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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.468/99.

Date of Order: 29-9-2000

Between:

B.V. Pudinaidu, s/o Appalanaidu ... Applicant

A n d

1. Union of India, represented by
The Secretary, Department of
Telecommunications,
Ministry of Communications,
20, Ashoka Road, New Delhi-110 001.
2. The Chief General Manager,
Telecommunications, A.P.Circle,
Nampally Station Road,
Hyderabad- 500 001.
3. The General Manager,
Telecommunications,
Vizag Area, Visakhapatnam-532 001.
4. The Telecom District Manager,
Vijayanagaram - 530 001. ... Respondents

Counsel for Applicant : Mr. N.R.Srinivasan

Counsel for Respondents : Mr. B.N.Sharma, SrCGSC

Coram :

The Honourable Mr. Justice D.H. Nasir, Vice-Chairman.
The Honourable Mr.R. Rangarajan, Member (Admn.)

Contd ... 2.

O R D E R.

Justice D.H. Nasir, VC :

1. The applicant in this O.A. is challenging the validity of notice dated 19.3.1999 issued by the Telecom District Manager, Vizianagaram (R-4). By the said notice the R-4 called upon the applicant to take notice that it was decided by him to revert the applicant from BCR Grade ~~III~~^{IV} ~~IV~~^{III} to Grade ~~IV~~^{III} with effect from 1.1.1996 and that the order of reversion would be effective from 5.4.1999. The R-4 referred to the office notices No.E-38/BCR/96-98/III/41 dated 3.12.1998 and the applicant's representation dated 24.12.1998 as also the order dated 22.12.1998 of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad before issuing the impugned notices.

2. The applicant's case, in short, is that he belonged to Scheduled Tribe community and he was initially recruited as Telephone Operator in the Telecom Department on 3.1.1962. He was confirmed in that cadre on 1.3.1965 and promoted to the Telecom Supervisory Cadre with effect from 1.6.1974. He was further promoted under the Biennial Cadre Review ("BCR" in short) as Grade III official with effect from 16.10.1990. Further according to the applicant, he was regularly promoted as Chief Telecom Supervisor in Grade IV with effect from 1.1.1996 under BCR Scheme. The Telecom Department introduced restructuring of BCR scheme. As per the instructions of the Telecom Department, those opting for restructured cadre of Senior Telecom Operating Assistant (Phones) were not eligible for promotion to Grade IV and therefore, he did not opt for the restructured cadre and was regarded

as non-optee by the respondents. His seniors in Grade III, namely, M. Satya Rao, U. Veerabhadra Swamy, P.V. Ramasarma and G. Seetharamaiah opted for the said restructured cadre and therefore, the department made them ineligible for being considered for promotion to Grade IV scale under the BCR Scheme. The applicant was, therefore, the seniormost Grade III official under R-4 and became eligible for being considered for promotion to Grade IV scale against any future vacancy. The aforementioned four officials were selected for appointment as Sr. TOA (Phones) ^{after} ~~and were~~ undergoing training; for that purpose, on 1.1.1996. On their successful completion of training they were appointed in the newly created cadre with effect from 26.1.1996 and were sanctioned advance increments according to rules.

3. From the perusal of the pleadings and the material papers which have come on record at the instance of both the parties, the following points arise for consideration :

- (1) Whether the optees were not entitled to be considered for Grade IV posts ?
- (2) Whether the applicant was the seniormost in the basic cadre ?
- (3) Whether the applicant was promoted on the basis of his being S.T. candidate ?

4. By letter dated 19.3.1999 issued by the Telecom District Manager, Vizianagaram, the applicant was given a notice that he was required to be reverted from BCR Gr.IV to BCR Gr.III in TO cadre with effect from 1.1.1996. This notice dated 19.3.1999 is, however, silent with regard to the grounds on which the applicant was so put on notice.

5. The applicant has produced a copy of the Department of Telecommunication letter No.22-6/94-TEII dated 13.12.1995 (Annexure-A.1 at page 12 to OA). In paragraph 2 of the said letter it is mentioned that this Tribunal by its judgment dated 7.7.1992 directed that promotions to 10% posts in the scale of Rs.2000-3200

would have to be based on seniority in the basic cadres subject to fulfilment of other conditions of the BCR. The Department of Telecommunications filed SLP against the judgment of the Tribunal and the Hon'ble Supreme Court vide order dated 9.9.1993 upheld the judgment of the Principal Bench of this Tribunal. In the 3rd paragraph of the aforesaid communication dated 13.12.1995 it is stated that it had now been decided in supersession of earlier instructions that promotions to the said Grade IV may be given from amongst officials in Grade III on the basis of their seniority in the basic grade. The applicant was promoted by order dated 29.12.1995 to the cadre of P.S. Gr.IV (10%) on purely officiating basis for a period of 179 days with effect from 1.1.1996. By letter subsequent to the applicant's promotion order the applicant was informed that 10% was to be applied to the number of posts in the BCR scale and that the number of officials who have opted for the restructured cadre would not be counted for working out 10% posts.

6. The Telecom Commission by its Memo dated 10.5.1996 (Annexure-A.5 page 17 to OA) relating to procedure for promotion to Grade IV against 10% posts under the BCR Scheme ~~stated~~ in paragraph-2 that the demand of the staff side ~~has~~ been considered by the Telecom Commission and it had been decided that -

- (i) The officials already promoted in Gr.IV of Rs.2000-3200 should not be reverted and may be allowed to continue in the Gr.IV.
- (ii) Number of posts required in excess of 10% of BCR posts be created to the extent to avoid reversion of officials already promoted in Gr.IV posts.

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(iii) The posts created in excess of 10% of posts in BCR were to be adjusted against the justified posts for promotion in future and till these excess posts were adjusted, no promotion would be further made in Gr.IV in that unit till the total number of posts in Gr.IV comes back to the prescribed limit of 10% posts of BCR.

By communication dated 26.6.1996 (Annexure-A.6 page 18 to OA) in connection with procedure for promotion to Gr.IV and the issue of guidelines regarding Biennial Cadre Review, a note is taken as recorded in paragraph-2 of the said communication that the Gr.IV posts were to be calculated with reference to Gr.III officials who did not opt for restructured cadre. In Para-9 (b) of the said communication it is stated with regard to officiating promotions ordered as on 1.1.1996 that the officiating promotions ordered as on 1.1.1996 as per the instructions of issued vide office letter No.TA/STB.14-5/BCR/Rlgs dt.22.12.1996 be regularised, if those officials become eligible as per DOT letter dated 13.12.1995. However, if the officials promoted on officiating basis as on 1.1.1996 were not eligible for 10% posts as per 13.12.1995 orders they may be reverted. Subsequent to the said letter dated 26.6.1996 the Telecom District Engineer,Vizianagaram issued promotion order vide Memo No.E-38/BCR/93-06/125 dt. 24.9.1996 to the applicant which reads as under :

" In accordance with the instructions contained in OMTA-VM Memo No.TAV/ST/3-5/95-96/VZM/3 dated 22.12.95, read with TAV/ST/3-5/96-97/46 dt. 06.09.1996, the Telecom District Engineer, Vizianagaram is pleased to promote Sri B.V. Pudi Naidu, T.S.-VZM to BCR Grade IV in the pay scale of Rs.2000-60-2300-EB-75-3200 w.e.f. 01.01.96. "

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7. The Department of Telecommunications vide letter dated 29.11.1996 on the question of promotion to Gr.IV against 10% posts in Gr.III under BCR Scheme stated in paragraph-2 that the method of calculating 10% BCR Gr.IV posts on periodic reviews was under consideration and thereafter a clarification is made in the said paragraph that an official already promoted to Gr.IV could not be reverted to Gr.III subsequently due to reduction in number of officials in Gr.III in a subsequent review. It is further clarified as stated in paragraph-3 of the said letter dated 29.11.1996 that mere option for restructured cadre would not debar an official for placement in the Gr.IV and that till the official was trained, qualified and actually appointed in ^{the} restructured cadre he along with his post would continue to be counted for calculation of BCR posts and the official would be considered for the purpose of granting promotion to 10% posts in Gr.IV as per rules and instructions on the subject.

8. From letter No.E-38/BCR/96-97/III/12 dated 31.3.1997 (Annexure-A.10 page 22 to OA) on the subject of promotions to BCR Grade IV on par with Junior it is stated in the second paragraph that the applicant had been promoted against the roster point earmarked for ST under 40 Point Roster and hence the promotion was in order.

9. By Annexure-A.11 page 23 to OA on the question of ^{the} eligibility of the staff working in ^{the} restructured cadres ~~for promotion to~~ to Gr.IV (10% BCR) of the basic cadre, after taking note of the fact that by office letter dated 22.10.1993 under which permission was granted to allow BCR of the basic grade to the officials who moved to the resteructured cadre and opted for OTBP of the basic grade, it was

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clarified that such official would have no claim for 10% posts in the pay scale of Rs.2000-3200 in the basic grade. In Paragraph-2 of the said letter it is stated that the question of allowing 10% BCR (Grade IV) of the basic grade, such officials had been under consideration of the Government and that the basis for such consideration had been that the staff in the restructured cadre should not be at a disadvantage compared to their counter part in the basic grade. In paragraph-3 of the said letter it is stated that the matter had been examined and he was directed to say that it had now been decided to allow 10% BCR scale of Rs.2000-3200 (Gr.IV) also to the staff working in the restructured cadre. This benefit would be given to the staff in the restructured cadre from the date their juniors in the old cadre had been given this benefit as per seniority in the basic grade of the old cadre.

10. By letter No.TA/STB/14-5/BCR dated 27.6.1997 (Annexure-A.12 page 24 to OA) it was communicated that the number of references had been received seeking clarifications as to whether Gr.III officials who opted/trained/absorbed into restructured cadres would be taken into account for calculation of Gr.IV posts and it was clarified in the said letter that Gr.III officials who stood absorbed into ^{the} restructured cadres should not be taken into account for calculation of justified Gr.III posts.

11. By letter dated 10.11.1999 (Annexure-A.13 page 25 to OA) it was clarified that all the officials working in the BCR scale would be considered for calculating 10% posts in Gr.IV irrespective of the fact whether they opted and absorbed in the restructured cadre or not. By a

subsequent letter dated 24.12.1997 (Annexure-A.14 page 26 to OA) it is stated in paragraph-2 that the officials who became eligible for Gr.IV promotions as per the basic cadre seniority would be promoted to Gr.IV with effect from the date they were due if they were not in the restructured cadre. If they were already absorbed in the restructured cadre, the date of promotion would be with effect from the date their junior was promoted.

12. It would thus appear from the perusal of the orders issued from time to time with regard to eligibility for calculation of 10% BCR that the respondents issued a Memo. dated 3.12.1998 addressed to the applicant, the gist of which is as under :

As a result of review it was observed that the promotion under BCR Gr.IV issued to the applicant under the Memo cited in para-1 of the said letter was not in order in view of the following reasons :

- (i) The applicant was junior to Sri M. Satya Rao based on basic cadre seniority since Sri M. Satya Rao was confirmed on 1.3.1964 and the applicant on 1.3.1965.
- (ii) Both the optees and non-optee Gr.III officials were to be considered for calculation of Gr.IV posts as well for promotion to Gr.IV whereas the optees were not considered as on 1.1.1996.
- (iii) Since only 3 posts were justified and one SC and one ST stood promoted, further reservation could not be provided i.e. as on 1.1.1996.
- (iv) It was therefore proposed to regulate the above orders of promotion by reverting the applicant to BCR Gr.III with effect from 1.1.1996.
- (v) The applicant was therefore called upon by the said notice dated 3.12.1998 to take notice of the above proposal and intimate the Department if he had any representation

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to make against the said proposal.

13. As far as the issue with regard to promotion on reservation basis on the ground that the applicant ~~is ST~~ ^{was a} the learned counsel Mr. Srinivasan for the applicant submitted that there could be no two opinions about the fact that the applicant had not been promoted on the ground that he belonged to ST and that the promotion was granted to him independent of that question. At one stage, the respondents stated in their letter dated 31-3-99 that the applicant's promotion to Grade IV could not be questioned because he was appointed under the ST quota. However, the respondents have stated as follows in para-16 of their reply affidavit dated 8.7.1999 :

"16. It is submitted with reference to para 4.7 (a, b) that TDM VZN has erroneously informed them that the applicant was promoted against roster point. In fact the applicant himself has stated that he has been considered as per his normal seniority only and there is no dispute about this fact now."

The contents of para-16 of the reply affidavit clearly establish that the applicant had been considered as per his normal seniority and there could be no dispute about this fact. In view of this statement made by the respondents in the reply affidavit, no controversy survives whether or not the applicant was promoted against roster point.

14. As regards 10% reservation, the respondents have contended back and forth whether the same also applied to the optees of the restructured cadre or whether it was confined only to the non-optees. In para-28 of the reply statement, the respondents say that as on 1.1.1996 the applicant did not come for consideration for Gr.IV promotion and that even if all the Gr.III officials, namely, those who had opted and those who had not opted

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were taken into consideration, one of the optees being senior to the applicant would be eligible for promotion against one justified additional post. It is further contended by the respondents that even if Gr.III officials who had opted were not considered for the 1.1.1996 review, then the number of Gr.III officials would be 27-17 =10 and only one post of Gr.IV was justified being 10% of Gr.III. Since two officials were already working in Gr.IV, there could not be any additional justification and the applicant even if he was the seniormost amongst the non-optees could not be considered.

15. The applicant has chosen to file a rejoinder to the reply affidavit dated 8.7.1999 filed by the respondents. However, the applicant has not dealt with the contentions raised in para-28 of the reply affidavit with regard to the applicant's claim for eligibility for promotion. The applicant was not entitled to promotion on the ground that only one post of Gr.IV was justified being 10% of Gr.III posts which clinches the issue and disentitles the applicant to claim that he was eligible for being promoted to Gr.IV post.

16. The respondents have also produced along with their additional reply affidavit dated 27.7.2000 a statement at Annexure-R.VI page 14 to the ARA) which shows that Sri M.Satya Rao was listed at Sl.No.6 in the seniority list while the applicant was listed at Sl.No.10 of the said list and therefore, on the ground of seniority also the applicant is not entitled to the relief as claimed by him in the present O.A.

17. It is pertinent to note that the applicant has not sought any relief specifically that the officials who

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had opted for the restructured cadre were not entitled to receive any advantage under 10% BCR quota and ^{on that ground} therefore the applicant's promotion could not be questioned.

18. In view of what is stated above, the applicant does not succeed in establishing that any ground existed to uphold his promotion and revoke the reversion order. Hence we do not find any merits in the applicant's case and the same deserves to be dismissed and it is hereby dismissed. No costs.



(R. RANGARAJAN)
MEMBER (ADMN.)



(D.H. NASIR)
VICE-CHAIRMAN.

DATED THE 22nd DAY OF SEPTEMBER, 2000.



DJ/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH:HYDERABAD

Reportable case

COPY TO:-

1ST AND 2ND COURT

1. HON. MEMBER
2. HON. (ADMIN) MEMBER
3. HON. (JUD) MEMBER
4. D.R. (ADMIN)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY CHECKED BY
COMPARED BY APPROVED BY

THE HON'BLE MR. JUSTICE DH. NASIR
VICE - CHAIRMAN

THE HON'BLE MR. P. RANGARAJAN
MEMBER (ADMIN)

THE HON'BLE MR. S. JAI PARAMESHWAR
MEMBER (JUD)

DATE OF ORDER 22/9/2000

NA/RA/CP.NC

IN
OA. NO. 468/98.

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER REJECTED

NO ORDER AS TO COSTS

*of 15
Copied*

