

41

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Date of order: 31.08.2000

OA No.108/95

1. K.P.Sharma S/o Late Shri Trivedi Prasad Sharma, working as TM(T), CTO, Jaipur.
2. R.P.Sharma S/o Late Shri Shiv Bux Sharma working as TM(T), CTO, Jaipur
3. R.C.Dixit S/o Late Shri Ganga Sahai, working as TM(T), CTO, Jaipur

.. Applicants

V e r s u s

1. Union of India through the Secretary to the Government of India, Ministry of Telecommunication, Sanchar Bhawan, New Delhi.
2. The Chief General Manager Telecom, Rajasthan Circle, Jaipur
3. The General Manager Telecom (East), Dhuleswar Bagh, Jaipur
4. The Chief Superintendent, Central Telegraph Office, Jaipur.
5. Shri D.Smith, Telegraph Master (T), Office of CTO, Jaipur.
6. Shri R.A.Sharma, Telegraph Master (T), Office of CTO, Jaipur
7. Shri R.N.Meena, Telegraph Master, (T), CTO, Jaipur

.. Respondents

Mr. R.F.Pareek, counsel for the applicants

Mr. M.Rafiq, counsel for respondents No. 1 to 4

Mr. P.V.Calla, counsel for respondents 5,6 & 7.

CORAM:

: 2 :

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

Hon'ble Mr. N.F.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.F.Nawani, Administrative Member

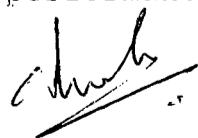
In this Original Application, filed under Section 19 of the Administrative Tribunals Act, the applicants pray that impugned orders at Ann. A1, A2 and A3 be declared illegal, qua the applicants and further that the respondents be directed to allow the applicants to work as Telegraph Master (Testing) [for short TM(T)] as per the seniority in the gradation list.

2. The grievance of the applicants essentially is that inspite of being senior, they have not been allowed to work as TM(T) while their juniors, the respondents Nos. 5 to 7 are being so allowed and while they were earlier working as TM(T), they have been reverted to Telegraph Master (Optional) [for short TM(O)] vide impugned orders Anns. A1 to A3.

3. We have gone through the material on record and have also heard the learned counsel for the parties.

4. On careful consideration of the rival contentions, we find that the controversy in this case lies in a narrow compass, whether the applicants should be put on the job of TM(T) instead of TM(O) considering their seniority positions.

5. The official respondents have admitted in their written reply that the applicants were at least senior than private respondents Nos. 5 and 6. The reasoning given for not allowing them to work as TM(T) is that latter were more familiar with the job of TM(T) than the applicants and performance (sic preference) in the matter of posting against

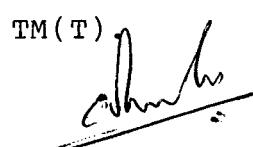


the posts of TM(T) has been given to those who had actually been working at ATMs as on 17.8.1983 and subsequently promoted against 85% upgraded posts of LSG TMs under the merger scheme of ATMs cadre into that of TMs. It has also been stated that the post of TM(T) is entirely a post of "technical attendance" and not a supervisory one as claimed by the applicants.

6. It is undisputed that the applicants are senior to the private respondents in the Grade-III. It appears from the reply of the respondents that the applicants might have got promotion to Grade-III later than the private respondents on account of 85% upgraded posts of LSG TMs under the merger scheme of ATMs. However, we have taken note of Ann.A9, which is under the headings "ATM-TM Merger", "Supreme Court Order Implemented (DOT letter No.15-15/92-TE.II dated 27.5.199)" and its para (2) is extracted below:-

"ATMs who are selected for promotion as LSGTMs would be placed in the scale of LSGTMs but that would not make them senior to the Telegraphists who were senior to them but were promoted as LSGTMs subsequently because of promotion of such Telegraphist would regain their seniority in the cadre of LSGTMs".

It, therefore, is quite clear that even if certain ATMs happened to have got promoted earlier, that would not make them senior to Telegraphists who were senior to them but were promoted as LSG TMs subsequently. Therefore, if some juniors were working as ATMs as on 17.8.1983, it would not shut out chances of their seniors to work on the post of TM(T)

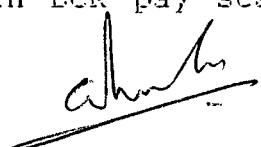


7. We can now come to the question of supervisory posts. In para 4(f) of their reply at internal page No.8, the respondents have mentioned that the post of TM(T) is not a supervisory post and seniority is irrelevant. In para 4(b) at internal page No.4, the respondents have said the "said officials (private respondents No.6 and 7) are more familiar with the job of TM (T) than the applicants". At yet another place in their reply in para 4(d) at internal page 6, it is mentioned that "preference in the matter of posting against the TM(T) post has been given to those ATMs as on 17.3.1983.....". On the other hand, the circular letter dated 18.3.1991 of Govt. of India, Department of Telecom annexed as Ann.E3 by respondents themselves, lays down in para III as under:-

" SUPERVISORY DUTIES:

Officials in Grade-IV in the cadres of TOA (General), TOA (Phones, TOA (Telegraph), TOA (Telegraph General) will perform supervisory duties without any extra remuneration or allowance. In case of non-availability of Grade-IV officials, the supervisory duties will be performed by the senior-most Grade-III official in the station without any extra remuneration or allowance. In case the senior-most official in Grade-III in the station declines, the next below official in the station will perform Supervisory duties."

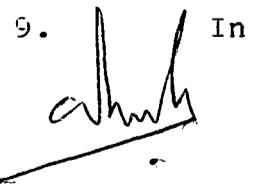
It will be clear from a plain reading of the above that officials in Grade-IV i.e. those occupying 10% of posts in BCR pay scale to be placed in the pay scale of Rs. 2000-



3100 as per para (B) of the same circular dated 18.3.1990) will perform supervisory duties without any extra remuneration or allowances. If Grade-IV officials be not available, such supervisory duties will be performed by the senior-most Grade-III official without any extra remuneration or allowance. Only when the senior-most Grade-III official declines, the next below official will perform supervisory duties. It also appears quite clear that the Grade-IV officials or if they are not available the senior-most Grade-III officials have the first claim on supervisory posts. Although the said circular dated 18.3.1990 appears to be a comprehensive one, incorporating all the grades involved in BCR scheme but the contentions of the respondents as briefly stated in the first part of this paragraph being rather unclear, it is not possible for us to return a clear finding on this issue. However, it does not appear to be a sound policy that the posting in the posts of TM(T) should be decided on the basis of such unclear postulations rather than a clear cut policy or guidelines.

8. The learned counsel for the applicants has referred to the judgment of the Apex Court in R.K.Sinha and ors. v. Union of India and ors. (1990) 19 ATC 855. We find that Ann.A9, referred to by us in paragraph 6 of this order is in consonance of the said judgment and we are, in any case, accepting the position that the applicants continue to retain their seniority, vis-a-vis any of their juniors in the cadre of Telegraphists, who might have been promoted LSG ATMs prior to them in the line with the said judgment of Hon'ble the Supreme Court.

9. In the result, while we refrain from quashing Ann.A1



(22)

: 6 :

and A3, we dispose of this OA with a direction to respondents to reconsider the claim of the applicants to the post of TM(T) in view of their undisputed seniority and also the fact that they do not seem to have declined the chance of working in a supervisory post in terms of the Govt. of India, Department of Telecom Circular dated 18.3.1992 (Ann.R3). This direction may be carried out within four months of receipt of a copy of this order and if the posts of TM(T) cannot be offered to them, they be informed suitably through a reasoned and speaking order.

No order as to costs.



(N.P.NAWANI)

Adm. Member



(S.K.AGARWAL)

Judl. Member