

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR.

O.A.No. 254/2003

Date of decision: 14.07.2004.

CORAM

The Hon'ble Mr. S.K. Agrawal, Administrative Member.

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

B.D, Kubba, S/o Shri Sundar Das Kubba, aged 61 years, retired from the post of Dy General Manager (TS) Office of the General Manager, Telecom, Ahmedabad and presently residing at 63 Nemi Sagar, Vashist Marg, Vaishali Nagar, Jaipur. 302 021.

R.P. Meena, S/o Shri Shree Krishna Meena, aged 58 years, retired from the post of Dy. General Manager, Office of the General Manager, Telecom Dist. Sriganganagar and presently residing at A/24, Jharwal House, Opposite Government Press, Sardar Patel Marg, Jaipur 302 001.

: Applicants.

rep. by Mr. U.D. Sharma : Counsel for the applicants.

VERSUS

Union of India, through the Secretary, Department of Telecommunications Sanchar Bhawan, 20 Ashok Road, New Delhi.

: Respondent.

rep. by Mr. T.P.Sharma: Counsel for the respondent.



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ORDER

Mr. J.K. Kaushik, Judicial Member.

In this case, the applicants have been striving hard for espousing their legitimate claim of promotion from the post of T.T.S. Group (A) (STS) to Junior Administrative Grade, with effect from 14.02.96. There have been enormous litigation in the matter by the applicants as well as the number of similarly situated persons and even certain favourable orders were passed. But on one pretext or the other, the applicants have remained wherever they were eight years back. Subsequently, they have taken voluntary retirement from service. This case sets an example where harrassment is at writ large in as much as the respondents have been inventing and taking new pleas just to justify their action in not extending the due benefits to the applicants.

2. We have heard the learned counsel for the parties at a great length and have considered the submissions, pleadings and the records of this case. Both the counsel have reiterated the facts and grounds narrated in their respective pleadings.

3. The factual backdrop of this case would be evident from the following extracts from a decision of this very Bench of the Tribunal in O.A. No. 193/96 dated. 24.04.2002 in the case of applicants itself, to which one of us (J.K. Kaushik) was a party to the case, which has attained the finality. The same is extracted hereunder:

The two applicants belonged to TTS Group 'A' cadre and have been promoted as Jr. Administrative Grade w.e.f 08.09.97. They are aggrieved with the promotion of officers belonging to ITS Group 'A' to the Junior Administrative Grade by order dated 14.02.96 (Annex.A/1) and their non inclusion in that order. They have filed this O.A seeking a direction that they should also be



promoted with effect from the date the officers vide impugned order have been promoted.


2. We have heard the learned counsel for the parties and also have perused the records. We find that for long period, there was a controversy of inter se seniority of the officers belonging to ITS and TTS Groups. After prolonged litigation, which also reached upto the Apex Court, the controversy got resolved by a settlement in respect of merger of Telegraph Traffic Arm Group A and B with Engineering Arm. The details of this agreement have been given in communication dated August 25, 2000 placed on record by the applicants as Annex. A/25 along with Additional affidavit. Para 5 of the agreement is as under:-

" with above agreement, TTRS-ITS merger has been closed once for all. Merger order dated 23.06.95 has been withdrawn and para 14 of the ordeere No. 5-1/4 TE-II dated 05.04.95 gets partially modified to incorporate the above arrangements."

3. Since the controversy has been resolved, we consider that this O.A can be finally disposed of by directing the respondents to re-consider the claim of the applicants for promotion w.e.f. the date of the impugned order dated 14.02.96.

4. We, therefore, direct the respondents to consider the case of the applicants regarding their entitlement to Jr. Administrative Grade w.e.f. 14.02.96 taking into account the provisions of the agreement dated 25.08.2000 and decide the same within a period of two months from the date of communication of this order. The decision so taken shall be communicated to the applicants within 15 days thereafter. The applicants shall be entitled to all consequential benefits in the event their promotion to Jr. Administrative Grade is given effect from 14.02.96 . Consequential benefits shall include payment of all arrears of pay and allowances arising out of the said decision. If the applicants are still aggrieved with the decision so communicated, they shall be at liberty to file fresh O.A, if so advised. No order as to costs."

3. The matter was considered in depth. It may be noticed that the cases were allowed in favour of the T.T.S. cadre employees whose cases were left out from the consideration for promotion despite the merger issued by the Presidential Order. The basis of denial was subsequent modification to the order of merger by a subordinate authority who had no such power and such modification was held to be invalid. The litigation went before the highest Court of the country, where the official respondents submitted a specific affidavit at Annex. A.16 and para 3 is relevant and is

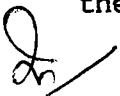


extracted as under:

" 3. That the petitioner Department has decided to provide promotional prospects to TTS Officers vis-a-vis I.T.S. Group "A" officers by calculating their seniority based upon length of service in equivalent grade. As such, the present petition filed against the judgement in O.A.No. 283/96 and subsequent R.P.88 has become infructuous and the Department has decided to withdraw the same."

4. Subsequently, proceedings were taken up by the respondents on the aforesaid basis but the matter was tilted and there was deviation. Keeping in view of the development and with full consciousness of the legal and factual position the order in the aforesaid case i.e. O.A. No. 193/96 supra came to be passed. As per the said order the respondents were required to carry out two exercises the first one is that of ascertaining the seniority position of the applicants in the combined eligibility list. Their cases were to be considered in case, any of their junior in ITS group was promoted with effect from 14.02.96. The second one was regarding the suitability of the applicants and in case they were suitable and any of their junior was promoted they were also to be promoted with all benefits as narrated in para 4 of the said order.

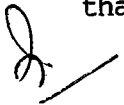
5. We may also point out that the agreement dated 25.08.2002 for nullifying the offending clause which came as an amendment to the merger order and promotions were made in respect of I.T.S. Grade with effect from 14.02.96 were ordered to be kept intact as is borne out from some of the judgements rendered by this Tribunal (e.g.) A.S. Nair and others vs. Secretary to the Government of India and others [O.A.No.283/96 decided on 12.04.96-Annex. A.12] and the cases of the persons from TTS Group who were senior enough and promoted from ITS Group as per the length of service were ordered to be protected. It was also agreeable to the respondent department as is evident from the affidavit, which was filed before the Apex Court that the seniority was to be based on the length of



service.

6. But strangely enough, the respondents instead of carrying out the exercise, which was expected of them, have endeavoured to side track the whole matter and have turned down the cases of the applicants on the plea that the agreement does not provide for the adhoc promotions from a retrospective date nor the existing rule permits so, as has been stressed by the learned counsel for the respondents and indicated in Annex. A/2 of this O.A. We may aptly point out that there was specific circumstance for which specific arrangement was made for providing adhoc promotions for the time being. These adhoc promotions were not against fortuitous vacancies but against regular vacancies and the respondents did promote the persons from I.T.S. Group by practising hostile discrimination to the TTS Group 'B', to which the applicants belong. It is settled proposition of law that an order may be legal or illegal; but for all times and it cannot be said that an order is legal for sometime and illegal for other time. In other words, an order could not be stated to be legal till it is declared to be illegal by a Court of law and illegal after it is so declared. Thus the offending clause was illegal from the very beginning. Since the respondents themselves came forward and have made specific assertion in an affidavit that promotions would be regulated as per the length of service, once a person from ITS Group has been promoted, there was no reason to deny the benefit of promotion to the applicants in particular and other similarly situated persons in general from the date their next juniors were granted.

7. It is the admitted position of the parties that promotions made vide Annex. A.1 have remained intact. It is also admitted that the applicant No. 1 is senior to officers mentioned at Sl.



No.74 to 81 and the applicant No.2 is senior to all the 81 officers mentioned in the said order and this has been specifically averred in para 4.7 of the O.A. and there is no specific denial to this factual aspect. In this view of the matter there is no difficulty in reaching to a positive conclusion that junior to the applicants have been promoted. It is also not the case of the respondents that such juniors have not been continued on the same or as a result of tripartite agreement, their promotion has been nullified. It is also not the case of the respondents that the applicants were otherwise unsuitable for promotion to the post of JAG.

8. It is trite law and is also well settled that one has a fundamental right for consideration of promotion and in case any of his junior has been considered for promotion, the case of a senior cannot be neglected as per the mandate of Article 16 of the Constitution of India. Admittedly, in this case, a number of juniors to the applicants have been promoted but the case of the applicants have not been considered and we have absolutely no hesitation in coming to the conclusion that there has been infringement of the fundamental rights of the applicants in non-considering the cases of the applicants for promotion at par with their juniors. If that be so, the Original Application is well founded and the action of the respondents are discriminatory, arbitrary and offended the equality clause enshrined in Art. 14 and 16 of the Constitution of India.

9. Before parting with the case, we find that 2 misc. application Nos. 259/2003 and 132/2004 were filed in this case and have been disposed of. We find that these M.As have been kept in a different folder. The same is contrary to the orders of Hon'ble Chairman communicated vide letter dated 10.05.94, as Order No. 3



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under the head Removal of difficulties - CAT Rules of practice 1993, which reads as under:

ORDER No. 3

In exercise of the powers conferred by Rule 158 of the CAT Rules of Practice, 1993, I hereby make the following order to remove the difficulties in implementation of Rule 13 (d):-

(i) Instead of keeping the MAs in part 'C' they may be placed in two separate folders tied with the parts 'A' and 'B' of the main file.

(ii) A separate index in respect of MAs may be maintained in the aforesaid folders meant for the MAs."

M.As should have been kept in separate folder with separate index as per the aforesaid order. This procedure has not been complied with in this case. We hope and trust and it is expected that the registry should take judicial notice of the said order and follow the same hereafter. Copy of the said communication dated 10.05.94 has been taken on record.

10. In view of what has been said and discussed above, the O.A merits acceptance and the same stands allowed accordingly. The respondents are directed to grant the applicants promotion to the post of JAG with effect from 14.02.96 with all consequential benefits including arrears of pay and allowances and revision of pensionary benefits etc. The respondents are also saddled with a cost of Rs. 2000/- ^{and pay} to the applicants. This order shall be complied with within a period of three months from the date of receipt of a copy of this order.

11. Registry is directed to adhere order No. 3 as enunciated in para No. 9 above in future.


(J.K. KAUSHIK)

Judicial Member


(S.K. AGRAWAL)

Administrative Member.

jsv.