

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH  
CIRCUIT SITTING AT GWALIOR

Original Application No.630 / 2001

Gwalior, this the 25th day of February, 2004

HON'BLE SHRI M.P.SINGH, VICE CHAIRMAN  
HON'BLE SHRI G.SHANTHAPPA, JUDICIAL MEMBER

D.P. Gupta s/o late Sh. Murlidhar  
aged 49 years, Occupation Telecom  
Technical Asstt. in the O/o S.D.E.  
O.C.B. Gwalior, Telephone Exchange  
Near M.L.B. College, Gwalior  
R/o Telecom Colony, Colony, Vinay Nagar,  
Sector 3 Type III Qr. No. 3  
Gwalior (MP).

...Applicant

(By Advocate: Shri S.C.Sharma)

-versus-

1. Union of India through  
Secretary to the Min. of Communication,  
Tele-communication Department,  
Sanchar Bhawan,  
New Delhi.
2. Chief General Manager,  
Tele communication Deptt.,  
Bhopal (MP).
3. General Manager,  
Tele Communication Department,  
Gwalior M.P.
4. J.P.Arora, T.T.A.  
O/O S.D.E. Electrical & Building,  
Telephone Exchange, S.D.M.Road,  
Gwalior (MP).
5. Anil Jagtap, J.T.O.  
O/o D.E. Installation (Circle),  
Gwalior , M.P.
6. D.K.Kulshreshtha, S.D.E.,  
Shivpuri, M.P.
7. R.K.Gupta, J.T.O.  
O/o D.E. Installation (Circle),  
Gwalior M.P.
8. V.P.Shrivastava, J.T.O.,  
Baranasi (U.P.).
9. J.C.Yadav, J.T.O.  
O/o S.D.O.T. Bhind (MP).

...Respondents

(By Advocate:- Shri P.N.Kelkar)

ORDER (ORAL)

By M.P.Singh, Vice Chairman -

By filing this O.A. the applicant has sought the following reliefs:-

- i) to declare the order at Annexure A-16 as non-reasoned, illegal, arbitrary, discriminatory order and quash the same.
- ii) to direct the respondents to promote the applicant on the post of T.T.A. w.e.f. 3.5.93 when his junior respondent no. 4 was promoted. The respondents be directed to give benefit of pay and payscale of T.T.A. since that date with arrears of salary and seniority above respondents nos. 4 to 9.
- iii) to direct the respondents to promote as J.T.O. to the applicant w.e.f. 17.5.1999 when his immediate junior was promoted and he be given pay and pay scale of that post since then alongwith arrears of salary and seniority over and above respondents no. 4 to 9.

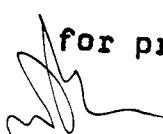
2. The brief facts of the case are that the applicant was appointed as Wiring Mazdoor in Telecommunication Department. He was promoted to the post of Technician w.e.f. 19.6.1978. While working as such he was transferred to Gwalior under S.D.O. Phones in 1979-80. According to the applicant he is senior to private respondents nos. 4 to 9 in the grade of Technician. The applicant has been shown to be temporary in the gradation list while juniors are shown to be confirmed except respondent no. 4. The applicant has submitted his representation on 7.8.1993 stating that as to why he has not been confirmed and placed in the seniority list of confirmed Technicians. The applicant has further submitted that without deciding his representation, the respondents sent private respondents nos. 4 to 9 for training for promotion to the post of Telecom Technical Assistant (For short, T.T.A.) and imparted training to them. Respondents nos. 4 to 9 were promoted to the post of T.T.A. during 1993 and 1994 on different dates. However, the applicant

was not promoted to the post of T.T.A. Being aggrieved by this, the applicant has filed this O.A. seeking the aforesaid relief.

3. The respondents in their reply have stated that the applicant was confirmed in the cadre of Mazdoor w.e.f. 8.6.74 on the recommendation of the D.P.C. held on 31.12.1996. His case for confirmation could not be considered earlier since a departmental enquiry was pending against him which concluded on 12.8.1996. According to the respondents, private respondents no. 4 to 9 were sent for training on the recommendation of D.P.C. The recommendation of the D.P.C. in respect of respondents no. 4 to 6 were approved on the basis of the DPC held on 27.8.1992 whereas in respect of respondents no. 7 to 9 were recommended for training for promotion on the basis of DPC held subsequently on 6.10.1993. Since the name of the applicant was not recommended in the DPC, therefore, he could not be sent for training for promotion.

4. Heard the learned counsel for the parties and have perused the material on record.

5. Learned counsel for the applicant has submitted that at the time of DPC held for the post of TTA, no departmental proceedings were pending against the applicant nor any chargesheet was issued to him. Therefore, his name should have been considered and recommended for training and he ought to have been promoted to the post of T.T.A. On the other hand, the learned counsel for the respondents states that since the departmental enquiry was pending against the applicant, his case for confirmation could not be considered. The applicant was considered and confirmed in the grade of Mazdoor only in the year 1996. Therefore, he could not be recommended by DPC for promotion to the post of T.T.A.



6. We have given careful consideration to the rival contentions and we find that the applicant was proceeded departmentally in the year 1988 under Rule 16 of CCS(CCA) Rules, 1965. The respondents have imposed the penalty on the applicant of withholding one increment for two years without cumulative effect vide order dated 24.4.1988 against which the applicant has filed an OA No. 420/90 before the Tribunal. The Tribunal vide its order dated 26.6.1996 remitted the case back to the appellate authority directing that the appellate authority shall decide the matter by passing a speaking order. The appellate authority by a two lines cryptic order rejected the appeal of the applicant vide annexure R-8. It is for these reasons, the applicant could not be confirmed in the grade of Technician. The contention of the respondents that there was a departmental enquiry proceedings at the time when the applicant was considered for promotion to the post of T.T.A., is not correct and, therefore, cannot be accepted. We find from the records, that the penalty of withholding of one increment was imposed on the applicant in the year 1988 for two years which penalty would have been over in the year 1990. Private respondents no. 4 to 9 who were junior to the applicant have been considered for promotion to the post of TTA in the year 1993 and 1994. They were recommended for training and promoted on the basis of recommendation of the DPC in the year 1993 and 1994 at that point of time neither any chargesheet was served nor any departmental proceedings were pending against the applicant. Therefore, the applicant was eligible for consideration for promotion to the post of T.T.A. from the date his junior i.e. respondents no. 4 to 9 were considered for training and promotion to the post of T.T.A.

7. For the reasons recorded above, we allow this O.A. and direct the respondents to consider the applicant for promotion to the post of T.T.A. w.e.f. the date his



immediate juniors have been considered for promotion to the post of T.T.A. and if he is found suitable for promotion to the post of T.T.A., he should be granted promotion from the date his immediate junior ~~has~~ been promoted. The applicant shall also be entitled for all consequential benefits including promotions, arrears of pay etc. The above directions should be complied with the respondents within three months from the date of receipt of a copy of this order. No costs.

G. Shanthappa  
(G. Shanthappa)  
Judicial Member

M.P. Singh  
(M.P. Singh)  
Vice Chairman

/na/ Copy forwarded to  
(i) Shri S.C. Sharma, Adv.  
Advocate.  
(ii) P.N. Kothari, Adv. for Resps.  
Advocate.