

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

DATE OF ORDER: 05.01.2004

1. OA 136/2002

Babu Lal Meena son of Shri Mool Chand Meena by caste Meena aged about 42 years, resident of Sector No. 11 House No. 533, Malviya Nagar, Jaipur at present working as Assistant Engineer (Electrical) (P&D), BSNL, Electrical Circle, Jaipur.

2. OA 137/2002

Devi Lal Meena son of Shri Bhahbu Lal Meena aged about 45 years, resident of Quarter No. 5/T-III, Chakchanpura, Telecom Staff Quarter, Bias Godam Road, Sawaimadhopur (Rajasthan) at present working as Assistant Engineer (Electrical) in Telecom Electrical Sub Division, Sawaimadhopur.

.... Applicants

VERSUS

1. Union of India through its Secretary, Department of Communication, Ministry of Telecommunication, Sanchar Bhawan, New Delhi.

2. Chairman-cum-Managing Director, BSNL, Sanchar Bhawan, New Delhi.

3. Member (Production), Department of Telecommunication, Sanchar Bhawan, New Delhi.

4. Senior DDG (Electrical Works), Chandralok Building, 10th Floor, Janpath, New Delhi.

5. Dy. Director General (Electrical Works), Chandralok Building, 10th Floor, Janpath, New Delhi.

.... Respondents

Mr. Rajendra Soni, Counsel for the applicants.

Ms. Shalini Sheoran, Proxy counsel for

Mr. Bhanwar Bagri, Counsel for the respondents.

CORAM:

Hon'ble Mr. R.K. Upadhyay, Member (Administrative)

Hon'ble Mr. Bharat Bhushan, Member (Judicial)

ORDER

PER HON'BLE MR. BHARAT BHUSHAN, MEMBER (JUDICIAL)

Both these OAs filed on identical grounds are being disposed of by a common order.

2. The main order would be placed in OA No. 136/2002, while copy in OA No. 137/2002.

3. The applicants in both the cases belong to ST category. After having passing the Higher Secondary Examination in Subjects Science Maths in the year 1977 and there after passing the Diploma in Electrical Engineering in the year 1980, they were initially appointed to the post of Jr. Engineer (Electrical) in PET Deptt. The applicant in OA No. 136/2002 was appointed on 20.7.1982 whereas in the latter case, the applicant was appointed on 20.1.1984. In the former case, the applicant was promoted to the post of Assistant Engineer (Electrical) w.e.f. 15.3.1992 whereas in the latter case, the date of promotion as Assistant Engineer was 22.3.1993. It is the case of both the applicants that after completing eight years of regular service on the post of Assistant Engineer, they became eligible for promotion to the post of Executive Engineer (Electrical). In respect of the applicant in the first case, the eligibility^{date} for such promotion to the post of Executive Engineer (Electrical) is stated to be 14.3.2000. It is their case that in the final seniority list of regular Assistant Engineers (Electrical) issued on 14.3.2000, the name of the applicant in the first OA is shown at sl. no. 231 whereas the name of the applicant in the latter case has been shown at sl. No. 233. It is stated that two persons, namely, S/Shri M.B. Rajanna and M.B. Nadge who were at sl. nos. 122 and 123 respectively in the seniority list in SC category had already since been promoted to the post of Executive Engineer (Electrical) in January, 1999 and were continuing on the said posts. But it is

alleged that the applicants were denied such promotion to the posts of Executive Engineer (Electrical). The same was due to them.

4. It is alleged that applicants made several representations but the same too were dismissed. Such act of the respondents have been assailed on the ground that it was violation of Articles 14, 15 and 16 of the Constitution of India and various office Memorandums issued by the Government of India from time to time. It is alleged that the applicants belonging to ST category, had completed eight years of regular service on the post of Assistant Engineers, which was the eligibility condition for the promotion to the post of Executive Engineer, but inspite of the vacancies in ST category available, they have been denied promotion on the ground that they were not coming in the zone of consideration of five times of the vacancies.

5. In the reply filed by the respondents, they have controverted the allegations of the applicants. It is contended that on the strength of office Memorandum dated 30.4.1983 and the clarification dated 30.9.1983 issued in that respect guidelines on the subject (Annexure R/1), which were in vogue at the relevant time, the applicants did not fall within the zone of consideration of five times of the vacancies. So, they could not be considered earlier but now that the guidelines had since been revised by the DORFT vide their CM dated 15.3.2002 (Annexure R/2) wherein it was provided that in case of ad-hoc promotion, if sufficient SC/ST candidates were not available within the range of actual vacancies, additional SC/ST candidates to the extent required were to be located by going down the seniority list (i.e. the restriction of five times the number of vacancies were withdrawn). ~~And now~~ ^{now} ~~after the revision of the guidelines,~~ the applicants were considered against ST vacancies by going down the seniority list and on finding them fit by the DPC held on 7.10.2002, were promoted to the grade of EE(E) on ad hoc basis for a period of six months or till the posts were filled up on regular basis whichever is

earlier. This was done vide office order dated 22.10.2002.

6. We have considered the rival contentions and have gone through the material on record. The respondents have taken us through the Govt. of India, Deptt. of Personnel & A.R. O.M. No. 36011/14/83-Estt.(SCT) dated 30.4.1983 and 30.9.1983 (Annexure R/1) on the subject of consideration of cases of Scheduled Castes/ Scheduled Tribes employees in ad hoc promotions. Here it would be useful to reproduce herebelow only the relevant portion of the O.M. on the basis of which the applicants had been denied promotion all along. The said portion reads as under:-

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" 2. It has been decided that the Scheduled Castes/ Scheduled Tribes candidates who are within the number of actual vacancies should be considered in accordance with their general seniority on the principle of seniority-cum-fitness and if they are not adjudged unfit, they should all be promoted on ad-hoc basis. If however, the number of Scheduled Castes/Scheduled Tribes candidates found fit within the range of actual vacancies is less than the number of vacancies identified as falling to their share, then additional Scheduled Castes/ Scheduled Tribes candidates to the extent required should be located by going down the seniority list but within 5 times the number of vacancies being filled on a particular occasion, subject of course, to their eligibility and fitness."

7. Hence obviously, the aforesaid provision had proved to be the obstacle in granting promotion to the applicants. So it was only after the revised O.M. dated 15.3.2002 was issued pursuant to the Hon'ble Supreme Court's judgement dated 7.9.2000 that the respondents held the DPC and granted promotion to the applicants in accordance with. But the grievance of the applicants is that they have been granted promotion at a later date only on account of the delayed action on the part of the respondents in issuing to revised O.M. by virtue of which the applicants who were hitherto ineligible had become eligible for being considered to the post of Executive Engineer (Electrical)."

8. We have bestowed our careful consideration to the pleas raised hereinbefore. In our opinion, the Hon'ble Supreme Court has quashed the O.M. dated 30.9.1983 on 7.9.2000. The claim of the applicants is that they had completed eight years of service as follows; Shri Babu Lal Meena on 14.3.2000 and Devi Lal Meena on 21.01.2001. It is claimed by the applicants that they should be promoted alongwith others who have been promoted vide order dated 03.4.2001 (Annexure A/11). The Hon'ble Supreme Court had already quashed the O.M. dated 30.9.1983 on the date when the DPC was held. It is in this background that both the applicants have claimed their promotion either from the date of completion of qualifying service of eight years or in the alternative from the date when others were promoted vide order dated 03.4.2001. In view of the facts of these cases as aforesaid, the respondents are directed to hold the Review DPC for consideration of their promotion w.e.f. 03.4.2001 as claimed by the applicants. We direct accordingly.

9. With these observations, both these OA are disposed of without any order as to costs.

(BHARAT BHUSHAN)
MEMBER (J)

(R.K. UPADHYAYA)
MEMBER (A)