

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.90/98

Date of order: 5/1/2003

Panna Lal Yadav, S/o Sh.Shankarlalji Yadav, R/o Near
Surpin Palace Hotel, Station Road, Civil Line, Kota,
presently working as Chief Sr.Supervisor Trunk Exchange
...Applicant.

Vs.

1. Union of India through Secretary to the Govt. of India,
Deptt of Telecommunication, Mini. of Communications,
New Delhi.
2. Chief General Manager, Telecommunication, Rajasthan
Circle, Jaipur.
3. General Manager Telecom, Distt.Kota, E-10E Exchange
Road No.2, Kota.
4. Sh.M.C.Gupta, TOA(P) Grade-III now Grade-IV Trunk
Exchange, Jhalawar Distt, Jhalawar.

...Respondents.

Mr.C.B.Sharma - Counsel for the applicant.

Mr.Hemant Gupta, Proxy of Mr.M.Rafiq -Counsel for respondents.

CORAM:

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

Hon'ble Mr.Gopal Singh, Administrative Member.

PER HON'BLE MR.S.F.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the
Administrative Tribunals Act, 1985, the applicant makes the
following prayers:

- i) to quash the order dated 26.2.98 (Annx.A1) and direct
the respondents to maintain the order dated 6.1.98 (Annx.A2)
in respect of the applicant;
- ii) to direct the respondents to release the arrears of pay
and allowances of higher scale Rs.6500-10500 after fixation
w.e.f. 1.2.98, as opted by the applicant;
- iii) to direct the respondents not to disturb the seniority

of the applicant already assigned to him; and

iv) cost of the application.

2. Facts of the case as stated by the applicant are that the applicant was initially appointed as Telephone Operator on 17.12.64 thereafter he was allowed higher scale under OTBP Scheme on 30.11.83. It is stated that under the BCR Scheme, the applicant was given promotion w.e.f. 17.12.90. Thereafter against Grade IV post on the basis of 10% post of BCR Scheme, the applicant was promoted vide order dated 6.1.98 and in pursuance of this order, the applicant joined the post in Grade-IV as Chief Senior Supervisor. But subsequent DPC has altered the position and vide order dated 1.2.98, the promotion of the applicant made w.e.f. 6.1.98 was made ineffective. It is stated that the respondents never afforded an opportunity of hearing to the applicant before passing of the impugned order Annx.A1. It is also stated that the applicant was given promotion on the recommendations of the DPC, therefore, the subsequent DPC cannot change/alter the position without affording an opportunity of hearing to the applicant. Therefore, the impugned order Annx.A1 is arbitrary, illegal, unjust and inviolation of Articles 14, 16 and 21 of the Constitution of India. Therefore, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. In the reply it is stated that the order dated 26.2.98 (Annx.A1) was passed on the recommendations of the Review DPC and action of respondents is in no way arbitrary, illegal, unjust and inviolation of Articles 14, 16 and 21 of the Constitution. It is also stated that the applicant was confirmed on 1.3.70 whereas respondent No.4 was confirmed on 1.3.66, therefore, seniority was determined as per existing rules and instructions on the subject and the applicant was always shown junior to

respondent No.4. The applicant never raised any objection for his placement in the seniority list below respondent No.4, rather accepted the position. It is also stated that the earlier DPC recommended the applicant for promotion to Grade-IV but this DPC erroneously and due to oversight considered the applicant senior to respondent No.4 although as per seniority list the applicant should have been considered junior, therefore, promotion of the applicant vide order dated 6.1.98 was not in order for which respondent No.4 objected immediately. Therefore, order of promotion of the applicant was held in abeyance and subsequently by another order dated 26.2.98 (Annx.A1), respondent No.4 was recommended and on recommendation of the review DPC and order dated 26.2.98, the earlier order of promotion dated 6.1.98 was superceded and respondent No.4 was promoted. Therefore, it is stated that the applicant has no case for interference by this Tribunal and this O.A devoid of any merit is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. It is not disputed that vide order Annx.A2, on the basis of recommendations of DPC, the applicant was promoted alongwith Shri S.M.Sharma in Grade-IV under 10% promotion w.e.f. 26.12.97, vide order dated 6.1.98. It is also not disputed that the order dated 6.1.98 was acted upon and the applicant joined the promotion post in pursuance of the order dated 6.1.98. It is also an undisputed fact that no opportunity of hearing was provided before issuance of the impugned order dated 26.2.98 (Annx.A2) by which the order passed on 6.1.98 was superceded and Shri M.C.Gupta, respondent No.4 was promoted in place of the applicant from the date mentioned in the impugned order.

6. It is argued by the counsel for the respondents that

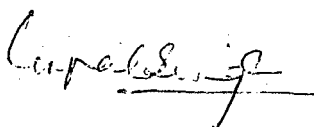
11. In Sardar Gulzar Singh Vs. UOI & Ors, SLJ 1998(1) CAT (PE) 21, it was held that action having civil consequences should not be done without giving notice.

12. In Laxmi Chand Vs. UOI & Ors, 1998 ATC 599, it was held that if any order involves civil consequences and has been issued without affording an opportunity such an order cannot be passed without complying with audi alteram partem - Party should be given an opportunity to meet his case before an adverse decision is taken.

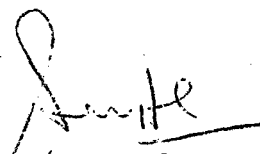
13. On the basis of the foregoing discussions and legal positions, it is abundantly clear that there has been a gross violation of principles of natural justice before passing the impugned order dated 26.2.98 (Annx.A1), hence this O.A can be allowed to the extent of quashing the impugned order at Annx.A1. It is also worthwhile to mention here that the applicant and respondent No.4, Shri M.C.Gupta, belonging to two separate seniority units, therefore, respondent No.4 would only be entitled to promotion under Jhalawar SSA. Accordingly promotion of the applicant vide order dated 6.1.98 should not have been superceded since the applicant was promoted against 10% of Kota SSA.

14. We, therefore, allow the O.A in part and quash and set aside the impugned order at Annx.A1 and direct the respondents to treat the applicant on promotion under Grade-IV 10% Promotion, in pursuance of order dated 6.1.98. The applicant shall be entitled to all consequential benefits. This order shall not preclude the respondents to pass appropriate order after affording an opportunity to show cause to the applicant.

15. No order as to costs.


(Gopal Singh)

Member (A).


(S.K. Agarwal)

Member (J).