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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9093/2015**

MAHANAGAR TELEPHONE NAGAR LTD. AND ANR.... Petitioners

Through: Mr. Shashwat Sharma and Ms. Ritu
Pama Advocates.

versus

RAJ MAL AND ANR.

..... Respondents

Through: Mr. Manjeet Singh Reen, Advocate for
R-1.
Mr. Amit Mahajan CGSC, UOI.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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10.12.2019

1. The short point involved in this matter is whether the Respondent is entitled to benefit of promotion from the date when his junior was promoted or not.
2. The facts in brief are that for promotion to the post of Junior Telecom Officer (JTO), a Departmental Screening Test was conducted by the Petitioners in which Respondent No.1 (hereinafter called 'Respondent') also participated on 29th January, 1995. Respondent No.2 is The Secretary, Department of Telecommunication, which is a proforma party. Result of the said test was declared on 18th July, 1995. On 25th April, 1996 the Respondent got implicated

in a criminal case and in view of this, he was put under suspension. Order of suspension was challenged by Respondent by filing O. A. No. 2545/1999, which was disposed of on 11th November, 1999 with a direction to the Petitioners to take a view as to whether the suspension of the Respondent was required to be continued or not? Suspension of Respondent was revoked vide order dated 21st August, 2000 which was received by Respondent on 31st August, 2000 and he joined his duty on 1st September, 2000.

3. Vide order dated 1st January, 2001 Respondent was sent on training for sixteen weeks at RTTC, Lucknow with effect from 15th January, 2001, which he completed on 6th June, 2001. Thereafter, he also completed the second phase of sixteen weeks training successfully. On 25th July, 2001 the provisional appointment of Respondent as JTO was withdrawn and he was reverted to the post of Phone Inspector. He submitted his representation dated 05.08.2003, but no response was received. On 12th October, 2004 Respondent was acquitted in the criminal case.

4. On 19th October, 2005 a major penalty charge-sheet was served upon Respondent, which he challenged by filing O. A. No.2747/2005 before Central Administrative Tribunal. This O.A. was disposed of on 28th July, 2006. The charge-sheet was dropped by the Petitioners on 30th October, 2006. A comprehensive order was passed on 2nd November, 2006 where Petitioners decided to treat the suspension period of the Respondent as 'spent on duty' for all intends and purposes and they also decided to pay full pay and allowances

for the aforesaid period to the Respondent as Phone Inspector.

5. Vide order dated 6th February, 2007 Petitioner posted the Respondent as JTO with effect from 4th June, 2001 in the pay-scale of Rs.6500-10500 (CDA). Respondent came to know through RTI that in the seniority list issued on 29th March, 2005, the Respondent was shown at Sl. No. 219A and his junior V. K. Sharma was shown at Sl. No. 221. Respondent got his next promotion on 30th August, 2011 as Sub-Divisional Officer (SDO) with effect from 4th January, 2010 and he was put in the pay-scale of Rs.24900-50500.

6. The Respondent's case is that his junior cannot draw more emoluments than him and he submitted a representation dated 28th January, 2012 to remove the anomaly in his pay fixation as his junior was getting higher salary than him. The Petitioners initially accepted his request on 13th May, 2013 but vide communication dated 7th January, 2014 his claim was rejected. Respondent filed an O.A. bearing No. 688/2014 before CAT. The said claim was adjudicated upon and decided vide impugned judgment dated 28th April, 2015. Operative portion of the said order is as under:

“11. Under these circumstances, we allow this O.A. and quash the impugned order dated 07.01.2014. We further direct that the respondents extend the benefit of notional promotion to the applicant by fixing his pay with reference to the pay drawn by his immediate junior. The respondents shall also pass appropriate orders regarding payment of arrears to the applicant in accordance with the DoP&T Instructions mentioned above. Considering the facts and circumstances of the case, we are not inclined to allow any interest. This exercise will be completed

within a period of eight weeks from the date of receipt of a certified copy of this order. No costs.”

7. This order has been challenged by the Petitioners on the ground that seniority is not the sole criteria for stepping up of pay; the Respondent underwent the training for JTO in the year 2001 and joined the post of JTO thereafter whereas Mr. V.K. Sharma had completed his training and completed other formalities by 3rd November, 1997 and had joined the post of JTO in the year 1997 itself. Reliance has been placed on FR-22 of FRSR Part-I and the OMs of Government of India.

8. The ground of limitation in filing the O.A. has now been taken, which ought to have been taken by the present Petitioners before the CAT. It has been submitted on behalf of the Petitioners that judgment of the Tribunal has been passed by bypassing the mandatory guidelines issued by the Government of India vide DoPT O.M. dated 4th November, 1993 which governs the present case and reliance on previous instructions dated 14th September, 1992 is not correct as the said instructions apply only to the cases of sealed cover promotions.

9. The Petitioners have also filed a supplementary affidavit pursuant to the order dated 15th March, 2016 by placing on record the rejoinder and documents filed before the Tribunal.

10. We have heard the arguments. The period of suspension of the Respondent

was regularised by order dated 2nd November 2006. The said period of suspension was ordered to be treated as 'spent on duty' for all 'intends and purposes' and full pay and allowances were ordered to be released. The only impediment in equating the pay of the present Respondent and Sh. V. K. Sharma, who was his immediate junior, is that although they had passed the Departmental Screening Test for promotion to the post of JTO conducted on 29th January, 1995 together and its result was declared on 18th July, 1995 but Mr. V. K. Sharma had completed his training in 1997 whereas the present Respondent had completed his training in 2001.

11. The reasons why the Respondent was not sent on training alongwith Mr. V. K. Sharma is that Respondent was under suspension for the period from 8th April, 1996 to 31st August, 2000. Naturally there was no occasion for sending the present Respondent for training during the said period. The order revoking his suspension was passed on 21st August, 2000 and as a consequence thereto vide order dated 2nd November, 2006 his entire suspension period was regularised for all 'intends and purposes'. It means that the Respondent was not to be treated as suspended during the said period. If he was not suspended during the said period, naturally he would have undergone training alongwith Mr. V. K. Sharma, who was his immediate junior and he ought to have got promoted as JTO from the same date when Mr. V. K. Sharma was promoted in the year 1997, whereas the Respondent was able to join the said promotional post only in the year 2001 after completion of his training on revocation of his suspension and completion of training.

12. It is not a case where the Respondent can be faulted for not joining his promotional post on his own, rather he could not have joined the said post because of his suspension which was later on revoked and duly regularised by treating the said period as 'spent on duty'. In view of the above, the FR-22 of FRSR, Part-I and DoPT O.M. dated 4th November, 1993 has got no application and the Tribunal was right in equating the present case with the sealed cover promotion cases.

13. In view of the fact that suspension period was regularised, so we see no impediment in upholding the order of the Tribunal to the extent by which the benefit of promotion was granted to the Respondent with reference to the date when his immediate junior was promoted as JTO.

14. However, as far as payment of enhanced salary and allowances is concerned, same be paid from the date when the Respondent took charge as JTO after completion of his training in the year 2001. Respondent be treated as notionally promoted to the post of JTO from the same date when his junior Mr. V. K. Sharma was promoted in the year 1997. His seniority and consequential benefits be determined accordingly.

15. As a result of the above discussion, the writ petition is disposed of in above terms and the impugned order of the CAT dated 28th April, 2015 is upheld as far as date of notional promotion of Respondent is concerned. Period of eight

weeks is granted from today to Petitioners to pass appropriate order for complying with this order. No order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 10, 2019

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