

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 20 July, 2001

OA No.467/2000 with MA No.356/2000

Ram Sahai Meena s/o Shri Gopi Ram Meena r/o A-25, Behind Geejgarh House, Jaipur, presently working as a Chief Telecom Supervisor O/o the Principal General Manager, Jaipur District, Jaipur

..Applicant

Versus

1. Union of India through the Secretary to the Govt. of India, Department of Telecommunications, Sanchar Bhawan, Sansad Marg, New Delhi.
2. Chief General Manager Telecom, Rajasthan Circle, Jaipur
3. Principal General Manager, Telecom District, Jaipur

.. Respondents

Mr. P.N.Jati, counsel for the applicant

Mr. Sanjay Pareek, counsel for the respondents

CORAM:

Hon'ble Mr. A.K.Mishra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member

ORDER

Per Hon'ble Mr. Gopal Singh, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, applicant, R.S.Meena has prayed for quashing the impugned order dated 11.8.2000 (Ann.A1) and for a direction to the respondents to grant BCR pay scale of Rs. 1600-2660 to the applicant on completion of 26 years of service.

2. Applicant's case is that he joined the Department of Telecommunications in the year 1964 and in terms of Biennial Cadre Review introduced by the Government of India, Department of Telecommunications, the applicant was entitled for grant of higher

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grade in the year 1990. However, the said benefit was not granted to the applicant on the ground that a chargesheet was pending against the applicant since 1987. The departmental proceedings came to an end on 28.2.96 and the penalty of Censure was imposed upon the applicant vide respondents' order dated 28.2.96 (Ann.A4). On the basis of this chargesheet the applicant was not given the benefit of BCR scheme from the due date. It is the contention of the applicant that Censure does not postpone the promotion. It has also been argued by the learned counsel for the applicant that the Inquiry Officer has given his report in the year 1987 and the Disciplinary Authority took 9 long years to impose the penalty of Censure upon the applicant and though the penalty of Censure was innocuous, it has resulted into postponing the promotion of the applicant by 6 years. The representation in this regard by the applicant has been rejected by the respondents vide their order dated 11.8.2000 (Ann.A1.).

3. In the counter, it has been submitted by the respondents that this application is beyond limitation and can be dismissed on this count alone. It has further been pointed out by the respondents that the case of the applicant for promotion to the higher grade was considered by the DPCs held on 30.7.91, 31.12.91, 29.6.92 and 3.3.93, but the DPCs did not recommend the case of the applicant for promotion under the BCR scheme. Again, the DPC met on 23.12.93 and its recommendations in regard to the applicant were kept in a sealed cover. In the intervening period, the applicant was considered fit for ad-hoc promotion to the higher grade w.e.f. 1.7.95 by the DPC held on 29.9.95. Further, the promotion case of the applicant was considered by the DPC held on 24.6.96 and the applicant was found fit for promotion w.e.f. 1.7.96. Accordingly, the applicant has been given the benefit w.e.f. 1.7.1996. It has, therefore, been averred by the respondents that this application is devoid of any merit and is liable

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to be dismissed.

4. We have heard the learned counsel for the parties and perused the record of the case carefully.

5. The applicant has also filed MA No. 356/2000 for condonation of delay in submitting this OA before the Tribunal. We would first consider this MA before proceeding further in the case. It has been pointed out by the respondents that the applicant was promoted under the BCR scheme w.e.f. 1.7.96 and this promotion was accepted by the applicant without any resistance. The applicant only now made a representation on 9.8.2000 for grant of benefit under the BCR scheme from the year 1990. This representation has been made 4 years after he has enjoyed the promotion under the BCR scheme. It has, therefore, been averred by the respondents that the application is barred by limitation and it deserves to be dismissed on this count alone. On the other hand, the applicant in his MA for condonation of delay has pointed out that the departmental proceedings against him came to an end only on 28.2.1996 and he was given the benefit of placing in the higher scale under the BCR scheme from 1.7.1996. The applicant was afraid due to the arbitrary action of the respondents for asking any relief. He has further stated that when he came to know in the month of August, 2000 that he is suffering a great loss in pay and allowances vis-a-vis his juniors then he represented his case to the Department. In the circumstances, the applicant has prayed for condonation of delay in submitting this application. This application has been filed on 25.9.2000. It is admitted that the cause of action arose to the applicant in the year 1996 and he made his first representation in the year 2000 after 4 years of the date when the grievance arose to him. In this view of the matter, the application is barred by limitation. However, in the interest of justice, we consider

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it appropriate to condone the delay in submission of this OA. Accordingly the delay is condoned and MA No. 356/2000 is allowed.

6. The learned counsel for the applicant has cited the case of Dilbag Singh v. Union of India and ors. printed at 1997 (3) SLJ (CAT) 112 in support of his contentions. In that case a chargesheet dated 28.8.1995 under CCS (CCA) Rules was served upon the applicant and the same was replied by the applicant on 14.9.1995. After completion of the inquiry, the applicant was imposed a penalty of Censure. In the meanwhile, the DPC was conducted in September-October, 95 and in view of the pending inquiry the result of the applicant had been kept in a sealed cover. Following the judgment of the Kerala High Court in K.Madhavan, Stenographer v. the Commissioner of Income Tax, Cochin, 1993 (1) SLJ 240, wherein it has been held that Censure inflicted as a penalty in the proceedings taken under CCS (CCA) Rules cannot have the effect of automatically postponing the employee's promotion, the Mumbai Bench of the Tribunal directed the respondents to open the sealed cover and the findings be implemented within one month. It was also directed that if the applicant is selected, he should be given promotion with effect from the date his juniors have been promoted with consequential benefits.

7. The applicant's case is that he was due for promotion under the BCR scheme in the year 1990. However, since a chargesheet was pending against him during that period, he could not be extended the benefit of the BCR scheme. The departmental proceedings came to an end on 28.2.1996 and the applicant was extended the benefit of BCR scheme on 1.7.1996. It is seen from the above narration that the applicant suffered a loss of promotion for 6 years only on account of the pending chargesheet. It is also not denied by the parties that the Inquiry Officer had submitted his report on 24.11.1987 and the

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Disciplinary Authority passed the order imposing penalty of Censure upon the applicant only on 28.2.1996 i.e. more than 8 years after the inquiry report was submitted to him. The respondents have not put in any plausible argument as to why the inquiry report was kept by the Disciplinary Authority for 8 long years. Had the Disciplinary Authority acted upon the inquiry report within a reasonable time, he would have given his order in the year 1988 itself and the applicant would have been considered and given the benefit of BCR scheme from the due date i.e. 1.1.1991, the date from which the BCR scheme <sup>was</sup> made effective. It is also seen that various DPCs that had considered the case of the applicant did not recommend him for promotion under the BCR scheme because of the pending chargesheet against the applicant. In the circumstances, we are of the view that had the chargesheet been decided by the Disciplinary Authority in a reasonable time, the applicant would not have suffered loss of promotion under the BCR scheme. It is also seen from the inquiry report dated 24.11.1987 that the applicant had already been awarded one monetary punishment by way of treating the period of absence as Dies-Non. In the conclusion, it has also been pointed out by the Inquiry Officer that non-observance of the departmental procedure was actually a situation forced upon the applicant by sheer ill-luck, sad demise of his father followed by his own sickness. In the light of these observations, we are of the view that the applicant deserves consideration. However, in regard to pay and allowances for the benefit under the BCR scheme from the due date, we are of the view that award of one year's pay and allowances prior to the date of filing of this application would meet the ends of justice. The applicant would, however, be entitled to notional fixation of pay under the BCR scheme from the due date. Accordingly, we pass the order as under:-

The OA is allowed. The applicant would be entitled for grant of benefit under the BCR scheme with effect from

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the due date, if otherwise eligible. He would, however, not be entitled to arrears of pay and allowances of fixation of pay in terms of these orders. The applicant would only be entitled to arrears of pay and allowances for one year prior to the date of filing of this application. The respondents are given three months' time to comply with this order. No costs.

*Gopal Singh*

(GOPAL SINGH)

Adm. Member

*A.K.Mishra*

(A.K.MISHRA)

Judl. Member