED BY

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 S.S. JAI PARAMESHWAR:  
M(J)

DATED: 23/9/98

ORDER/JUDGMENT

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

in  
C.A.NO. 304/97

ADMITTED AND INTERIM DIRECTIONS  
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

Y LKR

