

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 30th day of August, 2011

Transferred Application No.09/2009
(CWP 6841/2007)

CORAM: .

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Gyarsi Lal Verma
s/o Shri Kanhaya Lal Verma,
r/o Aswal Bhawan, Jamuna Colony,
Dhehar Ka Balaji,
Sikar Road, Jaipur

.. Applicant

(By Advocate, : Shri G.P.Kaushik)

Versus

1. Bharat Sanchar Nigam Ltd.,
D-148, Baraha Khamba Road,
New Delhi through its Chairman.
2. The Chief General Manager,
Bharat Sanchar Nigam Ltd.,
Rajasthan Circle,
Sardar Patel Marg,
Jaipur.
3. The Principal General Manager,
Bharat Sanchar Nigam Ltd.,
Telecom District Jaipur,
MI Road, Jaipur

4. Mahesh Chand Sharma
r/o 257/12, Sect.3,
Vidhadhar Nagar,
Jaipur.
5. Ram Sahai Yadav
r/o Dhani Dholia Wali
vill. Bidara via Sheopur,
Distt. Jaipur.
6. T.N.Pareek
r/o P.No.19, Madanwari,
Naya Kheda Behind Ambabari,
Jaipur.
7. Om Narain Sharma
r/o 1740, Chelon Ki Haveli,
Jat Kuwe Ka Rasta,
Chandole Bazar,
Jaipur.
8. Jagdish Prasad Sharma,
BCR IV through PGM,
Bharat Sanchar Nigam Ltd.
Telecom Distt. Jaipur, MI Road,
Jaipur.
9. Shyam Bagwani,
BCR Grave IV through PGM,
Bharat Sanchar Nigam Ltd.
Telecom Distt. Jaipur, MI Road,
Jaipur.

.. Respondents

(By Advocate: Shri Sudeep Mathur, proxy counsel for Mr. Inderjeet Singh)

ORDER (ORAL)

The grievance of the applicant is that respondents had changed the date of confirmation of the applicant time and again and at different times three date of confirmation of the



applicant have been shown. However, the applicant has been promoted under the Biennial Cadre Review (BCR) Scheme and has been promoted to BCR Gr.III on 1.7.1993. It is alleged by the applicant that respondent Nos. 8 to 9 are junior to the applicant while promoting at the level of BCR Gr.III. The applicant has been promoted as BCR Gr.III w.e.f. 1.7.1993 whereas persons junior to the applicant S/Shri Om Narain Sharma, T.N.Parrek, Jagdish Prasad and others have been promoted on the post of BCR Gr.III after promotion of the applicant. They have been promoted to the BCR Gr.IV whereas the applicant has not been promoted to the BCR Gr.IV without any sufficient reason.

2. Aggrieved and dis-satisfied by the action of the respondents, as the respondents have not promoted the applicant on the post of BCR Gr-IV, he preferred OA before this Tribunal with the prayer that the respondents be directed by a suitable writ/order to place the applicant as senior in the gradation list and Shri Om Narian Sharma as junior. The aforesaid OA was withdrawn by the counsel for the applicant. It is alleged that for withdrawal of the OA, the applicant has not instructed the counsel and the Tribunal vide order dated 16.5.2001 at the request of the counsel appearing for the applicant that he got instruction to withdrawn the OA, the OA was dismissed as withdrawn. Thus, the applicant filed the SB



CWP No.6841/2007 which has ultimately been transferred to this Tribunal.

3. Per contra, the learned counsel appearing for the respondents has raised preliminary objection regarding maintainability of this T.A. as the applicant has challenged promotion of private respondents which were made in the year 2001 and 2006 after a delay of about six years. It has also been submitted that private respondents were promoted to the BCR Gr.IV according to their seniority and it is not disputed that the applicant has failed to challenge the seniority list and that becomes final. It is also challenged that the applicant earlier filed OA before this Tribunal which was withdrawn without seeking any liberty from the Tribunal, as such, the applicant cannot challenge the same by filing substantive OA or writ petition.

On merits, the respondents have submitted that the applicant has been confirmed in the cadre of Technician w.e.f. 1.3.1972 when the post became available due to confirmation of Shri Tola Ram Jain in R.S.A. cadre and seniority of the applicant has been fixed after the name of Shri O.N.Sharma, R.S.Yadav, T.N.Pareek and M.C.Sharma who were confirmed prior to the applicant. Further, Shri Shyam Bhagwai was also confirmed prior to the applicant. Therefore, the private respondents were given promotion as per their

seniority prior to the applicant and at that time the applicant did not fall in the zone of consideration for promotion to BCR Gr.IV, therefore, he was not promoted. The seniority of the employees was fixed according to the date of confirmation in the grade in accordance with the Govt. of India, Ministry of Personnel circular dated 18.3.1988.

4. The learned counsel appearing for the applicant placed reliance upon the judgment rendered by this Tribunal in TA No.29/2009 dated 18.5.2011 wherein the main contention of the applicants was that since they are senior to Shri B.K.Sharma, they should also be extended the same benefit of Grade-IV w.e.f. 24.12.1990. After perusing the judgment passed in the aforesaid TA, we find that the ratio decided by this Tribunal in TA No.29/2009 is not applicable to the facts and circumstances of the present case, as admittedly, the applicant is not senior than the private respondents wherein in TA No.29/2009 decided by this Bench on 18th May, 2011, the applicants were senior than the private respondent.

5. We have also perused the letter dated 7th January, 1994 by which the Govt. of India has given clarification regarding placing of officials in BCR Gr.IV under 10 % quota, which clarified in following terms:-

"..... I am directed to clarify that promotion to Grade IV (10% quota) will be made from amongst the officials in



Grade III on the basis of their interse-seniority in that grade."

6. As discussed hereinabove, admittedly, private respondents are senior than the applicant, as such, the applicant was not considered for promotion to BCR Gr.IV. In the above circumstances, we find no illegality in the action of the respondents promoting senior and confirmed employee earlier than the applicant and there is no substance in this TA.

7. Consequently, the TA being devoid of merit fails and is hereby dismissed with no order as to costs.

Anil Kumar

(ANIL KUMAR)
Admv. Member

K.S. Rathore

(JUSTICE K.S.RATHORE)
Judl. Member

R/