

THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO.249/2002
AND
ORIGINAL APPLICATION NO.331/2002

May 17 Ad
2011

~~HMKA~~
Date 21/4/2013

Date of Decision : _____

P.P.Sharma : Petitioner.

Mr. P.N.Jatti : Advocate for the Petitioner(s)

Versus

Union of India & Ors. : Respondent.

Mr.Neeraj Batra : Advocate for Respondent(s)

CORAM

The Hon'ble Mr.Justice G.L.Gupta, Vice-Chairman,
The Hon'ble Mr. A.P.Nagrath, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordship wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(G.L.GUPTA)
VICE-CHAIRMAN

B.

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

1. ORIGINAL APPLICATION NO.249/2002
2. ORIGINAL APPLICATION NO.331/2002

Date of Decision : 05.05.03

1. ORIGINAL APPLICATION NO.249/2002.

P.P.Sharma S/o. Shri Champa Lal Sharma by caste Sharma aged about 57 years, resident of 62, Shiv Ram Colony, Jagatpura, Jaipur, 17, presently working as Private Secretary to the General Manager, Operation and Development Telecom, Jaipur Telecom District, Jaipur – 15.

...Applicant.

Versus

1. Union of India, through the Secretary to the Govt. of India Department of Telecom, Sanchar Bhawan, Sansad Marg, New Delhi -110 001.
2. Chief Managing Director, Sanchar -20, Ashoka road, New Delhi – 110 001.
3. Chief General Manager, Telecom Rajasthan Circle, Jaipur – 8.
4. Geneal Manager, Jaipur Telecom District, Operation and Development, Door Sanchar Bhawan, Lal Kothi, Tonk Road, Jaipur – 15.

...Respondents.

2. ORIGINAL APPLICATION NO.331/2002.

Lal Singh Vikal S/o. Shri Kumar Sain by cast Jatav aged about 39 years, resident of S-55, Geeggarh Vihar, 22 Godown, Hawa Sarak, Jaipur, presently working as PS (G) in the office of the Chief General Manager, Telecom Rajasthan Circle, Jaipur-8.

...Applicant.

Versus

1. union of India, through the Secretary to the Government of India, Department of Telecom, Sanchar Bhawan, New Delhi.
2. Chief General Manager Telecom Rajasthan Circle, Jaipur-8.

...Respondents.

Mr.P.N.Jatti, counsel for applicants.

Mr.Neeraj Batra, counsel for respondents.

CORAM

Hon'ble Mr.Justice G.L.Gupta, Vice-Chairman,
Hon'ble Mr.A.P.Nagrath, Member (A).



: O R D E R :

(Per Hon'ble Mr.Justice G.L.Gupta)

Both the O.As. have been heard together and are being disposed of by this common order.

2. The relief claimed in O.A. No.249/2002 filed by P.P.Sharma is as follows:

"8.1 That by a suitable writ/order or direction the impugned orders vide Annexure A/1 dated 16.4.2001 be quashed and set aside and the respondents be directed. The seniority of the applicant be counted of Sr.P.A. (G) with effect from 10.8.1992 to 15.7.1994 instead of 3.11.2000.

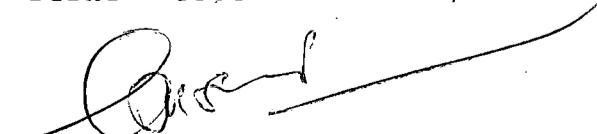
8.2. Any other relief which the hon'ble bench deems fit."

The relief claimed in O.A. No.331/2002 filed by Lal Singh Vikal is as follows:

"8.1. That by a suitable writ/order or direction the impugned order dt. 28.3.2001 vide Annexure A/1, A/11 with the order dated 3.11.2000 Annexure A/9 be quashed and set aside and further by a suitable writ/order and direction the respondents be directed to treat the regular promotion of the applicant as Sr. P.A.(G) in the pay scale of 6500-10500 with effect from 18.11.98, which were allowed to the applicant on regular basis.

8.2. Any other relief which the hon'ble bench deems fit."

3. The relevant facts are these. Lal Singh Vikal was appointed as a Senographer in 1983 and P.P.Sharma was appointed in the year 1972. They became Stenographer Gr.II by promotion. P.P.Sharma was promoted to the post of Senior P.A. (G) in the scale of Rs.2000-3200 vide order dt. 15.7.1994 on ad hoc basis and it was stated in the order that the seniority would be determined in accordance with the Rules on the subject. Applicant Lal Singh Vikal was promoted to the post of Sr. P.A. vide order dt. 18.11.1998. In the order, it was stated that the promotion was being made on the advise of the DPC and in pursuance of the instructions contained in DOT New Delhi letter No.372-3/93-STG-III dated 15.04.1994. By



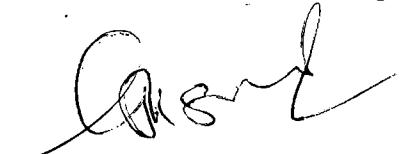
the subsequent order dt. 3.11.2000 both the applicants were promoted to the cadre of Senior P.A. (G) GCS - Group 'B' on regular basis in the pay scale of Rs.6500-10500 w.e.f. the date of assumption of charge as regular Sr. P.A.

4. The grievance of applicant Lal Singh Vikal is that he had already been promoted on the post of Senior P.A. (G) vide order dt. 18.11.1998 on the basis of the recommendation of the DPC and therefore his promotion to the said post could not be ordered from a later date in the year 2000. The say of applicant P.P.Sharma is that the period from 1994 to 2000 in which he worked on ad hoc basis should be counted for the purpose of seniority.

5. In the counters, the Respondents case is that the applicants had been given promotion in terms of the order dt. 15.1.1994 issued by the Director, as modified vide order dt. 3.7.1997 and therefore, the promotion of applicant Lal Singh Vikal vide order dt. 18.11.1998 has to be treated as 'local officiating basis' and the period of ad hoc service rendered by applicant P.P.Sharma cannot be counted for the purpose of seniority.

6. We have heard learned counsel for the parties and perused documents placed on record.

7. The contention of Mr. Jatti was that once applicant Lal Singh Vikal had been given promotion on regular basis in the year 1998, the promotion could not be treated to be ad hoc for the period 18.11.1998 to 3.11.2000. It was contended that a right had accrued to applicant Lal Singh Vikal as promoted on regular basis and it could not be taken away from the applicants without following the principles of natural justice. His



further contention was that when the applicants had been given promotion on the basis of the recommendation of the DPC the services rendered by them on the promoted post should be treated as regular basis for the purpose of seniority. He relied on the case of Baburam Vishram Pathare Vs. Union of India [2000 (3) ATJ 485] and Rudra Kumar Sain & Ors. etc. Vs. UOI & Ors. [2000 (3) ATJ 392].

8. The contention of Mr. Batra, learned counsel for the respondents was that in the order issued in favour of P.P. Sharma promoting him on the post of Senior P.A. it was clearly stated that the promotion was on ad hoc basis and that seniority would be governed in accordance with Rules and therefore, he cannot claim the counting of the period of service rendered on ad hoc basis for the purpose of seniority. His contention in respect of Lal Singh Vikal was that by mistake the words 'local officiating arrangements/ad hoc basis' were not stated in the order, but reference of the DOT letter dt. 15.4.1994 was made and this leads to an inference that his promotion was on 'ad hoc basis/local officiating arrangement'. It was canvassed that the period of ad hoc service cannot be counted for the purpose of seniority. Reliance was placed on the case of State of Punjab Vs. Gurdeep Kumar Uppal [2001 SC 2691] and State of Haryana Vs. Haryana Vetrynity and AHTS Assocn. & Anr. [2000 SC 3020] and Benjamin Jairaj Kurasu and Ors. Vs. Union of India & Ors. [1997-2001 F.B. Decisions 239].

9. We have given the matter our thoughtful consideration. It is seen that in the two orders issued promoting the two applicants to the post of Sr. P.A. reference was made to the DOT letter dt. 15.4.1994 were



referred to. It is appropriate to reproduce the letter dt. 15.4.1994 hereunder:

"Subject:- Declaring the cadre of Sr.P.A's (Rs.2000-3200) GCS Group 'B' (Gazetted) as Circle Cadre.

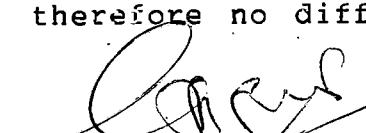
....

Presently promotion to the Grade of Senior P.A's of GCS Group 'B' (Gazetted) is being ordered on centralised basis from DOT HQ. Of late, representations have been pouring in from various quarters highlighting the problems faced by the affected officers. The Unions have also been raising the issue at various platforms. In view of this, the case has been considered in detail and it has been decided to declare the cadre of Senior P.A. GCS Group 'B' (Gazetted) as Circle Cadre with immediate effect.

The posts existing or likely to become vacant may be filled up at Circle level by constituting a DPC CONSISTING OF CGM as the Chairman and other two JAG Officers as members with further provision to co-opt one SC/ST officer of the level of not less than STS for reservation purpose. This procedure is to be adopted for filling up of the posts on purely ad-hoc basis, till the Recruitment Rules are modified to this extent. Other conditions as given in Recruitment Rules issued by this office notification number 372-22/87-STG-III dated 8.6.88 may have to be scrupulously followed till further orders. The territorial circles will continue to take recruitment action for posting Sr.PAs as per the above procedure to other service units like Maintenance, Project, T & D, QA etc. in their respective jurisdiction. Inter Circle transfers will continue to be regulated by TCHQ DI."

9.1. It may be pointed out that some modification was made in the letter dt. 15.4.1994 vide communication dt. 3.7.1997. The words "ad-hoc basis" appearing in para 2 of the letter were substituted by the words "local officiating arrangements".

10. As already stated, in the order issued in respect of P.P.Sharma it was clearly stated that the promotion was purely on ad-hoc basis and that seniority would be determined in accordance with Rules. There is therefore no difficulty in holding that the Respondents



were perfectly justified in issuing the order in November, 2000 promoting P.P.Sharma to the post of Sr. P.A. (G) on regular basis.

10.1. In the case of Lal Singh Vikal in the order dt. 18.11.1998 it was not stated that the promotion was on ad-hoc basis. However, in the order it was clearly stated that the order was being issued in pursuance of the instructions contained in the DOPT letter dt. 15.4.1994. In the letter dt. 15.4.1994 which has been read hereinabove it was clearly stated that the post was to be filled up at circle level by constituting a DPC consisting of CGM as the Chairman and other two JAG Officers as Members. It was further stated that the post was to be filled up on 'purely ad-hoc' basis which words were later substituted as 'local officiating arrangement'.

11. A reading of the letter dt. 15.4.1994 shows that the promotion to the grade of Sr. P.A. was being made on centralised basis. As that delayed the promotions, it was thought proper to provide promotion to the post of Sr. P.A. on local officiating arrangement basis, of course that was also to be done on the recommendation of the DPC.

12. In our opinion simply because the promotion of Lal Singh Vikal was made on the advise of the DPC, it cannot be said that it was a regular promotion. When in the order it was clearly stated that the promotion was in pursuance of the instructions contained in the letter dt. 15.4.1994 it has to be held that the promotion was purely on ad-hoc basis/local officiating arrangement basis. It is immaterial that in the order it was not stated that the promotion was on ad-hoc basis or was on local officiating arrangement.

12.1. It is significant to point out that when the



letter dt. 15.10.1994 was issued the amendment in the Recruitment Rules was under consideration. The letter was issued pending the amendment in the Recruitment Rules. Evidently, the promotion to the post of Senior P.A. pursuant to the letter dt. 15.10.1994 was a stop gap arrangement and the promotion of Lal Singh Vikal vide order dt. 18.11.1998 can in no circumstances be held to be on regular basis.

13. The Respondents cannot be said to have faulted when they issued the order dt. 3.11.2000 promoting both the applicants on regular basis from the date of assumption of charge. Resultantly, it cannot be said that the respondents have erred in rejecting the representations of the applicants.

14. As to the cases relied on by learned counsel for the applicants, it may be stated that the observations made in Rudra Kumar Sain (supra) were in the peculiar circumstances of that case. In that case, there was a dispute of the seniority between promotees and direct recruit Judicial Officers. The question for consideration was whether the promotion given to the promotees under Rule 16 & 17 were to be treated as ad-hoc, fortuitous or temporary if such appointments were made after due consultation with High Court and the appointee possessed the qualifications prescribed under the Rules.

14.1. The ruling cannot assist the applicant because in the promotion order of the applicants it was stated that the order was being issued in terms of the DOP, letter dt. 15.10.1994.

14.2. The case of Baburam V. Pathare (supra) also does not help the applicant. In that case, in the order of promotion it was not stated that it was for a limited



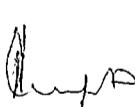
period. The promotion had continued for more than 11 years and no Recruitment Rules had been finalised. It is in these circumstances, the Court had held that the promotion of the applicant therein was not ad-hoc.

14.3. As already stated, in the instant case in the promotion order 18.11.1998 there was a reference to letter dt. 15.4.1994 and therefore this ruling does not assist the applicants.

15. Their Lordships have clearly held in the case of State of Haryana Vs. Haryana Vetrynity and AHTS Assocn. & Anr. (supra) and State of Punjab Vs. Gurdeep Kumar Uppal (supra) that the period of regular service only is to be counted for seniority and the service rendered by an ad-hoc appointee cannot be tagged on to the service rendered after regular appointment for computing the seniority.

16. Having considered the relevant material on record, we are of the considered view that the Respondents have not erred in giving promotion to the applicants vide order dt. 3.11.2000. The seniority on the post of Sr. P.A. is necessarily to be counted from the date of regular appointment.

17. There being no merit in these OAs, they are dismissed with no order as to costs.


(A.P.NAGRATH)
MEMBER (A)

B.


(G.L.GUPTA)
VICE-CHAIRMAN