

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 20.12.2004

ORIGINAL APPLICATION NO. 182/2001

N.N. Pareek son of Shri Radha Kishan aged about 47 years resident of II/7 Telecom Colony, Jhunjhunu and working as Telephone Operation Assistant (P) (in short TOA (P) Khetrinagar, District Jhunjhunu.

....Applicant

VERSUS

1. Union of India through the Secretary to the Government of India, Department of Telecommunications, Ministry of Communications, New Delhi.
2. Chief General Manager Telecom, Rajasthan Circle, Jaipur.
3. General Manager Telecom, Telecom District, Jhunjhunu.

....Respondents.

Mr. Nand Kishore, Counsel for the applicant.
None present for the respondents.

CORAM:

Hon'ble Mr. Kuldip Singh, Vice Chairman (Judicial)
Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER (ORAL)

This OA has been filed to seek the following reliefs:-

"That the impugned order dated 29.3.2001 (Annexure A/1) be quashed being illegal, arbitrary and capricious of Article 14 of the Constitution of India and principles of natural justice.

(ii) That the respondents may be directed to promote the applicant in the grade of Rs.1400-2300 under OTBP Scheme from the year 1997 with the similarly situated persons has been promoted and all the consequential benefits may kindly also be allowed.

2. Notices of this OA were issued on 2.5.2001 and reply to the same was filed by the respondents. The applicant then filed a rejoinder but for one reason or the other, the case was adjourned to future dates. Unfortunately on 18.09.2003, the

Tribunal was informed that counsel for the applicant, Mr. K.L. Thawani, has expired. The applicant was, therefore, informed either to appear in person or engage another counsel to argue the case in his behalf. On 23.12.2003, Mr. Nand Kishore filed power on behalf of the applicant and sought permission to amend the OA. The same was granted. On 04.02.2004 in MA No. 46/2004, the amended OA was allowed to be filed in the presence of the learned counsel for the respondents. But inspite of repeated opportunities granted on 22.03.2004, 10.5.2004, 06.07.2004, 16.08.2004, 02.09.2004, 14.09.2004 and 12.10.2004, reply to the Amended OA has not yet been filed. Vide geminie order dated 24.11.2004, it was ordered that :-

"Reply to the Amended OA not filed. Let the matter be listed on 20.12.2004. In the meanwhile, respondents may file reply."

Insipite of this order, when the case was announced even in the second round on 20.12.2004 and , none was present on behalf of the respondents, it was decided to hear the case of the applicant being a case of 2001.

3. The brief facts of case as mentioned in the Amended OA are that the applicant was appointed as Telephone Operator, redesignated as Telephone Operating Assistant (P), in short TOA (P), in 1977 and was confirmed in 1978. On introduction of one time bound promotion Scheme in 1983, officials having completed 16 years of service were placed in next higher scale of pay. The applicant completed 16 years in service on 17.4.1993 and thus became entitled for next higher scale of pay i.e. Rs.1400-2300 on this date but he was awarded punishment of stoppage of one increment for three years without cumulative effect vide order dated 01.06.1991 (Annexure A/4). On expiry of this penalty, the applicant was allowed to draw usual increments w.e.f. 30.8.1995 vide order dated 21.8.1995 and he also became entitled to One

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Time Bound Promotion w.e.f. 1.8.1995. But he was not given this benefit on 1.8.1995 and even the benefit of the same was not granted on 1.8.1996 when there was nothing adverse against him, Similarly, he was not granted promotion w.e.f. 1.8.1997 vide order dated 10.8.1997 (Annexure A/6) in which reason for the same is stated to be "due to currency of punishment" even though no such punishment was in currency on that date.

4. That vide OA No. 283/1998, applicant assailed his transfer from Jhunjhunu to Khetri ordered on 17.6.1998. In this, he had made a prayer regarding his promotion under One Time Bound Promotion Scheme also but due to multiple reliefs, the relief regarding one time bound promotion was not pursued and withdrawn. Regarding the relief against the transfer, directions were issued to the respondents to consider the representation of the applicant and decide it through a detailed speaking order within a period of one month.

5. Regarding one time bound promotion, the applicant represented to the respondents on 3.7.1997 and reminded them on 4.8.1997 but of no avail.

6. It is further stated that the respondents have issued another promotion order dated 5.8.99 (Annexure A/7) but in this order also, the applicant has been denied promotion and remark has been inserted in the order that "CR for the period w.e.f. 1.4.1998 to 30.6.1998 not completed and Rule 14 Charge sheet case is pending." It is clarified that a charge sheet under Rule 14 of CCS(CCA) Rule 1965 was in fact issued to the applicant vide order dated 27.1.1999 (Annexure A/8) but the same was cancelled vide letter dated 24.9.1999 (Annexure A/9), Further that a charge sheet was again issued under Rule 14 of CCS(CCA) Rules, 1965 containing the same charges as before. Aggrieved by

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this, the applicant represented on 5.10.1999 against the second charge sheet on the same charges (Annexure A/11) but no reply was received. However, on the basis of report of the Inquiry officer, the respondents have cancelled the second charge sheet also vide order dated 6.2.2001 (Annexure A/12).

6. From the above, it is clear that neither a charge sheet was pending against the applicant nor is there a currency of penalty against him since 1.8.1995, yet the applicant has not been granted promotion under One Time Bound Promotion Scheme after completion of 16 years of service by quoting one reason or the other and the same has been withheld vide General Manager Telecom, Jhunjhunu's order dated 29.3.2001 (Annexure A/1) stating therein that a case of Rule is under review as per second charge sheet dated 24.9.99. Applicant tried to clarify the position again through representation vide Annexures A/13 and A/14 but no response has been received. Therefore, this OA has been filed.

7. Since the period of 224 days of 'Dies Non' was regularised as 'EOL' vide letter dated 24.6.1997 (Annexure A/15) and date of increment has been preponed to 13.1.1994 and there was no punishment whatsoever on the date of DPC held on 10.7.1997, therefore the applicant was rightly entitled to One Time Bound Promotion on 10.7.1997. The applicant represented the case to the respondents but it was rejected on 8.11.2000. That applicant was considered for promotion in the scale Rs.4000-6000 as per the respondents letter dated 15.2.2002 and was considered for One Time Bound Promotion w.e.f. 26.09.2001 vide letter dated 03.10.2001 (Annexure A/16) much after this OA has been filed.

8. In the ground, it is stated that under One Time Bound Promotion Scheme, the applicant was due for promotion on

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17.4.1993. However, its denial due to currency of penalty upto 1.8.1995 is as per rules but denial of the same thereafter is arbitrary and illegal. Subsequent charge sheets dated 27.1.1999 and 24.9.1999 were either cancelled and let off due to which no disciplinary case or punishment is pending which also makes the impugned order dated 29.3.2001 (Annexure A/1) patently illegal.

9. Respondents have not filed ^{to reply} to the Amended OA. However, reply of the respondents dated 26.1.2001 available on the file is being considered. In it, it is stated that the applicant completed 16 years of service in the Department on 30.8.1994 and not on 17.4.1994. Due to the punishment of withholding of one grade increment for three years without cumulative effect i.e. official will not get any increment for the next three years from June, 1991, the period of punishment ended on 31.5.1994. In support of this, Annexure R/1 has been annexed. Due to the pendency of this punishment, he was not considered for promotion till year 1994. That vide order dated 17.7.1996, certain officers were promoted under OTBP Scheme and the case of the applicant was also sent but it was not found fit for promotion due to unsatisfactory service record. Proceedings of this DPC are annexed as Annexure R/3. The name of the applicant was again forwarded to DPC held on 10.7.1997 for the year 1997 but the DPC again did not find the candidature of the applicant satisfactory for promotion due to currency of punishment (Annexure R-3/6). No case was recommended for OTBP on 8.9.98 (Page 62 of Reply) due to unsatisfactory record of service of the candidates and against the name of the applicant remark "CR record not satisfactory" has been inserted. A charge sheet under Rule 14 was issued by the competent authority to the applicant on 27.1.1999 That a charge sheet dated 24.9.1999 was also issued which came in the way of his promotion and due to the pendency of this, the applicant was not considered for promotion.

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10. Replying to the grounds, the above facts are reiterated and the Allegation of arbitrariness and illegality are denied.

11. Although rejoinder has also been filed. but the same is not being considered because after this the prayer for submission of amended OA was granted and it is noticed that a few more facts have been added in Para No. 4 of the amended application, ^{ex} also the prayer clause was amended to claim One Time Bound Promotion from 1997 in place of 1995.

12. As stated above, inspite of repeated opportunities given to the counsel for the respondents to file reply to amended OA, no reply has been filed till date and inspite of clear order that no further adjournment will be given it being an OA of the year 2001, and the case will be heard on the basis of facts available on file, on the next date of hearing the counsel for the respondents did not make appearance on 20.12.2004. Therefore, the arguments were heard on behalf of the applicant on that day.

13. The main line of argument of the applicant is that only one punishment dated 1.6.1991 has been awarded to him which is stoppage of one annual increment for next three years without cumulative effect i.e. the official will not get any increment in next three years and although in the reply two more charge sheets dated 27.1.1999 and 24.9.1999 have been mentioned, the charge sheet dated 27.1.1999 was cancelled vide order dated 24.9.1999 (Annexure A/9) and charge sheet dated 24.9.1999 was also closed as "let off" vide order dated 6.2.2001 (Annexure A/12). Thus on the face of record, no other punishment than punishment dated 1.6,1991 exists, the currency of which came to an end on 31.5.1994 and after which date he has been granted

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further increment also. It is further stated that due to conversion of 224 days' Dies Non period w.e.f. 16.1.1992 to 26.8.1992 into EOL, the date of annual increment of the applicant also got preponed to 13.1.1994 instead of 30.8.1994 and in these circumstances not considering him for One Time Bound Promotion thereafter under wrong presumption that there was currency of punishment against him is factually wrong and arbitrary. He has also asserted that the fact that inspite of innumerable opportunities, the respondents have not filed reply to the Amended OA it proves that respondents have nothing more to say in the matter and the Tribunal may find the case of the applicant fit for allowing.

14. We have carefully considered the facts and the arguments putforth by the applicant. From the facts available on file, it is clear that the applicant was appointed as Telephone Operator in 1977 and was confirmed on 01.03.1978. The respondents introduced OTBP Scheme on 30.11.1983 and the same was applicable to the applicant and under this Scheme, in normal course, he would have become eligible for promotion in April, 1993 but due to the penalty of stoppage of one grade increment for three years without cumulative effect, consideration of his promotion got deferred to future date. Counsel for the applicant correctly contends that the further two charge sheets issued vide order dated 27.1.1999 and 24.9.1999 were withdrawn due to which they do not effect applicant's One Time Bound Promotion claim. On the other hand, the respondents in their reply have stated that from 1995 onwards they had forwarded the case of the applicant to the DPC and in support of it, they have also annexed proceedings of the DPC dated 17.7.1996, 10.7.1997, 08.09.1998 and 29.03.2001. All these have been collectively marked as Annexure R/3. But the said DPCs did not consider him suitable for promotion for the reasons stated in a statement

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form on Page No. 54 marked as Annexure R/3 which reads as follows:-

"Found in various DPC's w.e.f. 1993 to 2001

1. 1993-94 Charge sheet under Rule 16 pending.
2. 1994-95 Unsatisfactory service record.
3. 1995-96 Currency of punishment.
4. 1996-97 Currency of punishment and unsatisfactory Service Record.
5. 1997-98 Currency of punishment.
6. 1998-99 CR Record not satisfactory.
7. 1999-2000 Rule 14 Charge sheet pending.
8. 2000-2001 Charge sheet Rule 14 vide X-1/NNP/99-2000/2 dated 24.9.1999 is under Review.

S.D.E. (Admn.)
O/o GMTD Jhunjhunu."

Due to glaring variance of facts in as much as the currency of only punishment awarded to the applicant have come to an end in 1994 but currency of departmental action, unsatisfactory record and currency of punishment have been shown even in subsequent years, the matter was looked more carefully in the light of the ruleves governing the OTBP Scheme annexed by the applicant as Annexure A/3. para 5 of the Scheme reads as under:-

5. Immediately on introduction of the Scheme, the official who have already completed 16 years of regular service in respective grades will be identified and action will be taken to hold departmental promotion committee meetings for their promotion. The DPC will assess the fitness of all officials who have completed or will complete 16 years of service. All formalities should be completed within a period of 3 months and promotions will be granted retrospectively from the date of effect of the scheme.

This DPC will also consider the cases of officials who will be completing 16 years of service between 1st December, 1983 and 31st March, 1984. In their cases, promotions will be given from the date they complete 16 years of service subject to normal procedure relating to promotion (emphasis supplied).

In subsequent years, on 1st of April of every year, the official who will complete 16 years of service prosecutively upto 31st of March next year will be identified and action will be taken to complete the DPC formalities within a period of 3 months. The official who become eligible for promotion earlier than the date of the

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DPC, subject to their selection, will be given promotion retrospectively from the date they complete 16 years of service. Others who will complete 16 years of service after DPC formalities are over will be brought on the approved list and will be given promotion from their due dates, subject to normal procedures relating to promotion.

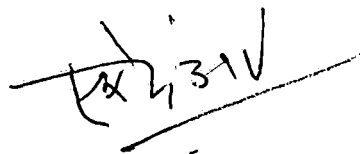
Posts in the basic grade will be upgraded to the higher grade with effect from the date the incumbent is promoted in the manner described above."

15. From the underline portion above, it is clear that even for consideration of promotion under this OTBP Scheme, normal procedure for promotion has to be followed. Thus it is clear that the applicant was imposed one punishment in the year 1991 and even though two charge sheets issued to him in 1999 subsequently cancelled, the contemplation for holding of departmental inquiry against him existed in the minds of the respondents during the subsequent years also. Since promotion can be granted only on the basis of suitability for higher responsibility based on satisfactory record of service, the respondents did not grant promotion to him. Due to this supposed unsatisfactory record of service basis for it has been prepared by them in a statement form at Annexure R/3. Normally we should not have looked into the contents of the charge sheet, which was subsequently withdrawn especially when the respondents have not drawn out attention to it since the question of conduct of officer is involved, we looked into Annexure A/8 dated 27.1.999. According to this applicant was alleged to be taking active part in political activities. Subsequently, this charge sheet was withdrawn, but we can surmise that these activities would have been weighing on the minds of the respondents while considering the conduct of the applicant unsatisfactory while refusing him promotion in the years 1995 to 2001. Thus it appears that although on the basis of absence of record of punishment, he was fit for promotion after 1994 but thereafter the respondents have not given him promotion due to contemplation of departmental action and unsatisfactory conduct.

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16. Since we do not have the benefit of presence of the counsel for the respondents to clarify these issues, we feel inclined to partly allow this OA with the directions to the respondents to review the case of the applicant for promotion for OTBP after expiry of period of punishment on 31.5.1994 on the basis of 'dispassionate scrutiny of his service record including CRS etc. Doing this review the subsequent charge sheets should not come in his way and they shall carefully assess the suitability of the applicant for One Time Bound Promotion on the basis of rules governing such promotion as enjoined in the Scheme of OTBP issued in the year 1983. The respondents are further directed to complete the above review within a period of three months from the date of receipt of a copy of this order and pass a detailed speaking order explaining the facts and circumstances to substantiate their decision. The applicant shall be given all consequential benefits from the date they are found due to him but monetary benefits will be only from the date one year prior to the date of filing this OA.

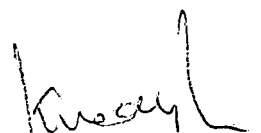
16. With these directions, the OA is disposed of with no order as to costs.



(A.K. BHANDARI)

MEMBER (A)

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(KULDIP SINGH)

VICE CHAIRMAN