

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 07.03.2003

OA No.68/99

R.P.Kalra s/o late Shri Karam Chand Kalra r/o 34/337 Pratapnagar Housing Board, Sanganer, Distt. Jaipur, last employed on the post of Senior Section Supervisor in the office of Executive Engineer, Telecom Division, C/54, Priyadarshini Marg, Tilak Nagar, Jaipur.

.. Applicant

VERSUS

1. Union of India through the Secretary to the Govt. of India, Ministry of Communication, Department of Telecom, Sanchar Bhawan, Parliament Street, New Delhi.
2. Chief General Manager Telecom, Rajasthan, Chomu House, Jaipur
3. Executive Engineer (HQ) O/o Chief Engineer, Telecom Civil, Telecom Staff Quarter, Malviya Nagar, Jaipur

.. Respondents

Mr. C.B.Sharma, 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 order dated 10.2.98 (Ann.A1) whereby his representation for grant of promotion to the post of Telecom Operating Assistant (TOA) Grade-IV was rejected. In relief, he has prayed for

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quashing the said order with further directions to the respondents to consider him for promotion to Grade-IV as per his basic grade seniority at par with his next junior and allow all consequential benefits including payment of arrears alongwith interest at market rate.

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

2.1 He was initially appointed to the post of LDC on 26.11.60. Thereafter he was promoted to the posts of UDC in 1973, Head Clerk in July, 1980 and TOA Grade-III in September, 92.

2.2 For promotion from TOA Grade-III to Grade-IV (Rs. 2000-3200), BCR scheme was introduced by the Department of Telecom vide their letter dated 8.2.94. As per the procedure adopted by the respondents, he did not fall within the consideration zone. His, one junior Shri S.P.Vashistha in the basic grade of LDC, whose date of initial appointment to the post of LDC is 22.12.60, was allowed promotion to TOA Grade-IV against 10% posts under this BCR scheme from November, 1994.

2.3 Based on the cases filed before the CAT Benches, it was held that for the purpose of granting promotion under 10% BCR scheme to Grade-IV carrying the scale of Rs. 2000-3200, the criteria should be based on seniority in the basic cadre. The OM dated 13.12.95 (Ann.A3) was issued. Thereafter orders were issued for revising the promotions and also create the additional posts so as to avoid the reversion of the officials already promoted vide respondents letters dated 10.5.96 and 7.8.96 (Ann.A4 and A5).

2.4 He submitted his representation vide his letter



dated 27.9.96 (Ann.A6) for considering his case for promotion to Grade-IV as per the decision of the DOT, but the same has been rejected vide the impugned order dated 10.2.98 (Ann.A1) on the ground that the DOT order dated 7.8.96 is not applicable from retrospective date.

3. The main grounds taken by the applicant are as under:-

3.1 There is nothing adverse against the applicant for debarring him for promotion to the post of TOA Grade-IV from the date his junior, as per base grade seniority, was promoted. All persons, who went into litigation got their due benefits from the date the scheme came into force. There cannot be a reasonable classification between those who went in litigation and those who did not. The impugned order is ex-facie illegal, arbitrary and discriminatory and the same deserves to be quashed.

3.2 The order dated 7.8.96 is only a clarification and it has to be applied from the date the scheme came into force and there is no question of prospective applicability. The order of the DOT was issued in 1995 itself and the promotions were to be revised/given even by creating additional posts to put up the officials already promoted by adopting wrong criterion of seniority in Grade-III instead of adopting base grade seniority.

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

4.1 Shri S.P.Vashista was holding the post of TOA Grade-III (Rs.1600-2660) w.e.f. 9.9.92. He was promoted/placed in Grade-IV carrying a pay scale of Rs. 2000-3200 w.e.f. 1.11.94 against 10% BCR posts as per DOT

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letter dated 8.2.94. Shri Vashistha, being senior in the Grade-III, was given promotion to TOA Grade-IV after considering his inter-se seniority in TOA Grade-III as per DOT letter dated 30.8.94 (Ann.R1).

4.2 Later on, the guidelines for promotion to Grade-IV were changed and as per new criteria, promotion to Grade-IV were to be made from amongst TOA Grade-III on the basis of their seniority in the basic grade as per DOT letter dated 10.5.96 (Ann.A4). By the time the clarification was received regarding creation of additional posts of TOA Grade-IV to accommodate those TOA Grade-III who became eligible due to new norms, the applicant retired on 31.7.96 and hence his case was not considered and he was accordingly informed. There is no provision for giving effect to the ruling retrospectively. Moreover, no junior candidate to the petitioner was given benefit as claimed for by him prior to the date of his retirement. Shri Vashistha was given promotion to TOA Grade-IV after considering his inter-se seniority in TOA Grade-III. It is denied that the order dated 7.8.96 was to be applied from the date the scheme came into force.

5. The applicant has not filed rejoinder. Based on the order of the Tribunal, the respondents through MA No.119/03 filed copies of all relevant orders passed by the Department.

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 Vashistha according to base grade seniority. Shri Vashistha was promoted as TOA in Grade-IV

2

w.e.f. 1.11.94. The applicant retired from service on 31.7.96 on the post of TOA Grade-III.

6.2 During the course of argument, the learned counsel for the respondents fairly conceded that although the applicant was junior to Shri Vashistha based on the seniority in TOA Grade-III, but he would be senior to Shri Vashistha based on his seniority in the base grade. On a query from the Bench, the learned counsel for the respondents further submitted that if Shri Vashistha would not have promoted, the applicant would have been promoted based on his seniority in the basic grade. The learned counsel for the applicant, during the course of arguments, submitted that the respondents themselves have issued a letter dated 29.10.02 containing orders for grant of promotion in Grade-IV from retrospective effect to the retired personnel, as filed by them in their MA. According to the said letter, the applicant shall be entitled for placement in Grade-IV from retrospective date.

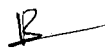
6.3 The said letter is reproduced below:-

"SUB: Granting of BCR Gr.IV promotion to the retired officials with retrospective date.

Kindly refer to this office letters No.22-6/94-TE-II dated 13.12.1995, 10/05/1996 and 13/02/1997, vide which it was instructed to give promotion under Gr.IV BCR Scheme, according to seniority in the basic grade. It was also instructed vide the said letter to review all the promotions to BCR Gr.IV since the inception of the BCR Scheme.

In this connection, queries were being received from various field units that whether the retired officials should also be considered for promotion to BCR Gr.IV retrospectively while reviewing the cases as per the above mentioned letters.


The matter has been examined, in




consultation with the Administrative Ministry viz. DOT and the Finance Branch of BSNL and it has been decided to grant promotion to the retired Gr.IV officials from the retrospective date in accordance with the procedure laid down vide this Office letter dated 13/12/1995 and the instructions laid down by DOP & T in their O.M. dated 12/10/1998 (copy enclosed). It has further been decided to fix the pay of such officials notionally and to revise the pension, accordingly."

6.4 In view of the above quoted letter and the admitted fact that if Shri Vashistha, who was junior to the applicant as per base grade seniority, would not have been promoted to Grade-IV, the applicant would have been so promoted, we find no reason as to why the applicant was not considered for placement/promotion to Grade-IV under BCR scheme before his retirement.

7. In view of above discussions, the OA is allowed. The respondents are directed to consider the case of the applicant for promotion to grade-IV under BCR scheme from the date Shri S.P.Vashistha was so promoted or from the date he would have been so promoted based on the base grade seniority, whichever is earlier. The pay of the applicant shall be notionally fixed. He shall not be entitled to any arrears of pay and allowances from the date he is so promoted till he retired. However, based on the notional pay fixation, he shall be entitled for revised pensionary benefits and also the arrears of the revised pensionary benefits. Let all the benefits under this order be made available to the applicant by the respondents within 3 months from the date of receipt of this order. No order as to costs.

  
(M.L. CHAUHAN)  
Member (J)

  
(H.O. GUPTA)  
Member (A)