

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 22.04.2003

OA No. 240/98

Nanag Ram Sharma s/o Bhawanlal Sharma, retired Senior Section Supervisor r/o P.No.25, Indira Colony, Jhotwara Road, Jaipur

.. Applicant

VERSUS

1. Union of India through the Secretary to the Govt. of India, Department of Telecom, M/o Communication, Parliament Street, New Delhi.
2. The Chief General Manager Telecom, Rajasthan Telecom Circle, Jaipur
3. The General Manager Telecom, Jaipur Telephones District, Jaipur

.. Respondents

Mr. P.V. Calla, counsel for the applicant

Ms. Shalini Sheoran, proxy counsel to Mr. Bhanwar Bagri, counsel for the respondents

CORAM:

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

Per Hon'ble Mr. H.O.GUPTA.

The applicant is aggrieved of the communication dated 27.1.98 (Ann.A1) whereby the respondents have held that he is not fit for notional fixation w.e.f. 1.6.74 in the cadre of LSG Clerk in Jaipur Telecom District. In relief, he has prayed for appropriate directions to the respondents to provide notional fixation w.e.f. 1.6.74 and thereafter fix his pay in a senior position with all consequential benefits, on various grounds stated in the

application.

2. The case of the applicant as made out, in brief, is that:-

2.1 He entered the service of the respondents as TS Clerk on 30.8.62 and thereafter having found suitable he was confirmed on the post of TS Clerk. The office of AOTR was decentralised in 4 divisions w.e.f. 1.4.67 and accordingly, his service was transferred to the Jaipur Phones Division in Rajasthan Circle.

2.2 Before 17.1.72, the seniority of all the Clerks working in the Division, Sub-Division and Circles were common and promotions were also accorded as per their length of service. On 17.1.72, the Jaipur Telephones District was constituted in a new Circle and several Clerks employed alongwith the applicant in the office of AOTR were later on accommodated in Jaipur Telephones District. At that time options from the employees working in other Units were not called for and in an arbitrary manner services of number of employees were transferred to the newly created Circle. In the Jaipur Telephones District a separate seniority was prepared and the employees so transferred in the newly created Circle were promoted on the basis of joining the Jaipur Telephones District Circle. Some employees senior to the transferee employees raised an objection and pray that the promotion ought to have been given on the basis of length of service, criteria which was in force. The employees junior to the applicant as per length of service in AOTR were promoted in the newly created Circle earlier to the applicant.

2.3 One Shri J.P.Koolwal, Section Supervisor agitated

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his grievance in the Court of law on the basis that since no option was given to the staff at the time of formation of Jaipur Telephones District, the concerned staff of remerger with Rajasthan Circle be given notional seniority to restore the status-quo-ante. The case was decided in favour of Shri Koolwal and benefit of LSG grade was given to Shri Koolwal from the date the same was provided to his juniors vide order dated 3.7.81 by implementing the judgment and granting revision of pay on notional basis and fixation under FR-27 to Shri Koolwal. When the benefit of LSG grade was provided to Shri Koolwal, similarly situated, who were not granted similar relief, also approached this Hon'ble Tribunal. After their representation were rejected vide order dated 5.4.89, an OA No. 509/89 was filed before this Hon'ble Tribunal in the name and style of P.N.Kapoor and Ors. Vs. U.O.I. and Ors. In that OA, the applicants therein, prayed that the official respondents be directed to consider their case for promotion to the post of LSG (Section Supervisor Operative) w.e.f. the dates relevant to different applicants as mentioned in that OA. It was also urged that when their juniors were promoted on the basis of seniority list of Rajasthan Circle, they may be given promotion in LSG Grade from retrospective effect alongwith all consequential benefits. The Hon'ble Tribunal decided the OA on 28.4.94 (Ann.A6). It was held that in view of the decision in the earlier OA, the applicants were entitled for promotion during the years 1974 to 1976 when their juniors were so promoted. The letter dated 29.6.72 (Ann.A2) contained a decision that there would be combined seniority of the officials in the District and in the Circles for the purpose of promotions in the District. A

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copy of the order dated 3.7.81 (Ann.A3) issued by the respondents is placed on record whereby large number of similarly situated employees were granted the benefit of LSG grade. As per this order notional benefit were granted to those employees who were promoted during 1974 to 1976 but refused to avail promotion and got the LSG later on. The applicant ~~has~~ also places on record a communication dated 3.4.81 (Ann.A4) of the DG, PST containing decision that since no option was given to the staff at the time of promotion to Jaipur Telephone District District, the concerned staff on re-merger with the Rajasthan Circle be given notional seniority to restore the status-quo-ante at the time of formation of the Jaipur District. Prior to the date of decision in OA No.509/89, no junior person to the applicant was promoted on the basis of the gradation list Ann.A5. Certain juniors to the applicant were granted relief who have agitated in OA No.509/89. After he came to know about the judgment delivered by the Hon'ble Tribunal, he made a detailed representation reuestion for providing him notional seniority and consequently granting him the LSG w.e.f. 1.6.74. A copy of his representation dated 22.6.94 is annexed at Ann.A7. The claim of the applicant was not considered for the reason that he had not entered in the litigation. The fact remains that the persons junior to the applicant in the gradation list (Ann.A5) were given notional fixation of seniority and benefit of fixation with consequential benefits, as may be seen from the order dated 18.8.94 (Ann.A8). As per the gradation list, the notional fixation of seniority should have been granted to the applicant w.e.f. 1.6.74 and in the order dated 18.8.94 (Ann.A8) his name should have been figured below Shri K.C.Jhalani (Sl.No.5) and above Shri

G.L.Chejara (Sl.No.6). When, no reply of his representation was received, he sent a notice for demand of justice on 28.6.95 (Ann.A9) and finally his case was rejected vide the impugned communication dated 27.1.98 (Ann.A1).

2.4 The applicant was promoted under CTBP scheme on completion of 16 years of service as LSG on 30.11.83, although the applicant should have been provided this grade w.e.f. 1.6.74. Thereafter he was promoted as Senior Section Supervisor under BCP scheme w.e.f. 30.11.90. While he was working as Senior Section Supervisor, he sought voluntary retirement w.e.f. 31.12.97 which was accepted by the respondents and he retired w.e.f. afternoon of 31.12.97.

2.5 Although the applicant was promoted on the post of Senior Section Supervisor on 30.11.1990 and continued till 31.12.97, the date of his retirement voluntarily, the respondents issued two gradation lists of LSG Clerks (Section Supervisor, now redesignated as TOA, Grade-II) corrected as on 30.9.93 and 1.2.95. In both the gradation lists (Ann.A10 and A11), the name of the applicant does not appear. From the perusal of the gradation lists, it would be revealed that the names of the employees junior to the applicant to whom the benefits of notional seniority was granted w.e.f. 1.6.74 or thereafter, were included. However, the Department vide Memo dated 9/17.7.97 (Ann.A13) has published a provisional seniority list of Senior Section Supervisors showing the position as on 30.6.97 inviting objections within 15 days. In the said gradation list, name of the applicant is at Sl.No.45 i.e. below the name of Shri E.C.Jhalsani and above the name of Shri G.L.Chejara. Against the name of Shri Chejara, the



date of entry in grade vic. basic grade of LSG/DTEP grade and BCP grade is mentioned as 10.9.62, 1.6.74 and 30.11.90 whereas against the name of the applicant against the same column the dates are mentioned as 30.8.62, 30.11.93 and 30.11.90. The precise grievance of the applicant is that when a person junior to him got LSG grade w.e.f. 1.6.74 why the same benefit is not granted to him particularly when the DG, P&T has taken a decision to provide LSG grade w.e.f. 1.6.74. At the time of formation of Jaipur Telephones District, he was not asked to submit his option nor he was posted earlier and refused to go on promotion at the time of considering cases after the judgment delivered by the Hon'ble Tribunal in the case of P.N.Kapoor and others. While issuing Ann.A8 the benefit of notional fixation or seniority in LSG ought to have been and should have been given and in view of the fact that he never foregone promotion, he should have been given all consequential benefits as it was given to ~~his seniority~~ <sup>B</sup> ~~to~~ Shri E.C.Jhalani and G.C.Chejara and others. Keeping in view the position in the said gradation list, he submitted a representation on 6.10.97 (Ann.A14) to the CGMT, Rajasthan Circle stating, inter-alia, that many juniors have been allowed LSG in the pay scale of Rs. 425-640/1400-2300 w.e.f. 1.6.74 and prayed that he may be given the same benefits as extended to his juniors. His representation was rejected vide communication dated 27.1.98 (Ann.A1). The reason given for rejecting the claim of the applicant for providing LSG w.e.f. 1.6.74 was on account of a chargesheet issued under rule 16 and penalty of Censure and that the DPC which met on 29.12.80, 7.1.83 and 21.11.83 found the applicant unfit hence the applicant was not entitled for the benefits. It is submitted that

the applicant's grievance is with regard to benefit of notional fixation w.e.f. 1.6.74 and how the recommendations of the DPC which met during the period 29.12.80 to 21.11.83 came in the way of the applicant.

3. The respondents have contested this application. Briefly stated, they have submitted that:-

3.1 The Jaipur Telephone Division was upgraded and constituted into a Telephone District only on 25.1.72 vide Deptt. of Communication letter dated 17.1.72 and all the Clerks working in the Jaipur Phones were given promotion to the selection grade in LSG Cadre on the basis of common gradation list of Circle as per the departmental instructions. It is admitted that some officials junior to the applicant were promoted in the LSG Cadre as the applicant was found unfit by the DPC and due to pendency of disciplinary case and also punishment of Censure under the Rules.

3.2 Shri J.P.Koolwal was given benefit only on being found fit for the same and not only on the basis of seniority but subject to fitness also. Keeping in view the decision rendered in the case of Shri Koolwal, an order dated 3.7.81 was passed by the respondents implementing the judgment and granting relief of fixation under FR-27 to the official concerned but the case of the present applicant is different as mentioned above. The case of the applicant for notional promotion from TS Clerk to the cadre of LSG Clerk from 1.6.74 was examined by the competent authority. The DPC which met on 29.12.80 and 7.1.83 found the applicant as unfit. The applicant was awarded the punishment of Censure. The scheme of OTPP was only introduced w.e.f. 30.11.1983 and as on 1.6.74 this

scheme was not in existence.

4. In the additional affidavit filed by the respondents, it has been submitted that the DPC held on 29.12.80 considered the case of the applicant for promotion to the post of Section Supervisor against 13 posts of 2/3 quota. The applicant was chargesheeted under Rule 16 of CCS (CCA) Rules, 1965 on 28.1.80. He was awarded a punishment of stoppage of one grade increment for 2 years without cumulative effect. When the DPC met on 29.12.80 the currency of punishment was in force. The DPC has considered this aspect as well as the ACR of the official for the year 1975-76, 1976-77 and 1978-79 and reported him to be an average officer. The second DPC met on 7.1.83. There were 18 posts of 2/3 quota to be filled in on the basis of seniority cum fitness. The DPC has considered the case of the applicant and he was not found fit for promotion due to unsatisfactory service record. The applicant had filed an appeal against the penalty of stoppage of increments for 2 years ordered vide memo dated 25.3.80 and the punishment was reduced to the Censure vide order dated 27.10.83 (Ann.A15). The ACR of the applicant for the year 1979-80 is adverse. The entire record of the confidential report of the official was taken into consideration by the DPC. The DPC was also convened on 21.11.83 to draw up the selection to 2/3 quota on the basis of seniority cum fitness for 9 posts. The DPC considered the case of the applicant alongwith others but he was not recommended for promotion due to unsatisfactory record.

5. In reply to the affidavit, the applicant, briefly stated, has submitted that the adverse remarks as

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mentioned by the respondents was never communicated to him. It has also been submitted that the punishment inflicted on 25.3.80 was converted to the Censure on appeal vide order dated 27.10.82. However, the adverse remarks for the year 1979-80 was considered without communication to him. P

6. Heard the learned counsel for the parties and perused the record.

6.1 It is an admitted fact that the applicant was senior to Shri G.L.Chejara. Shri Chejara was granted notional pay fixation and seniority in pursuance to the order dated 28.4.94 passed by the Tribunal in OA No.509/89 vide Deptt. of Telecom order dated 18.8.94 (Ann.A8) with effect from 1.6.74. No valid reason has been given as to why the applicant was not granted similar benefits as were given to the junior vide DOT order dated 18.8.94. The reason given by the respondents that the DPC considered his case on all three occasions when it met during the period 1980 and 1993 but the DPC found the applicant unfit for holding the post. The said DPCs have taken into consideration the ACRs of the applicant from the year 1975-76 onwards and also the revised penalty of Censure imposed on the applicant in 1980. If the junior to the applicant was promoted in the LSG grade w.e.f. 1.6.74, why the applicant's ACR and record were considered for subsequent years/period by the DPC, has not been explained by the respondents. In fact, the respondents cannot consider the ACRs and record for a period subsequent to the period when junior to the applicant was so promoted. It also appears that the applicant's case was considered for new vacancies which arose and not for grant of similar benefit as given to his junior w.e.f. 1.6.74, who

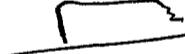
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was granted benefits as per the order of the Tribunal. However, during the course of arguments the learned counsel for the respondents, in consultation with the senior officer of the department, present in the court, conceded that the applicant has a claim for notional promotion etc. from 1.6.74 as given to his junior.

7. In view of above discussions, this OA is allowed. The respondents are directed to consider the case of the applicant w.e.f. 1.6.74 i.e. the date Shri G.L.Chejara, junior to the applicant, was promoted, taking into account the ACES and records prior to 1.6.74 and if found fit, grant him all consequential benefits as were granted to his junior Shri G.L.Chejara including further refixation of his pay in higher grade(s), as per rules. The respondents are also directed to <sup>to revise</sup> ~~his~~ retiral benefits and pay him additional amounts admissible under the rules. Let this order be complied within 3 months from the date of its receipt. No order as to costs.

  
(M.L.CHAUHAN)

Member (J)

  
(H.O.GUPTA)

Member (A)