

ab

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

05.03.2012

OA No. 75/2009

Mr. C.B. Sharma, Counsel for applicant.
Mr. B.K. Pareek, Proxy counsel for
Mr. T.P. Sharma, Counsel for respondents.

On the request of the proxy counsel appearing on behalf of the respondents, list it on 23.03.2012.

Anil Kumar

(Anil Kumar)
Member (A)

K.S. Rathore

(Justice K.S. Rathore)
Member (J)

ahq

23/03/2012

OA No. 75/2009

Mr. C.B. Sharma, Counsel for applicant.
Mrs. T.P. Sharma, Counsel for respondents.

Heard.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar

[Anil Kumar]
Member (A)

K.S. Rathore

[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 23rd day of March, 2012

Original Application No.75/2009

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDICIAL)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

Bhooramal Sharma
s/o Shri Gyarsi Lal Sharma,
r/o A-21, Sain Colony,
Station Road, Jaipur,
Retired as Chief Technical Supervisor (TTA),
from the office of S.D.E. Level-22,
B.S.N.L., M.I. Road,
Jaipur

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Bharat Sanchar Nigam Limited
Through Principal General Manager,
Telecom, District,
M.I. Road,
Jaipur
2. Chief General Manager, Telecom,
Rajasthan Circle,
Sardar Patel Marg,
Jaipur
3. Chairman-cum-Managing Director,
B.S.N.L., Corporate Office,
New Delhi.

4. Shri Om Narain Sharma
s/o late Sri Narain Sharma,
retired as Chief Technical Supervisor,
BSNL, Jaipur r/o 1740, Jat Ke Kue Ka Rasta,
Chandpole Bazar,
Jaipur
5. Shri Babu Lal Sharma
s/o Shri Jagdish Narain Sharma,
retied as Chief Telecom Supervisor,
BSNL, Jaipur r/o 33, Jai Hanuman Vatika,
Bas Badanpura, Jaipur

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

ORDER (ORAL)

The present OA is filed by the applicant claiming the following reliefs:-

- "1. Issue appropriate, order or direction and direct the respondents to promote the applicant on the post of Chief Technical Supervisor (Grade-IV) as per his seniority in basic grade or suitably modifying the promotion order of the applicant (Order dated 2.9..2006 Annexure-A/1) as well as order dated 13.2.207 Annx. A/13.
2. Issue appropriate, order or direction and direct the respondents to promote the applicant on the post of Chief Technical Supervisor (Grade-IV) from the date when his juniors in the basic grade were given promotion and also direct the respondents to grant all consequential benefits to the applicant from the said date.
3. Issue appropriate, orders or direction and direct the respondents to pay arrears of salary to the applicant in consequences of his promotion to the post of Grade-IV from the date his junior were so promoted.



4. Annexures-A/2 and Annexure-A/3 by which the juniors of the applicant were so promoted may kindly be modified in accord away with the relief granted to the applicant.
5. Any other order or direction which this Hon'ble Court deems fit and proper may kindly be passed in favour of the applicant.
6. Cost of the Original Application may kindly be quantified in favour of the applicant."

2. The applicant was promoted as Chief Technical Supervisor vide memo dated 2.9.2006 whereas respondent No.4 was promoted vide memo dated 22.8.2001 and respondent No.5 was given promotion to the post of Chief Technical Supervisor vide memo dated 13.08.2004.

3. The main grievance of the applicant is regarding promotion from the date from which juniors to the applicant have been given promotion. Therefore, the order dated 2.9.2006 (Ann.A/1) order dated 13.2.2007 (Ann.A/13) and orders dated 22.8.2001 (Ann.A/2) & 13.8.2004 (Ann.A/3) by which the juniors to the applicant were promoted are challenged on the ground that action of the respondents in not promoting the applicant on the post of Chief Technical Supervisor is in contravention to the judgment of CAT-Principal Bench in OA No. 1455/1991 dated 7.7.1992, Smt. Santosh Kapoor and others vs. Union of India and ors., wherein the CAT-Principal Bench observed as under-



“In the above view of the matter, we direct that the promotions of 10% posts in scale 2000-3000 would have to be based on seniority in basic cadres subject to fulfillment of other conditions in the BCR viz. those who were the regular employees as on 1.1.1990 and has completed 26 years of service in basic grade (including higher scales). The respondents are directed to consider applicants accordingly from the due dates with consequential benefits.”

4. Against the aforesaid judgment, the Union of India approached the Hon'ble Supreme Court by way of filing Special Appeal which was dismissed by the Hon'ble Apex Court on 9th September, 1992 and thus, the law laid down in Santosh Kapoor's case attains finality.

5. Pursuant to the judgment rendered by the Apex Court, the Ministry of Communication, Department of Telecom issued a circular dated 13.12.1995 wherein it has been categorically directed that promotion to the Grade-IV is to be given from amongst officials of Grade-III on the basis of their seniority in the basic grade.

6. It is also contended on behalf of the applicant that the seniority for the purpose of promotion is to be counted from the date of appointment and not according to the date of confirmation as per the law laid down by the Apex Court in the case of Direct Recruit Class-II Engineering Officers' Association vs. State of



Maharastra, reported at (1990) 2 SCC 715. Thus, denying promotion to the applicant on the post of Chief Technical Supervisor (Grade-IV) while promoting the persons junior to him in the basic grade is contrary to law and requires interference by this Tribunal.

7. Per contra, the learned counsel appearing for the respondents challenged the maintainability of this OA on the ground that the present OA is barred by limitation for which no reasonable and sufficient cause has been shown by the applicant. The applicant had never before challenged the impugned orders dated 2.9.2006, 22.8.2001, 13.8.2004 and 19.1.2004. As such, the original application deserves to be dismissed being barred by limitation under Section 21 of the Administrative Tribunals Act, 1985.

8. It is also stated that the applicant is estopped from challenging the said orders as even in S.B.Civil Writ Petition No. 6229/2005, which had been submitted by the applicant before Hon'ble High Court at Jaipur Bench, none of the said orders had been challenged by the applicant, wherein the applicant claimed the following reliefs:-

"It is, therefore respectfully prayed that Your Lordships may graciously be pleased to accept and allow this Writ Petition and;

- i) issue appropriate writ, order or direction, direct the respondents to promote the petitioner on the



post of Chief Technical Supervisor (Gr.IV) as per his seniority in basic grade;

- ii) issue appropriate writ, order or direction, direct the respondents to promote the petitioner on the post of Chief Technical Supervisor (Gr.IV) from the date when his juniors in the basic grade were given promotion and also direct the respondents to grant all consequential benefits to the petitioner from the said date.
- iii) Issue appropriate writ, order or direction, direct the respondents to pay arrears of salary to the petitioner in consequence of his promotion to the post of Grade-IV from the date his juniors were so promoted.
- iv) Any other order or direction which this Hon'ble Court deems fit and proper may kindly be passed in favour of the petitioner.
- v) Cost of the writ petition may kindly be quantified in favour of the petitioner."

9. Thus, this OA not only deserves to be dismissed on the point of inordinate delay but also on the ground that at this stage the applicant is estopped to challenge the orders impugned which have been passed way back in the year 2006 and prior to this.

10. It is further strongly controverted that all the seven persons whose names have been given by the applicant in para-8 of the OA are senior to the applicant in the basic gradation list and no person junior to the applicant has been promoted to Grade-IV in the Technical Cadre. In the basic gradation list, which was corrected



upto 1.7.1971, name of the applicant appeared at SI.No.162 whereas names of seven persons mentioned by the applicant appeared as under:-

1.	Shri Triloki Nath Pareek	126
2.	Shri Badri Narian Bagra	124
3.	Shri Damodar Prasad	130
4.	Shri Gopal Lal Jat.	134
5.	Shri Babu Lal Sharma	131
6.	Shri Om Prakash Pareek	135
7.	Shri Om Narain Sharma	123

11. Thus, bare perusal of the gradation list, it is evident that the applicant is much junior in the basic grade seniority as compared to the aforesaid persons mentioned by him in para 4.4 of the OA. Even if we consider the date of confirmation in the basic grade, it appears that the applicant was confirmed on 1.3.1970 whereas all the persons were made confirmed on 1.3.1969.

12. It is also submitted that the gradation list dated 19.1.2004 was sent to all unit officers to get it signed from all Technicians and to get objections, if any. Further, copies of said gradation list were placed on all Notice Boards and were also supplied to the District Secretaries of the Unions. The applicant never raised any objection against the said gradation list. The respondents also submitted copy of the gradation list along with their reply to the writ petition submitted by the applicant in the year 2006. The applicant failed to challenge the same and did not raise any objection and now in the



year 2009 the applicant is estopped from challenging the said gradation list.

13. Having considered the rival submissions of the respective parties and upon careful perusal of the material available on record as well as the judgments relied upon by the respective parties and the relief claimed, it is not disputed that the gradation list was published on 19.1.2004 and objections were invited and it is also not disputed that the applicant has not submitted any objection at the relevant point of time and even in the writ petition filed by the applicant in the year 2006, but by way of the present OA the order impugned dated 2.9.2006 is challenged at such a belated stage. Thus, in our consider view, the OA not only deserves to be dismissed on the principal of estoppel but also on the ground of delay and laches. The applicant has not even filed any application for condonation of delay explaining the reason as to why the order impugned dated 2.9.2006 (Ann.A/1), 22.8.2001 (Ann.A/2) 13.8.2004 (Ann.A/3) and provisional basic gradation list dated 19.1.2004 are not challenged at the relevant time. The judgments relied upon by the applicant are not applicable in the facts and circumstances of the present case.

14. The Hon'ble Apex Court in the case of D.C.S.Negi vs. Union of India and ors., in SLP (Civil) No.7956/2011 dated 7.3.2011 observed as under:-



"..... A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3).

In the present case, the Tribunal entertained and decided the application without even advertng to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicates its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non-applicant is not at all relevant....."

15. In view of the ratio decided by the Hon'ble Supreme Court in the case of D.C.S. Negi (supra), the present OA deserves to be dismissed on the ground of delay and laches and the same is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K.S. Rathore
(JUSTICE K.S.RATHORE)
Judl. Member