

(3)

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1887/2001

Wednesday, this the 29th day of May, 2002

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

Shri Mahender Kumar Wadhwa, ITS
Staff No.08003
Joint Dy. Director General (PG)
Bharat Sanchar Nigam Limited
Chandralok Building, 10th Floor
36, Janpath, New Delhi - 110 001

..Applicant

(Applicant in person)

Versus

1. Union of India through
the Secretary Telecom,
Ministry of Communications
Department of Telecommunications
Sanchar Bhawan, 20, Ashoka Road
New Delhi-1
2. Director (ST-II)
Ministry of Communications
Department of Telecommunications
Sanchar Bhawan, 20, Ashoka Road
New Delhi-1

..Respondents

(By Advocate: Shri K.R.Sachdeva)

O R D E R (ORAL)

Shri S.A.T. Rizvi:

Applicant, who is currently working as Joint Director General (PG) in the Bharat Sanchar Nigam Limited (BSNL), inter alia, prays for a direction to be issued to the respondents to promote him to the JAG of the ITS Group 'A' from the date his immediate junior, namely, Shri Sashidharan C. was promoted pursuant to order dated 24.1.1995 (A-2), to grant him all consequential financial benefits arising from his promotion, to withdraw the warning contained in the presidential order (A-7) and to direct deletion of the following operation from the orders passed by the President (A-3) in the departmental proceedings initiated against him:-

d



(2)

"5.... yet found him lacking in supervisory skill while exercising control over his subordinates, however, has taken a lenient view and...."

2. It would appear from the above that the applicant has challenged the presidential orders placed at A-3 & A-7 on merits and, on that basis, has sought his promotion to be antedated with reference to the date of promotion of his next junior. The challenge to the order at A-3 is, however, limited to the removal/deletion therefrom of the words reproduced in para 1. The contention raised is that the applicant could not be promoted in time along with his next junior as the departmental proceedings were pending against him at the material time, and now that he has been exonerated by dropping of proceedings (A-3), he is entitled to promotion from the date his next junior stood promoted.

3. The learned counsel appearing on behalf of the respondents has sought to raise a preliminary objection by invoking the issue of jurisdiction. According to him, BSNL, in which the applicant is currently working, has not been notified under Section 14 of the Administrative Tribunals Act, 1985 and, therefore, the jurisdiction of this Tribunal does not extend to that organization. The present OA is, therefore, according to him, barred by jurisdiction. In support of his contention, the learned counsel has placed before us the order passed by this Tribunal in OA-1421/2001 on 2.4.2002. A perusal of the aforesaid order reveals that, in that case, it was assumed that the officers in question were no longer part of the Department of Telecommunications (DOT) and had

2



(3)

become part of the newly formed company, namely, BSNL. It was on this basis that it was held that the jurisdiction of the Tribunal did not extend so as to cover the officers in question then working as part of the BSNL. In another case, namely, that of Shri Ram Gopal Verma Vs. Union of India & Anr. decided by Delhi High Court on 24.8.2001 brought to our notice by the learned counsel, the petitioner was a TES Officer, who was then on deputation with the MTNL. While working in the MTNL, the petitioner was suspended by the CGM/MTNL. That order was challenged before this Tribunal. It was in these circumstances that it was held by the Delhi High Court that the remedy would lie elsewhere and not before the Tribunal. The MTNL had not been notified under Section 14 of the Administrative Tribunals Act, 1985 at the time the Delhi High Court considered the aforesaid matter. The plea of lack of jurisdiction advanced by the learned counsel for the respondents is, in the circumstances, negatived. It is pointed out, however, that the matter raised in the present OA admittedly relates to the period of his service under the DOT.

4. The applicant in person has assailed the impugned order dated 13/16.12.1999 (A-3) on several grounds though the challenge is, as stated, limited and does not go so far as to seek the annulment of the order. He has assailed the subsequent order also dated 13/16.12.1999 (A-7).

5. He has, to begin with, drawn our attention to the undisputed fact that the disciplinary proceedings relate to the period of his posting in an E-10-B exchange, to

2



(4)
which place he was posted despite the fact that he was ill-equipped in terms of appropriate technical training to hold the post, and besides, for this reason alone, he had lodged a protest against his posting. He has shown certain instructions issued by the DOT which clearly provide that only trained staff is required to be posted in E-10-B exchanges. Copies of the relevant instructions dated 25.2.1991 and 3.9.1990 supplied by him are taken on record. The earlier instruction dated 25.2.1991 is addressed to all the CGMs, Telecom/Telephones wherein it has been made clear that only trained staff should be posted for operation and maintenance of E-10-B exchanges, in one of which the applicant was posted while working in the DOT.

6. When the report of the inquiry authority was supplied to him by the disciplinary authority, the applicant again reiterated those very instructions to bring home his contention that he was wrongly posted against his desire in an E-10-B exchange. He has, in particular, drawn our attention to the points then raised by him which are listed at Nos. (i), (ii), (iii), (xi) and (xii) of paragraph 4 of the impugned order dated 13/16.12.1999 (A-3). These points, apart from referring to the important aspect of training, also relate to certain defects already seen in the E-10-B exchanges which could not have been helped by the applicant. On this basis, drawing of adverse conclusions against him is, according to him, wholly without justification.

d

3

(5)

7. In the aforesaid impugned order (A-3), it has been admitted in clear enough terms that the aforesaid points were duly supported by oral/documentary evidence. The impugned order also indicates that the disciplinary authority (DA) was also convinced that the officer was not trained in E-10-B system and that he had protested against his posting in that system on the ground of being an untrained person. The same order further provides that meter washing could not constitute a wilful act on the part of the applicant, and also that the situation arising from the applicant being an untrained person appeared to the DA to have been exploited by the subordinate (JTO) of the applicant, who in turn was fully trained in handling the relevant system. The DA clearly found substance in the various submissions made by the applicant. All the same, he proceeded to observe/conclude as follows:-

"..... yet found him lacking in supervisory skill while exercising control over his subordinates..."

For the reasons, he has already brought for before us, the applicant submits that there is no justification whatsoever for arriving at the above conclusion regarding his supervisory skills.

8. We have considered the matter carefully in the light of the submissions made by the applicant and what is actually contained in the impugned order (A-3) itself. There is a clear recognition in the impugned order of the fact that the applicant was not properly and adequately trained for posting in an E-10-B system and had himself protested against his posting in that system, and meter

15

(6)
washing ^{could} not have resulted from any wilful act on the part of the applicant. Further, according to that very order, his junior (JTO) exploited the situation by taking advantage of the applicant's lack of training. Having said as much, the impugned order proceeds to find fault with him by saying that he was found lacking in supervisory skills while exercising control over his subordinates. We are not convinced. It has not at all been shown in what manner he lacked the ability to supervise and what precisely were the lapses committed by the applicant which have led to the presumption that he lacked in supervisory skills. Not only this, the impugned order also has not dealt with the various points which the applicant had raised in his representation and to which we have already adverted in paragraph 6 above. It appears to us that inadequate appreciation of the various facts and circumstances mentioned by the applicant in his aforesaid representation have led to the finding that he lacked in supervisory skills.


9. Furthermore, and what is more important, the guilt of lack of supervisory skills has not been included as a separate and definite charge in the charge-sheet served on him way-back on 30.11.1994 (A-1). The same also does not find mention in the statement of imputations. The result is that the applicant did not get any opportunity to meet the aforesaid charge. This finding has, therefore, been arrived at, in our view, in utter disregard of the principles of natural justice.




(7)

10. For the above reasons, the impugned order dated 13/16.12.1999 (A-3) is quashed and set aside to the extent that the portion of it reproduced in para 7 above will stand deleted. The subsequent order (A-7) which is also impugned in this ^{OA} and which is a warning administered to the applicant directly in consequence of the portion of the aforesaid order, which has been ordered to be deleted therefrom also stands quashed and is set aside. While directing as above, we will like to point out that ^{since} ~~such~~ warning, in any case, is not one of the prescribed punishments under the CCS (CCA) Rules, 1965, it could not possibly affect the applicant's case even if it is allowed to prevail irrespective of whether it is kept on his ACR dossier or on his personal file. For obvious reasons, therefore, we have not found it necessary to dilate on the rule position and the related instructions brought to our notice by the applicant in this regard.

11. For all the reasons mentioned in the preceding paragraphs, the present OA is allowed. The impugned orders placed at A-3 & A-7, both dated 13/16.12.1999 are quashed and set aside, the former only to the extent indicated in the previous paragraph. He thus stands fully exonerated. The applicant, who has already been regularly promoted w.e.f. 20.8.2001, is entitled to be promoted on regular basis from the date his next junior has been promoted to the JAG of the ITS Group 'A'. He will also be entitled to all the consequential benefits arising from his antedated promotion in terms of the law laid down by the Hon'ble Supreme Court in Union of India etc. Vs. K.V. Jankiraman reproduced in JT 1991 (3) SC 527, including back-wages. No order as to costs.


(S.A.T. RIZVI)
Member (A)


(ASHOK AGARWAL)
Chairman

/sunil/