

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.493/95

Date of order: 7/12/2001

R.P.Sharma, S/o Shri Gyarsi Lal Sharma, R/o 89 Suraj
Nagar (East) Civil Lines, Jaipur.

...Applicant.

Vs.

1. Union of India through the Secretary, Ministry of Telecommunication, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecommunication, Rajasthan Circle, Sardar Patel Marg, Jaipur.
3. General Manager, Telecommunication (East), Rajasthan Jaipur.
4. Chief Supdt. Central Telegraph Office, M.I.Road, Jaipur.
5. Sh.H.M.Trivedi, Chief Telegraph Master, Central Telegraph Office, M.I.Road, Jaipur.
6. Sh.N.L.Jain, Chief Telegraph Master, Central Telegraph Office, M.I.Road, Jaipur.

...Respondents.

Mr.R.P.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.

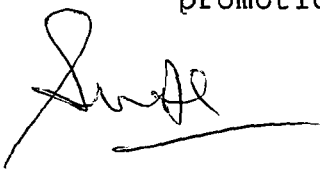
PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer to direct the respondents to promote the applicant to Gr.IV in the scale Rs.2000-3200 with all consequential benefits.

2. Facts of the case as stated by the applicant are that the applicant was initially appointed as Telegraphist

in the scale Rs.55-170 on 18.3.60 and was further promoted on the post of LSG Telegraphist vide order dated 17.7.76. He was further promoted to Gr.II in scale of Rs.1400-2300 under OTBP scheme after completion of 16 years of service. It is stated that respondent No.3 denied promotion to the applicant in Gr.IV scale Rs.2000-3200 (RP). It is also stated that in the order dated 6.11.92 an unreasonable condition is inserted as 'promotion to Gr.IV from Gr.III will be provided on seniority cum fitness basis on obtaining the minimum bench marks which is 'good' except for SC/ST candidates where it is seniority cum fitness basis'. The condition of obtaining minimum good bench marks cannot be said to be justified by any stage of imagination being contrary to the object of BCR Scheme particularly when 10% post of Gr.III are to be upgraded on the basis of functional justification. It is also stated that Sh.M.L.Jain who is admittedly junior to the applicant and does not possess the minimum good bench mark has been given promotion to Gr.IV vide order dated 31.3.95. Therefore, the applicant has been given step-motherly treatment and denied promotion in an arbitrary, capricious and discriminatory manner. Therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. In the reply it is stated that the applicant was not found fit for promotion to Gr.IV vide order dated 31.8.94. The applicant filed representation against the said order which was rejected vide order dated 15.3.95. It is stated that DPC makes assessment of the candidate for promotion with reference to ACRs for preceding 5 years and the DPC did not found the applicant fit for promotion in the meeting held on 24.8.94 and 23.3.95.

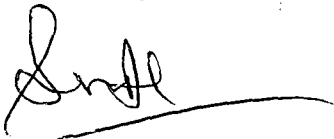


Therefore, the applicant has no case and this O.A is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record including the file containing the minutes of DPC which considered the candidature of the applicant for promotion on 24.8.94 and 23.3.95.

5. On a perusal of the record, it appears that CAT, Principal Bench, New Delhi, vide its order dated 7.7.92 had directed the respondents that promotion to 10% posts in the scale Rs.2000-3200 would have to be based on seniority in the basic cadre subject to fulfillment of other conditions of BCR viz those who are regular employees as on 1.1.90 and had completed 26 years of service in the basic grade (including higher grades). It also appears that DOT filed SLP against the said order and Hon'ble Supreme Court vide its order dated 9.9.93 upheld the judgment of CAT, Principal Bench, New Delhi. It also appears that similar applications had been filed before other Benches of the CAT and in those cases as well, the judgments in line with the judgement of Principal Bench, New Delhi, had been followed. In view of this judgment, Govt. of India, Mini. of Communication, Deptt. of Telecom, New Delhi, vide its order dated 13.12.95, issued instructions that promotion to Gr.IV (Scale Rs.2000-3200) may be given from amongst officials in Gr.III on the basis of their seniority in the basic grade. The promotion would be subject to fitness determined by the DPC as usual.

6. On a perusal of these instructions, it appears that the words "subject to obtaining the minimum bench marks which is good" has been deleted and it is made clear that promotion from Gr.III to Gr.IV can be given on the basis of



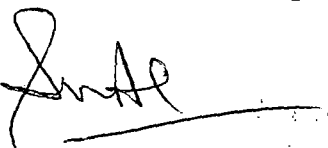
seniority cum fitness. On a perusal of the minutes of the DPC, it appears that the DPC has followed the circular dated 6.11.92 only and not taken note of the judgment of CAT Principal Bench, New Delhi which was upheld by Hon'ble Supreme Court. If the DPC would have taken note of the judgment of CAT Principal Bench, New Delhi, the position with regard to the applicant would have been different.

7. On a perusal of the record it appears that the DPC has assessed the ACR of the applicant and others as under:

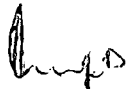
<u>Name</u>	<u>Assessment of ACRs</u>				
	1989-90	1990-91	1991-92	1992-93	1993-94
R.P.Sharma	Average	Good	Average	Average	Average
H.M.Trivedi	Good	Good	Average	Average	V.Good
M.L.Jain	Good	Good	Good	Average	Good

On a perusal of the above assessment made by the DPC it appears that the DPC has discriminated the applicant not recommending him for promotion from Gr.III to Gr.IV whereas the DPC recommended juniors to the applicant to Gr.IV and has not taken a note of the judgment of the CAT Principal Bench, New Delhi which was upheld by Hon. Supreme Court. Therefore, in our considered view, the finding of the DPC is erroneous and the applicant is entitled to promotion w.e.f the date when his juniors S/Shri H.M.Trivedi and M.L.Jain have been promoted from Gr.III to Gr.IV scale Rs.2000-3200.


8. We, therefore, allow this O.A and direct the respondents to promote the applicant in Gr.IV scale Rs.2000-3200 (RP) from the date when his juniors have been promoted to that grade. The applicant shall be entitled to all consequential benefits thereof. The whole exercise must be



completed within 3 months from the date of receipt of a copy
of this order. No order as to costs.


(A.P. Nagrath)

Member (A).


(S.K. Agarwal)

Member (J).