

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.634/1994

Date of order: 20/9/2001

S.P.Yadav, S/o Lt.Sh.Khedu Yadav, working as Section Supervisor (Building), Office of Chief GMT, Jaipur.

...Applicant.

Vs.

1. Union of India through Secretary, Communications, Mini. of Telecommunications, New Delhi.
2. Chief General Manager Telecom, Rajasthan Telecom Circle, Jaipur.
3. Sh.Nanag Ram Sharma, S/o Sh.Govind Ram Sharma, Senior Section Supervisor, O/o Chief GMT, Jaipur.

...Respondents.

Mr.K.S.Sharma : Counsel for applicant

Mr.Bhanwar Bagri : for respondents.

CORAM:

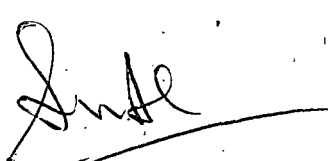
Hon'ble Mr.S.K.Agarwal, Judicial Member.

Hon'ble Mr.A.P.Nagrath, Administrative Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer to direct the respondents to consider his candidature for promotion to Gr.III in the pay scale Rs.1600-2660 (RP) at par with his junior without insisting on the applicant for completing minimum prescribed years of service in the basic grade under BCR Scheme with all consequential benefits.

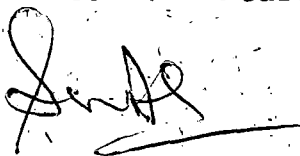
2. Facts of the case as stated by the applicant are that the applicant was initially appointed as T.S Clerk on 19.4.71 and was promoted as Accounts Clerk on 8.10.75, as UDC on 2.2.77 and as Section Supervisor on 30.4.92 in the scale Rs.1400-2300(RP) whereas respondent No.3 was initially



appointed as Peon on 7.2.61 and promoted as LDC on 1.9.66, promoted as UDC on 12.2.81 and promoted as Section Supervisor on 9.9.92 in the scale Rs.1400-2300 and he was promoted under BCR Scheme as Sr. Section Supervisor on 23.10.92 in the scale Rs.1600-2660 by ignoring the seniority and accrued rights of the applicant. It is stated that the applicant is still working as Section Supervisor scale Rs.1400-2300 whereas respondent No.3 is drawing the pay scale Rs.1600-2660. It is stated that in no case senior should draw less pay than his junior. Therefore, the applicant is entitled to the same pay scale as has been given to respondent No.3. It is further stated that Hyderabad Bench of the Tribunal in O.A No.28/94 and Bangalore of the Tribunal in O.A No.403/92 and O.A No.343/93 have taken a view in favour of the applicant and this Tribunal in O.A No.113/93 also taken similar view. Therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. It is admitted in the reply that respondent No.3 was junior to the applicant and he was promoted under BCR Scheme and was given Grade III scale Rs.1600-2660 w.e.f. 23.10.92 after completing 26 years of satisfactory service but the applicant was not given this promotion as he did not complete 26 years of satisfactory service on that date, therefore, the applicant has no case. It is also stated that the respondents' department has filed SLP before the Apex Court of the country challenging the order passed in O.A No.403/92, passed by the Bangalore Bench of the Tribunal and the Apex Court stayed the operation of the order passed in O.A No.403/92 vide its interim order dated 24.2.95. Therefore, the applicant has no case.

4. Heard the learned counsel for the parties and also



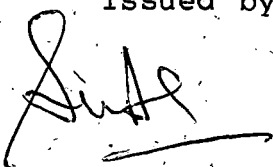
perused the whole record.

5. On a perusal of the proceedings in this case, it appears that constant directions are being given to the parties for placing before this Tribunal the further development regarding the SLP pending before the Apex Court but the parties failed to give the exact information regarding the SLP challenging the order passed by the Bangalore Bench of the Tribunal in O.A No.403/92.

6. The learned counsel for the applicant vehemently urged that in catena of cases this Tribunal and other Benches of the Tribunal have decided that if promotion in the pay scale 1600-2660 (RP) is given to a junior after completing 26 years of satisfactory service in the basic grade under the BCR Scheme, the senior should also be promoted in the aforesaid grade and the requirement of completing 26 years of satisfactory service shall not be insisted upon. On the other hand, the learned counsel for the respondents argued that the SLP filed challenging the operation of the order in O.A No.403/92 passed by Bangalore Bench of the Tribunal has been stayed by the Apex Court in the SLP filed by the respondents' department, therefore, in view of the stay order of the Apex Court, the applicant has no case.

7. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

8. The parties, inspite of our repeated directions have failed to produce the exact position of SLP filed by the respondents' department in O.A No.403/92 decided by Bangalore Bench of the Tribunal. The adinterim stay order issued by the Apex Court vide its order dated 24.2.95 only



means that the same is binding to the parties in that case against which an SLP was filed.

9. In K.Sreedharan Vs. Dy.General Manager (Admn), Telecom, Bangalore & Ors, the Bangalore Bench of the Tribunal vide its order dated 5.10.93 in O.A No.341/93 held that senior is entitled to promotion under BCR scheme at par with his junior without insisting on the applicant completing minimum prescribed years of service in the basic grade.

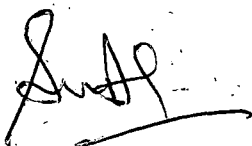
10. In Ram Naresh Sharma Vs. UOI & Ors, O.A No.113/93, this Tribunal reiterated the same view and held that the applicant should also be considered for promotion to HSG scale 1600-2660 with effect from the date his next junior was promoted without insisting upon the period of service prescribed for this purpose.

11. The Principal Bench of the Tribunal in O.A No.,177/93 decided on 17.6.94 also took the similar view.

12. In O.A No.101/95, P.P.Sethi Vs. UOI & Ors, decided on 14.3.95, this Tribunal supported the view as given by Bangalore Bench of the Tribunal in O.A No.341/93 decided on 5.10.93 and Hyderabad Bench of the Tribunal in O.A No.28/94 decided on 25.3.94.

13. In O.A No.530/92, Madan Gopal Verma Vs. UOI & Ors decided on 25.11.99 by this Bench of the Tribunal again affirmed the views already taken by this Tribunal as mentioned above.

14. In O.A No.370/96 Brijendra Singh Vs. UOI & Ors, decided on 11.5.2000 this Tribunal also held that the applicant is entitled to consideration for his promotion to HSG-II under BCR scheme at par with his junior without insisting the applicant for completing the minimum

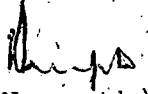


prescribed period of service in the basic grade.

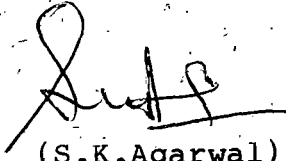
15. As the parties have failed to put up the exact position regarding pendency/decision in the SLP against O.A No.403/92, Smt.Leelamma Jacob & Ors Vs. Union of India & Ors and the interim order passed by Hon'ble Supreme Court in O.A No.403/92 is only binding upon the parties of that case, Therefore, in view of the order passed by various Benches of the Tribunal in catena of cases as mentioned above, we are of the opinion that the applicant is also entitled to be considered for promotion in BCR Scheme in Grade III scale Rs.1600-2660 at par with his junior, respondent No.3, without insisting upon the applicant for completing the minimum prescribed service in the basic grade.

16. We, therefore, allow this O.A and direct the respondents to consider the candidature of the applicant for promotion to Grade III, Rs.1600-2660 under BCR Scheme without insisting the applicant for completing the minimum prescribed service in the basic grade. All other conditions of BCR Scheme except the length of service will however be applicable while considering his promotion to Gr.III, Rs.1600-2660. In case the applicant is found suitable for promotion, he shall be promoted to Grade III, Rs.1600-2660 with effect from the date his erstwhile junior was promoted. The applicant shall also be entitled to all consequential benefits. The above directions shall be complied within a period of 3 months from the date of receipt of a copy of this order.

17. No order as to costs.


(A.P.Nagrath)

Member (A)


(S.K.Agarwal)

Member (J).