

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT SITTING AT GWALIOR

Original Application No. 262 of 1998

Gwalior, this the 28th day of October, 2003

Hon'ble Shri Shanker Raju, Judicial Member  
Hon'ble Shri Sarveshwar Jha, Administrative Member

L.R. Miholia, S/o Shri Matole,  
Senior Section Supervisor, O/o  
Sub Divisional Engineer (MM),  
Gwalior (Telecom), R/o. 14, Ashok  
Colony, Merar, Gwalior-474 006.

... 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  
Tele Communications, New Delhi.
2. The Chief General Manager,  
Telecom, M.P. Telecom Circle,  
Bhopal.
3. The General Manager Telecom,  
Maratha Boarding, Jayendra Ganj,  
Lashkar, Gwalior.-9.

... Respondents

(By Advocate - Shri T.C. Singhal)

O R D E R (Oral)

By Sarveshwar Jha, Judicial Member -

The applicant has preferred this Original Application against the order of the respondents dated the 6th October, 1997 and also against their order dated the 5th August, 1995 (Annexure A-1 and Annexure A-2 respectively), whereby benefit of promotion has been granted to the two persons as shown in Annexure A-1 on ad-hoc basis in the scale of pay of Rs. 2000-3200/- against 10% posts in the B.C.R. Scheme with effect from 01.07.1997 and the benefit of regular promotion in T.O.A. Grade-IV (10%) in the scale of pay of Rs. 2000-3200/- has been given in the case of another

one person with effect from 06.01.1995 under the same scheme. He has accordingly prayed that the respondents be directed to promote him to Grade-IV with effect from the same date, i.e. 06.10.1997 and that all consequential benefits of such promotion be given to him retrospectively with effect from the said date. He has also prayed that no further promotions be granted in the said grade until he is considered for such promotion and further that the gradation list as on 30.06.2000 (Annexure A-15) be ordered to be corrected and the applicant be placed at serial No. 5 instead of serial No. 7. This part of his prayers has been made by way of amended relief, as allowed by the Tribunal vide its order dated the 15th July, 2003.

2. The applicant has, apart from seeking benefit of promotion under the BCR scheme with reference to the cases cited by him, as referred to hereinabove, has also referred to the need for giving him the said benefits by following the instructions regarding reservation being given to the scheduled caste category, which, according to him, envisaged maintenance of 40 points roster (now revised<sup>as</sup> 120 points roster with effect from 08.09.1993, as submitted in paragraph 4.2 of the Original Application). He seems to have submitted a representation to the General Manager, Telecom, Gwalior on 13.02.1997 followed by<sup>a</sup> number of reminders claiming his right to be promoted to Grade-IV against a reserved vacancy (as explained in paragraph 4.4 of the Original Application). A representation was also submitted to the Chief General Manager, Telecom, Bhopal in this regard. Copies of these representations are placed at Annexure A-9 and Annexure A-10 to the Original Application. He has not received replies to these representations. However, after having come across the respondents having

promoted Shri G.S. Sheikh and Shri S.N. Singh to Grade-IV from the general community vide the orders referred to above, the applicant again represented to the General Manager, Telecom, Gwalior on 09.10.1997, which was followed with a legal notice to all the respondents on 03.11.1997. But, here again, the respondents have not taken any action in the matter, as claimed by the applicant. He has alleged that the relevant papers in regard to his promotion were not placed before the DPC which was constituted on 20.07.1998 and hence this Original Application.

3. The respondents, however, have not accepted the contents of the submissions made by the applicant in the different paragraphs of this Original Application. They have submitted that the applicant was appointed as a temporary T.S. Clerk after training with effect from 01.07.1969 vide letter No. E-6/chI/APPI/96 of July 1969 and not vide the respondents order No. E.46/24, dated 20.11.1968. They have further submitted that the roster in Grade-IV has been abolished vide letter No. 22-6/94-TEII, dated 22.08.1997 of DOT, New Delhi (Annexure R-1) and further that the representation submitted by the applicant, as mentioned in paragraph 4.4 of his Original Application, became meaningless in the light of the fact that in restructured cadre BCR officials who had opted for the said cadre were not to be counted in computing such officials for Grade-IV posts as such in July, 1996. Accordingly, the respondents have maintained that, as advised by the Circle Office at Bhopal, Grade-IV promotions were made on the basis of basic grade seniority according to which the applicant was not eligible for the said promotion.

4. It is observed that the applicant has reiterated some of the things which he has submitted in his Original Appli-

cation while submitting his rejoinder to the reply filed by the respondents and has proceeded to resubmit that the provisions for reservation were to be applied even when arrangements were to be made on ad-hoc basis beyond 45 days. He has also submitted that time bound promotion and BCR promotion in his case had also been made on the basis of initial appointment (Annexure A-5). In this regard, he has made a general reference to the judgment of the Hon'ble Supreme Court laying down that seniority shall be reckoned from the date of initial entry into the service. He has, however, not cited any specific judgment. The need of maintaining roster point so as to give the benefit of reservation while considering/granting promotions to the candidates in the reserved category has been referred to by him in his rejoinders repeatedly. He has referred to the decisions of the Hon'ble Supreme Court in the case of *Indra Sawhney Vs. Union of India* (1992 AIR SCW) Para 599(5) to <sup>not</sup> contend that the benefit of reservation is to be given/only in appointments but also in selection by promotion thereafter. His detailed submissions in this regard are given in his rejoinder filed on 22nd April, 2002.

5. However, the respondents in their subsequent reply have referred to the letter dated 08.09.1999 placed at Annexure R-2 in which procedures for promotion to Grade-IV have been laid down and have categorically stated that the contention of the applicant in the matter as advanced in paragraph 4.2 and 4.3 of his rejoinder is not correct. They have mentioned that due to termination of the reservation roster, as confirmed by the Circle office vide their letter dated 17th July, 2001 through GMTD, Gwalior (paragraph 4.5 of their reply to the rejoinder) the reservation roster was not applied and the same is as per the rules on the subject.

Accordingly, they rejected the representation of the applicant submitted in this regard.

6. From the above it is observed that while the respondents have mentioned that they proceeded in the matter strictly in accordance with the procedure laid down in the matter of promotion to Grade-IV vide the Department of Telecom letter dated 08.09.1999 (Annexure R-2 to the reply to the rejoinder) and that reservation roster was not applicable to promotion under BCR, the applicant has not taken care to refer to the said letter and react to the position that reservation is not to be made applicable to the cases of promotion under BCR. It appears that the applicant has been insisting on his case being accepted on the basis of instructions relating to reservation roster being applied to him retrospectively, which fact gets nullified when seen in the light of the procedures laid down in the letter of the respondents dated the 8th September, 1999 (Annexure R-2). These instructions are quite detailed and cover the relevant aspects of promotion to Grade-IV against 10% posts in BCR scheme. The respondents could have considered the case of the applicant only under these instructions relating to the scheme and not under instructions relating to reservation which were not applicable to promotion to Grade-IV against 10% posts in the BCR scheme. The applicant has also not correctly stated the date of his initial appointment in the Department as a temporary T.S. Clerk and has failed to provide a convincing position in regard to his initial date <sup>in the service</sup> of entry/ which has also been advanced as a basis for his being given the benefit of promotion to Grade-IV under the BCR scheme. Accordingly, his claim that he should receive precedence with ~~the~~ reference to the case of Shri Adiram also becomes dispu-

ted. The applicant has mixed up the issues of reservation and the procedures as related to the promotion to Grade-IV under the BCR scheme and has not thus been able to justify the appropriateness of the reliefs that he has prayed for.

7. Having heard the learned counsel of both the sides and keeping in view the facts and circumstances of the case and the records brought up by two sides on the subject, we are of the considered opinion that the case of the applicant has no merit and, therefore, it is fit to be dismissed, with no order as to cost.

*[Signature]*  
(Sarveshwar Jha)  
Administrative Member

*[Signature]*  
(Shanker Raju)  
Judicial Member

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BD Kargaiyan,  
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