

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

18

ORDER SHEET

ORDERS OF THE TRIBUNAL

10.10.2011

OA No. 266/2009 with MA 205/2009

Mr. C.B. Sharma, Counsel for applicant.
Mr. B.N. Sandu, Counsel for respondents.

It is a DB matter. DB is not available today.

List it on 31.10.2011.

Anil Kumar
(Anil Kumar)
Member (A)

ahq

31/10/2011

OA No. 266/2009 with MA No. 205/2009

Mr. C.B. Sharma, counsel for applicant.
Mr. B.N. Sandu, counsel for respondents.

Heard.

The OA. and MA. are 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 31st day of October, 2011

Original Application No.266/2009

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Gajanand Yadav
s/o late Shri Devi Narayan Yadav,
r/o 2766, Bagru Walon Ka Rasta,
Chandpole Bazar, Jaipur
Retired as Lower Selection Grade
(Section Supervisor),
Office of General Manager,
Telecom District (GMTD), Jaipur

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through its Secretary to the Government of India,
Ministry of Communication and
Information Technology,
Department of Telecom,
Sanchar Bhawan, New Delhi.
2. Chief General Manager,
Rajasthan Telecom Circle,
Jaipur
3. Principal General Manager,
Telecom District,
Jaipur.

.. Respondents

(By Advocate: Shri B.N.Sandu)

ORDER (ORAL)

Brief facts of the case are that prior to 1967, two wings were in existence in the Telecom Department i.e Engineering and Accounts Office Telephone Revenue. For both the wings, the staff was having separate seniority lists and promotional avenues. In the year 1967, respondents department took a decision for merger of the staff.

2. The applicant, at the time of merger, was working in the Engineering wing in clerical cadre and was due for promotion to the post of Lower Selection Grade (Section Supervisor), but the officials who were officiating in Accounts Office Telephone Revenue Wing were allowed Lower Selection Scale on officiating basis in spite of fact that they were junior to the applicant.

3. The respondent department allowed Lower Selection Grade scale to the officials who came from Accounts Office Telephone Revenue and became junior to the applicant after merger, but not considered the applicant for Lower Selection



Grade. One Shri B.K.Sharma and other who belong to Accounts Office Telephone Revenue were allowed Lower Selection Grade scale prior to the applicant and also placed above the applicant in the seniority list dated 1.8.1980 (Ann.A/3).

4. Some of the officials approached the Civil Court against seniority assigned below the officials like Shri B.K.Sharma. The Civil Court passed decree in favour of them with the direction to maintain seniority as per rules i.e. date of appointment and in view of the ratio decided by the Hon'ble Supreme Court the seniority should be from the date of initial appointment.

5. The respondents further issued seniority list in the year 1988 and thereafter in the year 1991 vide letter dated 30.1.1991 showing position as on 4.1.1972 after merger of both the wings, in which applicant was placed at Sl.No.34 whereas Shri B.K.Sharma was shown at Sl.No.92. The respondents ignoring the seniority, further promoted Shri B.K.Sharma in the Higher Selection Grade scale in the year 1981 and the applicant was never considered for Lower Selection Grade scale and thereafter in Higher Selection Grade scale taking into consideration the position as on 4.1.1972.

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6. In the year 1990, respondent department introduced BCR Scheme with the provision that Grade-IV promotion will be based on seniority in Grade-III and these provisions were challenged before various Benches of this Tribunal and after considering the matter, CAT-Principal Bench, New Delhi vide order dated 7.7.1992 in the case of Smt. Santosh Kapoor and ors. vs. Union of India and others held that promotion to Grade-IV is on the basis of basic cadre seniority i.e. initial date of appointment and after the decision of Hon'ble Supreme Court respondent department also reviewed orders and passed specific directions that Grade-IV promotion should be on the basis of basic cadre seniority.

7. The applicant represented vide letter dated 9.2.2001 for extending benefits as per law laid down by Hon'ble Supreme Court as regards higher scale on the basis of basic cadre seniority after considering date of initial appointment, but the case of the applicant was not considered by the respondents and kept pending without specific reason and during the period the applicant retired on 31.12.1989 on attaining the age of superannuation without due promotions to the Higher Selection Grade scale.

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8. The applicant also served a notice for demand of justice through his counsel on 26.2.2004, but no action has been taken by the respondents. The applicant continued pursuing his case through representation dated 11.5.2005 and also in the year 2006 and 2007 and the respondent only responded the representation vide their letter dated 13.2.2007 informing the applicant that the case is very old and cannot be considered at this stage. Although vide letter dated 13.2.2007 (Ann.A/7) claim of the applicant has been rejected being barred by limitation, but thereafter also the applicant further represented before the respondents for revision of pension and the same was answered by the respondents vide letter dated 23.12.2008 (Ann.A/8) by which the applicant was informed that his application will be considered in Pension Adalat which will be held on 5.1.2009 and pension can be revised only after receipt of revised case from the SSA meaning thereby that application of the applicant was kept pending by the respondents. Further vide Ann.A/9 dated 30.3.2009 regarding regularization of stepping up from the junior officials and payment of consequential benefits was forwarded originally to Accounts Officer, Headquarter, Jaipur and vide letter dated 23.4.2009 (Ann.A/10) the applicant was further informed that stepping up will be decided by the Circle

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Office. Further, vide Ann.A/11 dated 22.5.2009 the matter has been referred to Assistant Director (T.T.), Head Office, Jaipur.

9. Thus, it appears that vide Ann.A/7 claim of the applicant was rejected on the ground that case is very old and does not fall within the reasonable time limit as the case is time barred, therefore, no action is possible at this juncture, but bare perusal of Ann.A/8 to A/11 reveals that case of the applicant was further reviewed by the respondents and applicant was informed that his case is under consideration with the SSA, Accounts Officer as well as Circle Office and Assistant Director (T.T.).

10. The learned counsel appearing for the applicant placed reliance on the judgment of the Division Bench of Hon'ble Rajasthan High Court in the case of Smt. Rukma vs. State of Rajasthan and Ors., reported in 2000 (3) SLC (RAJ.) 102 wherein the Hon'ble High Court was of the view that in the case of pension, the cause of action is recurring and therefore, there is no question of any delay and laches. The appellant therein made several representations and none of the representation was considered by the department, as such, there was no reason for not giving the pension to the appellant.

11. The learned counsel appearing for the applicant also referred to the order dated 18.5.2011 passed by this Bench in



TA No.29/2009, M.D.Pareek and ors. vs. UOI and ors. and submitted that similar controversy was dealt with by this Tribunal in this case.

12. In this OA the applicant has also filed a Misc. Application No.205/2009 for condonation of delay in filing the present OA. We have considered the Misc. Application and in view of the ratio decided by the Hon'ble High Court in the case of Smt. Rukma (supra), since the case pertains to the pensionary benefits which is recurring cause of action, therefore, we are satisfied with the reasons stated in the Misc. Application seeking condonation of delay and the delay caused in filing the present OA is condoned. The Misc. Application No.205/2009 stands disposed of accordingly.

13. Having considered the rival submissions of the respective parties and after going through the material available on record as well as the representations filed by the applicant after Ann.A/7, it appears that case of the applicant was kept pending for consideration at various stages and still the respondents have not taken any decision. In view of the judgment referred and relied upon by the applicant in support of his submissions, it reveals that as per settled proposition of law, in the case of pension, the cause of action is recurring and therefore, there is no question of any delay or laches, as

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has been mentioned by the respondents in Ann.A/7. Thus, we are of the view that ends of justice will be met if direction is given to the respondent to consider representations which have been acknowledged by the respondents vide Ann.A/8 to Ann.A/11 and shall decide the same strictly in accordance with the provisions of law and if the case of the applicant is found in order, the benefit as claimed by the applicant be extended in favour of the applicant as has been extended to similarly situated persons.

14. With these observations, the OA stands disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

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

R/