

OA 826/94

Date of order 27.6.95

M.D. Singhal s/o Shri Chittar Mal Singhal, resident of 86, Suraj Nagar (East) Civil Lines, Jaipur, presently posted as Telegraph Master (Functional) in the Central Telegraph Office, Jaipur.

... Applicant.

VERSUS

1. Union of India through the Secretary to the Government of India, Department of Telecommunication, Ministry of Communications, New Delhi- 110 001.
2. The Chief General Manager, Telecommunication, Rajasthan Circle, Jaipur 302 007.
3. The General Manager, Telecommunication (East), Jaipur 302 007.
4. The Chief Superintendent, Central Telegraph Office, Jaipur- 302 001.
5. Shri L.R. Meena, Senior Telegraph Master, Central Telegraphs Office, Jaipur 302 001.

... Respondents

CORAM

Hon'ble Mr. O.P. Sharma, Member (Administrative)
Hon'ble Mr. Rattan Prakash, Member (Judicial)

For the Applicant : Mr. C.B. Sharma
For the Respondents : Mr. U.D. Sharma

O R D E R

PER HON'BLE MR. O.P. SHARMA, MEMBER (ADMINISTRATIVE)

In this application u/s 19 of the Administrative Tribunals Act, 1985, Shri M.D. Singhal has prayed that order (Annexure A-1) dated 5.10.94 by which his representation dated 6.9.94 staking claim to the post of Senior Telegraph Master, CTO, Jaipur, in place of Shri L.R. Meena was rejected and order (Annexure A-2) dated 6.10.92 by which Shri L.R. Meena, respondent no. 5, was posted as Senior Telegraph Master while the applicant continued to serve as Telegraph Master, may be quashed. A further prayer of the applicant is that respondents may be directed to treat the applicant as senior to respondent no. 5 in Grade IV from the date when juniors to the applicant were placed in that grade, with all consequential benefits.

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2. The case of the applicant is that he was appointed as Telegraphist in the year 1956 and was placed in the higher selection grade under Biennial Cadre Scheme (BCR) scale Rs. 1600-2660 after completing 36 years of service. Thereafter he was placed in scale Rs. 2000-3200 under the BCR Scheme in which scale he is now working. At the time of placement of officials in scale Rs. 2000-3200 Grade IV under the BCR Scheme, the applicant was not considered alongwith his juniors. Respondent no. 5, Shri L.P. Meena, who was junior to the applicant in the lower grades was considered for appointment to Grade IV, scale Rs. 2000-3200, being from a reserved category, by wrong application of 40 Point Roster. A comparative statement showing the seniority of the applicant vis-a-vis respondent no. 5 has been placed by the applicant as Annexure A-4 which shows that upto Grade III, the applicant was senior to respondent no. 5.

3. Further, according to the applicant, prior to 31.8.94 one Shri R.P. Saini was holding the post of Senior Telegraph Master in the office and the applicant was allowed by respondent no. 4 to work in place of Shri Saini whenever the latter one was on leave. However, vide Annexure A-2 dated 6.10.94, respondent no. 5 was allowed to perform the duties of Senior Telegraph Master. The applicant agitated the matter by a detailed representation, which was however rejected by the respondents by Annexure A-1.

4. The respondents in their reply have stated that rules regarding reservation of SC/ST candidates were also applicable to promotion ^{under the} BCR Scheme, as clarified by instructions contained in Department of Telecommunications dated 6.11.92. 40 Point Roster was applicable in case of promotion to Grade IV and since respondent no. 5 belongs to ST community, he was promoted to

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Grade IV on 1.12.94. The applicant did not challenge the promotion of respondent no. 5 to the Grade IV w.e.f. 1.12.92. Therefore, this promotion has attained finality and cannot be questioned in this OA. Thus respondent no. 5 was senior to the applicant in Grade IV, the applicant having been promoted to Grade IV on 23.12.93, and therefore the respondents were justified in posting respondent no. 5 as Senior Telegraph Master. The applicant had been utilized as Senior Telegraph Master only as a stop gap arrangement during the leave period of Shri R.P. Saini for short durations for 4 to 13 days on six occasions between April and September, 1994. The mere fact that the applicant had been allowed to discharge the functions of Senior Telegraph Master on certain occasions for short durations will not confer on him any right to be appointed on the post of Senior Telegraph Master.

5. The learned counsel for the applicant stated during the arguments that application of 40 Point Roster to promotion to Grade IV was not justified and to support his plea in this regard, he referred to certain judgments of the Tribunal. He added that when respondent no. 5 was granted promotion to Grade IV on 1.12.92, the applicant did not come to know about this fact and he became aware for the first time about respondent no. 5 having been promoted earlier and made senior to him when he received communication (Annexure A-1) dated 5.10.94 by which his representation dated 6.9.94 against appointment of respondent no. 5 as Senior Telegraph Master was rejected. The applicant was, therefore, entitled to be treated senior to respondent no. 5 and therefore, deserved to be posted as Senior Telegraph Master in place of Shri L.R. Meena, who is now be posted as such.

6. The learned counsel for the respondents reiterated that

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order granting promotion to respondent no. 5 to Grade IV w.e.f. 1.12.92 was not questioned by the applicant at the appropriate time and, therefore, the seniority of respondent no. 5 vis-a-vis the applicant would be determined in terms of that order. As per this order, respondent no. 5 attained promotion to Grade IV earlier than the applicant. He further stated that it was not believable that while the applicant and respondent no. 5 were both working in the same building, the applicant would not have come to know about respondent no. 5 having been promoted to Grade IV on date earlier than the applicant, and thus having become senior to him.


7. We have heard the learned counsel for the parties and have gone through the records.


8. As admitted by the applicant himself, respondent no. 5 was granted promotion to Grade IV w.e.f. 1.12.92 whereas the applicant was promoted to the said grade w.e.f. 23.12.93. Regardless of whether promotion to respondent no. 5 was wrongly granted by the respondents by applying 40 Point Poster, the applicant cannot agitate this issue in the present OA when he did not challenge the said promotion at the appropriate time. We are not inclined to believe that when the applicant and respondent no. 5 were sitting in the same office building, the applicant did not come to know about the promotion of respondent no. 5 on a date earlier than that of the applicant at the relevant time. The applicant has himself stated in para 2 page 3 of the OA that the applicant's case was not "considered" when his juniors were considered for promotion to scale Rs. 2000-3200. Consideration is a stage prior to promotion and if the applicant was aware that he had not been considered alongwith respondent no. 5 for promotion to Grade IV, this means he must be aware of the order of promotion of respondent no. 5 also.

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9. In these circumstances, by virtue of ^{the} order promoting the respondent no. 5 w.e.f. 1.12.92 he became senior to the applicant. Since ^{he} is senior to the applicant, he was posted to the higher post of Senior Telegraph Master while the applicant continued to be Telegraph Master. The applicant's officiation for a few days during 1994 on the post of Senior Telegraph Master would not confer any right on him to hold that post in preference to a senior. In these circumstances, we do not find any proper basis for challenge to the appointment of respondent no. 5 on the post of Senior Telegraph Master. We have perused the judgments referred to by the learned counsel for the applicant but we do not find that these have any relevance to the facts of the present case because these are on the point whether 40 Point Roster should be applied while granting upgradation under BCR Scheme.

10. In the result the O^A is dismissed. No order as to costs.


(RATTAN PRAKASH)
MEMBER (J)


(O.P. SHARMA)
MEMBER (A)

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