

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 23.03.2001

OA No.541/1997

Gajraj Singh s/o Shri Fenna Lal r/o 54-Devanand colony, Tonk Road, Jaipur, at present working as Senior Supervisor (Instruction) Circle Telecom Training Centre, Jhalana Doongeri, Jaipur.

.. Applicant

Versus

1. Union of India through Secretary, Department of Telecommunication, Ministry of Communication, Sanchar Bhawan, New Delhi.
2. The Chief General Manager Telecom, Rajasthan Telecom. Circle, Sardar Patel Marg, Jaipur
3. The General Manager Telecom, District, Jaipur District, Jaipur.
4. Shri R.G.Bhandari (Staff No.0781) Chief Supervisor, Office of the S.D.O.P., Shastri Nagar, Jaipur.

.. Respondents

Mr. K.S.Sherma, counsel for the applicant

Mr. Hemant Gupta, Proxy counsel to Mr. M.Rafiq, counsel for respondents

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

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

Order

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

In this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks the following reliefs:-

"8.1 That the respondents may kindly be directed to promote the humble applicant on the post of chief telephone supervisor in grade-IV of scale worth Rs. 2000-3200 (revised



pay scale 6500-10500) prior to the Respondent No.4 and other promoted junior colleagues promoted with him.

8.2 That the Respondents may kindly be directed to quash the promotion order of Annexure A/1, A/2 and A/3 and revise the seniority list of Annexure A/4, placing the humble applicant on the correct position as he was shown vide Annexure A/9.

8.3 That the consequential benefits alongwith the due arrears and interest thereon @ 18% per annum may kindly be awarded in favour of the humble Applicant.

8.4 That the cost of the suit may kindly be allowed in favour of humble applicant.

8.5 That any other appropriate relief which may kindly be deemed fit in favour of humble applicant be awarded."

2. We have heard the learned counsel for the parties and have gone through all the material on record, including the rejoinder to the reply.

3. After carefully considering the rival contentions, we are of the considered opinion that the only question to be decided by us in this OA is whether denial of promotion to the post of Chief Telephone Supervisor (Grade-IV) in the scale of Rs. 2000-3200 under the BCR Scheme and consequent omission of the name of the applicant in the order dated 12.2.1997 was wrong and the applicant should have also been promoted from the date on which those whose names are found in the said order were promoted. Whether the applicant and Shri R.G.Bhandari (respondent No.4) were rightly or otherwise promoted on lower grades i.e. in Grade-II (LSG Supervisor Post) on



30.11.1981 (as mentioned by official respondents in their reply) or 20.5.1979 (Ann.A7) and 30.11.1981 respectively or for that matter later when both the applicant and respondent No.4 were promoted to Grade-IV (Senior Supervisor post) w.e.f. 12.2.1993 as per Ann.A8 (and not 30.11.90 as mentioned by the applicant in para 4.3 of the OA) as also the placement of the applicant and respondent No.4 in the gradation lists of Sr./Jr. Supervisors of Rajasthan Circle as corrected upto 1.7.1977 (Ann.A5) are not the issues which are required to be interfered with by us at this belated stage because of the well settled position in law that the matters relating to promotion and seniority should not be unsettled after substantial passage of time. The judgment of the Apex Court in the case of B.S.Bajwa v. State of Punjab and ors, reported in JT 1998 (1) SC 57, refers. We shall, therefore, restrict ourselves only to the examination of the impugned order dated 12.2.1997 (Ann.A1) according promotion to the post of Chief Telephone Supervisor (Grade-IV pay scale Rs. 2000-3200) under ECF Scheme to certain Senior Telephone Supervisors including respondent No.4 and not promoting the applicant as claimed by him.

4. There is no dispute about the fact that promotion under the impugned order dated 12.2.1997 (Ann.A1) was given under ECF Scheme. The judgment dated 7.2.1972 in OA No.1455/1991 rendered by the Principal Bench of this Tribunal has settled the law that promotion to 10% posts in the scale of Rs. 2000-3200 shall be based on base grade seniority and with this view having been upheld by the Apex Court in the SLP filed by the Department, the legal position has accordingly been finally settled in this regard. In their reply, the official respondents have stated that respondent No.4 is senior to the applicant in the basic cadre. They have also stated that the gradation list of Grade-III officials with respect to their basic cadre seniority upto 31.3.1997 was prepared and this was never

Chand

objected by the applicant. It is further stated by the official respondents that in view of Rule 38 of P&T Manual Vol.IV, the name of the applicant was shown at Sl.No.230 of the said list and since the applicant accepted his position in the seniority fixed as on 1.7.1987, he cannot now be permitted to challenge the same at this belated stage. However, in his rejoinder, the applicant stated that promotion in Grade-IV (Chief Telephone Supervisor) is based on Divisional seniority and not on the basis of Circle seniority. However, all what has been stated by the applicant in his rejoinder is that such averment of the respondents is 'false and fabricated' and further that 'the promotion of Grade-IV is also on Circle seniority' without giving specific and cogent grounds to controvert the contention of the official respondents, except something about need for an option to staff whether they want to live in Jaipur Telephone District or want to go in their parent circle. In these circumstances, we find no reason to disbelieve the official respondents who must be following an All India Policy. We also cannot see how the question of option arises since the District/Division must be a subordinate unit under a bigger circle unit. We, therefore, feel that promotion to Grade-IV, being part (10 percent) of the BCR Scheme should be based on the District /Division seniority and not on the Circle seniority. Rule 38 of the P&T Manual, to which our attention was drawn by the learned counsel for the applicant clearly states that an official transferred on his own request will rank junior most in the new unit and if the old and new unit form part of a higher cadre (a Circle in this case), he will retain his seniority in the wider unit. It is thus proper that the applicant ranks senior to respondent No.4 in the seniority dated 26.10.77 (Ann.A5) as it is the gradation list of Rajasthan Circle, the wider unit. However, the applicant, who was placed on bottom seniority due to his own request transfer under Rule 38, would have become junior to the respondent No.4 in the

chun

base grade in the District/Division seniority list, and consequently the question of the applicant getting promotion to Grade-IV alongwith or ahead of respondent No.1 may not arise. If this be the position, there would be no justification to interfere with the order dated 12.2.1997 (Ann.A1).

5. It has, however, also been averred by the applicant, and this issue was also strenuously argued by the learned counsel for the applicant that there had been certain historical changes in the creation and continuation of Jaipur Telecom District/Division. It is not for us to undertake a roving enquiry into the creation or evolution of the Jaipur District/Division of the Telecom Department, including the designation of its Head and its relationship with the Rajasthan Circle. This is best done by the Department itself. However, DG P&T's letter dated 30.7.1975 (Ann.A13) does mention of Jaipur being one of the minor (emphasis supplied) Telephone Districts and goes on to provide guidelines as to how the seniority of staff on merger of seniority of staff transferred under Rule 38 ibid of the minor Telephone Districts can be restored and merger of seniority of such staff with that of Telecommunication Circle. It will, therefore, be just and proper if the Department reviews the case of the applicant and decides whether the applicant is entitled to restoration of his seniority, even after his transfer under Rule 38 ibid and if, on this being done, he is entitled to promotion alongwith and ahead of his juniors who got promoted to Grade-IV vide order dated 12.2.1997 (Ann.A1).

6. We, therefore, dispose of this OA with a direction to respondent No.2 to review the case of the applicant, especially vis-a-vis the D.G. P&T's letter No.257/124,74-STE.I/7486 of 30.7.1975 (copy placed as Ann.A13) and if the applicant is entitled



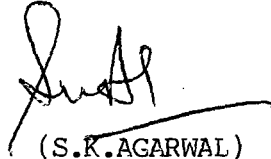
to restoration of his seniority, consider and decide the case of the applicant for promotion to the Grade-IV in the pay scale of Rs. 2000-3200 w.e.f. the date such promotion has been given to his junior. If, however, the applicant is not entitled to any benefit, he may be suitably informed through a reasoned and speaking order. This direction may be implemented within four months of receipt of a copy of this order.

7. In the circumstances, there will be no order as to costs.



(N.P. NAWANI)

Adm. Member



(S.K. AGARWAL)

Judl. Member