

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 123/2005.

Jaipur, this the 2nd day of March, 2007.

CORAM : Hon'ble Mr. M. K. Gupta, Judicial Member.
Hon'ble Mr. J. P. Shukla, Administrative Member.

Nanag Ram Sharma
S/o Late Shri Bhura Mal Sharma,
Aged about 63 years,
R/o Plot No. 25, Indira Colony,
Bani Park, Jhotwara Road,
Jaipur.

... Applicant.

By Advocate : Mr. P. V. Calla.

Vs.

1. Union of India through
Secretary to the Government of India,
Department of Telecom,
Ministry of Telecommunication,
Parliament Street,
New Delhi.
2. The Chief General Manager
Telecom, Jaipur Telephones,
District Jaipur.
3. The Principal General Manager,
Telecom, Jaipur Telephones,
District Jaipur.

... Respondents.

By Advocate : Shri Sunil Kumar Ojha proxy counsel for
Shri Vishnu Kant Sharma

: O R D E R :

Per M. K. Gupta.

In this 3rd round of litigation, applicant who has
already attained the age of superannuation and retired as

Senior Section Supervisor, GMTD, now known as PGMTD, in this application under Section 19 of the Administrative Tribunals Act, 1985, challenges communication dated 23.03.2004 vide which his request for promotion had been rejected. Applicant seeks direction to respondents to promote him in BCR Grade-IV in the scale of Rs.2000-3200 (Revised to Rs.6500-10500 w.e.f. 1.1.1996). Consequently, he also seek directions to respondents to release arrears of pay and allowances as well as revised pension etc.

2. The admitted facts are that initially applicant joined the services as TS Clerk in the year 1962. His juniors were promoted w.e.f. 1.6.1974 which benefit had been denied to him. Therefore, applicant herein, along with others, filed OA No.509/89 in the name and style of P. N. Kapoor & Ors. Vs. Union of India & Ors, seeking directions to respondents to consider their case for promotion to the post of LSG (Section Supervisor Operative). Said OA was decided on 28.4.1994 holding that they were entitled for promotion during the years 1974 to 1976 when their juniors were so promoted. Prior to date of decision in aforesaid OA, he was promoted under OTBP Scheme on completion of 16 years of service as LSG on 30.11.1983. He was also promoted as Senior Section Supervisor under BCR Scheme w.e.f. 30.11.1990. His grievance had been that he should have been promoted in the said grade of LSG w.e.f. 1.6.1974, therefore, he

instituted another OA namely OA No.240/1998 on earlier occasion he had approached this Tribunal by instituting OA No.240/1998, - wherein he was aggrieved by the communication dated 27.01.1998 holding him not fit for notional fixation w.e.f. 1.6.1974 in the cadre of LSG Clerk in Jaipur Telecom District. He sought directions to respondents to provide notional fixation w.e.f. 1.6.1974 and thereafter fixing his pay in higher grade with all consequential benefits.

Prior to it, he sought voluntary retirement w.e.f. 30.12.1997, which was accepted and he retired from the said date. Said OA No.240/1998 was allowed vide order dated 22.4.2003 directing the respondents "to consider the case of the applicant w.e.f. 1.6.74 i.e. the date Shri G. L. Chejara, junior to the applicant, was promoted, taking into account the ACRs and records prior to 1.6.74 and if found fit, grant him all consequential benefits as were granted to his juniors Shri G. L. Chejara in the higher grade" as per rules. The respondents were also directed "to revise retrial benefits and pay him additional amounts admissible under the rules."

The grievance raised now is that C. L. Chejara had been promoted to the next higher post i.e. the scale of Rs.2000-3200 and as said C. L. Chejara was reverted, he had filed OA NO.64/2000 along with others. In the said

OA, wherein he was applicant No.7, a direction was sought therein to respondents to grant them the benefit of pay scale of Rs.6500-10500, of the post of Chief Section Supervisor under BCR Grade-IV w.e.f. 17.1.1995 and 29.8.1995. The said OA was allowed vide order dated 25.4.2004 noticing that their juniors were so promoted to Grade-IV w.e.f. 17.1.95 and 29.8.1995, which orders were issued on 6.3.1998.

3. The grievance of applicant is that as said C. L. Chejara was promoted to said grade vide order dated 7.7.2006 w.e.f. 17.1.1995, he was also entitled to such promotion. Therefore, he had made a representation on 1.3.2004, which had been rejected vide impugned communicated dated 23.3.2004. It was further pointed out that the order dated 25.4.2003 in OA No.64/2000 has been upheld by the Hon'ble High Court as well as Hon'ble Supreme Court of India. Shri P. V. Calla, Learned Counsel, strenuously urged that since the applicant was granted the relief vide order dated 22.2.2003 in OA No.240/1999 with all consequential benefits, he should have been promoted to the said post at par with Shri C. L. Chejara.

4. The respondents contested the claim laid and stated that present OA filed belatedly is hopelessly barred by limitation. Earlier he was found unfit for promotion by the DPC which met on 29.12.1980 and 7.1.1983 and,

therefore, he was not granted notional promotion w.e.f. 1.6.1974 in the grade of LSG cadre. Otherwise also, his service record was blemished. His ACRs for the year 1978-79 and 1979-80 contained adverse entries, which were duly communicated. Apart from this, a penalty of stoppage of increment for two years was imposed upon him vide order dated 25.7.1980. On an appeal filed against the aforesaid penalty, Appellate Authority reduced it to "censure" vide order dated 27.10.1982. None of his juniors were promoted to BCR Grade-IV. The applicant had already been granted admissible monitory benefits vide memo dated 22.9.2003 at par with C. L. Chejara as per direction of this Tribunal dated 22.4.2003 in OA No.240/98 and nothing more is due to him. No illegality has been committed and applicant was not entitled to any relief.

5. Shri Sunil Kumar Ojha, proxy counsel for Shri Vishnu Kant Sharma, Learned Counsel for respondents, contended that applicant has already been granted the benefit in terms of directions issued by this Tribunal in OA No.240/98. It was clarified that S/Shri G. D. Chatri and R. J. Meena were promoted to BCR Grade IV, but later on having been found ineligible were reverted from retrospective date vide Memorandum dated 15.3.2000. Similarly Shri Madho Lal Meena was also reverted vide memo dated 9.2.2000. Shri R. J. Meena and Shri Madho Lal Meena were promoted prior to 31.12.1995 under Roster

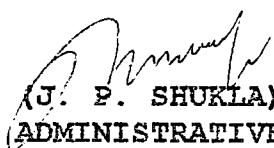
Scheme whereas Shri G. D. Chatri was promoted on ad hoc basis on seniority fixed of the TRA Staff. As applicant had already been granted all admissible monitory benefits vide memo dated 22.9.2003 at par with G. L. Chejara, nothing more is due.

6. We heard Learned Counsel for the parties carefully and bestowed our thoughtful consideration to rival contentions raised by the parties.

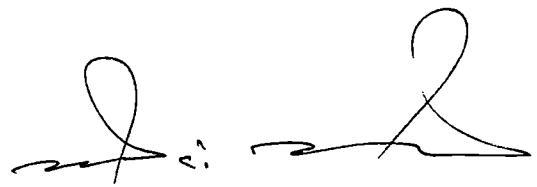
7. The short question which needs for consideration is whether applicant is entitled to further promotion in BCR Grade-IV carrying a scale of Rs.6500-10500. If we have regard to directions issued by this Tribunal vide order dated 22.4.2003 in OA No.240/98, as extracted herein above, one would find that the direction issued to the respondents were of limited extent namely: "to consider applicant's claim w.e.f. 1.6.1974" and further direction issued was that "if found fit, grant him all consequential benefits including further refixation of his pay in higher grades, as per rules". It is not in dispute that the applicant's pay was refixed on notional basis w.e.f. 1.6.1974 under FR vide order dated 22.9.2003 and the actual benefits were also allowed w.e.f. 3.7.1980. The dispute is confined to further promotion in the scale of Rs.6500-10500. It is not in dispute that the applicant's two ACRs namely 1978-79 and 1979-80 contained adverse remarks, besides there was a penalty of

censure as modified vide appellate order dated 27.10.1982. No rule or law has been relied upon or brought to our notice to establish that promotion to the said post was based automatic and purely based on seniority without having regard to the fitness of an official. Even if, a junior is promoted, that will not confer him a vested right of promotion irrespective of his service record. As we have observed that no rule or law has been pointed out on this aspect, we are unable to arrive at a final conclusion. Moreover, the order vide which Shri C. L. Chejara was promoted in BCR Grade-IV indicates that it was a case only against 10% quota. Due to lack of sufficient material placed on record, we are unable to concur with the applicant that he was entitled to further promotion at par with Shri C. L. Chejara. Moreover, we may notice that all these aspects were known to the applicant when he had been pursuing aforesaid OA No. 240/1908 which was decided only in the year 2003, yet he took no steps to seek such relief or to amend the said OA. Having slept over the matter, applicant, at this belated stage, cannot be allowed to unsettle the settled service position.

8. In view of the above, we find no merits in the applicant's claim. OA is, thus, dismissed. No costs.



(J. P. SHUKLA)
ADMINISTRATIVE MEMBER



(M. K. GUPTA)
JUDICIAL MEMBER