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CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX No. .243 of 1998

DATE OF DECISION 1.2.2001.....

(AT SHILLONG)

Shri Bhagirathi Singh

PETITIONER(S)

Mr M. Chanda and Mrs N.D. Goswami

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

The Union of India and others

RESPONDENT(S)

Mr B.C. Pathak, Addl. C.G.S.C.

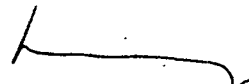
ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

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 Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.243 of 1998

Date of decision: This the 1st day of February 2001
(At Shillong)

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Bhagirathi Singh,
Working as Wireless Supervisor in ISPW,
Shillong.

.....Applicant

By Advocates Mr M. Chanda and Mrs N.D. Goswami.

- versus -

1. The Union of India, through
The Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Director, Police Telecom,
Directorate of Coordination,
Police Wireless,
New Delhi.
3. Shri T.K. Sarkar,
Working under respondent No.2.
4. Shri L.C. Manna,
Working under Respondent No.2.

.....Respondents

By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

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O R D E R (ORAL)

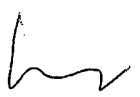
CHOWDHURY.J. (V.C.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 assailing the orders dated 8.6.1998 and 9.9.1996 passed by the respondent No.2 rejecting his prayer for promotion to the post of Wireless Supervisor grade Rs.1400-2300 with effect from the date of his passing the Wireless Operator Test Grade I with all consequential benefits.

2. The applicant entered into service under the respondents as Wireless Operator. He passed the Wireless Grade I test on 6.11.1992. He was allowed the higher proficiency pay from the date of his passing



the Wireless Operator Grade I test. His grievance here is basically confined to his promotion to the post of Wireless Supervisor. As per the recruitment rules, a Wireless Operator can be considered for promotion to the post of Wireless Supervisor after the Wireless Operator passed the Wireless Operator Grade I test of the DCPW and have put in five years of service in the grade. According to the applicant, immediately after his passing the Grade I test on 6.11.1992, he was to be appointed to the higher grade. However, the respondent authority promoted the respondent Nos.3 and 4 as Wireless Supervisor vide order dated 30.12.1992 and 11.1.1993 respectively, superseding the claim of the applicant. The respondents, however, instead of promoting the applicant as Wireless Supervisor promoted him by order dated 20.10.1993 as Technical Assistant (Stores), which according to the applicant was an ex cadre post. The applicant protested against his promotion to the an ex cadre post, but instead of correcting the error by promoting him to the post of Wireless Supervisor on which his juniors were promoted, the respondents reverted the applicant to the post of Wireless Operator with effect from 14.12.1993. The applicant continued to represent his case before the authority and finally he was promoted as Wireless Supervisor Grade 1400-2300 with effect from 28.4.1994 vide order dated 7.7.1994. The applicant thereafter also submitted representation before the respondents for antidating his promotion with effect from the date of his passing the test. His claim was not considered by the respondents in the right perspective for which he moved the Tribunal earlier by O.A.No.41 of 1998 and this Tribunal disposed of the said O.A. by order dated 23.3.1998 with directions to the respondents to dispose of the representation of the applicant. The applicant submitted a representation afresh and the respondents turned down his representation vide order dated 8.6.1998. The applicant finally approached this Tribunal by way of the present O.A. assailing the legitimacy of the action of the respondents.



3. The respondents filed their written statement and disputed the claim of the applicant. The respondents in their written statement have stated that the post of Wireless Operator is a Group 'C' post and for promotion to the next higher post, the incumbent was required to pass the Departmental Grade I Wireless Operator Test with requisite service in the grade. There are two options available to a Wireless Operator for the next promotion which are Wireless Supervisor or Technical Assistant (Stores) both in the pay scale of Rs.4500-7000 (revised) subject to availability of vacancy in either of the grade whichever comes first. For promotion to the grade of Technical Assistant (Stores) the eligibility criteria is three years of regular service and passing or Grade I Test and for promotion to the grade of Wireless Supervisor the eligibility criteria is five years of regular service and passing of the Grade I Test. The applicant, a Scheduled Caste candidate, was appointed as Wireless Operator in the Directorate of Coordination (Police Wireless) with effect from 12.8.1976. He passed the Grade I Wireless Operator Test on 6.11.1992 and at that time he was posted at Inter State Police Wireless Station, Lucknow. After he passed the Grade I Wireless Operator Test on 6.11.1992 no DPC meeting was held for promotion in the grade of Wireless Supervisor (Rs.1400-2300 pre-revised). In 1993 he came under the purview of the DPC held on 17.9.1993 for promotion to the post of Technical Assistant (Stores) against the reserve vacancy for SC candidate. Based on the recommendations of the DPC, the Directorate offered the applicant the promotion in the grade of Technical Assistant (Stores) with place of posting at Delhi and the applicant joined at Delhi in the grade on 30.11.1993. On 8.12.1993 the applicant submitted a representation stating that he may be transferred to Lucknow in the grade of Technical Assistant (Stores) and if it was not possible, he might be reverted to the grade of Wireless Operator, the grade from which he was promoted to the grade of Technical Assistant (Stores). Since the post of Technical Assistant (Stores) was sanctioned only for the Delhi office of the Directorate his request could not be acceded to and he was reverted to the post of Wireless Operator at his own request and posted at his choice.....

choice station Lucknow. Thereafter he came under the purview of the DPC held on 31.1.1994 for promotion to the post of Wireless Supervisor. He was promoted against the reserved vacancy and posted at Lucknow itself. While denying the contention about the supersession of the applicant by his juniors, the respondents stated that the two juniors, namely respondent Nos.3 and 4 were promoted on 30.12.1992 and 11.1.1993 respectively and they also belonged to the SC category. The respondents Nos.3 and 4 passed the Grade I Test on 21.6.1991 and 15.11.1991 respectively and came under the purview of the DPC meeting held on 9.9.1992 in which the crucial date of eligibility was 1.10.1992. Since the applicant was not eligible on the crucial date, i.e. 1.10.1992 he was not considered for promotion and he was considered for promotion at the first available opportunity when the DPC meeting was held. In para 11 of their written statement, the respondents described the eligibility position in respect of the concerned parties, which is reproduced below:

Sl. No.	Name	Date of joining as W/Opt	Date of completion of 5 yrs service as W/Opr	Date of passing Grade I Test
1.	Bhagirathi Singh (Applicant)	12.8.76	11.8.81	6.11.92
2.	T.K. Sarkar (Res No.3)	11.10.76	10.10.81	21.6.91
3.	L.C. Manna (Res No.4)	11.10.76	10.10.81	15.11.91

4. Mr M. Chanda, learned counsel for the applicant, argued at length and submitted that since it was a non-selection post the criteria for promotion is seniority. The respondent Nos.3 and 4 are, admittedly, junior to the applicant. Therefore, he could not have been superseded by the juniors in the next rank. Mr Chanda in support of his contention cited the rules as well as the Government instructions including the methodology of holding of DPC given in Swamy's Handbook and submitted that the respondent authority could not have appointed the respondent Nos.3 and 4 on promotion after the applicant became eligible on 6.11.1992.

The learned counsel pointed out that the respondent No.3 was promoted

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on 30.12.1992 and the respondent No.4 on 11.1.1993 and on that date the applicant attained his eligibility, so much so, that he passed the eligibility test.

5. Mr B.C. Pathak, learned Addl. C.G.S.C., on the other hand, submitted that the DPC met on 9.9.1992 it considered the case of respondent Nos.3 and 4, but the applicant was not eligible on that date and therefore, his case could not be considered by the DPC held on 9.9.1992. The proceeding of the DPC held on 9.9.1992 was produced before us. As per the record the DPC for promotion to the grade of Wireless Supervisor was held on 9.9.1992 under the Chairmanship of the rank of Deputy Director with three other members- one of the rank of Assistant Commandant (Personnel), CISF and two of the rank of Assistant Director. The committee considered the sanctioned strength of Wireless Supervisor. There were eight clear vacancies in the grade and three anticipated vacancies to arise during the year. The committee also took note of the provisions of the recruitment rules and found that as per the provisions of the existing recruitment rules, the vacancies could be filled only by promotion from amongst the Wireless Operators who have passed the Grade I Wireless Operator's Trade Test conducted by the DCPW and have put in five years of regular service in the grade. The committee also assessed the roster position. The DPC considered sixteen unreserved category candidates and eleven reserved category candidates and also scrutinised their ACRs for the last five years. The DPC accordingly recommended the names of the candidates, which also included the respondent Nos.3 and 4. Since the applicant was not eligible, the question of his consideration on that date did not arise. Mr Chanda, though, submitted that the respondent No.4 could not have been accommodated for the vacancies which were considered by the DPC as on 9.9.1992. From the records, however, we find that this contention of Mr Chanda is not correct. The respondent Nos.3 and 4 were both considered for the total vacancies of eleven including three anticipated vacancies. The respondent authority duly considered the representation of the applicant and passed a reasoned order. We do not find any illegality in the impugned


action.....

action of the respondents. No injustice, as such, is found.

6. In the circumstances we do not find any merit in this application. Accordingly the application is dismissed. There shall, however, be no order as to costs.



(K. K. SHARMA)
ADMINISTRATIVE MEMBER



(D. N. CHOWDHURY)
VICE-CHAIRMAN

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