

Central Adminisrative Tribunal  
Principal Bench

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O.A.No.1632/2001

Hon'ble Shri Govindan S. Tampi, Member(A)  
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 3rd day of December, 2002

Jagdish Rai  
(JE-1594)  
SDE Mobile Services, MTNL  
r/o A-1/17, Lawrence Road  
Delhi - 110 035. ... Applicant

(By Advocate: Sh. S.N.Anand)

Vs.

1. Union of India through  
Secretary  
Department of Telecom.  
Ministry of Communications  
Sanchar Bhawan  
20, Ashoka Road  
New Delhi - 110 001.
2. The Chief General Manager  
Northern Telecom Region  
Janpath  
Kidwai Bhawan  
New Delhi.
3. The Chief General Manager  
Mahanagar Telephone Nigam Limited  
Khurshid Lal Bhawan  
Janpath  
New Delhi.
4. The Deputy General Manager (Admn.)  
O/o Chief General Manager  
Northern Telecom Region  
Janpath, Kidwai Bhawan  
New Delhi. ... Respondents

(By Advocate: Sh. V.K.Rao)

O R D E R (Oral)

By Shri Shanker Raju, M(J):

In this OA, applicant impugns respondents' order dated 31.10.2000 whereby he has been accorded Lateral Advancement (in short as 'LA') in the pay scale of Rs.7500-12000 w.e.f. 26.5.1997. He has sought benefit of the same from 26.6.1990 instead of 26.5.1997 with all consequential benefits including his revision of retiral benefits.

2. Applicant, who was promoted as Junior Engineer in 1975, has completed 12 years service in 1987. To ameliorate stagnation in the cadre of Engineering Supervisor/Junior Engineer/Junior Telecom. Officer notified a Scheme known as LA vide Circular dated 26.6.1990 granting promotion to the next higher pay scale of Rs.7500-12000 upon completion of 12 years service as on 1.1.1990. 24

3. Applicant was served with a minor penalty charge-sheet under Rule 16 of the CCS (CCA) Rules, 1965 in April, 1997 to which he was exonerated on 26.5.1997. By an order 31.10.2000, applicant was accorded LA from 26.5.1997 instead of 1.1.1990.

4. Applicant, who had completed 12 years service in 1990, and as on 1.1.1990 no proceedings were pending against him he preferred representation to the respondents for LA, but no reply was received and in the meanwhile, he superannuated on 30.9.2000, giving rise to the present OA.

5. Placing reliance on a decision of the Apex Court in Union of India Vs. K.V.Janakiraman, ATR 1992 (1) SC 174 as well as the decision in N.T.Joseph v. Union of India & Others, OA 37 of 1991, decided on 10.6.1992, contended that applicant who completed 12 years before 1.1.1990 and when neither charge-sheet was served upon him nor any decision was taken to hold any proceedings, the applicant should have been accorded LA w.e.f. 1.1.1990 which has been delayed by resorting to sealed cover. Moreover, it is contended

that he has been exonerated from all the charges, denial of LA w.e.f. 1.1.1990 is in violation of Articles 14 and 16 of the Constitution of India.

6. Respondents' counsel Sh. V.K.Rao, denied the contentions and took exceptions to the OA on the plea of limitation. It is further contended that applicant's case for LA was taken by DPC on 19.9.1990 but his case was kept under sealed cover as charge-sheet dated 8.10.1991 was issued under Rule 16 <sup>W.M.</sup> which culminated <sup>W.M.</sup> penalty of withholding of increment of pay by three years without cumulative effect in terms of an order passed on 6.9.1993. As the applicant was exonerated in the last charge sheet dated 9.6.1996, he was promoted from 26.5.1997.

7. Shri V.K.Rao, learned counsel further stated that applicant was awarded two censures on 12.3.1994 and 14.3.1995 and by resorting to DoPT's OM of 1992, it is stated that before actual promotion, any of the circumstances, i.e., pendency of the proceedings figures, the finding of the DPC shall not be given effect to and the sealed cover procedure was resorted to, which was rightly opened in 1997, the decision of the respondents does not suffer from any legal infirmity.

8. We have carefully considered the rival contentions of the parties and perused the material on record.

9. In so far as the limitation is concerned, the same would not apply as the applicant has challenged the orders passed on 31.10.2000 giving LA to the applicant w.e.f. 26.5.1997. In so far as the plea taken on the basis of OM of 1992 is concerned, the same would not have any retrospective effect as, admittedly, the DPC was held on 19.9.1990.

10. We also find that when the DPC was held in 1990, applicant had completed 12 years qualifying service and as on 1.1.1990 he was fully eligible and qualified for LA in the pay scale of Rs.7500-12000. The charge-sheet issued to the applicant was subsequent to the DPC, and in view of the ratio of Janakiram's case supra and the Full Bench resorted to sealed cover, and according him LA on his subsequent exoneration, cannot be countenanced.

11. Moreover, the punishment imposed in terms of the charge-sheet of 8.10.1991 was turned to censure which is not an impediment for promotion.

12. However, the fact remains that at the relevant time when the DPC held, neither any charge-sheet was issued nor any decision has been taken to hold the proceedings.

13. In the result, for the foregoing reasons, accord of Lateral Advancement to applicant from 26.5.1997, cannot be sustained. OA is partly allowed. We set aside the impugned order in so far as it amounts to LA to applicant from 26.5.1997 and direct respondents to grant benefit of LA in the pay scale of

Rs.7500-12000 to applicant from 1.1.1990. However, the same should be done notionally and applicant shall not be entitled for pay and allowances. However his pensionary benefits shall be revised keeping in view of his LA from 1.1.1990. The aforesaid exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju  
(Shanker Raju)  
Member(J)

(Govindan S. Tampi)  
Member(A)

/rao/