

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 18th day of May, 2011

TRANSFERRED APPLICATION No.29/2009

[CWP No.12365/2008]

With

Misc. Application No.337/2010

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. M.D. Pareek S/o Shri Ganga Dhar Pareek, aged about 72 years, resident of D-8, P&T Colony, M.I. Road, Jaipur, retired as Sr. Section Supervisor, O /o G.M.T.D., Jaipur.
2. Bhola Ram Sharma, S/o Shri Gauri Dutt, aged about 71 years, resident of 1B-50, Shiv Shakti Colony, Shastri Nagar, Jaipur, retired as Chief Section Supervisor, O /o G.M.T.D., Jaipur.
3. Ram Bux Sharma, S/o Shri Chittermal, aged about 71 years, resident of A-39, Ram Kutir, Shastri Nagar, Jaipur, retired as Chief Section Supervisor, O /o G.M.T.D., Jaipur.
4. Ram Dayal Sharma, S/o Shri Pyare Lal Sharma, aged about 74 years, resident of 313, Mahima Heritage, Central Spine Vidhyadhar Nagar, Jaipur, retired as Sr. Section Supervisor, O /o G.M.T.D., Jaipur.
5. R.S.Sharma S/o Shri N.L. Sharma, aged about 74 years, resident of D-244, Prem Nagar, Jhotwara, Jaipur, retired as Sr. Section Supervisor, O /o G.M.T.D., Jaipur.
6. S.K. Batt Son of Shri P.Bhatt, aged about 70 years, resident of G-25, Janpath, Shyam Nagar, Sodala, Jaipur, retired as Chief Section Supervisor, O /o G.M.T.D. Jaipur.
7. N.C. Vijay S/o Shri Har Sahai, aged about 71 years, resident of B-75, Nehru Nagar, Jaipur, retired as Chief Section Supervisor, O /o G.M.T.D., Jaipur.
8. Hem Ram Palliwal son of Shri K.M. Palliwal, aged about 72 years, resident of 44/223, Rajat Path, Man Sarovar,

Anil Kumar

Jaipur, retired as Chief Section Supervisor, O /o G.M.T.D. Jaipur.

9. Yashpal Sharma S/o Shri C.D. Sharma, aged about 74 years, resident of 133 Kanwar Nagar, Chandi Ki Taksal, Jaipur, retired as Sr. Section Supervisor, O /o G.M.T.D. Jaipur.
10. Pooran Singh S/o Shri Ganpat Singh, aged about 74 years, resident of 3 Santaji Marg, Opp Pondrik Park, Brahmpuri Road, Jaipur, retired as Sr. Section Supervisor O /o G.M.T.D., Jaipur.

... Petitioners/Applicants

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through the Secretary to the Govt. of India, Department of Telecom, Ministry of Information & Technology, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecommunications, Rajasthan Circle, Jaipur-8.
3. Principal General Manager, Telecom District, Jaipur-10.
4. Shri B.K.Sharma through General Manager, Telecom, Sri Ganganagar (Raj).
5. Bharat Sanchar Nigam Limited through Managing Director, Statesman House, New Delhi-110001.

... Respondents

(By Advocate : Shri T.P. Sharma)

ORDER (ORAL)

The petitioners/applicants (10 in number) had filed a Writ Petition [No.12365/2008] before the Hon'ble High Court with the following prayer:-

"i) By an appropriate writ, order or direction the impugned action in connection with not allowing benefits of grade IV scale Rs.2000-3200 from the date juniors so allowed i.e. 24.12.1990 be quashed and set aside with the letter dated 24.9.2001 (Ann.20) with all consequential benefits.

Anil Kumar

ii) By an appropriate writ, order or direction, the respondents be further directed to complete process of review DPC started vide letter dated 8.9.1997 (Ann.8) and to extend benefits of grade IV scale Rs.2000-3200 with due fixation of pay and allowances and arrears their upon including revised pension and pensionary benefits.

iii) Any other order which the Hon'ble High Court deems fit and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioners.

iv) Costs of the writ petition may kindly be awarded in favour of the petitioners."

2. The Hon'ble High Court vide its order dated 18.5.2009 transferred the aforesaid writ petition to this Tribunal.

3. The applicants have submitted that they were holding substantive posts in the erstwhile Department of Telecom and retired from the post of Sr. Section Supervisor at the relevant time. The then Department of Telecom introduced the scheme for placement in the next higher scale after completion of 26 years of service in the basic grade, vide order No.27-4/87-TE-II(1) dated 16.10.1990 (Ann.1) and it has been provided that 10% of posts in the scale will be in the next higher scale of Rs.2000-3200 and scale at the relevant time graded as follows:-

Grade-1	Rs.975-1600 (Basic grade)
Grade-II	Rs.1400-2300
Grade-III	Rs.1600-2660
Grade-IV	Rs.2000-3200 on the basis of 10% posts of the scale of Rs.1600-2660

4. The applicants were allowed Grade-II and Grade-III as per their base grade seniority and the respondents issued seniority list vide letter dated 30.1.1991 in which name of the applicants find place at S.Nos.57,54,46,62,64,66,61,76,77 & 80, whereas the name of their junior Shri B.K. Sharma (Respondent No.4) find place at Sr. No. 92.

Anil Kuma

5. That the respondents further clarified the position vide letters dated 7.1.1994 and 18.2.1994 stating therein that grade-IV promotion is given on the basis of seniority in grade-III and respondent No.4 was allowed grade-IV promotion w.e.f. 24.12.1990 on the basis of seniority in grade-III.

6. The procedure for allowing promotion in grade-IV on the basis of seniority in grade-III was challenged before the Principal Bench of this Tribunal and the Principal Bench, New Delhi, directed that promotion in the grade-IV scale Rs.2000-3200 would be based on the seniority in the basic cadre and the order of the Principal Bench was upheld by the Hon'ble Apex Court. So, the respondents further issued letter dated 13.12.1995 (Ann.5) for allowing grade-IV on the basis of base grade seniority.

7. The respondents further passed the orders dated 10.5.1996 (Ann.6) and 13.2.1997 (Ann.7) for protecting rights of the those officials who were to be reverted on the basis of revised procedure and ordered that their reversion be protected by creating supernumerary posts and thus respondents No. 4 was protected from reversion and he enjoyed the higher scale upto his retirement in the year 1998.

8. The respondents as per the revised procedure started to convene review DPC and called for certain information vide letter dated 8.9.1997 (Ann.8) for allowing grade-IV promotion to the officials including respondent No.4 w.e.f. 24.12.1990, who is admittedly junior to the applicants and his name find place at S.No.45 and the name of the applicants also find place at S.Nos.4,2,6,19,21,23,18,32,33 & 35 but by that time respondent No.4 retired from service on 28.2.1998. Subsequently, applicant Nos.2,3,6,7,8 & 9 were allowed grade-IV promotion w.e.f. 21.4.1993 instead of 24.12.1990 as was allowed to their juniors, whereas the other applicants were not allowed grade-IV promotion and the respondents also ordered for reversion of other officials holding the post of grade-IV due to promotion on the basis of grade-III seniority. The applicants

Anil Kumar

have prayed that they are also entitled to the similar benefits as Shri B.K.Sharma, who is junior to them in the basic grade.

9. The officials who were allowed promotions in the grade-IV on the basis of seniority in grade-III were ordered to be reverted after revising the procedure allowing grade-IV promotion on the basis of seniority in the basic grade. Such officials approached various Benches of the Central Administrative Tribunal and thereafter the matter was taken to the Hon'ble Supreme Court and after decision, the respondents issued a letter dated 3.10.2002 (Ann.19) to protect the rights of the officials who were ordered to be reverted and were allowed to continue in grade-IV. By this action, the junior persons who were allowed grade-IV promotion on the basis of seniority in grade-III were ordered to be continued in grade-IV.

10. The respondents rejected the claim of the applicants vide letter dated 24.9.2001 (Ann.20) inspite of the fact that junior persons to the applicants like Shri B.K.Sharma enjoyed the benefits of grade-IV w.e.f. 24.12.1990 till retirement.

11. That the similarly situated employees also approached the Jaipur Bench of the Tribunal by filing OA 64/2000 [Ram Dayal and Ors v. UOI & Ors.] and the Jaipur Bench allowed the OA vide order dated 25.4.2003 (Ann.21) with the direction to the respondents to extend the benefits of promotion of grade-IV w.e.f the dates their next juniors have been so promoted. The respondents also challenged the order of the Jaipur Bench before the Hon'ble High Court of Rajasthan in DB Civil Writ Petition No.1739/2004 but the said writ petition was dismissed vide order dated 24.3.2005 (Ann.22).

12. The applicants further challenged the letter dated 24.9.2001 (Ann.20) before the Jaipur bench of the Tribunal by filing OA 433/2002. The Jaipur Bench of the Tribunal disposed of the said OA vide order dated 29.11.2007 (Ann.26) holding that the Tribunal has got no jurisdiction to entertain the matter

Anil Kumar

pertains to BSNL and the orders passed by the BSNL authorities cannot be taken into consideration by this Tribunal.

13. Being seriously aggrieved by the action of the respondents in connection with not allowing the benefits of grade-IV promotion from the date juniors were allowed and rejection of the claim vide letter dated 24.9.2001 (Ann.20) the applicants submitted the present Writ Petition before the Hon'ble High Court. The main prayer of the applicants, as stated above, is that the letter dated 24.9.2001 (Ann.20) be quashed and set aside and the applicants be allowed the benefits of grade-IV scale Rs.2000-3200 from the date their juniors were so allowed i.e. w.e.f. 24.12.1990.

14. The respondents have filed their reply contesting the claim of the applicants. In the reply, the respondents have stated that the contents of the writ petition are admitted to the extent that name of the applicants who find place at serial numbers in the gradation list dated 30.1.1991 are, as follows:-

Sr. No.	Gradation (SI) No.	Name of Official S/Shri
1.	46	R.B. Sharma
2.	54	B.R.Sharma
3.	57	M.D.Pareek
4.	61	N.C.Vijay
5.	62	R.D.Sharma
6.	64	R.S.Sharma
7.	66	S.K.Bhatt
8.	76	H.R.Paliwal
9.	77	Y.P Sharma
10.	80	Pooran Singh
11.	92	B.K. Sharma

15. The promotion in grade-IV was given from amongst the officials in grade-III (Annexure R/1) on the basis of their enter-se-seniority in that grade prior to 13.12.1995. Since Shri B.K. Sharma was senior in grade-III, therefore, he was given

Anil Kumar

promotion to grade-IV as per the existing rules. The basis of promotion to grade-IV was revised from seniority in grade-III to seniority in the basic grade vide DOT letter dated 13.12.1995 (Annexure R/2).

16. The said procedure of giving promotion to grade-IV on the basis of seniority in grade-III was challenged by certain officials before the Principal Bench of this Tribunal, New Delhi, by filing OA 1455/1991. The Principal Bench vide its order dated 7.7.1992 directed that the promotion to 10 % posts in the scale of Rs.2000-3200 would have to be based on seniority in the basic cadre. The Hon'ble Supreme Court vide order dated 9.9.1993 upheld the judgment of the Principal Bench of this Tribunal. After that, the Department of Telecom, New Delhi, instructed vide letter No.22-6/94-TE-II dated 13.12.1995 that promotion to grade-IV may be given from amongst the officials in grade-III on the basis of their seniority in the basic grade.

17. As such, the review DPC was held and the promotion orders from BCR grade-III to grade-IV were issued vide letter No.STA/12-150/TOA(G)/19 dated 11.2.2000 (Annexure R/3) and subsequently revised vide order dated 8.6.2000 (Annexure R/4). Shri M.D.Pareek was not coming in the purview of promotion as per his seniority in the basic cadre as per prevailing rules at that time. But, the other applicants namely S/shri R.B.Sharma, Bhola Ram Sharma, Abdul Gaffar, N.C.Vijay and Hemraj Palwal were promoted on the basis of their seniority in the basic grade. Shri M.D.Pareek and others had filed OA 330/1999 before the Jaipur Bench of the Tribunal to implement the BCR scheme for the applicants and others as per Supreme Court's orders. The said OA was decided on 4.1.2001 with the direction to the respondents to decide the issue in regard to promotion under 10% quota of the BCR scheme in respect of the applicants and the other similarly situated persons within four months from the date of receipt of a copy of CAT's orders. A suitable reply dated 1.5.2001 (Annex.R/5) was also given to 16 applicants.

Anil Kumar

18. As per the court's decision in OA 330/99 dated 4.1.2001, OA 64/2000 dated 24.3.2005 and further direction received vide BSNL, HQ, New Delhi, No.22-23/2004-TE-II dated 28.8.2006, viz; "to implement the CAT orders dated 25.4.2003 in the case of the officials involved in the present case only and can not be taken as precedent in other cases", the present OA has no merit because the applicants have already been given reply by the office of the respondents vide letters No.STA/5-406/99/7 dated 5.1.2001 and STA/5-406/99/31 dated 24.9.2001 (Annex. R/5 & R/10 respectively). The respondents have prayed that the present OA has no merit and the same deserves to be dismissed.

19. We have heard learned counsel for the parties and perused the material available on record. The main contention of the applicants is that since they are senior to Shri B.K.Sharma, they should also be extended the same benefit of grade-IV w.e.f. 24.12.1990. The respondents in their reply have admitted that Shri B.K.Sharma was junior to the applicants as per the gradation list dated 30.1.1991 but he was given promotion because he was senior in grade-III to the applicants.

20. Learned counsel for the applicants also drew our attention to Ann.8, which is the seniority list dated 8.9.1997, in which Shri B.K.Sharma is at Sr. No.45, whereas the applicants have been shown as senior to him. When learned counsel for the respondents was asked to clarify whether the applicants are senior to that of Sh.B.K.Sharma, as per the seniority list dated 8.9.1997 (Annex.8), he was not able to give a satisfactory reply. Since Shri B.K.Sharma was earlier promoted on the basis of seniority in grade-III but since the serial numbers were changed subsequently to give promotion on the basis of base seniority and if the applicants are senior to Shri BK. Sharma as per the base seniority then why the same benefit cannot be given to the applicants, could not be clarified by learned counsel for the respondents. Therefore, we are of

Anil Kumar

the opinion that in the interest of justice that the applicants may file a representation before the respondents and we direct the respondents to decide the same within a period of three months from the date of receipt of the representation by them by a speaking order.

21. With these observations, the TA is disposed of with no order as to costs.

22. In view of the order passed in the TA, no order is required to be passed in MA 337/2010, which shall also stand disposed of accordingly.

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(Anil Kumar)
MEMBER (A)

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J. S. Rathore

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