

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

CIRCUIT SITTING AT GWALIOR

Original Application No. 157 of 1998

Gwalior, this the 24th day of April 2003

Hon'ble Shri R.K. Upadhyaya -- Member (Admnv.).
Hon'ble Shri J.K. Kaushik -- Member (Judicial).

A.R. Pankaj, S/o. late Kashiram,
Ex. Chief Section Supervisor,
Telecom. District Manager,
Morena, R/o. 25, Ashok Colony,
Morar, Gwalior - 747006.

... Applicant

(By Advocate - Shri B.D. Kargaiyan)

V e r s u s

1. Union of India - Through
The Secretary to the Ministry
of Communications, Deptt.
of Telecommunications, New Delhi.

2. The Chief General Manager,
Telecom, M.P. Telecom. Circle,
Bhopal.

3. The General Manager Telecom,
Maratha Boarding, Jayendraganj,
Lashkar, Gwalior - 474009.

4. Telecom District Manager,
Morena.

... Respondents

(By Advocate - Shri T.C. Singhal)

O R D E R

By J.K. Kaushik, Member (Judicial) :-

Shri A.R. Pankaj has assailed impugned promotion order to Grade-IV (HSG-I) made by the respondents on 25/07/1994 (Annexure A/1), may be ordered to be modified, the promoting the applicant to the said post in the scale of Rs. 2000-3200 with effect from 25/07/1994 and he be allowed all consequential benefits retrospectively from 25/07/1994 to 31/12/1996.



2. The relevant facts leading to filing of this original application by the applicant are that the applicant was appointed as Time Scale Clerk in Posts and Telegraphs Department in the year 1967. He qualified Higher Grade Examination 1/3rd quota of vacancies and was promoted as Lower Selection Grade on 07/12/1979. He was assigned his due seniority from the date of his promotion. He was further promoted to the post of Senior Section Supervisor under the BCR Scheme vide order dated 30/11/1990 (Annexure A/4).

2.1. The further case of the applicant is that 13 officials were promoted against 10% posts in Grade-III under BCR Scheme. Their names ~~are~~ have been indicated in paragraph 4.4 of the original application, but the applicant being senior most was not considered for the same. The implication of grant of promotion to the post of L.S.G. under 1/3rd quota has been explained. The applicant took up the matter with the authorities. The instructions have been issued that the persons ^{who} were promoted in 1/3rd quota will rank senior to all those who were placed in the scale of Rs. 1400-2300 under One Time Bound Scheme. The matter was reminded number of times, but with no response. Thereafter legal notice were got issued through the counsel of the applicant. The applicant also got super-annuated from service on 31/07/1997.

3. The original application has been filed on multiple grounds. The main being that the applicant is senior to the 13 persons and despite being senior his case has been ignored, whereas the junior persons who have completed 26 years of service have been promoted to the higher grade i.e. HSG Grade-I. Even the further clarification in the matter of seniority has been ignored. There has been infraction of Article 14 of the Constitution of India etc.

4. The respondents have filed reply to the original application and have submitted that the promotion to the post of Grade-IV against 10% quota is required to be made as per the basic grade seniority in Grade-III. It has been further averred that instruction of the BCR Scheme will not affect the officials who had already been promoted on regular basis from the basic grade to the next higher grade before 30/11/1983, and they would reckon block senior to the officials who are placed in the next higher scale in pursuance to the new scheme. The respondents have also indicated the position of the 13 persons said to be junior to the applicant and it has been averred that the applicant's name falls at a much lower place than these persons. Thus the applicant is the junior most and is not entitled to get any relief.

5. A rejoinder has been filed on behalf of the learned counsel for the applicant, wherein it has been pointed out that the gradation list which has been referred to by the respondents has already been ~~xxxx~~^h cancelled as per decision of Hon'ble C.A.T, Jabalpur Bench and the seniority of the applicant was not fixed as per the rules. Certain other facts have been reiterated.

6. We have heard the learned counsel for the parties and have carefully perused the pleadings and records of the case. A gradation list dated 6th April 1990 has also been produced by the learned counsel for the applicant and the same is being placed in the file of this case.

7. The learned counsel for the applicant has reiterated the facts and grounds raised in the pleadings on behalf of the applicant. He has drawn our attention to the gradation list which is submitted at the time of hearing by him. As per the gradation list which is of 6th April

1990, the name of the applicant is shown at serial No. 245 and that of some of the juniors the name is placed at serial No. 95 i.e. K.Z. Raut and serial No. 102 i.e. Shri K.H. Sondawale. He has plainly submitted that the position of the applicant has not been correctly shown in this gradation list and the earlier gradation list was cancelled and as a matter of fact if his name would have been placed at the correct place the applicant would have found place over serial No. 95 and he would have been allowed the due promotion under 10% of BCR Scheme to the grade of Grade-IV. But since he has not been assigned the due place in the gradation list his claim has been totally neglected and instead of giving him promotion from 25/07/1994 he was allowed the benefit ~~from~~ from 31/12/1996. On the contrary the learned counsel for the respondents has submitted that the original application is ex facie time barred in as much as the order dated 25/07/1994 has been challenged on 26/02/1998 and therefore the original application deserves to be dismissed on the ground of limitation itself. Further he has submitted that the gradation list is also of dated 6th April 1990 which has been submitted on behalf of the applicant and the same has never been challenged. Even it is not under challenge of this original application and untill and unless the applicant gets a position in seniority ^{junior} above the so called ~~persons~~ persons he can have no claim lease to say legal claim for any promotion, since one could be considered for promotion only if his ne-ext junior is so considered. In this view of the matter the applicant has absolutely no case and the original application deserves to be dismissed with heavy costs.

7.1. As far as the ^{peripheral} ~~question~~ question i.e. regarding the preliminary objection of the limitation is concerned, the applicant immediately submitted a representation against the same and he was finally promoted in the year 1996 and the

same followed by representation for coming in the retrospective promotion, by invoking the beacon guideline by the Apex Court laid down/in the case of Collector Acquisition and another Versus Smt. Kartaju and others AIR 1987 Supreme Court 1353 and with the desirability of deciding the case on merit we consider this case to be within limitation. But the other hurdle that in the gradation list the applicant's name is much below than the persons over whom he intends to make a march and the gradation list is not under challenge. If that be the position, the in-escapeable conclusion would be that none of the junior to the applicant has been considered for the said promotion and therefore the applicant cannot claim the benefit of next below rule. Thus the original application as such is not maintainable and has no force.

8. In view of the aforesaid discussion the original application is devoid of any merit and calls for no interference by this Tribunal. The same stands dismissed. However there shall be no order as to costs.

J.K. Kaushik
(J.K. KAUSHIK)
MEMBER (J)

R.K. Upadhyaya
(R.K. UPADHYAYA)
MEMBER (A)

TC 800/103
SA
5/5/03

पृष्ठान्त से ले/ज्या..... जयपुर, दि.....
यदि किसी अन्य दिनांक पर

- (1) सचिव, राज्य सरकार, जयपुर
- (2) उपसचिव, राज्य सरकार, जयपुर
- (3) प्रत्यक्षी, सी.डी.डी. जयपुर
- (4) वरिष्ठ, जयपुर, जयपुर

सूचना एवं आवश्यक कार्यवाही हेतु

J.K. Kaushik
1.5.03

B.D. Kargaiyan, Adv.
TC Singhal, Adv.
4/5/03