

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR.

Date of Decision: 15.4.2002

OA 8/96 with MA 3/96

Bhooramal Sharma s/o Shri Gyarsi Lal Sharma r/o A-20,
Sen Colony, Station Road, Jaipur.

... Applicant

Versus

1. Union of India through Chairman, Telecom Department,
Sanchar Bhawan, New Delhi.

2. Chief General Manager, Tele Communication,
Sardar Patel Marg, Jaipur.

3. General Manager, Telecom, M.I. Road, Jaipur.

... Respondents

CORAM:

HON'BLE MR. JUSTICE O.P. GARG, VICE CHAIRMAN

HON'BLE MR. A.P. NAGRATH, ADM. MEMBER

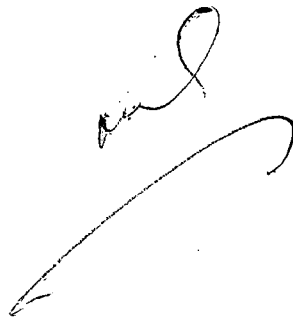
Mr. S.K. Jain, counsel for the applicant

Mr. Arun Chaturvedi, counsel for the respondents

O R D E R

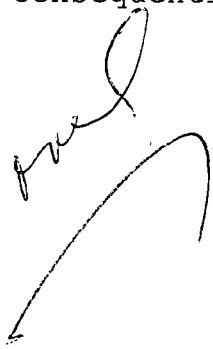
PER HON'BLE MR. JUSTICE O.P. GARG, VICE CHAIRMAN

The applicant was originally appointed on the post of Mechanic on 16.2.67. He became eligible for promotion to the post of Higher Grade Technician in one-third quota which is to be filled by promotion on completion of 10 years of service on 16.2.77. Applications were invited for the qualifying examination for filling up one-third quota by way of promotion. For certain reasons, the qualifying examination could not take place in the year 1977. Subsequently, after clubbing the vacancies of the years 1977 and 1978 a qualifying examination was held on 10.12.78. In all, there were 18 vacancies of both the years. As a result of the qualifying examination, 17 persons were declared eligible for promotion and




on 24.8.79, 13 persons were actually given promotion to the post of Higher Grade Technician. Name of the applicant was shown at S.No.11, while the names of two of his juniors namely Hot Chand Khemchandani and M.I.Qureshi, and others, were assigned higher serial numbers. A gradation list of the promoted Higher Grade Technicians was circulated by the respondents in the month of November, 1983, in which the name of the applicant appeared at S.No.105. The mistake occasioned on account of the fact that the applicant was placed in the quota of the vacancies meant for the year 1978 though he was in fact eligible for promotion to the post in quota for the year 1977 itself, when he completed 10 years of service as a Mechanic. The applicant made a representation on 14.6.84 that he has been wrongly treated as a promotee against the quota of the year 1978. The grievance of the applicant was found to be correct and his placement in the gradation list was changed treating him to have been promoted against the quota of 1977 vacancies. His name was correctly shown at S.No.87. The relevant communications and the letters circulated by the respondents are at Anns.A/2 and A/3.

2. The applicant is now aggrieved on account of the in action on the part of the respondents in not giving him the benefit of notional fixation on the date he was given promotion on the post of Higher Grade Technician i.e. from 1977. The various representations made by the applicant failed to evoke any response and subsequently he was driven to file the present OA under Section 19 of the Administrative Tribunals Act, 1985, (for short, the Act). The applicant prays that the respondents be directed to give benefit of notional fixation from the date he was given promotion on the post of Higher Grade Technician, with all consequential benefits.



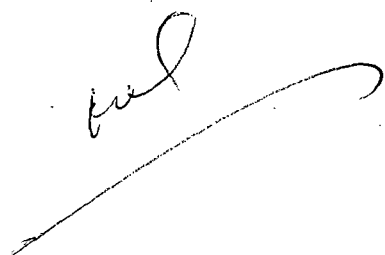
by the Chief General Manager, Telecom, Rajasthan, to the Director General, Department of Telecommunication, New Delhi, on 25.1.91 alongwith parawise comments. When no reply was received, the applicant again submitted an application dated 25.4.95 to the General manager, Telecommunication Department, Jaipur. The Senior SPE (Staff) (R&E), O/o GMTD, again wrote a letter to the Assistant Director (Staff), O/o CGMT, Rajasthan Circle, Jaipur, seeking intimation with respect to the present position of the case of the applicant and the fate of the representation dated 26.4.90. A copy of the letter dated 12.10.95, addressed by the Sr.SPE (R&E) is at Ann.A/9. In this letter, addressed to the Assistant Director (Staff), it was mentioned that intimation of present position in the case of the applicant may be given as the official (Applicant) is pressing in this regard day to day. Since the said letter did not evoke any response, the applicant obviously took to his head ^{that} ~~with~~ the departmental authorities are not going to settle the issue raised by him. Thereafter, he had filed this OA in the month of December, 1995. As stated above, the applicant had not come forward against any order passed in the year 1977 or thereafter. He has raised a legitimate grievance with regard to his right to be treated as having been promoted against the quota of 1977 vacancies and since this matter was kept by the departmental authorities to linger on without any decision, now they do not have ~~any~~ cheeks to plead before this Tribunal that the OA is barred by time. As a matter of fact, the delay in filing the OA occasioned on account of the callous in-action on the part of the respondents in not responding to the representation of the applicant. We are, therefore, of the firm view that taking into consideration the facts and circumstances of this case, the present OA cannot be treated as barred by time and it is not hit by the provisions of Section 21 of the Act.



5. Now it is the time to consider the merits of the case. To begin with, it may be mentioned that the learned counsel for the respondents pointed out that the applicant is not entitled to the fixation of pay in view of the decisions of the Apex Court in the case of 1997 SCC (L&S) 1852, Union of India & Anr. v. R.Swaminathan & Ors., and 1998 SCC (L&S) 1336, Union of India & Ors. v. Sushil Kumar Paul & Ors. Both these decisions are hardly of any relevance to decide the controversy in hand.

6. There is no dispute about the fact that as per the amendment made in the gradation list, the applicant is shown at S.No.87, while Hot Chand Khemchandani shown in the promotion order at S.No.4 has been assigned junior position at S.No.103 and M.I.Qureshi shown in the promotion order at S.No.5 is at S.No.104 in the gradation list. The applicant undoubtedly is senior to Hot Chand Khemchandani and others shown in the promotion order. The applicant was promoted against one-third promotion quota of the year 1977. If, for certain reasons, a combined examination for vacancies of the years 1977 and 1978 had taken place in the year 1978, the applicant cannot be interpolated against vacancies of the year 1978. He had completed the essential requisite of minimum 10 years service to become eligible for promotion to the post of Higher Grade Technician against one-third quota on 16.2.77. Of necessity, he has to be treated as having promoted against the quota of the year 1977 and has to rank senior in the gradation list above Hot Chand Khemchandani. His placement with the promoted candidates of the quota of the year 1978 is palpably erroneous. The relief claimed by the applicant cannot be denied on any ground whatsoever.

7. The present OA is allowed to the extent that the applicant shall be treated to have been promoted

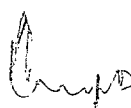


3. A detailed reply has been filed on behalf of the respondents. A rejoinder has also been filed.

4. Heard the learned counsel for the parties at considerable length. A preliminary objection was raised by the learned counsel for the respondents asserting that the present OA is hopelessly barred by limitation and it was not filed within a period of one year of the accrual of the cause of action. He made a reference to the provisions of Section 21 of the Act to fortify his contention that the applicant cannot be permitted to claim relief for the notional pay for the year 1977 by filing the OA on 20.12.95. He also placed reliance on the decision of the Apex Court in 1999 SCC (L&S) 251, Union of India & Anr. v.

S.S.Kothiyal & Ors. and 2000 SCC (L&S) 53, Ramesh Chand Sharma v. Udham Singh Kamal & Ors. We have thoroughly gone through the aforesaid two decisions and find that they are not squarely applicable to the facts of the present case, as would be evident from the following discussion. This submission was repelled by the learned counsel for the applicant, who pointed out that the applicant was compelled to file the OA only when it became apparent that the respondents are not likely to take any decision on the representations made by the applicant. Admittedly, no order has been passed in the present case denying the relief which has been claimed by the applicant in the present OA. As a result of the rectification of the clerical error, which has occasioned on account of showing the applicant at S.No.105 in the gradation list treating him to be as 1978 promotee and his placement at S.No.87 ~~and his placement at S.No.87~~, the applicant made a representation on 16.8.86 followed by a number of reminders. When the applicant waited in vain for the redressal of his grievances by his immediate superiors, he submitted a representation in the year 1990 to the Chairman, Department of Telecommunication, New Delhi, which was forwarded by

against one-third quota of the year 1977 and accordingly shall be given the benefit of notional fixation from the date he was given promotion on the post of Higher Grade Technician. He shall, however, be not entitled to arrears of pay etc. on account of the benefit of notional fixation, as ordered above. No costs.


(A.P. NAGRATH)
MEMBER (A)


(JUSTICE O.P. GARG)
VICE CHAIRMAN