

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 27th day of August, 2009

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

1. **ORIGINAL APPLICATION No.472/2005**

Satpal Antil,
Executive Engineer,
Postal Civil Division,
Jaipur.

... Applicant

(By Advocates : Shri C.B.Sharma, proxy counsel for
Shri Dharmendra Jain)

Versus

1. Union of India through
Secretary to the Govt.,
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi.
2. Union of India through
Secretary to the Govt.,
Department of Telecom,
Sanchar Bhawan,
New Delhi.
3. Chief Engineer (Civil),
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi.
4. Deputy Director General (C),
Department of Telecommunication,
12th Floor, Sanchar Bhawan,
New Delhi.
5. Shri C.Madhilagan,
Assistant Engineer,
Postal Civil Sub Division,
Chennai.

... Respondents

(By Advocate : Ms. Kavita Bhati, proxy counsel for Shri Kunal Rawat)

2. ORIGINAL APPLICATION No.499/2006

Satpal Antil,
Assistant Engineer (Civil),
Postal Civil Sub Division-I,
Jaipur.

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through
Secretary to the Govt.,
Department of Posts,
Ministry of Communication &
Information Technology,
20, Ashoka Road,
Dak Bhawan,
New Delhi.
2. Union of India through
Secretary to the Govt.,
Department of Telecom,
Sanchar Bhawan,
New Delhi.
3. Shri C.Madhilagan,
Assistant Engineer,
Postal Civil Sub Division,
Chennai.

... Respondents

(By Advocate : Ms. Kavita Bhati, proxy counsel for Shri Kunal Rawat)

ORDER

PER HON'BLE MR.M.L.CHAUHAN

By way of this common order, we propose to dispose of both these OAs filed by the same applicant.

2. In OA 472/2005, the applicant has prayed that the respondents may be directed to prepare seniority of the Assistant Engineers and thereafter consider his case for further

promotion. It has further been prayed that order of the Telecommunication Department for treating two departments as one may be held illegal.

3. In OA 499/2006, the applicant has also sought identical relief with a further prayer that the Department of Telecom [DOT, for short] may not pass any order pertaining to the Department of Posts [DOP, for short] and services of the applicant may be regularized in the cadre of Executive Engineer against the vacant post available with the DOP in respect of those employees who had opted to continue in the government service, by quashing the order dated 6.10.2006 (Ann.A/1) as also the order dated 3.10.2005 (Ann.A/2), whereby posting and transfer in the grade of Executive Engineer were ordered with immediate effect and on promotion the persons were allocated to DOP.

4. Briefly stated, facts of the case are that the applicant is at present working as Assistant Engineer in the DOP. Grievance of the applicant in these cases is regarding promotion to Group-A cadre. Admitted facts are that the applicant exercised his option as Junior Engineer in the Department of Posts (DOP) at the time of bifurcation of the P&T (Civil Wing) into DOP and DOT, whereas some other persons exercised their option for absorption into DOT. The applicant was further granted promotion in the Group-B cadre. It may be stated that in the two Wings, control of cadre management was to be done by the DOT.

5. It is admitted case between the parties that the applicant was granted promotion in Group-B cadre by the DOT, being a

cadre controlling authority. Case of the applicant is that as can be seen from the RMP Rules (Ann.R/1), issued vide Gazette Notification dated 6.8.94, for the post of Executive Engineer, as per Schedule-1, 94 posts of the Executive Engineer (Civil) were allocated to the DOT, whereas 32 posts were allocated to the DOP.

6. Further grievance of the applicant is that once 32 posts of Executive Engineer have been allocated to the DOP, it is not permissible for the respondents to fill those posts from the employees belonging to BSNL/MTNL and also those who had exercised option to be absorbed in the Government service and in fact they were absorbed as such.

7. Further grievance of the applicant is that even if some of the Group-B employees, who had exercised option for their absorption in the Government, have been declared surplus, they cannot be assigned seniority over and above the applicant, who belongs to DOP. In case such employee has to be adjusted being surplus, at the most they can be absorbed in the Group-B cadre at bottom seniority in the DOP and the DOP should proceed to fill-up these 32 posts on that premise.

8. Learned counsel for the applicant has also drawn our attention to the DO letter dated 30.5.2008, written by the DOT to the DOP. At this stage, it will be useful to quote para-2&4 of the said DO letter, as follows :

“2. After the formation of BSNL, all the Group B posts have been transferred to BSNL and there is no Group B post in DOT. DOT cadre Group B officers are manning some of the posts in Postal Civil Wing. The remaining vacant posts in Group B are to be filled up by DOP. The officials in Group C D cadre

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those who got absorbed in DOP and recruited by DOP subsequently are DOP employees. DOP is the cadre controlling authority in respect of such officials and their promotion to Group B shall be made by DOP. Hence DOP may carry out the cadre management of Group B cadre.

4. The Group A cadre absorption process is not complete and the matter is subjudice. Hence DOT to continue with the cadre management of Group A Officers for some more time till the absorption process of Group-A officers is completed and DOP is in a position to take over the entire cadre management functions of the officers working in the postal civil wing. However, in respect of officers appointed in Group B cadre by DOP, their promotion to Group A shall be processed by Department of Posts."

9. From the portion, as quoted above, it is evident that the DOT has authorised the DOP to make appointment in Group-B cadre in respect of the posts allocated to the DOP in that cadre and also to process the case of promotion to Group-A posts. Apprehension of the applicant is that the respondents are not processing the matter in the right perspective as the persons who have been declared surplus by the Government shall also be considered in preference to the applicant.

10. Notices of these OAs were given to the respondents, who have filed their reply opposing the claim of the applicant.

11. The matter was heard on different dates and finally when the matter was heard on 10.8.2009, this Tribunal passed the following order :

"The respondents have filed MA 19/2008 in OA 499/2006. In para 5 & 6 of this MA, the respondents have categorically stated that the applicant is not at all eligible for promotion to the post of Executive Engineer and have made the following averments :

"5. For promotion from AE(C) to EE(C) not only the seniority in the feeder grade of Assistant Engineer (C) but also the eligibility service and degree in Civil Engineering as prescribed in the Recruitment Rules, are mandatory requirement for consideration.

6. That since the applicant did not fulfill the requisite/prescribed recruitment rules applicable for promotion from Group-B officers to Group A hence the applicant's case was not considered for promotion from Assistant Engineer to Executive Engineer."

The respondents have also brought to our notice the Recruitment and Promotion Rules for the post of Executive Engineer (Civil), perusal of these rules shows that 50% from Assistant Engineers (Civil), who have completed probation and have rendered not less than 8 years regular service in the grade and possess a degree in engineering or equivalent are entitled to be promoted to the post of Executive Engineer.

However, there is a 'Note' below Rule 4(ii), which is in the following terms :

"However, the existing incumbents holding the post of Assistant Engineer (Civil) on a regular basis on the date of notification of these rectt. rules shall continue to be eligible for promotion to the post of Executive Engineer if they possess a Diploma in Civil Engg. from a recognized University/Institution or equivalent and 8 years regular service in the grade."

These rules are applicable to those employees who are holding the post of Assistant Engineer on the date the rules were notified i.e. August 6, 1994.

Admittedly, the applicant was promoted as Assistant Engineer (Civil) after that date i.e. in the year 1997. Since the applicant does not fulfill the requisite eligibility condition for promotion to the post of Executive Engineer, it is not open for him to challenge the said promotion.

Learned counsel for the applicant, however, seeks time to study the matter.

Let the matter be listed on 26.8.2009."

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12. Pursuant to the observations made above, learned counsel for the parties were heard. Learned counsel for the applicant argued that no doubt, the applicant was governed by the Recruitment and Promotion Rules of P&T Building Works (Group-A) Services, as notified vide notification dated 15.7.1994 and published on 6.8.1994, but after bifurcation of the P&T Civil Wing into DOP and DOT, the applicant is not governed for promotion to the post of Executive Engineer by the aforesaid rules so long as the DOP do not frame its separate statutory rules. It was further argued that BSNL has framed its separate rules in respect of the employees who have been absorbed in it and on that parity it was incumbent upon the DOP to frame its separate statutory rules.

13. We have given due consideration to the submission made by learned counsel for the applicant. We are not impressed at all with the submission so made. Admittedly, at initial stage, the conditions of services of the applicant and further promotion avenues were governed by the statutory rules as published on 6.8.1994. As can be seen from Schedule-I attached with the Recruitment Rules for different posts in the P&T Building Works (Group-A) Services, cadre of the Executive Engineers consisted of 126 posts, out of which 94 posts belonged to DOT, whereas 32 posts belonged to DOP.

14. As already noticed above, grievance of the applicant is regarding filling up of the said 32 posts of Executive Engineer in the DOP from the Assistant Engineers belonging to that department without considering the employees who have already exercised their option to absorb in the government

service and in any case if they are to be considered for promotion alongwith the Assistant Engineer of Postal Department, in that eventuality they should be shown in the bottom seniority. Contention of learned counsel for the applicant that the applicant is not governed by the Recruitment and Promotion Rules of P&T Civil Wing, published on 6.8.1994 is wholly misconceived. The fact remains that the DOP has not framed any separate rules till date and the 32 posts of Executive Engineers which are included in Schedule-I are a part of the aforesaid rules. Simply because the DOT/BSNL have subsequently framed separate rules for their employees who have been absorbed in that organization is no ground to hold that the P&T Civil Wing Rules, 1994 are not applicable in the case of the employees belonging to DOP. Admittedly, the applicant is not eligible for promotion to the post of Executive Engineer in terms of the rules, as quoted above. As such, according to us, it is not permissible for the applicant to challenge the promotion order of a person, as made vide Ann.A/1 and Ann.A/2 in OA 499/2006. The matter on this point is no longer res-integra. The Apex Court in the case of **K.H.Siraj v. High Court of Kerala and Others** [2006 SCC (L&S) 1345], in para 68, while relying its earlier judgement in the case of Umakant Saran (Dr.) v. State of Bihar [(1973) 1 SCC 485] held that only those who are eligible or in a zone of consideration can question the legality or otherwise of the select list.

15. As already noticed above, since the applicant is not eligible for promotion to the post of Executive Engineer, the applicant has no locus-standi as to how the 32 posts of

Executive Engineer, which have been allocated to the DOP as per Schedule-I, have to be filled in. In other words, whether the said posts are to be allocated to the DOP to be filled in from the employees belonging to Postal Department or whether the employees who have exercised their option for their absorption in the government department and have become surplus now can also be considered for promotion to the post of Executive Engineer (Civil) and how their seniority has to be determined.

16. Thus, we are of the view that without going into the merit of the case whether the posts of Executive Engineer belonging to Postal Department have to be filled in from the Assistant Engineers belonging to the Postal Department or from the Assistant Engineers who have exercised their option for absorption in the government department at initial stage can also be considered for promotion, the present OAs can be disposed of solely on the ground that since the applicant is not eligible for promotion to the post of Executive Engineer, he has no locus-standi to raise the grievance regarding his promotion to the said post in view of the law laid down by the Apex Court, referred to above.

16. With these observations, both the OAs stand dismissed with no order as to costs.

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(B.L.KHATRI)
MEMBER (A)

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(M.L.CHAUHAN)
MEMBER (J)