

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER : 23.4.2002

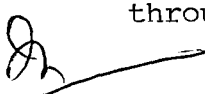
OA No. 400/1996

Atul Kumar Saxena son of shri Kailash Narain Saxena aged about 34 years resident of 181, Mahavir Nagar, Tonk Road, Jaipur presently working in the office of the General Manager, Telecom (East) Jaipur as Senior Telecom Operating Assistant (General).

....Applicant.

VERSUS

1. The Union of india through the Chief General Manager, Telecom Rajasthan Telecom Circle, Dak Bhawan, Sardar Patel Marg, Jaipur.
2. The General Manager Telecom (Operation), Rajasthan Telecom Circle, Dak Tar Bhawan, Sardar Patel Marg, Jaipur.
3. The General Manager Telecom (East), 12, Dwarika Puri, Jamna Lal Bajaj Marg, C-Scheme, Jaipur.
4. The Assistant Director (Staff), Office of the General Manager Telecom (East), 12, Dwarika Puri, Jamna Lal Bajaj Marg, C-Scheme, Jaipur.
5. Shri Satya Narain, Sr. Telecom Operating Assistant (General) through the General Manager Telecom (East), 12, Dwarika Puri, Jamna Lal Bajaj Marg, C-Scheme, Jaipur.
6. Shri Mangal Ram Jat, Sr. Telecom Assistant (General), through the General Manager Telecom (East), 12, Dwarika Puri,



Jamna Lal Bajaj Marg, C-Scheme, Jaipur.

.....Respondents.

Mr. V.B. Srivastava, Counsel for the applicant.

Mr. R.L. Agarwal, Proxy counsel for

Mr. Bhanwar Bagri, Counsel for the respondents.

CORAM

Hon'ble Mr. Gopal Singh, Member (Administrative)

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDICIAL)

Applicant, Shri Atul Kumar Saxena, has filed this Original Application u/s 19 of the Administrative Tribunal's Act and has prayed for the following reliefs:-

"(i) by an appropriate writ order or directions the impugned order dated 16.7 .1996 (Annexure A/1) may kindly be set aside and quashed.

(ii) by an appropriate writ order or directions the respondents may be directed to give promotion to the applicant on the post of Senior Telecom Operating Assistant (Computer) on one of the post created vide order dated 12.4.1996 retrospectively w.e.f. 1.5.1993 on the Govt. policy, Gradation list (Annexure A/8), Eligibility Cum Select Penal List (Annexure 9) and as per earlier decision dated 21.6.96 taken on the basis of recommendations of Assistant Director (Staff) and Senior Section Supervisor (staff) as has been granted to the similarly situated persons.



(iii) by an appropriate writ order or direction the respondents may kindly be directed to give all service benefit including pay fixation, arrear etc. of Sr. Telecom Operating Assistant (Computer) in the pay scale w.e.f. 1.5.1993 as already given to his juniors.

(iv) Any other appropriate order or directions which the Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly also be granted in favour of the applicant.

(v) The cost of the application may also be awarded in favour of the applicant."

2. The brief facts of the case are that the applicant was initially appointed as LDC on 27.2.1986. He was promoted to the post of UDC which is redesignated as Sr. Telecom Operating Assistant w.e.f. 1.1.1986 on regular basis on the restructuring of the cadre. The applicant was entrusted with the job of computer of advance technology from June, 1991. He was also imparted with the requisite training of computer of advance technology course. He was issued a certificate of working vide Annexure A/3 and Annexure A/4 indicating his actual working on the computers.

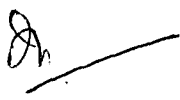
3. In the year 1995, promotions were granted to the TAOs working to the post of Sr. TAOs in the pay scale of Rs. 1320-2040 w.e.f. 1.5.1993, applicant's junior Shri Shri Satya Narain (Respondent no. 5) and Shri Mangal Ram Jat (Respondent no. 6) were granted the promotion to the post of Sr. TAO w.e.f. 1.5.93 on the basis of their working for operating of the computers vide order dated 16.6.96.

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4. The moment the applicant came to know about the said promotion of the juniors, he immediately represented the matter to the competent authorities but there was no response to the same. He, however, was allowed his normal promotion against the restructuring post w.e.f. 1.1.96 vide letter dated 16.2.96 (Annexure A/10). On the other hand, his juniors, respondents Nos. 5 & 6 were allowed the benefit of promotion on the higher post of Sr. TAO w.e.f. 1.5.96 to 31.12.1995. The case of the applicant was ignored and he was denied the due benefits as was extended to his juniors. Hence this OA.

5. The show cause notices regarding admission were issued on 30.7.1996. The respondents have filed the detailed reply to the OA and have controverted the averments made in the OA. The respondents have taken the stand that the criteria for grant of officiating promotion to the post of Sr. TAO was that the candidates ought to have been working on and operating the computer and the applicant was not working on the computers and that was the precisely the reason that he was not granted the benefit of officiating promotion to the post of Sr. TAO. It has also been averred that the representation of the applicant was not considered as there there was no documentary proof of applicant's actually working on the computers. It has also been averred that the training undergone by the applicant is not recognised one by the department and thus no illegality has been committed and this OA deserves to be dismissed with cost.

6. The applicant has also filed rejoinder to the reply and



applicable in the case or not and not for any other purpose."

We have made specific query from the learned counsel for the respondents in regard to the aforesaid reply that once that the applicant was fully eligible for placement in the pay scale of SR. TAO w.e.f. 1.5.1993 and his case was approved by the competent authority as per their averments, what was the reasons for ignoring his case, we could not get any satisfactory reply for ignoring the case of the applicant especially when the benefit has been extended to his juniors.

9. We have also perused the record wherein it has been mentioned at Note sheet Page No. 30/N that the name of the applicant has been mentioned and it has been specifically said that he is working on computers works in the office from 1.5.1993 but it was said that since there are only three posts so orders were to be issued in respect of three persons. Thereafter for the reasons, best known to the authorities, three persons were picked up including respondents Nos. 5 & 6. We have also perused the proceedings of the Selection Committee wherein the name of the applicant was very much under consideration but the Committee only picked up three persons including the private respondents for promotion to the post of Sr. TAO and no reasons are given why the applicant though senior to the private respondents, was ignored.

10. We have not been shown any special order in respect of any persons including the private respondents in regard to the posting/utilisation/working entrusting on computers/operating computers. We are not persuaded with the justification, the



has countered the contention of the respondents taken in the reply. It has also been mentioned that similar type of certificates in respect of respondents No. 5 & 6 have also been issued to him regarding his experience and working on the computers and on the basis of those certificate, they were granted officiating promotion on the higher post. The respondents have also further filed additional reply to the rejoinder to the reply and have reiterated their stand taken in the reply and they have denied the contents of the rejoinder to the reply.

7. We have heard the learned counsel for the parties and have perused the records of the case. The relevant official records were also called and have been perused by us.

8. The learned counsel for the applicant has drawn out attention to the averments made in Para NO. A-15 of the OA wherein it has been specifically mentioned that the applicant was working on the computer regularly since its very initiation in 1991 without any break or interruption. In the same para his case was also recommended on the basis of the factual report as indicated in the said para. To this para the respondents have replied as under :-

"That the contents of Para A-15 of the reply of the respondents whereby it has been proved that the applicant was eligible for placement in the pay scale of Sr. TAO(G) w.e.f. 1.5.1993 and the same was also approved by the GMT (East), Jaipur. Further, the so called Selection Committee was constituted only for purpose to ascertain whether reservation policy is



applicable in the case or not and not for any other purpose."

We have made specific query from the learned counsel for the respondents in regard to the aforesaid reply that once that the applicant was fully eligible for placement in the pay scale of SR. TAO w.e.f. 1.5.1993 and his case was approved by the competent authority as per their averments, what was the reasons for ignoring his case, we could not get any satisfactory reply for ignoring the case of the applicant especially when the benefit has been extended to his juniors.

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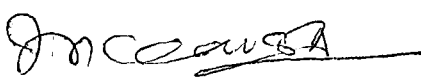
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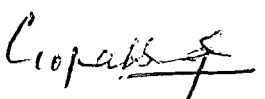


respondents are putting for granting the benefits of promotion on the post of Sr. TAO to the juniors of the applicant. It would also worthwhile to observe that the applicant has been given regular promotion to the post of Sr. TAO w.e.f. 1.1.96 on <sup>was</sup> the basis of same Computer Training which <sup>was</sup> imparted to him. It is not the case of the respondents that any other special training in computers was imparted to the applicant by the respondent's department. It is difficult to understand as to why the applicant was denied due benefits under restructuring Scheme i.e. officiating promotion on the post of Sr. TAO. It smacks <sup>of</sup> arbitrariness and there has been hostile discrimination in the matter of consideration of promotion. We are of the firm view that the applicant was superseded in the matter of promotion and there was been infringement of his fundamental right under ARTICLE 14 & 16 of the Constitution of India.

11. In view of the aforesaid discussion, the OA has much force and the same merits acceptance. We, therefore, pass the order as under :-

OA is allowed. The respondents Nos. 1 to 4 are directed to treat the applicant as promoted to the post of Sr. TAO (Computer) on officiating basis for the period from 1.5.93 to 31.12.95. The applicant shall be entitled to all the consequential benefits thereof including the fixation of pay, arrears etc. This order shall be complied with within a period of three months from the date of receipt of a copy of this order. No order as to costs."

  
(J.K. KAUSHIK)  
MEMBER (J)

  
(GOPAL SINGH)  
MEMBER (A)