

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 555/1999
T.A. No.

199

DATE OF DECISION 22-05-2002

L.S. Siddhu

Petitioner

Shri P.N. Jatti

Advocate for the Petitioner (s)

Versus

UOI & Others

Respondent

Shri R.L. Agarwal

Proxy counsel for Shri
Bhanwar Bagri, Advocate

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr.

M.P. Singh, Member(A)

The Hon'ble Mr.

J.K. Kaushik, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *Yes.*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *+*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *+*

J.K. Kaushik
(J. K. KAUSHIK)
OFFICIAL MEMBER

M.P. Singh
(J.K. Kaushik)
Member(J)
M. P. SINGH
MEMBER
(ADMINISTRATIVE MEMBER)

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

O.A.No.555/1999

Jaipur, this 22nd day of May, 2002

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

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

L.S. Siddhu

61/147, Rajat Path

Mansarovar, Jaipur

.. Applicant

(Shri P.N. Jatti, Advocate)

Versus

Union of India, through

1. Secretary

Deptt. of Telecom

Sanchar Bhawan, New Delhi

2. Chief General Manager

Rajasthan Circle, Jaipur

3. Principal General Manager

Telecom Distt. Opp. GPO

Mirja Ismail Road, Jaipur

.. Respondents

(Shri R.L. Agarwal, Advocate)

(For Shri Bhanwar Bagri, Advocate)

ORDER

Shri J.K. Kaushik, Member(J)


Shri L.S. Sidhu, the applicant has filed this OA under section 19 of the AT Act, 1985 seeking directions to the respondents to extend the benefit of Biennial Cadre Review (BCR) promotion to Grade III w.e.f. 16.10.1990 in the pay scale of Rs.1640-2900 and further promotion to Grade IV (10%) in the pay scale of Rs.2000-3200 w.e.f. 13.12.1995 with all consequential benefits.


2. The case of the applicant is that he was appointed as Telephone Operator on 1.1.1960. He became eligible for next promotion under OTBP Scheme on completion of 16 years of service. The Department of Telecommunication has introduced BCR Scheme on 30.11.1990 and as per that Scheme one was to be given promotion to the post of Grade III (Rs.1640-2900) on completion of 26 years of service. The applicant had completed 30 years of service



by the said date, i.e. 30.11.90 but he was not extended the benefit of promotion under the BCR Scheme whereas his next junior was given the said benefit. He submitted multiple representations to the authorities and ultimately he was given the promotion to the post of Grade III w.e.f. 29.2.1996, just on the date of his superannuation. Thereafter, he submitted another representation praying for grant of said promotion from 30.10.90 instead of 29.2.96. But his case has been turned down vide letter dated 13.11.1998. His claim regarding promotion to the post Grade IV has also been rejected by the same order.

3. Respondents have filed their detailed reply and have taken the preliminary objection that the claim of the applicant for promotion under BCR Scheme relates to 1990 and the application has not been filed within the time of limitation and merits dismissal on this ground alone. Further, it has been mentioned that the case of promotion of the applicant was considered by the DPC held in 1991-92 and again on 29.3.93 but he was found unfit due to unsatisfactory service records. Promotion of the applicant was again considered on 28.6.93 and findings of DPC were kept in a sealed cover due to pendency of a disciplinary case under Rule 14 of CCS(CCA) Rules, 1965 against the applicant.

4. Respondents have further averred that the case of the applicant was again reviewed by the DPC held on 29.6.85 and ad hoc promotion was allowed to him from 1.7.1995, in view of communication dated 13.12.95 (wrongly mentioned as 14.9.92 which is a typing error). The disciplinary case under Rule 14 was finally decided on 8.1.96 and punishment for recovery of Rs.392/- was awarded to the applicant. Thereafter ad hoc promotion  allowed to the applicant from



1.7.95 was cancelled and he was reverted on 23.1.96 in view of the punishment order issued on 8.1.96. His case for promotion to Grade III under BCR Scheme was again reviewed in the DPC held on 13.2.96 and he has been promoted w.e.f. 1.2.96 vide communication dated 29.2.96. It has also been mentioned that the applicant joined on 1.2.79 under Para 38 on account of transfer from Jaipur Telecom Division and his seniority was fixed at Sl.No.282. His case did not fall within the zone of consideration to Grade IV and his representation was accordingly rejected vide letter dated 13.11.1998. Respondents have reiterated in their reply that he was not extended promotion to Grade III on account of pendency of disciplinary case against the applicant and there is no infirmity in the matter and therefore the OA deserves to be dismissed on this ground also.

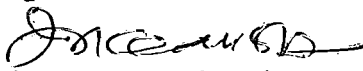
5. In applicant's rejoinder the above contentions have been controverted as there was no currency of punishment on 16.10.90. It has also been mentioned in the rejoinder that pendency of disciplinary proceedings does not bar the promotion under BCR Scheme in view of the judgement of the Guwahati Bench of the Tribunal dated 30.6.97 in OA 88/96 in the case of Anil Chandra Nath Vs. UOI (Swamy's case law 1997/2 page 319-321).

6. We have heard the learned counsel for the rival contesting parties and perused the records.

7. Regarding maintainability of the OA, it has been argued by the learned counsel for the respondents that the applicant is claiming benefit under BCR Scheme from the year 1990 and thus cause of action had arisen to him in the year 1990. Filing of this OA after



a long delay of about 9 years is not maintainable. The counsel has also relied upon the judgement of the Hon'ble Supreme Court in S.S.Rathore Vs. State of MP and contended that even repeated representations would not extend the period of limitation. It has also been submitted that the applicant has not filed any application for condonation of delay. We find that cause of action arose to the applicant on 30.11.90 when he became due for consideration for promotion to Grade III. As per law on limitation under section 21 of AT Act, 1985, OA ought to have been filed by 30.11.91 in case there was ~~no~~ representation and on 30.5.1992 in case there was ~~any~~ representation and the same was not disposed of. In the present case, we find that the OA has been filed on 12.11.99; thus there is a delay of about 8 years. Admittedly, no application for condonation of delay has been filed and thus the OA is badly hit by limitation and deserves to be dismissed on this ground. We are supported in this proposition by the decision of the Hon'ble Supreme Court in R.C.Sharma Vs. Udham Singh Mamal & Ors. 2000(1) SC 178. It was a Civil Appeal filed against the decision of the Tribunal which decided the case regarding non-promotion on merit, which was time barred overlooking the statutory provisions contained in Section 21(1) & (3) of AT Act, 1985. The apex court has held that Tribunal was not right in deciding the OA on merits. Thus, there is no need to decide this OA on merits. 8. In the result, for the reasons recorded above, we are of the considered view that the OA deserves dismissal on the ground of limitation and we do so accordingly. No costs.


(J.K. Kaushik)
Member(J)


(M.P. Singh)
Member(A)

/gtv/