

(B)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A.594 /2001

NEW DELH THIS. 26...DAY OF APRIL 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

R P Gupta, S/o Late Sh Kashi Ram,
C-151 A, Gali No.5, near Dr. Mittal's Clinic
Pehla Pushta New Osmanpur, Delhi
working as AO (Retd) Telecom Distt. Morena (Gwalior)
under CGM, MP Telecom Circle, BhopalApplicant
(By Shri S.C. Luthra, Advocate)

VERSUS

Union of India through

1. The Secretary, Min. of Communication,
Dept. of Telecom, Sanchar Bhawan,
20 Ashoka Road, New Delhi
2. Member (Services) Telecom Commission,
Dept. of Telecom, Sanchar Bhawan,
20 Ashoka Road, New Delhi
3. The Chief General Manager, Telecom Circle
Western Area, Dehradun Uttaranchal.

.....Respondents

(By Shri M.M. Sudan, Advocate)

O R D E R

Reliefs sought in this OA are as follows:-

- i) direct the respondents to allow the applicant to cross the Efficiency Bar which fell due on 1.1.89 in the scale of Rs.2375-75-3200-EB-100-3500 and give him annual increments since 1.1.89 to 1.1.94.
- ii) direct the respondents to pay the applicant arrears of salary consequent on action as per (i) above;
- iii) direct the respondents to regularise the period of applicant's suspension from 26.2.88 to 15.6.89 as duty for all purposes and pay the applicant the difference between the salary and allowances due to him during the aforesaid period and the subsistence allowance paid to him;
- iv) direct the respondents to pay interest to the applicant @12% per annum on the amounts which became due as per (ii) and (iii) above;

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v) award costs in favour of the applicant and against the respondents; and
vi) pass any other and/or further order(s) as deemed fit.

2. Heard Sh. S C Luthra, learned counsel for the applicant and Sh. M.M. Sudan, learned Sr. Standing Counsel for the respondents.

3. The applicant while working as Accounts Officer in the Office of TDM Ghaziabad, remained under suspension between 26.2.88 to 15.6.89. On 26.4.94, he was charge-sheeted on 26.4.94, but accepting the IO's report dated 22.3.2000, exonerated him on 29.5.2000. However, his crossing of EB which became due on 1.1.89, he was not allowed and he had retired on superannuation on 30.11.94. Applicant's representation for regularising his period of suspension, as well as permitting him to cross E.B. on 1.1.89, with drawl of increments upto 1.1.94 and payment of amounts due, had not met with any success, leading to this O.A. According to the applicant, as he had been exonerated he was entitled for the payments claimed by him. Denial of the above was improper and the Tribunal's intervention was called for, pleads Shri S C Luthra, learned counsel for the applicants.

4. Rebutting the pleas of the applicant, Sh. M M Sudan, learned counsel for the respondents, points out that the applicant's commutation of pension and leave encashment have been held back, on account of pending disciplinary proceedings, while all other retiral benefits have been released. Proceedings had been initiated against the applicant for improper and

incorrect purchase of items from one B R Electricals. He is also facing CBI prosecution in four cases. In view of the above permission to him to crossed EB, regularisation of suspension period payment of full salary etc. do not arise and cannot be claimed by him in law. Applicant's request for restoration of benefits had been held back only on account of the pending prosecution. OA therefore has no merit and has to be dismissed, plead Sh. Sudan.

5. I have considered the matter. While the applicant is seeking permission to cross EB w.e.f. 1.1.89, which was the due date, but which was denied on account of pending disciplinary proceedings , as the proceedings have ended in his exoneration, respondents state that he was not entitled for the same on account of other pending proceedings. Applicant's plea is that the other proceedings were of dates subsequent o 1993 and therefore his crossing of EB w.e.f. 1.1.89, had to be restored. This plea, if true, merits acceptance in view of the decision of Hon'ble Supreme Court in the case of Delhi Jal Board's Vs Mahinder Singh [(2000)7 SCC 210], relevant portion of which reads as below:

"5. The right to be considered by DPC is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is within the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges were framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any disciplinary inquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by DPC in favour of such an officer, if he had been found fit for promotion and if he was

later exonerated in the disciplinary inquiry which was pending at the time when DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and the sealed cover was opened to give effect to it, another departmental enquiry was started by the Department, would not come in the way of giving him the benefit of the assessment by the first DPC in his favour in the anterior selection. There is, therefore, no question of referring the matter to a larger Bench."

Therefore if DPC had found him fit for crossing EB w.e.f.

1.1.89, he should get the benefit thereof, notwithstanding the initiation of further proceedings on any subsequent dates. That is exactly what the law provides.

Regularisation of his the period of suspension , from 26.2.88 to 15.6.89 would also have to be accepted with benefits to the applicant.

6. In the result , the OA succeeds substantially and is accordingly disposed. Respondents are directed to regularise his period of suspension from 26.2.88 to 15.6.89 and permit him to cross EB on 1.1.89, raising his pay appropriately , in view of his exoneration in the first charge-sheet. Consequential benefits shall follow. This shall be done in two months from the date of receipt of a copy of his order. No costs.

(Govindan S. Tampli)

Member (A)

Patwal/