CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A.No.712 of 2000 & T.A. No.30 of 1999

Jabalpur, this the 22nd day of January, 2004

Hon'ble Shri M.P.Singh - Vice Chairman
Hon'ble Shri G.Shanthappa - Judicial Member

Original Application No.712 of 2000

Shri Dinesh Kumar Saxena, aged about 54 years, S/o late Shri L.B.Saxena, Resident of F-108/48, Shivajinagar, Bhopal (MP) - Applicant

(By Advocate - Smt.S.Menon)

Versus

1. Union of India, Through Secretary, Ministry of Communications, Sanchar Bhawan, New Delhi.
2. The Chief General Manager, M.P.Telecom Circle, Hoshangabad Road, Bhopal (MP).
3. Shri O.P.Sharma, Adult, DE(Administration), Office of GMTD, Bhopal (MP) - Respondents

(By Advocate - Shri P.Shankaran)

Transferred Application No.30 of 1999
(W.P.No.113/1999)

Shri Dinesh Kumar Saxena, aged about 53 years, S/o late Shri L.B.Saxena, R/o F-108/48, Shivaji Nagar, Bhopal - APPLICANT

(By Advocate - Smt.S.Menon)

Versus

1. The Secretary, Government of India, Ministry of Communications, 'Sanchar Bhawan', New Delhi.
2. The Chief General Manager, M.P.Telecom Circle, Hoshangabad Road, Bhopal-12.
3. Shri O.P.Sharma, adult, D.E.(Administration), O/o G.M.T.D., Bhopal - RESPONDENTS

(By Advocate - Shri S.C.Sharma through Shri Harshit Patel)

Common Order (Oral)

By M.P.Singh, Vice Chairman -

Since both the OA & TA involve common question of law and the facts and issues raised are identical, these are being disposed of by this common order.

2. In T.A.30/1999, the applicant has claimed the following main reliefs -

(i) direct the respondents to consider the petitioner for promotion to the grade of S.T.S. of I.T.S. Group 'A' and further direct that he shall be entitled to all the service benefits including the arrears of pay, etc. from a retrospective effect.

(ii) to quash the order of reversion dated 31.3.2000 Annexure-A-22 as also the order dated 7.4.2000 passed in pursuance thereof/Annexure A-23...

(iii) direct the respondents to promote the applicant to the grade of S.T.S. of I.T.S. Group 'A' with effect from 1.7.1998 and grant him all the consequential and ancillary service benefits.

(iv) compensation to a tune of Rs.25,000/- be awarded in favour of the applicant and against the respondents jointly and severally.

3. In O.A.712/2000, the applicant has claimed the following main reliefs -

(i) to direct the respondents to remove the anamoly in the pay by fixing the pay of the applicant at par with his junior/Respondent No.3 and grant him all the ancilliary benefits from a retrospective date.

4. The brief facts of the case are that the applicant was working as Sub Divisional Officer(T) in Vidisha in the year 1998. Earlier he had filed an OA No.146 of 1996 as his efficiency bar was not crossed by the respondents. The Tribunal vide order dated 7.8.1998 had disposed of the said OA by directing the respondents to consider the applicant's case for crossing of efficiency bar from the date when he was due. Accordingly, vide order dated 12.10.1998 the applicant was permitted to cross the efficiency bar with effect from 1.5.1986. Some of the juniors of the applicant were promoted on adhoc basis in the grade of S.T.S. of I.T.S. (Group-A) vide order dated 1.7.1998. As the applicant had not been promoted on adhoc basis in the STS, he submitted a representation on 7.7.1998. Thereafter, the respondents have promoted him in the STS vide order dated 30.7.1999 on adhoc basis.

4.1 ~~In the meantime,~~ A charge-sheet was issued to the applicant on 15.4.1996; an enquiry officer was appointed; the enquiry was completed; a copy of the enquiry report was submitted to the applicant on 19.11.1999 to make representation

Thereafter, the adhoc promotion to STS of the applicant was terminated vide order dated 31.3.2000 and the applicant was reverted to the post of AD(T/P)vide order dated 7.4.2000. The respondents have thereafter dropped the charge sheet dated 15.4.1996 vide their order dated 27.4.2000. Thereafter, the applicant has again been promoted on adhoc basis in the Senior Time Scale vide order dated 19.12.2000. Vide order dated 9.3.2002 the applicant has been promoted as Senior SDE with retrospective effect from 28.1.2000 i.e. the date the DPC gave its recommendations for promotion in senior SDE grade in the pay scale of Rs.8000-275-13500.

4.2 The grievance of the applicant is that his next junior Shri O.P.Sharma, respondent no.3 was promoted on adhoc basis with effect from 1.7.1998 and thereafter he was appointed on regular basis. As the enquiry against the applicant has been dropped, which should be considered as non-est, the applicant is entitled to all the benefits of pay protection including pay and promotion with effect from the date his next junior Shri O.P.Sharma has been promoted. Therefore, he has prayed that he should be granted promotion from 1.7.1998, with all consequential benefits.

5. The respondents in their reply have not denied the contention of the applicant that Shri O.P.Sharma,respondent no.3 is ~~xxx~~ junior to the applicant. During the course of arguments, the learned counsel for the respondents has stated that Shri O.P.Sharma was promoted on adhoc basis as stop gap arrangement while the applicant could not be promoted because there was a D.E. pending against him.

6. We have carefully considered the contentions raised by the learned counsel for the parties. We find that Shri O.P.Sharma was promoted on adhoc basis on 1.7.1998 and the applicant could not be promoted because of the pendency of the DE proceedings.The applicant was promoted on adhoc basis in 1999, however, He was ~~xxx~~ reverted on 7.4.2000. Again he was promoted on 19.12.2000 only after the DE proceedings were

dropped. We also find that earlier also, the applicant was not allowed to cross the efficiency bar and he approached this Tribunal and it was only after the directions were given by the Tribunal he was allowed to cross the efficiency bar. In this case, now the enquiry proceedings have been dropped and the applicant has been completely exonerated. Therefore, if the disciplinary proceedings have not been initiated against the applicant he would have also got his adhoc promotion from the date his junior private-respondent no.3 was promoted on adhoc basis i.e. from 1.7.1998. Since the proceedings have been dropped, these be treated as non-est and the applicant is entitled for his adhoc promotion and consequential benefits from the date his junior was given i.e. from 1st July,1998.

7. As regards the payment of the back wages is concerned, the Hon'ble Supreme Court in the case of Union of India Vs.K.V.Jankiraman etc.etc.,AIR 1991 SC 2010 has held as follows-

> "We are,therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary".

Accordingly, as regards the payment of salary for the intervening period, the respondents are directed to decide the same, in the light of the above decision of the Hon'ble Supreme Court, within a period of three months

from the date of communication of this order, by passing a speaking and detailed order and if found admissible grant him all consequential benefits to the applicant within the period stipulated above.

8. In the result, OA& TA are disposed of with the directions contained in paras 6 and 7 above. No costs.

(G.Shanthappa)
Judicial Member

(M.P.Singh)
Vice Chairman

rkv.

पृष्ठांकन सं. ओ/न्या..... ..... जबलपुर, दि.....

प्रतिलिपि

(1) [illegible] जबलपुर

(2) [illegible] काउंसल S. Mewara, Adv.

(3) [illegible] काउंसल SC Shaiwa

(4) [illegible] P. Shankaran

सूचना एवं आवश्यक कार्यवाही हेतु Report

उप रजिस्ट्रार 16/2/04

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