

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

O.A. No. 454/1996

Jaipur, this 22nd day of May, 2002

Hon'ble Shri M.P. Singh, Member(A)
Hon'ble Shri J.K. Kaushik, Member(J)

R.K. Mathur
3-Ja-36, Jawahar Nagar
Jaipur

.. Applicant

(Shri P.N. Jatti, Advocate)

Versus

Union of India, through

1. Secretary
Ministry of Telecommunications
Sanchay Bhawan, New Delhi

2. General Manager
Telecom District
M.I. Road, Jaipur

.. Respondents

(Shri Mukesh Sharma, Advocate)

ORDER

Shri J.K. Kaushik, Member(J)

Shri R.K. Mathur has filed this OA under section 19 of the AT Act, 1985 praying for direction to quash and set aside the order dated 29.8.95 (A/1) wherein he has been declared as unfit for promotion to the post of Chief Telephone Supervisor (CTS, for short) in the pay scale of Rs. 2000-3200 due to unsatisfactory service records and further directions to the respondents to promote to the said post either from 29.8.95 or from the date his juniors were so promoted.

2. Brief facts of the case are that the applicant was initially appointed to the post of Telephone Operator on 1.5.1959; thereafter he was promoted as Telephone Supervisor on 1.6.74 and as senior Telephone Supervisor on 1.11.90. The next promotion is to the post of CTS, which has been created under the upgradation scheme so as to avoid stagnation. As per procedure envisaged in order dated 13.12.95, promotion would be given from amongst officers in Grade III on the basis of their seniority in the basic



grade and further subject to fitness to be determined by the DPC. This post was introduced under the Biennial Cadre Review Scheme. According to the applicant, his juniors S/Shri S.K. Mukherjee, Ram Swaroop and M.L. Sant were extended the said benefit of promotion to the post of CTS vide order dated 29.8.95. The said order states that the case of applicant was considered by the DPC and he was found unfit due to unsatisfactory service records.

3. It is further the case of the applicant that there has been absolutely no adverse remarks having been communicated to him during his entire service career and there is no ground or reason to disentitle him to the said promotion to CTS. It is further contended that until adverse entry has been communicated the same cannot be used against him. He submitted a detailed representation on 13.9.95 to the General Manager (T) District, Deptt. of Telecommunications, Jaipur requesting him to give the benefit with retrospective date at par with his juniors. There has been no response and hence this OA has been filed.

4. Respondents have filed their detailed reply controverting the contentions raised in the OA. The main contention raised in the reply is that the applicant failed to obtain the minimum bench mark 'good' as required under the guidelines vide letter dated 6.11.92. Further it has been averred that the benefit of promotion under BCR scheme is strictly on the basis of seniority alone. One must have the minimum bench mark of 'good'. Since the applicant failed to obtain the bench mark, that was the reason he could not be extended the benefit of promotion



and he has been declared unfit. Therefore, the OA deserves to be dismissed.

5. We have heard the learned counsel for the parties and carefully perused the records of the case. As far as the facts are concerned, there is no dispute regarding the same. Learned counsel for the applicant has argued that the applicant does not have unsatisfactory service records as mentioned in A/1 order. On the other hand, learned counsel for the respondents has submitted that the applicant did not obtain the minimum bench mark of 'good' and anything less than that amounts to unsatisfactory service records.

6. We are of the considered view that if the respondents considered that less than bench-mark 'good' is adverse, then the same should have been communicated to the applicant and he should have been given a hearing through representation as per rules in vogue. Nothing adverse can be used against the applicant until the same has been communicated to him and he is given reasonable opportunity of making representation to the same. If the respondents have treated the remarks less than 'good' as adverse they ought to have communicated to him but there is no communication at all and the question of giving any opportunity of making representation against the said adverse remarks did not arise. Therefore rejection of the claim of the applicant for promotion to the post of CTS is not proper. Since his juniors have been extended the benefit, the applicant is also entitled to get the promotion with effect from the date his next junior has been allowed and the impugned order to that extent deserves to be set aside.



6. The next contention of the applicant is that the original scheme does not contain any clause or requirement that the benefit would be extended on the basis of one's obtaining minimum bench mark of 'good'. We had an occasion to go through the scheme dated 16.10.90 (A/3 in another OA 555/99, which has also been heard on the same date), wherein it has been provided that the officials who have completed ~~or~~ would be completing 26 years of service in the basic grades (including time spent in higher scales/OTBP) will be ascertained. The persons will be screened by a duly constituted Review Committee to assess the performance and determine their suitability for advancement. Thus it is amply clear that there is explanation like minimum grade of 'good'. As far as the applicant is concerned, there was absolutely nothing adverse against him and it is also not the case of respondents that there was any adverse entry against him and the same was communicated to him. Therefore, he could not have been declared as unfit.

7. Thus, after examining the case in all complexity, we are of the considered opinion that there is force in the OA and the applicant is entitled to get promotion to the post of CTS from the date his next junior has been promoted. In the result, the impugned order dated 29.8.95 in so far as it relates to the applicant that he has been found unfit for promotion due to unsatisfactory service records is quashed and set aside. Respondents are directed to issue orders



promoting the applicant to the post of CTS from the same date his next junior was so promoted. Applicant shall be entitled to all consequential benefits including arrears of difference of pay and allowances. This exercise shall be completed by the respondents within a period of two months from the date of receipt of a copy of this order.

No costs.

J.K. Kaushik
(J.K. Kaushik)
Member (J)

M.P. Singh
(M.P. Singh)
Member (A)

/gtv/