IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. Nos 569/99, 460/2000 ~~xxxx~~
~~xxxxx~~ 461/2000, 463/2000

DATE OF DECISION 29.8.02

Jiv Raj Singh and three others — Petitioner

Mr. S.K. Jain — Advocate for the Petitioner (s)

Versus

Union of of India and 2 others — Respondent

Mr. Manu Bhargava — Advocate for the Respondent (s)

Ms. Shalini Sheron for
Mr. Bhanwar Bagri

Mr. N.C. Goyal

CORAM :

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman.

The Hon'ble Mr. Gopal Singh, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
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 ?

I agree
Gopal Singh 29/8/02
Mr. Gopal Singh
Hon'ble Member(A)

May help see
(G.L. Gupta)
Vice Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Original Application Nos. 569/99, 460/2000, 461/2000 and 463/2000

Jiv Raj Singh,
S/o Shri Raghunath Singh
working as Senior Telephone
Supervisor, under P.G.M.T.D.
Jaipur : Applicant in O.A. No. 569/99

K.G. Rabbani
S/o Shri K.G. Hussain
working as Senior Telephone
Supervisor, under P.G.M.T.D.
Jaipur : Applicant in O.A. No. 460/2000

Sita Ram Jangid
S/o Shri Bhonri Lal
working as Senior Telephone
Supervisor, under P.G.M.T.D.
Jaipur : Applicant in O.A. no. 461/2000

B.L. Pareek
S/o Shri Ram Nath Pareek
working as Senior Telephone
Supervisor under P.G.M.T.D.
Jaipur : Applicant in O.A. No. 463/2000

rep. by Mr. S.K. Jain : Counsel for the applicants.

- versus -

1. The Union of India through
the Secretary to the Government
of India, Department of Telecommunications
New Delhi

2. Chief General Manager, Telecom,
Rajasthan Telecom Circle,
Sardar Patel Road,
Jaipur. : Respondents.

3. Principal General Manager,
Telecom,
Jaipur District,
Jaipur. : Respondents.
in all the 4 O.As

rep. by Mr. Manu Bhargava : Counsel for the respondents in O.A. No. 569/99

Ms. Shalini Sheron for Mr. Bhanwar Bagri : Counsel for the respondents in O.A. Nos. 460/2000 and 463/2000

Mr. N.C. Goyal : Counsel for the respondents in O.A. No. 461/2000

CORAM : The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman
The Hon'ble Mr. Gopal Singh, Administrative Member

Date of order: 4.08.02

Per Mr. Justice G.L. Gupta

ORDER

In all above mentioned four applications identical question of law has arisen and therefore they were heard together and are being disposed of by this common order.

2. The facts have been borrowed from O.A. No. 569/99. Applicant was initially appointed as Telephone Operator in Jodhpur Division in Rajasthan Circle and was transferred from Jodhpur Division to Jaipur Division under Rule 38 of the P & T Manual Vol. IV on 10.12.70.

It is averred that at the time of transfer of the applicant seniority was maintained on Circle basis and therefore the transfer of the applicant did not adversely affect his seniority. It is stated that

the seniority of the applicant could not be changed for the purpose of his promotion to the higher cadre, as the new unit was a part and parcel of the wider unit. It is the further case for the applicant that seniority list (Annex. A.1) dated 30.4.97 was not circulated and it was also not got noted from the applicant and the applicant came to know about the seniority list only when the orders of promotion of Shri D.R. Balai dated 6.1.98 and Shri Gopi Ram Dhir dated 16.9.98 were issued. According to the applicant both of them are juniors to the applicant and therefore the applicant has been deprived of the promotion. Almost similar facts have been stated in the other 3 O.As.

The following reliefs have been sought :

i) That the impugned seniority list dated 30.4.97(Annex. A.1) be quashed and set aside and the respondents be directed to re-frame the seniority of the applicant on the basis of length of service in the cadre.

ii) That the respondents be directed not to defer the applicant from promotion to the post of Chief Telephone Supervisor on the ground of his transfer on request under Rule 38 of the Manual. The respondents be also directed to consider the applicant for promotion on the above post whenever the selections are held.

iii) That the applicant be declared to have been promoted on the post of Chief Telephone Supervisor from the date his juniors are promoted with all consequential benefits of pay fixation, arrears, seniority etc.

iv) Any other relief which this Hon'ble Tribunal deems fit may also be granted in favour of the humble applicant looking to the facts of the case.

3. In the reply the respondents' case is that the applicant was transferred from Jodhpur Division to Jaipur Division at his own request and as per the provisions of Rule 38 of the P & T Manual Vol. IV he was given bottom seniority. The further case of the respondents is that no person junior to the applicant has been given promotion and no cause of action has arisen to the applicant. It is stated that the seniority lists dated 18.1.84 and 10.12.97 were not challenged by the applicant within the period of limitation and therefore the application should be dismissed as barred by limitation. It is averred that the promotional cadre has been divisionalised, and seniority and promotion cases are to be decided only on division basis and not on circle basis.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. Mr. Jain, the learned counsel for the applicants contended that the applicants' seniority should be fixed on the basis of Rule 38(3) of the P & T Manual Vol. IV, read with Director General of Posts and Telegraphs letter dated 30.7.75. Relying on the decision of this Tribunal in S.P. Angiras vs Union of India and others and five other cases (O.A. No. 459/2000 and batch) decided on 14.5.2002, the learned counsel contended that the

respondents be directed to re-consider the case of the applicants.

6. On the other hand, Mr. Manu Bhargava, Ms. Shalini Sheron and Mr. N.C. Goyal, learned counsel for the respondents contended that the applicants case is to be governed by Rule 38(2) of the P & T Manual Vol. IV and not by Rule 38(3). They relied on the case of M.S. Rawat vs. Union of India (O.A. No. 335/99 and 4 other OAs - decided on 3.12.2001) by this Bench of the Tribunal. Their main contention was that the applications have been filed after the expiry of the period of limitation and therefore they should be dismissed on the ground of limitation.

7. We have given the matter our thoughtful consideration As already stated, the reliefs claimed in these OAs is for quashing the seniority list dated 30.4.97. It is seen that O.A No. 569/99 was filed on 26.11.99 and O.A. Nos 460/2000, 461/2000 and 463/2000 were filed on 25.9.2000.

Sec. 21 of the Administrative Tribunals Act, 1985, provides period of limitation for filing applications under the Administrative Tribunals Act. It is provided that an application can be filed against a final order within a period of one year from the date such final order is made. In the instant case, the impugned seniority list was published on 30.4.97. All these four applications have been filed much after the expiry of one year and therefore

they are liable to be dismissed on the ground of limitation alone.

8. It is significant to point out that the applicants have not filed Misc. Applications for condoning the delay in filing the O.As. Their Lordships of the Supreme Court have held in the cases of Secretary to Government of India and others vs. Shivram Mahadu Gaikwad (1995-(30)-ATC-635) and Ramesh Chand Shamma vs. Udham Singh Kamal and others (2000-SCC-(L & S)-53) and in Director of Settlement and others vs. D. Ram Prakash (2002-(1)-SCSLJ-91) that the Tribunal should not decide the case on merits if the application is not filed within the period of limitation and condonation of delay is not sought. That being the legal position, these applications are liable to be dismissed as barred by limitation.

9. Even on merits, the applicants cannot succeed. It is the case for the respondents in the reply that the promotional cadres have been divisionalised and seniority and promotion matters are to be decided on division based seniority and not on circle based seniority. The applicants have not filed rejoinder rebutting the avements made in the reply that promotion to Grade IV are to be made division-wise.

10. If the promotions are made division-wise then sub-rule (3) of the Rule 38 cannot apply for the purpose

of promotion to the post of Chief Telephone Supervisor. In the case of M.S. Rawat, (supra) it has been clearly held by a division Bench of this Tribunal, that promotions to Grade IV are only division wise and sub-rule (3) of Rule 38 of the P & T Manual Vol. IV is not applicable to such matters. It has been further held in that case, that the employee had come to Jaipur Division on his own request and therefore he could be placed at the bottom of the seniority list. There is no cause for us to take a view different than the one taken by the Division Bench in M.S. Rawat's case (supra)

11. As to the case of S.P. Angiras, cited by the learned counsel for the applicants, it may be pointed out that the case was not decided on merits. What was directed in that case is that the matter may be reviewed in view of the D.G. P & T's letter dated 30.7.75. It is significant to point out that that order was passed on the concession made by the learned counsel for the respondents. This fact is evident from the observations made at para No. 6 of the order.

Incidentally, it may be observed that one of the Hon'ble Members, who had disposed of the O.A. No. 459/2000 (S.P. Angiras-supra) was also a Member of the Division Bench which had decided M.S. Rawat's case. (O.A. No. 335/99-order dated 3.12.2001).

It is the rule of precedence that if subsequently the Bench wants to take a different view than the one taken by the earlier Division Bench the matter should be referred to a larger Bench. It seems that the decision in M.S. Rawat's case was not brought to the notice of the Bench hearing the case of S.P. Angiras and others.

12. Keeping in view of the order passed in M.S. Rawat's case, which is a reasoned order, holding that promotion to Gr. IV is to be made on division seniority basis, there is no occasion to give direction to the respondents to re-consider the seniority of the applicants in the light of the D.G. P & T's letter dated 30.7.75.

13. For the reasons aforesaid, we find no merit in these applications, which are dismissed with no order as to costs.

(Gopal Singh)
Administrative Member

(G.L. Gupta)
Vice Chairman.

jsv.