

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1004/2002

Tuesday, this the 16th day of April, 2002

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

S.B. Bansal s/o Shri Kashi Ram
G-89, Punjabi Colony
Narela, Delhi-40

..Applicant
(By Advocate: Shri H.C.Sharma)

Versus

1. UOI through Secretary
Dept. of Telecommunication
Sanchar Bhawan, New Delhi

..Respondent

O.R.D.E.R (ORAL)

Justice Ashok Agarwal:

Applicant was initially appointed as Junior Telecom Officer (JTO) in the year 1974. He qualified for promotion to the post of Telecom Engineering Service Group "B" (TES Gr. "B"). In 1992, A DPC was convened which recommended the applicant's promotion to the aforesaid TES Gr. "B". On 16.2.1993, a charge sheet was issued against the applicant Annexure A-1 containing the following article of charge:-

"Article-I

That said Shri S.B. Bansal, now functioning as J.T.O. in M.T.N.L., New Delhi, put in a false L.T.C. claim based on fictitious papers in respect of his family members on 13th August, 1991. The official thus violated Rules 3-1(i) & 3-1(iii) of C.C.S. (Conduct) Rules 1964, which lay down that every Government servant at all times maintain absolute integrity and do nothing which is unbecoming of a Government servant."

2. The incident for which the charge sheet was issued, it is clear, had taken place on 13.8.1991. In

(1)

(2)

the meanwhile, candidates junior to the applicant were promoted to TES Gr. "B" on 18.11.1993. By an order passed in disciplinary proceedings on 3.2.1995, a penalty of censure was imposed upon the applicant. Applicant has thereafter been promoted as TES Gr. "B" on officiating basis in 1997. By the present OA, applicant seeks directions for his promotion w.e.f. 18.11.1993, the date when his juniors were promoted. He has also claimed all consequential benefits.

3. In support of the claim for earlier promotion, reliance is placed on behalf of the applicant on a decision of the Jabalpur Bench of the Tribunal in ATR 1990 (1) CAT 58 - P. Singh Versus Union of India & Others (OA-202/87) decided on 12.6.1989 which has, inter alia, held that the recommendations of the DPC have to be implemented provided there was no adverse material regarding the adverse action or to vigilance nature against a delinquent. In other words, if adverse material of disciplinary or vigilance nature did not exist or which could not have been brought to the notice of the DPC, the same cannot be used against the empanelled officer subsequently in the light of the latter developments.

4. We have heard Shri H.C. Sharma, learned counsel appearing in support of the OA and we have further considered the aforesaid judgement of the Jabalpur Bench in the light of the facts which have arisen in the present case and we find that the aforesaid decision will have no application in the present case. Aforesaid

W.A

(A)

ratio, as is clear, would apply when there was no pending enquiry or charge-sheet issued to the delinquent when the DPC had met which could come in the way of implementing the recommendations of the DPC. Aforesaid judgement has clarified the aforesaid position with the observation "when the DPC had met there was no pending enquiry or charge issued to him which had come in the way of implementing the recommendations of the DPC". Before the aforesaid ratio can have application both ^{have to be} ingredients satisfied that there should be no enquiry and there should also be no charge-sheet issued. As far as the present case is concerned, the articles of charge framed against the applicant disclose that the misconduct which was made the subject matter of the disciplinary proceedings had arisen on 13.8.1991 which is prior to the meeting of the DPC which had been convened in 1992. It is, therefore, reasonable to hold that the enquiry in regard to the aforesaid misconduct was already underway when the aforesaid DPC had been convened. Claim of the applicant, in the circumstances, for promotion w.e.f. 18.11.1993 when his juniors were promoted, in our judgement, cannot be considered. Claim of the applicant for promotion can at best arise after a lapse of six months from the date of the order of penalty which has been imposed upon him on 3.2.1995. He can, therefore, at best claim promotion w.e.f. 3.8.1995.

W.A

5. Having regard to the contentions raised by the learned counsel, we are inclined to dismiss the present OA as the claim contained in the same for promotion

(4)

w.e.f. 18.11.1993 cannot be granted, with liberty to the applicant to submit a representation, if so advised, claiming promotion w.e.f. 3.8.1995. On such representation being made, respondents will pass suitable orders thereon expeditiously and in any event within a period of three months from the date of submission of the representation. It goes without saying that in case the applicant is still aggrieved by the orders to be passed on his representation, it will be open to him to seek redressal in accordance with law.

6. Present DA, in the circumstances, is dismissed in limine.


(S.A.T. Rizvi)
Member (A)


(Ashok Agarwal)
Chairman

/sunil/