

(30)

21/11/2012

C.B. Sharma, Counsel for the applicant.
B.N. Sandhu, Counsel for the respondents.

Court Officer

~~Case adjourned on the request of
learned counsel for applicant(s) /
respondent(s). Put up for hearing
on 29/11/2012~~

Case adjourned on the request of
learned counsel for applicant(s) /
respondent(s). Put up for hearing
on 29/11/2012

Dr. B. N. Sandhu
Court Officer

T.A. No. 16/2009 (CWP No. 4433/2004)
29-11-2012

Mr. C.B. Sharma, Counsel for applicant.
Mr. B.N. Sandhu, Counsel for respondents.

Heard.

T.A. is disposed of by a separate
order on the separate sheets for
the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K.S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

TRANSFER APPLICATION NO. 16/2009
IN
S.B. Civil Writ Petition No. 4433/2004

Jaipur, the 29th day of November, 2012

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Raghuveer Sharan Agarwal, son of Shri Ramswaroop Agarwal, aged around 57 years, resident of Karamchari Colony, College Road, Gangapur City, District Sawaimadhopur.

... Applicant

(By Advocate : Mr. C.B. Sharma)

Versus

1. Bharat Sanchar Nigam Limited through Chairman & Managing Director, 20, Ashoka Road, New Delhi.
2. Union of India through its Secretary to the Govt. of India, Depoartment of Telecommunication, Ministry of Communication, Sanchar Bhawan, New Delhi.
3. Chief General Manager, Telecommunications, Rajasthan Circle, Bharat Sanchar Nigam Ltd., Jaipur.
4. Telecom District Manager, Bharat Sanchar Nigam Limited, Sawaimadhopur.
5. Shri M.P. Meena, Chief Technical Supervisor (Technician Grade IV), Telecom District BSNL, Dausa.

... Respondents

(By Advocate : Mr. B.N. Sandu)

ORDER (ORAL)

The applicant filed a S.B. Civil Writ Petition No. 4433/2004 before the Hon'ble High Court, which has been transferred to this Tribunal vide Hon'ble High Court's order dated 02.02.2009.

2. The applicant filed the Writ Petition before the Hon'ble High Court praying for the following reliefs:-

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- "(i) By issuing an appropriate writ, order or direction, the impugned letter dated 10.03.2004 (Annexure 4) be quashed and set aside and the official respondents be further directed to promote the petitioner on the post of Technician Grade Iv (10% quota of BCR) by modifying the necessary orders from the date of junior persons (respondent no. 5) with all consequential benefits.
- (ii) Any other appropriate order or direction which the Hon'ble Court deem think just fit and proper in the facts and circumstances of the case may also be passed in favour of the petitioner.

3. The main contention of the applicant is that he is senior to private respondent no. 5, Shri M.P. Meena, in the basic grade that is Technician Time Scale.

4. The learned counsel for the applicant further stated that the respondent no. 5 was promoted in the scale of OTBP (Technician Grade II) in the year 1978 and in the scale of BCR (Technician Grade III), he was promoted 01.01.1994 on completion of 26 years of service. The name of private respondent no. 5 in the gradation list of the Technician Grade I, II, III and IV is at sr. no. 2 whereas the name of the applicant is at no. 1, which clearly shows that the applicant is senior to private respondent no. 5 in the Technician Grade III also (Annexure-1).

5. Learned counsel for the applicant also stated that as per rules, promotion to Grade IV, which is the 10% quota of BCR has to be made on the basis of basic grade seniority as amongst the Technician Grade III and as the applicant is at sr. no. 1 in the seniority of Technician Grade III (BCR), he is entitled for promotion on the post of Technician Grade IV. The official respondents have issued circular/instructions No.

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22-47/93-TE-II dated 24.02.2002 (Schedule-B), regarding promotion of senior officials, when juniors have been promoted. In this circular dated 24.02.2002, in clause VI, it has been categorically provided that the promotion to Grade IV (10% of BCR) will be on the basis of basic grade seniority.

6. Learned counsel for the applicant further submitted that the applicant is admittedly senior to private respondent no. 5, the respondent no. 3 without taking into consideration the seniority, arbitrarily promoted the respondent no. 5 on the post of Chief Technical Supervisor vide order dated 26.05.1998 w.e.f. 01.01.1994 (Annexure-2) which has been later on provided w.e.f. 15.10.1993 vide corrigendum dated 07.09.1998 (Annexure-3), where as the respondent no. 5 placed to BCR (Technician Grade III) w.e.f. 01.01.1994.

7. Learned counsel for the applicant further submitted that the applicant submitted representations dated 15.07.2003 and 03.11.2003 (Annexure 4 & 5 respectively) with the request to promote him in Grade IV (10% of BCR) but without considering the request of the applicant on merit, the respondents informed the applicant that Shri M.P. Meena, private respondent no. 5, has already been promoted vide communication dated 19.03.2004 (Annexure-6). He argued that this letter dated 19.03.2004 (Annexure-6) is totally illegal, arbitrary and against the relevant orders, circulars issued in this regard and it deserves to be quashed and set aside.

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8. He further argued that according to this letter only one post is sanctioned in Grade IV (10% quota of BCR) and this post has to be filled up on general seniority of the basic grade. According to the settled principle of law, one post cannot be reserved. Therefore, he requested that the applicant may be promoted to the basic grade IV from the date his Junior, Shri M.P. Meena, private respondent no. 5, has been promoted with all consequential benefits.

9. On the other hand, learned counsel for the respondents argued that according to Para (ix) of the OM dated 16.10.1990, seniority is the basic criteria for promotion subject to selection and as per DOT, New Delhi OM NO. 11-14/88-NCG (Pt.) dated 29.01.1991, promotion under BCR Scheme is on functional basis and normal rules of reservation in favour of SC/ST employee will apply.

10. He further submitted that Shri M.P. Meena, private respondent no. 5 is ST candidate and he has been promoted under the normal rules of reservation as prescribed vide DOT New Delhi OM No. 11-14/88-NCG (Pt) dated 29.01.1991.

11. Heard learned counsel for the parties and perused the documents on record. The respondents have also agreed that the applicant is senior to private respondent no. 5, Shri M.P. Meena. This they have admitted in Para No. 8 of their reply. Even during the course of arguments, learned counsel for the respondents did not dispute the interse seniority between the applicant and the private respondent no. 5, Shri M.P. Meena. The main plea of the official respondent is that

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private respondent no. 5 was promoted as a ST candidate and as per normal rules of reservation vide DOT New Delhi OM No. 11-14/88-NCG (Pt) dated 29.01.1991. The learned counsel for the applicant argued that the respondents have not given any details of the roster point, which was reserved for the ST. He also argued that even in their letter dated 19.03.2004 (Annexure 6), they have not informed that Shri M.P. Meena, private respondent no. 5, has already been promoted. According to this letter, there is only one post of Technician Grade IV and if there is only one post, there cannot be any reservation on a single post. Promotion to Grade IV, which is 10% quota of BCR has to be made on the basis of basic grade seniority amongst the Technician Grade III and the applicant is at no. 1 in the seniority of Technician Grade III (BCR), therefore, he is entitled for promotion on the post of Technician Grade IV.

12. We are inclined to agree with the averments of the learned counsel for the applicant that the respondents have not clarified in their reply as to how many posts were there in Grade IV, which is 10% quota of BCR, what were the roster point on which the reservation for SC/ST were to be made and how many other SC & ST employees were promoted on the basis of normal rule of reservation as prescribed vide DOT New Delhi OM No. 11-14/88-NCG (Pt) dated 29.01.1991. We have also gone through the letter dated 19.03.2004 issued by the respondents. In this letter also, respondents have not informed that Shri M.P. Meena, private respondent no. 5, was promoted to Technician Grade IV (BCR) because of reservation. The respondents have also not filed the promotion order issued in favour of Shri M.P.

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Meena, which could show that he was promoted as a ST candidate in order to comply with the normal rule of reservation in favour of SC/ST employees. Therefore, in the interest of justice, we deemed it proper to direct the official respondents to reconsider the case of the applicant for promotion to Technician Grade IV (BCR) from the date from which his junior, Shri M.P. Meena, private respondent no. 5 was promoted. The respondents are directed to pass a reasoned and speaking order in this regard according to the provisions of law, rules and instructions on the subject expeditiously but not later than a period of three months from the date of receipt of a copy of this order. If any prejudicial order is passed against the applicant, he is at liberty to file fresh OA for the redressal of his grievances, if so advised.

13. With these observations, the TA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

K.S. Rathore
(Justice K.S. Rathore)
Member (J)

AHQ