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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

OA No.70/1996

Date of order: 18-11-1997

Bhocramal Sharma, presently working as Sr. Technical Supervisor, office of SDE and WSD Mtce. Exch. GMTD, M.I.Road, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Telecommunications, Sanchar Bhavan, New Delhi.
2. The General Manager, Telecommunications, District Jaipur.

.. Respondents

Mr. K.N.Sharma, counsel for the applicant

Mr. K.N.Shrimal, counsel for the respondents

CORAM:

Hon'ble Mr. O.P.Sharma, Administrative Member

Hon'ble Mr. Ratan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. O.P.Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri Bhocramal Sharma has prayed for a declaration that the applicant is entitled to get promotion to the post of Technical Supervisor Grade-III scale Rs. 1600-2660 under the ECP scheme w.e.f. 1st July, 1990, with all consequential benefits.

2. The case of the applicant is that he was appointed as Technician in the Department of Telecommunications on 16.2.1967 and was promoted as Higher Grade Technician under the one-third quota for promotions, in October, 1977. Persons junior to the applicant have been granted promotion to the post of Technician Grade-III (Senior TSO) prior to

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the date on which the applicant was granted promotion to the said post. One Shri Mohd. Rafiq Ahmed, who was junior to the applicant was granted promotion under the Biennial Cadre Review (BCR) Scheme w.e.f. 1.7.1992. Two others S/Shri Hazari Lal Sharma and Ram Avtar Sharma were also granted promotion to the post under the BCR scheme w.e.f. 15.2.1993. All these 3 persons are junior to the applicant as seen from the gradation list of Technicians in Grade-III as on 31.3.1995. The said gradation list is at Ann.A3. These 3 persons figure in the seniority list at Sl.Nos. 52, 20 and 22 respectively whereas the applicant figures at Sl.No.18. The applicant has, however, been granted promotion under the BCR scheme w.e.f. 1.7.1993. As soon as the applicant came to know about the grant of promotion to Shri Mohd.Rafiq Ahmed, his junior w.e.f. 1.7.1992, he submitted a representation dated 22.2.1995 (Ann.A1), airing his grievance. However, his representation has been rejected vide communication dated 1.11.1995 (Ann.A2), by which the applicant has been informed that persons junior to applicant, whose names have been mentioned by him in his representation had all completed 26 years of service and the scheme is only for those officials who have completed 26 years of service. Since the applicant had not completed 26 years of service when promotion to his immediate junior was granted, he has not been granted promotion from the date from which his junior Shri Mohd.Rafiq Ahmed was granted promotion, namely 1.7.1992.

3. According to the applicant, he got promotion in the lower scale of Technician scale Rs. 1400-2300 under the one-third quota to be filled up on the basis of examination, in the year 1977. The anomaly of grant of promotion to the higher scale Grade-III to his juniors, ignoring his case, has arisen because he has not completed

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26 years of service. The respondents have acted against the letter and spirit of the BCR scheme in denying him promotion from the date from which his juniors have been granted promotion. He has alleged violation of Articles 14 and 16 of the Constitution in the matter of denial of promotion to him. He has also referred to the orders passed by the Bangalore and Hyderabad Benches of the Tribunal, wherein it had been held that seniors could not be denied promotion w.e.f. the date from which their erstwhile juniors were granted promotion under the BCR scheme.

4. The respondents in their reply have stated that the persons who were granted promotion prior to grant of such promotion to the applicant, were senior to him in the basic grade. Promotion to Grade-III scale Rs. 1600-2660 would be available only to those who have completed 26 years of service in the basic grade. The respondents have also annexed a document Ann.R3 being a letter dated 13.12.1995 issued by the Ministry of Communications to all Heads of Telecom Circles etc. in which reference has been made to an order of the Tribunal dated 7.7.1992 passed by the Principal Bench of the Tribunal in OA No. 1455/94 by which a direction was issued that promotion to scale Rs. 2000-3200 (Grade-IV) under the BCR scheme may be granted on the basis of seniority subject to fulfillment of certain conditions. In this communication (Ann.R3) it has been stated that it has now been decided, in supersession of the earlier instructions, that promotions to the scale Rs. 2000-3200 (Grade-IV) may be made from amongst officials in Grade-III on the basis of their seniority in the basic grade.

5. The applicant has also filed a rejoinder to the reply filed by the respondents.

6. During his oral arguments, the learned counsel for the

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applicant presented before us a copy of the order dated 19.8.1994 passed by this Bench of the Tribunal in OA No. 113/93, Ram Naresh Sharma Vs Union of India and Ors. He also presented before us a copy of an order passed by the Bangalore Bench of the Tribunal in OA No. 403/92 passed on 2.9.1993. He has placed before us yet another order of the Tribunal passed by the Hyderabad Bench of the Tribunal on 25.3.1994 in OA No. 28/94, S.H.C.R.H. Acharya and Ors. Vs. Chairman, Telecom Commission and Ors. According to him, the import of these orders, is that where a junior has been granted promotion under the BCR scheme, the senior who however may not have completed 26 years of service shall also be granted promotion from the date from which his junior has been granted promotion. He has, therefore, prayed that in accordance with these orders of the Tribunal and particularly the order of this Bench of the Tribunal, the applicant is entitled to promotion w.e.f. the date from which his junior Shri Mohd. Rafiq Ahmed was granted promotion w.e.f. 1.7.1992.

7. The learned counsel for the respondents relied upon Ann.R3 dated 13.12.1995 to which a reference has been made above. As per this communication, it has now been laid down, according to him, that promotions under the BCR scheme would be based on seniority in the basic grade. These instructions are operative from the date of its issue. Therefore, as of today promotion to the applicant under the BCR scheme cannot be granted from the date from which it was granted to Shri Mohd. Rafiq Ahmed because the applicant was not senior to the said Shri Ahmed in the basic grade.

8. We have heard the learned counsel for the parties and have perused the material on record including the judgments cited by the learned counsel for the applicant.

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9. Although the BCR scheme applicable to the Telecommunications Department has not been ~~presented~~ ^{filed} either by the applicant or by the respondents, its basic outlines, discussed during the arguments, were not disputed. These were that persons employed in the basic grade were to be granted promotion to the higher grade (Grade-II) scale Rs. 1400-2300 on completion of 16 years of service on the basis of seniority-cum-fitness. They were further entitled to promotion to Grade-III Rs. 1600-2660 on completion of 26 years of service, again on the basis of seniority-cum-fitness. It was in pursuance of this scheme that Shri Mohd. Rafiq Ahmed, a person undisputably junior to the applicant in Grade-II scale Rs. 1400-2300 was granted promotion w.e.f. 1.7.1992 and S/Shri Hazari Lal Sharma and Ram Avatar Sharma also undisputably junior to the applicant, were granted promotion to Grade-III scale Rs. 1600-2660 w.e.f. 15.2.1993 under the BCR scheme on the ground that they had completed 26 years of service. The applicant was denied promotion because he had not yet completed 26 years of service as on 1.7.1992, the date on which Mr. Mohd. Rafiq Ahmed was granted promotion under the said scheme w.e.f. 1.7.1992. This situation had arisen because the applicant had been granted promotion to Grade-II scale Rs. 1400-2300 not under the BCR scheme on completion of 16 years of service, but on account of his passing the departmental examination under the one-third quota reserved for promotions on passing such examination. He was, therefore, treated as senior to those who had been promoted under the BCR scheme, to the said grade. However, when it came to the matter of promotion to Grade-III, scale Rs. 1600-2660 the applicant was found not to have completed 26 years of service while certain persons junior to him in Grade-II had completed 26 years of service and were granted

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promotion. This certainly was an anomalous situation in which a senior has been denied promotion although, in a way, he is more meritorious than his juniors who have been granted promotions to Grade-III under the BCR scheme. This is because the applicant was granted his first promotion to Grade-II scale Rs. 1400-2300 on his passing the departmental examination, whereas his juniors were granted this promotion under the BCR scheme.

10. The order of this Bench of the Tribunal dated 19.8.1994 in OA No. 113/93 in Ram Naresh Sharma's case relates to grant of promotions to the Postal Assistants in the Postal Department under the BCR scheme but the principle applicable to promotions in both the Departments under the BCR scheme would be the same because the instructions are admittedly more or less common. In this order the Tribunal relied upon an order of the Bangalore Bench of the Tribunal in Smt. Leelamma Jacob and Ors. Vs. Union of India & Ors., 1993 (3) SLJ (CAT) 514. In the order of the Bangalore Bench, the Tribunal had directed that while implementing the BCR scheme, if juniors are granted promotion on completion of 26 years of service, the seniors should also be considered for promotion irrespective of whether they have completed 26 years of service or not. The Hyderabad Bench of the Tribunal in OA No. 28/94 in the case of S.N.C.R.N. Acharya and Ors. Vs. Chairman Telecom Commission and Ors. held by its order dated 25.3.1994 that while implementing the BCR scheme, seniors in Grade-II should be considered for promotion to Grade-III scale Rs. 1600-2660 in their turn as per their seniority whenever their erstwhile juniors in Grade-II are considered for promotion to Grade-III by virtue of their having completed 26 years of service in the basic grade, without insisting on their completing the minimum prescribed years of service

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in the basic grade. The Hyderabad Bench of the Tribunal in this order relied upon an order dated 2.9.1993 passed by the Bangalore Bench of the Tribunal in OA No.403/92 in the case of Shri M.A.Govindaraju. In Govindaraju's case the Bangalore Bench of the Tribunal held that recruitment rules have not been amended and these do not provide for the eligibility condition of 26 years of service in the basic grade for promotion from Grade-II to Grade-III. We are of the view that although the scheme provides for grant of second time bound promotion under the PCR scheme on completion of 26 years of service, the general rule of grant of promotion on the basis of seniority remains undisturbed. Therefore, the applicant would be entitled to promotion to Grade-III scale Rs. 1600-2660 on the basis of his seniority with reference to the date from which his junior has been promoted to Grade-III, although he may not have completed 26 years of service. The reliance by the learned counsel for the respondents on Ann.R3 dated 13.12.1995 is not of any help to the respondents, because in any case this communication covers promotions from Grade-III to Grade-IV whereas the dispute raised by the applicant is about promotion from Grade-II scale Rs. 1400-2300 to Grade-III scale Rs. 1600-2660. We, therefore, direct that the applicant should be considered for promotion to Grade-III w.e.f. the date from which his junior Shri Mohd.Eafiq Ahmed has been granted promotion to Grade-III under the PCR scheme subject to fulfillment of other necessary conditions and if he is found eligible for promotion, he shall be entitled to promotion to Grade-III w.e.f. 1.7.1992.

11. Before concluding, we would deal with the ground raised by the respondents regarding the application being barred by limitation. The application was filed on 29.1.96

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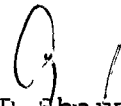
whereas the applicant's junior Shri Mohd.Rafiq Ahmed was granted promotion w.e.f. 1.7.1992. The respondents have also raised a point that the applicant has not filed any application for condonation of delay and, therefore, the OA deserves to be dismissed on the ground of limitation. It is true that the applicant has not filed any Misc. Application seeking condonation of delay but a prayer to this effect was orally made before us during the arguments. Ordinarily, we would not entertain a prayer of this nature made orally but in the peculiar circumstances of the case and on account of the averments of the applicant that he came to know only on 22.5.1995 about the promotion of Shri Mohd.Rafiq. we have thought it fit to condone the delay in filing the OA, in the interest of justice. Accordingly, we have chosen to dispose of this OA on merits.

12. The OA stands disposed of accordingly. The respondents shall implement the Tribunal's order within a period of four months from the date of receipt of a copy of this order. No order as to costs.



(Ratan Prakash)

Judicial Member



(O.P. Sharma)

Administrative Member