

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1595 of 2002

Date of Decision : 27.3.2003

Lalit Kumar ... Applicant

(Shri S.C. Saxena ... Advocate for the Applicant)

VERSUS

Union of India and Others ... Respondents

(Shri K.C.D. Gangwani with Ms. R.O. Bhutia
..... Advocates for the Respondents)

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No



(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH

OA No.1595 of 2002

New Delhi, this the 27th day of March, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

Lalit Kumar
S/o Late Shri Kishori Lal Gupta,
Aged 53 years,
R/o A4/230, Pashim Vihar,
New Delhi.

.. Applicant

(By Advocate : Shri S.C. Saxena)

versus

Union of India,

1. Through, Secretary,
Min. of Information and Broadcasting,
Shastri Bhawan, New Delhi.
2. Director General, All India Radio,
Akashwani Bhawan, Parliament Street,
New Delhi.
3. Chief Engineer,
CCW, All India Radio,
Soochna Bhawan, CGO Complex,
Lodhi Road, New Delhi.

...Respondents

(By Advocates : Shri K.C.D. Gangwani, Senior counsel
with Ms. R.O. Bhutia)

Deptt. Representatives: Shri Ashok Kumar EO I to CE-I
Shri Harvinder Singh, DDA (CW-I)
Shri N. Ram, Assistant)

ORDER(oral)

By Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

In this application, the applicant has challenged the order/letter issued by the respondents dated 15.6.2001 by which his request for promotion to the post of Assistant Engineer (Electrica) (AE (E)) due to him w.e.f. 25.7.1980 has been denied. | ✓

2. The respondents have stated that the grievances of the applicant have been carefully examined and have given detail comments on the grievances. They have

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(2)

stated in para 3 of the impugned letter that "the relative seniority of direct recruits and promotees in the grade of AEs(E), have been determined strictly in accordance with the extant rules/instructions relating to seniority". In para 4 of the said letter, they have informed the applicant that his repeated representations have already been disposed of vide their earlier letter dated 3.2.1998 and that no further representation or memorial in this regard from him would be entertained in future. However, It is relevant to note that in para 2 of the said letter, very detail examination and comments have been given by the respondents, although they appear to have told the applicant that no further representation would be entertained. The relevant portion of para. 2(1) reads as under:

"2. The above grievance petition has been carefully examined and comments are offered as under:-

(1)Grievance: Non-implementation of CBI report and alternation of seniority as AE (E).

Comments: In this connection, it may be mentioned that Shri Lalit Kumar was at Sl. No.2 in the seniority list of JE(E)s when he joined in 1980 to ✓ consider promotions in the grade of AE (E), the JE(E)s who were at Sl.No.3 & 4 in the seniority list were promoted whereas Shri Lalit Kumar, could not be promoted due to his lower position in the panel ✓ / proposed by DPC and non-availability of a vacancy.

It is evident from above that Shri Lalit Kumar was duly considered as per the CBI report. As regards alternation of seniority of Shri Lalit Kumar in the grade of AE, the same happened due to the fact that the promotions from the grade of JEs to AE, are done on a "selection basis". (emphasis added)

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(3)

3. The Tribunal had in its order dated 21.2.2003 noted the submissions of the learned counsel for applicant that there is a fabrication in the ACR of the applicant and he had been denied promotion "on the pretext that there is some CBI case pending against the applicant". The learned counsel had submitted that he had not been informed of any such CBI case pending against him by the applicant. It was further noticed that the respondents were taking a plea that there was a CBI case pending against the applicant, a direction was given to the person who had filed the affidavit to appear, along with the record to show that there is a CBI case pending against the applicant on the next date.. When the case was listed on 7.3.2003, it was noticed by the Tribunal that the respondents were still unable to show whether any CBI case was pending against the applicant at the relevant time. For this purpose, learned counsel for respondents had sought two weeks more to ascertain whether any case was pending against the applicant or not.

4. Today when the case was listed for hearing when both learned counsel are present, Shri K.C.D. Gangwani, learned counsel for respondents, on instructions from the officers present in Court, has categorically stated that there was no CBI case pending against the applicant at the relevant time. He has explained that the averments to the contrary in the impugned letter dated 15.6.2001 was only a "defect

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in the language". We are unable to agree with this contention having regard to the circumstances of the case. We say so because repeatedly the respondents have, as noted in the Tribunal's orders, stated that there was a CBI case pending against the applicant at the relevant time. Learned counsel for respondents undertakes to file an affidavit now to the effect that there is no CBI case pending against the applicant. In fact, the respondents themselves have stated that the case of the applicant for promotion to the next higher post has been considered "as per the CBI report" and other relevant materials. It has also been the contention of the respondents, as noted in the aforesaid orders of the Tribunal, that there was a CBI case pending against the applicant.

5. In Para 4.4 of the OA, the applicant has stated that he has been representing against denial of promotion as AE(E) due to him w.e.f. 25.7.1980. ✓ He has stated that since the reasons for denial of promotion were not intimated to him, he has met the senior officers about his promotion as AE(E) and was given to understand that his promotion has been withheld due to a CBI enquiry pending against him and that his promotion will be considered after the finalisation of that enquiry. He has also stated that the details of the CBI case were not intimated to him. In the reply affidavit filed by the respondents dated 12.12.2002, the respondents have disputed the contents of Para 4.4 to the effect that they have given replies to the applicant to his representation. They have

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also referred to their earlier letter dated 3.2.1998 that "no further representations or memorial in this regard from him will be entertained in future." However, in the reply to para 4.4, it is relevant to note that no reference has at all been made to any CBI enquiry stated to be pending against the applicant at the relevant time even though he has made a reference to it. The respondents have only stated that they have again reconsidered the grievances of the applicant by the impugned order dated 15.6.2001, quoted above.

6. It has also been pointed out by the applicant in his rejoinder that the respondents have offered no comments about the fact of the so called CBI case pending against him. Learned counsel for respondents has referred to para 4.8 of the counter affidavit which talks only of seniority. In the circumstances of the case, we find that the affidavit filed by the respondents is not only vague with regard to the averments made by the applicant in para. 4.4 with respect to the so called CBI case pending against him at the relevant time but they have also chosen not to reply to this issue for whatever reason. In this context, the aforesaid orders of the Tribunal dated 21.2.2003 and 7.3.2003 are relevant. The learned counsel for respondents submits that when the promotion of the applicant was considered, it has been done on the basis of seniority and merit of the case. However, from the respondents' impugned letter dated 15.6.2001, the case of promotion of the applicant appears to have been considered "as per the CBI

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report". It is also relevant to note that learned counsel for respondents had made a submission that this is only a "Babu's language". We are constrained to note such a reference because this letter has been signed by the concerned officer, Shri S.K. Mohindra, Grievances Officer. An officer of the Department, Shri Ashok Kumar, E.O-I to C.E-I who is present in Court has submitted that Shri S.K. Mohindra, Grievances Officer is an officer of the rank of Superintendent Engineer (C). If, as contended by the learned senior counsel for respondents, the promotion of the applicant has been considered only on the ground of seniority and merit of the case, we do not see any reason why the words that he has been duly considered as per 'the CBI report' has crept into the impugned letter dated 15.6.2001. Even to the specific averments of the applicant in para 4.4 of the OA, the respondents have chosen not to give a categorical reply as to whether there was a CBI case against the applicant or not.

7. In this view of the matter, as now there is a clear submission at the bar by the learned counsel for respondents that there was no CBI case pending against the applicant at the relevant time, we take note of it. His prayer for an adjournment to bring this fact on record in writing is not considered necessary because that ought to have been done in time, in terms of the previous orders of the Tribunal which has not been done. Sufficient time had already been given to the respondents for this purpose, i.e., to clarify

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whether any CBI case was pending against the applicant at the relevant time, which now they have done. That information has been submitted orally at the Bar by the learned counsel for respondents.

8. In the above facts and circumstances of the case, the OA succeeds and is allowed with the following directions:-

- (i) The impugned letter dated 15.6.2001 is quashed and set aside;
- (ii) Respondent No.1 is directed to take necessary steps to hold a Review DPC to consider the case of the applicant for promotion to the post of Assistant Engineer (Electrical) from the due date, i.e, 27.5.1980, keeping in view the aforesaid observations, including their own submission that there was no CBI case pending against the applicant at the relevant time;
- (iii) Respondent No.1 shall also take into consideration the other grounds taken by the applicant, including the ACRs of the applicant to ensure that these have been written strictly in accordance with the relevant provisions of law and rules before the same is placed before the review DPC for necessary action as above;

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(iv) The above action shall be taken within three months from the date of receipt of a copy of this order, with intimation to the applicant.

(v) In the circumstances of the case, cost of Rs.2,000/- (Rupees Two Thousand only) is imposed against the respondents in favour of the applicant.

(Govindan S. Tampi)
Member (A)

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Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Vice Chairman (J)