

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : INDORE

Original Applications Nos.201/00170/2017 &
201/00171/2017

Indore, this Friday, the 15th day of March, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Mahendra Kumar Yadav (M.K. Yadav), S/o Late Shri Kanhaiyalal Yadav, aged 65 years, Occ. Retd. R/o 34, Rupramnagar, Manik Bag Road, Indore 452007

-Applicant in OA 201/00170/2017

Rajesh Kumar, S/o Late Shri Thakurdas Dikshit (R.K. Dikshit as per service record), Aged 62 years, Occ. Retd. R/o 69, Shri Sapt Shrangi Nagar, Near Silicon City, Indore 452012

-Applicant in OA 201/00171/2017

(By Advocate – Shri Umesh Gajankush)

V e r s u s

1. Bharat Sanchar Nigam Ltd through the Chief General Manager, MP Telecom Circle, Sanchar Bhawan, Bhopal (MP) 462015.

2. The General Manager, Office of the General Manager, Telecom, Distt. Indore (MP) 452001

- Common Respondents

(By Advocate – Shri V.P. Khare)

(Date of reserving order : 13.03.2019)

C O M M O N - O R D E R

By Navin Tandon, AM.

Since both the Original Applications involve identical facts and reliefs, they are being adjudicated through this

common order. For the purpose of this order, the facts are taken from OA No.201/00171/2017 and the documents relied thereupon.

2. The applicant is aggrieved by the fact that his lateral advancement promotion was delayed by more than two years when it was due.

3. The applicant has made the following submissions in the O.A:

3.1 He was initially appointed in the department as T.S. Clerk in 1973. Thereafter he was undergone Telegraphically Training and was appointed as Telegraphist. The applicant had undergone A.S.T.T. (TTS-Group C) Training at TTC Jabalpur during year 1981-82.

3.2 The Ministry of Communications, vide its communication dated 05.04.1994 (Annexure A-1) has introduced a scheme of merger of Telegraphic Traffic wing with the Telecom Engineering wing.

3.3 The respondents, vide their order dated 26.06.1990 (Annexure A-2) had issued a scheme, wherein the JTOs after completion of 12 years of service were to be placed in the higher scale of Rs.2000-3500/- on non-functional basis.

3.4 The Ministry, vide circular dated 16.05.1995 (Annexure A-3), communicated the lateral advancement

scheme in the cadre of ASTT/TTS, which is now merged with the cadre of JTO/SDE.

3.5 The applicant was given the lateral advanced promotion w.e.f. 18.08.1996, whereas one Shri S.R. Patinge, who is junior to the applicant (All India Gradation list of ASTT at Annexure A-4) got the benefit immediately after completion of 12 years of service w.e.f. 09.08.1994.

3.6 The applicant submitted his representation dated 15.03.2014 (Annexure A-11) followed by reminder dated 25.09.2014 (Annexure A-12) and 01.12.2014 (Annexure A-13).

3.7 Since his representation was not decided, he approached this Tribunal in OA No.201/00219/2015, which was disposed of on 18.03.2015 (Annexure A-14) directing the competent authority of the respondents to pass a reasoned and speaking order on his representation within two months.

3.8 The said representation has been rejected vide order dated 25.06.2014 (Annexure A-15).

4. The applicant has, therefore, sought for the following reliefs:

“8. Relief Sought:

1. Petition may kindly be allow by issuing appropriate direction by quashing impugned order dated 25.06.2015 (A/15).

2. To issue appropriate order or direction to the respondents to grant the benefit of lateral advancement promotion from 9.8.1994 with all consequential benefit including arrears and re fixation of pension with interest.

3. To issue appropriate order or direction to the respondent to modify the date of lateral advancement promotion from 18.8.1996 to 9.8.1994 with all consequential benefits.

4. To award the cost of the petition.

5. Any other relief which this Hon'ble Tribunal deems fit in the facts and the circumstances.”

5. The respondents have raised the preliminary objection that the present O.A has been filed in the year 2017, whereas the said promotion was done in the year 1997. Therefore, the O.A deserves to be dismissed on the ground of delay and laches.

6. The applicant, in his rejoinder, has submitted that he is facing a substantial loss of amount of retiral benefits including pension, which is permanent and recurring cause to the applicant.

7. We have considered the matter. We find that the prayer of the applicant is not directed against any correction of seniority list or seeking promotion at the cost of third party. The next higher grade was to be given to everyone covered under the scheme. Wrong execution of the said scheme is affecting his pension and, therefore, there is recurring cause of action every month. Therefore, we hold that the O.A can be considered on merit.

8. In their reply, the respondents have submitted that the seniority of JTO as well as ASTT is maintained in respective circles. The case of Shri S.R. Patinge cited by the applicant is not applicable in this case, as he is from Maharashtra circle, whereas the applicant is from Madhya Pradesh circle. Further, it has been mentioned in Para 3 of the scheme dated 16.05.1995 (Annexure A-3 & R-3) that no ASTT/TTS Gr 'B' will be given lateral promotion even on completion of 12 years or more of his regular service until all of his eligible senior JTO/SDE are placed in the lateral scale on completion of his 12 years service.

9. We have heard the learned counsel for the parties and perused the documents annexed with the pleadings of respective parties.

10. The undisputed facts of the case are that the benefit under the scheme of Lateral Advancement after completion of 12 years of service was granted to the JTOs vide order dated 26.06.1990 (Annexure A-2). As a subsequent development, the cadre of ASTT of Telegraphic Traffic wing, was merged with the Telecom Engineering wing vide order dated 05.04.1994 (Annexure A-1). The lateral advancement scheme in the cadre

of ASTT/TTS, which had been merged with the JTOs, was communicated vide order dated 16.05.1995 (Annexure A-3).

11. The respondents vide their order dated 20.02.1997 (Annexure A-6) have issued the orders for lateral advancement promotion, wherein the applicant has been promoted w.e.f. 18.08.1996 and his date of appointment has been shown as 09.08.1982. The applicant is seeking promotion on the date he completed 12 years of qualifying service i.e. w.e.f. 09.08.1994.

12. We were given to understand that ASTT stands for Assistant Superintendent Telegraph Traffic.

13. During the argument stage, it was not disputed that the JTO and ASST are circle cadre. Therefore, their promotions under lateral advancement scheme are also to be implemented on circle basis. It follows therefore that Shri S.R. Patinge has to be given the promotion under lateral advancement scheme in Maharashtra cadre, whereas the applicant has to be given the same benefit in Madhya Pradesh cadre. Therefore, even though Shri S.R. Patinge is junior to the applicant in the All India Seniority list (Annexure A-4), the benefit granted to Shri S.R. Patinge in Maharashtra cadre cannot be extended to the

applicant in Madhya Pradesh cadre as local conditions may be different.

14. Para 3 of the communication dated 16.05.1995 (Annexure A-3) is reproduced below:

“3. With the merger of ASTT and TTS Gr. ‘B’ with JTO and SDE respectively the lateral advancement scheme will also be applicable to the erstwhile ASTTs and TTSs on completion of their 12 years of regular service in the cadre provided that :-

- (i) No ASTT/TTS Gr. ‘B’ will be given lateral promotion even on completion of 12 years or more of his regular service until all of his eligible senior JTO/SDE are placed in his lateral scale on completion of his 12 years of service.
- (ii) In the cadre of ASTTs on merger with JTOs, the lateral advancement scheme will be applicable only after the combined gradation list is approved by the circles concerned.”

14.1 Perusal of the above provision clearly indicates that lateral promotion to ASTT/TTS can be given only after all eligible senior JTO/SDE are placed in the lateral scale.

14.2 The seniority list of the merged cadre of ASTT and JTOs were to be prepared as per Para 4 of order dated 05.04.1994 (Annexure A/1). As per this, the two lists of ASTT and JTOs were to be merged together on yearly pro-rata basis.

15. The order dated 20.02.1997 (Annexure A-6) was perused in which the name of the applicant appears at Sr. No.11. He has been given lateral induction on 18.08.1996. It was confirmed by

the applicant, who was present in the Court to assist his counsel, that all the names above him except at Sr. No.5, are of JTOs (Sr. No.5 is Shri M.K. Yadav, applicant in OA 201/00170/2017). It is seen that the applicant has been given the promotion on the same day when all the JTOs senior to him have been given the same promotion. Therefore, there is no violation of Para 3 (ii) of the order dated 16.05.1995 (Annexure A-3).

16. Further, the applicant in Para 2.3 of his representation dated 15.03.2014 (Annexure A-11) has mentioned the names of 12 persons, who have been given promotion on completion of 12 years vide order dated 20.02.1997 and 30.07.1998.

16.1 Perusal of the order dated 30.07.1998 (Annexure A-10) indicates that six ASTTs mentioned in his representation, have got the lateral advancement on completion of 12 years, even though the JTOs senior to them were given the lateral advancement at a later date.

17. Learned counsel for the applicant placed reliance on a decision of Hon'ble High Court of Madhya Pradesh (Jabalpur Bench) in the case of **Ram Sewak Choudhary vs. State of M.P. and others**, 2008 (4) MPLJ 308 to say that depriving the same benefit to the applicant as granted to the others clearly

amounts to hostile discrimination, which is prohibited under the constitutional provisions.

18. In **Ram Sewak Choudhary** (supra), it was a case where the benefit of relaxation of Hindi typing was given to other employees, but was not given to the petitioner. However, in the present case, the provision of lateral advancement has been correctly given to the applicant. Even though it appears that in subsequent promotion orders, some persons of the same ASTT cadre have been given the promotion on completion of 12 years of service when JTOs senior to them have not been given promotion, same is not as per rule.

19. In the matters of **Coromandel Fertilizers Ltd. vs. Union of India**, 1984 SCC (Tax) 225, the Hon'ble Apex Court has held that wrong decision in favour of any party does not entitle any other party to claim benefits on the basis of the wrong decision. Further, in the case of **Gursharan Singh vs. New Delhi Municipal Committee**, (1996) 2 SCC 459, it has been held by Hon'ble Supreme Court that the concept of equality as envisaged under Article 14 of the Constitution is a positive concept, which cannot be enforced in a negative manner. When any individual is shown to have committed any illegality or

irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them.

20. In view of the legal position of negative parity brought out above, we cannot grant same relief to the applicant as apparently has been granted to others erroneously.

21. Considering the above, we do not find any irregularity in the orders passed by the respondents. Accordingly, the O.A is dismissed. No order as to costs.

22. A copy of this order be placed in the file of O.A. No.201/00170/2017 also.

(Ramesh Singh Thakur)
Judicial Member

am/-

(Navin Tandon)
Administrative Member