

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 24.01.2001 (8)

OA No.433/1997

Babu Lal Rawat S/c Shri Chand Rawat aged about 38 years, at present working as TOA (Phones), Telephone Exchange, Bari, District Dholpur under Telecom District Manager, Bharatpur.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Communications, Department of Telecommunication, Central Secretariat, New Delhi.
2. Telecom District Manager, Telecom District Bharatpur.
3. Division Engineer (Admn) O/c Telecom District Bharatpur.
4. Smt. Meva Meena, TOA (Phones) Telephone Exchange, Bari, Distt. Dholpur under O/o TDM, Bharatpur.

.. Respondents

Mr. Hemant Gupta, Proxy counsel to

Mr. Shiv Lal Verma, counsel for the applicant

Mr. V.S. Gurjar, counsel for the respondents

CORAM:

Hon'ble Mr. A.K. Mishra, Judicial Member

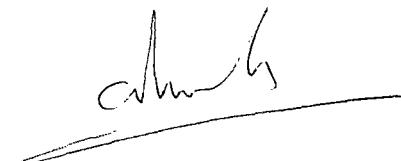
Hon'ble Mr. N.P. Nawani, Administrative Member

Order

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

In this Original Application, the applicant essentially prays that the promotion given to him under One Time Bound Promotion (for short OTBP) scheme from TOA (P) Grade-I to Grade-II w.e.f. 14.7.1991 vide order dated 1.10.1991 (Ann.A2) should not be cancelled and replaced by such promotion only w.e.f. 16.5.1997 accorded through Ann.A1, which should, therefore, be set-aside and quashed to that extent.

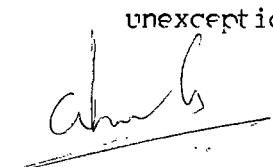
2. We have heard the learned counsel for the parties and have



perused all the material on record.

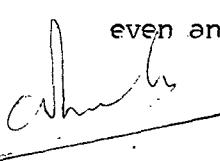
3. It is not disputed that promotions against OTBP scheme could be given in respect of SC/ST officials under relaxed conditions. It is also not disputed that both the applicant and Smt. Mewa Meena, respondent No.4 (for short R4) are ST candidates; the mention of the applicant as being SC at one place in the OA appears to be a typographical error. It also appears that a shortfall in ST category was available at roster point No.17. After this point, the controversy starts. The DPC which met earlier on 31.7.1991 recommended the name of the applicant for promotion w.e.f.

14.7.1991 on the basis of the seniority position in the Gradation list and since R4 had joined in the Bharatpur Division on her own request from Sriganganagar Division losing her seniority, she was considered junior to the applicant and the applicant was allowed to be promoted against the available roster point. However, it was only after a lapse of around six years that the Department realized that the benefit under the OTBP scheme in case of SC/ST is to be given on the basis of length of service and not on seniority, clarified as it was by the DOT letter No.11-14/88-NCG dated 29.9.94. If that be so, the length of service of Smt. Mewa Meena was more than that of the applicant since the former was appointed on 25.11.1980 while the applicant was so appointed later, on 16.5.1981. It is besides the point that R4 on being transferred from Sriganganagar Division to Bharatpur Division on her own request had been given bottom seniority but the length of the service and not the seniority happened to be the criterion for grant of promotion under OTBP scheme. This was clearly incorporated in the clarification issued by the Department of Telecom dated 29.9.1994. It is well settled principle that schemes like OTBP have been instituted to remove stagnation and it is, therefore, unexceptionable that the length of service rather than the



seniority in the gradation list is the relevant factor for grant of the benefit of higher pay scale under OTBP. Vide order dated 7.7.92 in OA No. 1455/91, the Principal Bench of this Tribunal had held that the promotion under OTRP/BCR schemes are to be given on the basis of length of service in the basic cadre. This order of the Principal Bench has been upheld by Hon'ble the Supreme Court in Special Writ Petition Civil 4244 of 1993 and Civil Application No.3201 of 1993. In fact in the clarification issued by the Ministry of Communications, DOT in their letter No. 22-6-94-TE-II dated 11th March, 91, it has been clarified that only officials who have completed/will be completing 26 years of service or more on the crucial date will be eligible for promotion under BCR. Against this background, if the Department on realizing the mistake done, convened a review DPC on 16.9.1997 and on its recommendation, Smt. Mewa Meena was granted the OTBP w.e.f. 14.7.1991 against the only roster point available viz. point No.17 and simultaneously cancelled the promotion given to the applicant w.e.f. 14.7.1991, no exception can be taken to such a step of the Department. However, the Department also promoted the applicant under OTBP but only w.e.f. 16.5.1997 on completion of normal 16 years of service. In the circumstances, we do not find any ground to declare the impugned order, as it stands, illegal or unconstitutional.

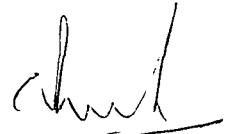
4. However, before we leave the matter, we feel it necessary to consider another aspect of the case. Promotion which was earlier given as far back as 1.10.1991 by Ann.A2 has been withdrawn by the impugned order Ann.A1 on 16.9.1997 i.e. after a gap of almost six years. The order dated 1.10.1991 was issued without any fraud or mis-representation on the part of the applicant. As a low paid employee, he must have spent whatever salary the Department was giving him all these six years. In fact, he was legitimately expecting that level of pay and allowances all those years with not even an inkling that he might one day in future be dis-entitled



from it. It will, therefore, be completely unfair, and even illegal, to make any recovery of excess amount paid to him, calculated now after more than 9 years, especially when it was none of his fault. We also observe that the Department has not mentioned any thing about recovery in the impugned order and may be have no intention of effecting any such recovery.

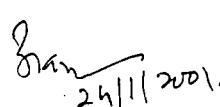
5. We, therefore, dispose of this OA by not interfering with the impugned order dated 16.9.1997 but with a direction to the respondents not to make any recovery from the applicant on account of any excess pay and allowances paid to the applicant during the period from 14.7.1991 to 15.9.1997.

There will be no order as to costs.



(N.P.NAWANI)

Adm. Member



24/11/2001
(A.K.MISHRA)

Judl. Member