FREE COPY UNDER RULE - 22
OF C.A.T. (PROCEDURE) RULES

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER : 11.5.2001

1. OA NO. 459/2000

S.P. Angiras son of Shri Ganga Vishnu Sharma aged about 53 years, now a days working as Sr. Telephone Supervisor under the P.G.M.T.D. Jaipur.

2. OA No. 414/2000

Banshidhar Kumhar son of Shri Mahadev Prasad aged about 53 years now a days working as Sr. Telephone Supervisor under the P.G.M.T.D. Jaipur.

Seal of The Central Administrative Tribunal Jaipur

3. OA No. 462/2000

R.P. Kurdia son of Shri Bharat Mal aged about 56 years now a days working as Sr. Telephone Supervisor under the P.G.M.T.D., Jaipur.

4. OA No. 413/2000

Onkar Mal Nayak son of Shri Ghashi Lal Nayak aged about 49 years now a days working as Sr. Telephone Supervisor under the P.G.M.T.D., Jaipur.

5. OA 464/2000

P.C. Sharma son of Shri Bhonrilal Sharma aged about 53 years now a days working as Sr. Telephone Supervisor under the P.G.M.T.D., Jaipur.

6. OA No. 291/2000

Gopal Chand Sogan son of Shri R.M. Sogan aged about 54 years now a days working as Sr. Telephone Supervisor under the P.G.M.T.D., Jaipur.

....Applicants

VERSUS

1. 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.

3. Principal General Manager Telecom, Jaipur District, Jaipur.

....Respondents.

For the Applicants : Mr. S.K. Jain

For the Respondents : Mr. L.N. Boss in OAs No. 459/2000, 413/2000 and 414/2000.
Mr. P.C. Sharma, Proxy counsel for Mr. Sanjay Pareek in OAs No. 462/2000, 464/2000 and 291/2000.

CORAM

Hon'ble Mr. A.P. Nagrath, Member (Administrative)
Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDICIAL)

S/Shri S.P. Angiras, Banshidhar Kumhar, R.P. Khurdia, Onkar Mal Nayak, P.C. Sharma and Gopal Chand Sogan have filed their individual OAs No. 459/2000, 414/2000, 462/2000, 413/2000, 464/2000 and 291/2000 respectively u/s 19 of the Administrative Tribunals Act, 1985. The cause of action are based on similar question of facts and law with idential prayers. Thus, we are deciding all these OAs through a single order. All the applicants have made identical prayer, which is as under :-

(i) That the impugned seniority list dated 30.4.1997 Annexure A/1 be quashed and set aside and the respondents be directed to reframe the senniority 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 posts 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.

2. The brief facts of the case are that all the applicants were appointed to the various divisions of Rajasthan Circle under Directorate of Post & Telegraph. They were allowed their transfer from their parent divisions to Jaipur division under Rule 38 of Post & Telegraph Manual Vol. IV on dated 10.5.72, 16.2.71, 26.2.71, 27.3.82, 1.8.85 and 1.3.77 respectively. Since then they continued in Jaipur Division. At present they are employed as Sr. Telephone Supervisor. They have been allowed the benefits of O.T.B.P. on completion of 16 years and promotion under BCR Scheme on completion of 26 years of service on the basis of entry into the basic grade. However, when the question of promotion to the post of Chief Telephone Supervisor came up for consideration, the respondents have denied the same for the reason that they lost their seniority in new division as they were allowed 'on request transfer' under Rule 38 of the P&T Mannual Vol. IV, which inter-alia provides that in case a of a request transfer from one division to another, one would

be placed bottom seniority in the new division.

3. It has been stated in the OA by the applicants that as per Para 38(3) of P&T Mannual Vol. IV, if the old and the new unit forms parts of a wider unit for the purpose of promotion to a higher cadre, the transferee (whether by mutual exchange or otherwise) will retain his original seniority in the gradation list of the wider unit and the post of Chief Telephone Supervisor falls in the category of wider unit i.e. the Rajasthan Circle unit. Thus there could be no loss of seniority. Further, it has been stated that the DOPT has issued a specific circular dated 30.7.75 (Annexure A/5) which lays down the procedure for dealing with the matter relating to determination of the seniority in case of telephone operators who got their transfer under Para 38, prior or after the formation of minor telephone districts. Despite this, the respondent department has issued the impugned gradation list dated 30.4.97. As per this seniority list, the position of the applicants have been shown much below to the persons, who were infact junior to them in the base grade. The seniority list has not been prepared as per the rules. Further there has been discrimination in as much as the other similarly situated persons have been granted the due benefits of further promotion to the post of Chief Telephone Supervisor and the applicants have been debarred. Hence these applications.

4. All these cases were admitted by this Tribunal on various dates and the notices were issued after admission. The respondents have filed reply and have controverted the facts and grounds mentioned in the OAs. It has been mentioned that granting OTBP on completionn of 16 years of service and benefit of promotion under BCR on completion of 26 years of service are governed by different sets of rules in as much as the same are based on the length of service and there is no effect of Para 38 of P&T Mannual Vol. IV on the benefit under OTBP and BCR Schemes but the case of promotion to the post of Chief Telephone Supervisor is a different one and

seniority rules laid down under the said para applies to the same as promotion to Grade IV i.e. Chief Telephone Supervisor is based on Divisional seniority.

5. We have heard the learned counsel for the parties and have very carefully perused the records of the case. The learned counsel for the applicant has heavily relied upon the judgements passed in OAs No. 541/97 Gajraj singh vs. Union of India and 542/97 Gaurilal Meena vs. Union of India & Others dated 23.3.2001 by this Tribunal convering up similar controvery. On the other hand learned counsel for the respondents drawn our attention to the judgement dated 3.12.2001 in OA 335/99 M.S. Rawat vs. Union of India & Others passed by this Tribunal wherein it has been said that the post of Chief Telephone Supervisor is Grade IV post and that promotion to this grade is as per seniority within the division. Rule 38(3) has in fact no application in the matter and since the applicants are seeking promotion to the post of Chief Telephone Supervisor, their seniority has to be regulated as per Para 38(2) wherein it has been provided that they will get bottom seniority.

6. We have perused these judgements and we find that the implications of letter dated 30.7.75 (Annexure A/5) have not been discussed in the judgement dated 3.12.2001 in OA No. 335/99(supra) relied upon by the resondents. Even the other two judgements dated 23.3.2001 (supra) which have been referred to by the learned counsel for the applicants were not brought to the notice of this Tribunal while deciding the case in 335/95 (supra). This issue regarding assignment of seniority nullifying the Para 38 as envisaged in letter dated 30.7.75 (Annexure A/5) has been dealt with and adjudicated upon in the aforesaid judgement dated 23.2.2001. The learned counsel for the applicant has pointed out that the respondents have not given effect to the said letter dated 30.7.75 (Annexure A/5) so far and requested that the OA may be disposed of on the lines this Tribunal has disposed of

the OA No. 541/97 and 542/97 vide judgement dated 23.3.2001. The learned counsel for the respondents did not have any serious objection to the said request made on behalf of the learned counsel for the applicants.

7. We are of the considered opinion that the ends of justice would be met if a similar direction is given to the respondents as has been done in the cases of similarly situated persons by this Tribunal in OAs No. 541/97 and 542/97 vide order dated 23.2.2001. This would also be in furtherance to maintain the judicial consisteny. Thus we pass the order as under :-

We dispose of this OA with a direction to respondent No. 2 to review the case of the applicants especially vis-a-vis the D.G.\ P&T's letter No. 257/124/74-STB.I/7486 of 30.7.1975 (Annexure A/5) and if the applicants are held entitled to restoration of their seniority, consider and decide the case of the applicant for promotion to the Grade IV in the pay scale of Rs. 2000-3200 w.e.f. the date such promotion has been given to their juniors. If, however, the applicants are not entitled to any benefit, they may be suitably informed through a reasoned and speaking order. This direction shall be implemented within four months of receipt of a copy of this order.

In the circumstances, there will be no order as to costs.

(J.K. KAUSHIK)
MEMBER (J)

(A.P. NAGRATH)
MEMBER (A)

AHQ

Certified That This is a True and Accurate Copy of The Document/Order As in the Case File No. ..... And That All The Matter Appearing Therein Has Been Legibly and Faithfully Copied With No Modification.

Signature Clerk Section Officer (Judicial)
C.A.T. Jaipur Bench