

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1814/2002

This the 22nd day of July, 2003

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE-CHAIRMAN (J)

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

R.S.Sachdeva (Staff No.87907),
Accounts Officer (Banking),
O/o General Manager (TR),
Mahanagar Telephone Nigam Ltd. Hqrs.,
Khurshid Lal Bhawan, Janpath,
New Delhi-110050.

... Applicant

(By Shri S.N.Anand, Advocate)

-versus-

1. Secretary,
Ministry of Communications,
Department of Telecom,
20 Ashoka Road, Sanchar Bhawan,
New Delhi-110001.

2. Member Finance,
Telecom Commission,
20 Ashoka Road, Sanchar Bhawan,
New Delhi-110001. ... Respondents

(By Shri V. K. Rao, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant has assailed respondents' action in denying him promotion to the grade of Senior Accounts Officer while his juniors were granted ad hoc promotion vide orders dated 15.1.2001 (Annexure-A) and regular promotion vide order dated 3.8.2001 (Annexure-B).

2. Applicant was chargesheeted under Rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 vide memo dated 13.1.1999 (Annexure-C). Penalty of stoppage of one increment for two years was imposed upon him vide Annexure-D dated

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9.9.1999. He filed appeal against the aforestated penalty by Annexure-E dated 22.6.2000. Meanwhile DPC for promotion to the grade of Senior Accounts Officer was held and several juniors of applicant were promoted on ad hoc basis vide Annexure-A. As applicant's statutory appeal had not been disposed of, he filed OA No.1190/2001 which was disposed of by the Tribunal vide order dated 10.5.2001 directing respondents to dispose of the appeal within three months with liberty to approach the Tribunal again on survival of grievance (Annexure-G). Again, several juniors to applicant were promoted vide Annexure-B dated 3.8.2001. Appellate authority vide order dated 8.8.2001 (Annexure-H) modified the penalty from stoppage of one increment for two years to that of censure. Applicant made repeated representations seeking promotion with reference to his next junior Ms. Usha R. His representations dated 29.8.2001, 27.11.2001 and 23.1.2002 are Annexure-I colly.

3. The learned counsel of applicant contended that applicant has a vested right to be considered for promotion. Procedurally, during the currency of penalty findings in respect of applicant ought to have been kept in sealed cover by the DPC; the sealed cover should have been opened immediately on expiry of the currency of the penalty of censure. The learned counsel stated that the effect of the penalty of censure imposed by appellate authority is over on expiry of a period of six months from 9.9.1999, i.e., the date of the order passed by appellate authority. As such, he is entitled to promotion in the grade of Senior Accounts Officer with

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reference to his next junior Ms. Usha R. on ad hoc basis w.e.f. 15.1.2001 and on regular basis w.e.f. 3.8.2001. The learned counsel relied on the following cases to contend that censure does not postpone promotion:

- (1) N.T.Joseph vs. Union of India (Full Bench, Ernakulam OA No.37/1991 decided on 10.6.1992);
- (2) Dilbagh Singh vs. Union of India (CAT Mumbai Bench - OA No.396/1996); and
- (3) A.Vama Reddy vs. Controller General of Defence Accounts, New Delhi & Ors. (A.P.High Court W.P. No.17905 of 2000 decided on 20.7.2001).

4. The learned counsel of respondents, on the other hand, stated that the relief claimed by applicant is contrary to rules and regulations on the subject. When applicant's junior Ms. Usha R. was promoted on ad hoc basis on 15.1.2001 and on regular basis on 3.8.2001, punishment of stoppage of one increment for two years already stood imposed upon applicant. Even the modified punishment of censure vide order dated 8.8.2001 would not make any difference inasmuch as censure is one of the minor penalties in terms of Rule 11 of the CCS (CCA) Rules that can be imposed on a Government servant. The contention made on behalf of applicant that censure is not a bar for being considered for promotion is misconceived and contrary to law laid down by the Supreme Court in the case of State of M.P. vs. I.A.Qureshi, (1998) 9 SCC 261. In that case, the Apex Court held :

....."Censure" is one of the minor penalties that can be imposed on a government servant. It cannot, therefore, be said that the penalty of Censure which was imposed on the respondent in the departmental proceedings

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was not a penalty as contemplated in the circular dated 2-5-1990. Once it is held that a minor penalty has been imposed on the respondent in the departmental proceedings, the direction given in the said circular would be applicable and the sealed cover containing the recommendation of the DPC could not be opened and the recommendation of the DPC could not be given effect because the respondent has not been fully exonerated and a minor penalty has been imposed. The respondents can only be considered for promotion on prospective basis from the date after the conclusion of the departmental proceedings."

Respondent in the above case was imposed penalty of censure under Rule 10 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. This Rule is peri materia Rule 11(1) of the CCS (CCA) Rules, 1965 under which censure has been described as a minor penalty. The ratio in this case is squarely applicable to the facts of the present case. Applicant could be considered for promotion in respect of a future vacancy by holding a fresh DPC.

5. Having regard to the above discussion, this OA must fail being devoid of merit. Dismissed accordingly, however, without any costs.

V. Majotra

(V. K. Majotra)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice-Chairman

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