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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 26.05.2000

OA No.611/1993 with MA No.132/94

Om Prakash (Staff No.4218) Senior Assistant Engineer
(Incharge) Circle Telecom, Training Centre, Jaipur.

.. Applicant

Versus

1. Union of India through Secretary Telecommunications,
Ministry of Communications, Sanchar Bhawan, New Delhi.
2. The Chief General Manager Telecommunications, Rajasthan
Circle, Jaipur.
3. Shri T.R.Nanda, Senior Assistant Engineer (Vigilance)
Office of the General Manager Telecom Distt. Jaipur.

.. Respondents

Mr. K.S.Sharma, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents

CORAM:

Hon'ble Mr. Justice B.S.Raikote, Vice Chairman

Hon'ble Mr. N.P.Nawani, Administrative Member

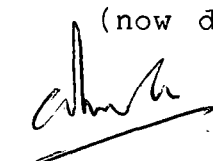
O R D E R

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this application filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant has sought
following reliefs:

- "(i) That the applicant be declared senior to the
respondent No.3 in the All India Seniority List and
also senior to respondent No.3 in the Rajasthan
Telecom Circle.
- (ii) That the respondent No.1 be directed to rectify the
seniority lists Ann. A1 and A2 by giving the proper
seniority to the applicant by placing at proper
place and above the respondent No.3.
- (iii) That the respondent No. 1 and 2 be directed to give
a consequential benefits to the applicant which is
enjoying by his juniors.
- (vi) The cost of the legal expenditure be awarded from
respondent No. 1 and 2 to the applicant."

2. The applicant was appointed as Engineering Supervisor
(now designated as Junior Telecom Officer) in 1963 whereas



Shri T.R.Nanda, respondent No.3 (for short R3) was so appointed in 1964. The applicant passed the departmental examination for promotion to TES Group-B in April, 1973 and R3 passed the same in October, 1973. The applicant became eligible for promotion in 1975 and when the DPC met from 25.2.1976 to 30.3.1977, the applicant was graded "good" and found a place in the panel but could not be appointed being lower in the panel. R3 was not in the eligibility list when the said DPC met. The next DPC met in March, 1979 when both the applicant and R3 were considered, both were assessed as "very good" and both were promoted. However, it is admitted that the applicant was senior as compared to R3 in the eligibility list for this DPC. As a follow up of the decisions of various Benches of this Tribunal in several OAs, the respondents refixed the seniority of Telecom Engineering Service Group-B officers promoted on the basis of DPC held in 1976-77 and issued seniority lists dated 23.10.1992 (Ann.A1) and 12.11.1992 (Ann.A2). The applicant who was shown senior to R3 prior to the aforementioned revised seniority lists, did not at all find a place in the seniority list dated 23rd October, 1992 and R3 was shown at Sl.No.767. The applicant's name figured in a subsequent seniority list dated 12.11.1992 wherein his name was shown at Sl.No.135. Accordingly, the applicant has become junior to R3 by virtue of the seniority lists dated 23.10.1992 and 12.11.1992. The applicant is aggrieved by this change in his seniority and has prayed that respondents be directed to rectify the aforementioned two seniority lists, place the applicant at his proper place and above R3 in the said lists and give him consequential benefits.

3. We have heard the learned counsel for the parties and have perused the material on record.

4. The case of the applicant essentially is that he was senior to R3 by virtue of his first appointment, by his passing the departmental examination earlier than R3, his name appearing at Sl.No.552 in the seniority list issued vide order dated 4.9.1992 (Ann.A4) wherein the name of R3 is at Sl.No.755 and by virtue of his name being shown as senior to R3 in the Blue Book (on the pattern of civil lists) published by respondents in 1989 as also in 1992. It is further contended that one Shri T.N.Lal had challenged his

Shri T.N.Lal

promotion order before the Allahabad Bench of this Tribunal which held that seniority must be determined on the basis of the date of passing the departmental examination as provided in Rule 206 of the Posts and Telegraphs Manual. This decision of the Allahabad Bench had become final with the Apex Court dismissing the SLP filed against this decision. The revised seniority lists dated 23.10.1992 and 12.11.1992 have been prepared as a follow up of the said decision and similar decisions in other OAs of various Benches of this Tribunal and the guiding principle for revision of seniority lists should have been the date of passing the departmental examination. It was, therefore, argued that since the applicant had passed the departmental examination in April, 1973 as compared to passing of such examination by R3 in October, 1973, there would have been no justification in revising the seniority list in such a manner that applicant was made junior to R3. It has also been contended on behalf of the applicant that if the Review DPC was going by the assessment made by the earlier DPC and as far as comparative assessment of the applicant and R3 was concerned, the Review DPC ought to have taken the assessment arrived at by the DPC held in 1979 wherein both the applicant and R3 were graded as "very good" and any change in such assessment after a gap of about 13 years was uncalled for and illegal. He strongly opposed the contention of the official respondents that since the applicant had obtained a grading of "good" during the first DPC held in 1976-77, the Review DPC was justified in grading him as "good" and it was also stressed that it was precisely for that reason that the applicant had requested the Tribunal to ask the respondents to show the CRs of the applicant and R3 which the respondents failed to do without any justifiable reasons.

5. The respondents have opposed the contentions of the applicant and have stated that the DPC which was held for considering the cases of eligible officers for promotion against the vacancies of 1976-77, the case of the applicant was duly considered and his performance was graded as "good" but he could not be recommended for promotion as vacancies were limited and only those persons assessed as "very good" were recommended for promotion. R3 was not in the zone of consideration and his case was not considered by the said DPC. It has been added that when the next DPC met in 1979

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cases of both the applicant and R3 were considered and both were graded as "very good" and promoted. Since the applicant was senior, he was placed above R3 in the promoted cadre. Thereafter, as a follow up of decisions of various Benches of the Tribunal a Review DPC was held for the year 1976-77 on the basis of fresh eligibility list in the cadre of JTO and the applicant having already been assessed by the DPC of 1976-77, his grading was not disturbed and kept as "good". Shri T.R.Nanda, respondent No.3 was also considered in view of additional vacancies available due to flux of time between 1976-77 and 1992 and his performance was assessed as "very good" on the basis of such a grading having been given to him by the DPC held earlier in 1979 and came to be recommended and promoted and accordingly given the date of deemed promotion as 17.4.1978 vide order dated 23.10.1992 (Ann.A1). However, the Review DPC in respect of the year 1979 considered the case of the applicant by maintaining assessment of the earlier (1979) DPC as "very good" and he was accordingly given promotion vide order dated 12.11.1992 (Ann.A2). It has been argued by the learned counsel for the respondents that in view of the fact that assessments made by the earlier DPCs were not altered, the promotion given to the applicant and R3 were correct and there is no infirmity in assigning seniority to R3 over that of the applicant and there was no need to see the yearwise CRs.

6. We have considered the rival contentions very carefully. We are of the opinion that the principle laid down in the decision of the Allahabad Bench of this Tribunal and decisions in other similar OAs by various Benches of this Tribunal was that the seniority of Engineering Supervisors (now JTOs) will be determined from the date of passing the departmental examination. This principle is clearly laid down in Rule 206 of the Posts and Telegraphs Manual which clearly states that ".....but the Engineering Supervisors who passed the qualifying examination earlier will rank senior as a group to those who passed the examination on subsequent occasions i.e. officials who passed the examination held in 1956 will rank as en-block senior to those who passed in 1957. Their seniority inter-se will, however, be according to their seniority in the cadre of Engineering Supervisors". A plain reading of the said Rule will make it clear that the seniority of Engineering

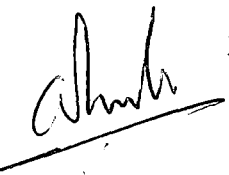
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Supervisors (now JTOs) will have to be reckoned as a group according to the members of the group passing a particular departmental examination. The rule gives an illustration that officials who passed the examination held in 1956 will rank as en-block senior to those who passed in 1957. This, in our considered opinion, cannot be construed in the manner that if two groups passed departmental examinations in the same year, as has happened in the present case, the officials passing in the subsequent group can become senior to the officials who have passed in the first group. Even if, for arguments' sake, it is taken that all those who passed the departmental examination in the year 1973 should be considered as one group, the applicant will rank senior to R3 since the inter-se seniority within the group is to be determined by virtue of seniority in the cadre of Engineering Supervisors and the applicant having joined as Engineering Supervisor in 1963 has to be considered senior to respondent No.3 who joined the cadre in 1964. Since the revision of eligibility list followed by promotion orders dated 23 October, 92 and 12.11.1992 Ann.A1 and A2 respectively was required to be based on the principle of "first departmental examination passed ranking senior to those official passing subsequently", there was no justification for ranking R3 senior to applicant. We, therefore, feel that the applicant has to be considered senior to R3 in the revised eligibility list also.

7. The other major issue to be considered is regarding comparative assessment given to the applicant and R3 by Review DPC on the basis of which R3 was given deemed date of promotion as 17.4.1978 and the applicant was given the deemed date of promotion as 18.4.1979. With regard to the statement submitted by the learned counsel for the respondents (pages 65 to 68 in paper book refers), it is to be noted that in the earlier DPC held between 25.2.1976 to 30.3.1977 in respect of the vacancies for the year 1976-77, the case of only the applicant was considered and on the basis of his grading "good" he was kept in the panel. During that time R3 was, as per submission of the respondents themselves, not even in the eligibility zone and thus no comparative assessment between the applicant and R3 was required to be made by the DPC. It is again the submission of the official respondents themselves that the Review DPC

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held in 1992 had not made any fresh assessment of the candidates and had just adopted the gradings given by the earlier DPCs. For whatever reasons, the applicant even though in the panel for successful candidates in the said DPC recommendations, could not be promoted. Since R3 had not competed with the applicant during the 1976-77 DPC for the vacancies of 1976-77, there would normally be no occasion for R3 to compete with the applicant in the Review DPC for the vacancies of the same year. It has, however, been stated by the counsel for the official respondents at Bar that R3 got into zone of consideration on account of additional vacancies that became available. Be that as may be, the "very good" grading given to R3 by the DPC of 1979 could not have been transported back in the past and the Review DPC for the vacancies of 1976-77 could not have given R3 the grading of "very good" without considering the CRs of the very same years, may be of 1971 to 1976 on the basis of which the applicant was graded "good" by the DPC of 1976-77. Admittedly, the concerned CRs of R3 were not seen by the Review DPC and it just took into consideration the grading given by another DPC, and that too held after a lapse of three years, and it was only such patently wrong transportation of grading given in 1979 to, in a way, to the DPC held on 26.2.1976 (because the Review DPC in 1992 did not make its own assessment but just adopted the grading given by the DPC held in 1976-77) that R3 could steal a march over the applicant. This procedure does not appear to be sustainable to us. We have seen the proceedings of DPCs held during 1976-77 and 1979 as also the Review DPC held on 8-9 October, 1992 to confirm our conclusions as stated above. Further, we are constrained in cross-checking the overall grading of "good" given to the applicant due to the inability of the official respondents to show us the CRs of the applicant. The relevant CRs for the vacancies of 1976-77 could have been at least 5 years preceding to the year 1976-77. However, all that the respondents could produce before us are CRs for the following period. We have also briefly given the gradings/general assessment given by the Reporting/Reviewing/Accepting authorities.

 1975-76

- By RO: Performance as Instructor
(the post applicant held) "Very
Good". Overall assessment
"Satisfactory".

9.9.74 to 31.3.75-

By RO: "Very Good". Deserves promotion out of turn.

1.2.73-31.3.73 -

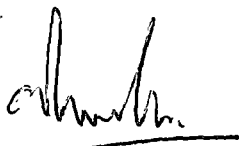
By RO: "Very Good".

On the basis of the above assessment of the performance of the applicant, it is difficult to come to a conclusion that the overall grading to be given to the applicant would be only "good". If the official respondents have not been able to produce other relevant CRs, an adverse presumption has to be drawn. We are, therefore, of the considered opinion that because of the two reasons recorded by us, i.e. wrong transportation of the "very good" grading given to R3 by the DPC of 1979 to the DPC of 1976-77/Review DPC for 1976-77 and overall grading of only "good" given to the applicant by the DPC of 1976-77, the applicant deserved to be promoted from the same date or an earlier date than his junior Shri T.R.Nanda, respondent No.3 was so promoted.

8. We, therefore, dispose of this Original Application with a direction to the respondents that the applicant may be granted promotion to TES Group-B from the same date or a date earlier to the date on which the respondent No.3 has been so promoted with all consequential benefits and his seniority in the TES Group-B shall be revised placing him at a position higher than that of respondents No.3 within the group of persons who passed the departmental examination in April, 1973. These directions may be carried out within four months of the date of receipt of a copy of this order.

9. Misc. Application No.132/94 also stands disposed of as having become infructuous in view of the decision in the Original Application.

Parties to bear their own costs.


(N.P.NAWANI)
Adm.Member


(B.S.RAIKOTE)
Vice Chairman