

13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 14.03.2000

OA No.347/94 with MA No.374/94

A.K.Jain S/o Shri Vimal Chand Jain at present employed on the post of A.E.
in the Office of Telecom Project, Jaipur.

.. Applicant

Versus

1. Union of India through its Secretary, Telecommunication Department, Sanchar Bhawan, New Delhi.
2. The Chief General Manager, Telecom Rajasthan Circle, Telecommunication Department, Jaipur.
3. The Deputy General Manager (O), Telecommunication Department, Rajasthan Circle, Jaipur.

.. Respondents

Mr. C.B.Sharma, proxy counsel to Mr. J.K.Kaushik, counsel for the applicant

Mr. V.S.Gurjar, counsel for respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

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

ORDER

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

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant prays that the impugned order dated 20.6.1986 (Ann.A1) ordering the applicant's reversion from the post of JE to a lower post and subsequent consequential orders thereof including order of fixation at Ann.A2 and Ann.A3 may be declared illegal and quashed and the applicant may be allowed all consequential benefits.

2. The controvesy in this application lies in a limited compass.

It is admitted that the applicant alongwith other Junior Engineers was

: 2 :

directed to work as Junior Engineer (for short JE) on purely temporary basis against Electrification projects. It is also admitted that while some of his juniors have continued to work in some other electrification project, he has been reverted to the lower post vide impugned order at Ann.A1 and his pay fixation done in the lower post by Ann.A2. It is the case of the applicant that the administration has resorted to a policy of pick and choose and while the applicant has been reverted, some of his juniors are being allowed to work in the higher post. Further, before the reversion, the applicant was not issued with any show-cause notice nor was he given any opportunity to put forward his case and thus the principles of natural justice have been violated.

3. The respondents have taken a preliminary objection that the OA is barred by limitation. The impugned order of reversion was issued on 20.6.1986 and the OA has been filed on 30.7.1994. In reply the learned counsel for the applicant has stated that the applicant has also challenged the order of fixation of his pay dated 6.6.1992 (Ann.A2) and since this has resulted in a continuing wrong, the limitation does not apply. Having considered the submissions made by the rival parties with regard to limitation, we feel that, in the interest of justice, the OA should not be rejected purely on the argument of its being barred by limitation.

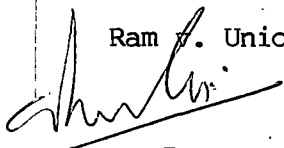
4. It has also been argued by the learned counsel for the respondents that when specific time bound projects of electrification are taken up, the prudent policy is to utilise the manpower locally available, after giving them training and temporary local promotion in a particular segment. Once the work is over in a particular segment, there is no option but to revert such employees to their substantive posts. If it so happens that the project at some other place continues to be in operation for a longer period and happens to be utilising some juniors, the applicant cannot question such utilisation of juniors and demand that he cannot be

Chandra

reverted and his pay cannot be fixed in the lower pay scale. It was also contended that in view of the temporary local promotion given, and this fact having been mentioned in the promotion letter, there is no need to issue a show-cause notice and violation of principles of natural justice cannot be claimed.

5. We have heard the learned counsel for the parties and have carefully gone through the record.

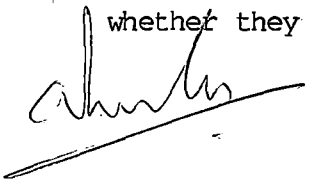
6. The issue to be decided is whether when certain employees are promoted even on adhoc and local basis, the principle of seniors to be promoted first and juniors to be reverted first can be given a go-bye. The respondents have justified the reversion of seniors on the plea that after work of the project on which the senior persons happen to be employed on local adhoc basis was over, there is no option but to revert them and if the work on a project where a junior is employed is continuing beyond the date of reversion of his senior in some other project, the junior person has to be continued on work till the project is completed. While we appreciate the concept of local adhoc promotions in respect of time bound local projects, we do feel that such local fortuitous promotions have to be for a short period of time. If it is anticipated that such local requirement is likely to be a longer duration, it should be the policy of the administration to offer local promotion to the seniors first. The corollary of this is that when such local short term requirement comes to an end, it should be the juniors who should be reverted before the seniors. We are also aware of the fact that in the case of R. Swaminathan reported in (1997) 7 SCC 690, Hon'ble the Supreme Court has held that the stepping up of pay of senior is not admissible on account of junior's local adhoc promotion but it has also been observed that such local promotions of junior have to be of short duration. In our decision in OA No. 571/95, Mali Ram v. Union of India and Ors. decided on 31.01.2000, we have observed that



: 4 :

"the practice of giving local adhoc/officiating promotions to juniors when such promotions go for period as long as three-four years, generates quite a bit of hear-burning amongst the seniors and a large number of OAs filed in various Benches of this Tribunal is only a manifestation of this. We would, therefore, like the respondent No.2 to consider issuing suitable guidelines to the effect that in case such a local vacancy is likely to exceed a certain period, say one year, options should be asked from all the senior officials for being considered for local adhoc/officiating promotion at the place where such local vacancy occurs and only when the seniors do not opt to go to such a place, the adhoc/officiating promotion should be given to a junior".

7. In this particular case, we feel that it will not be proper to quash the order of termination in view of the fact that no work is now available in that particular project and we cannot interfere in an administrative matter to the extent that we direct payment of salary against a post which does not exist. However, having said this, we are constrained to observe that it is not a fair administrative policy to allow junior to continue enjoying the benefits of a local promotion for a long duration of time and simultaneously resort to reversion of a senior person who was promoted on local basis to a project which was known to have a shorter life span than the project where juniors were given local adhoc promotion and which was known to have a much larger life span. In this case it is an admitted fact that juniors are continuing to enjoy the benefit of promotion whereas seniors have been reverted. The well accepted principle of "first come last go" in respect of adhoc promotions should generally be observed except in cases where local adhoc promotion is anticipated to be of a very short duration. In a project like electrification which is devided into various segments, the telecom administration, in consultation with railways, should devise a policy whereby seniors are asked to opt whether they are prepared to go to another segment where the work is likely




to be a longer duration so that they are not made to suffer the consequences of reversion. If such a policy is adopted it will not only stop any heart-burning amongst the seniors and force them to knock the doors of the Tribunal but also save the administration from the charge of not following the principles of natural justice before reverting the seniors to lower posts while allowing juniors to continue in the higher posts. As we do not know whether the juniors are still continuing on the higher posts in some other segments of eletrification project (s) and whether seniors can still be accommodated in such segments on temporary adhoc basis, we are not able to give any specific directions to extend relief to the applicant which on the face of the matter appears to be justifiable.

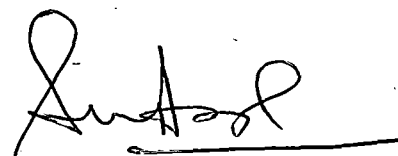
8. We, therefore, dispose of this application with a direction to respondents to prepare suitable guidelines, in consultation with the railway administration, so that while deputing the Junior Engineers for Railway Electrification projects, senior Junior Engineers are deputed to projects which are likely to last for a longer period of time and when reversion of certain officials becomes imminent it is only the juniormost officials who are reverted/repatriated. We also direct that respondents may explore the possibilities of whether it is possible even at this juncture to depute the applicant in a nearby Railway Electrification project in place of the juniormost Junior Engineer. These directions may be carried out as expeditiously as possible.

9. Misc. Application No.374/94 is also stands disposed of.

Parties to bear their own costs.


(N.P.NAWANI)

Adm. Member


(S.K.AGARWAL)

Judl. Member