

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 707 of 2001

New Delhi, this the 14<sup>th</sup> day of March, 2002

Hon'ble Mr. V.K. Majotra, Member (A)  
HON'BLE MR. Kuldip Singh, Member (J)

Jatinder Kumar, JTO  
Faridabad Telecom District,  
2349, Sector-16,  
Faridabad (Haryana).

... Applicant

By Advocate: Shri S.N. Anand.

Versus

1. Union of India through Secretary,  
Ministry of Communications  
(Department of Telecom.)  
Sanchar Bhawan,  
20, Ashoka Road,  
New Delhi-110 001.
  2. The Chief General Manager,  
Mahanagar Telephone Nigam Limited,  
Khurshid Lal Bhawan,  
New Delhi-110 050.
  3. The Chief General Manager Telecom,  
Haryana Circle,  
Amabala.
  4. The General Manager,  
Telecom District,  
Faridabad (Haryana).
  5. The Telecom District Manager,  
Rewari Telecom District  
Rewari (Haryana).
- ... Respondents

By Advocates: Shri V.K. Rao, Counsel for respondent  
Nos. 1 and 2.

Shri M.M. Sudan, Counsel for  
respondent Nos. 3 to 5.

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant has filed this OA seeking the  
following reliefs:-

(i) Call for the records of the case.

(ii) Direct the respondents to give effect to

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order dated 8.9.94 promoting the applicant to TES Group 'B' or alternatively consider case of applicant for ad hoc promotion in the light of instructions issued by Government of India vide OM dated 14.9.92 (Annexure A).

(iii) Pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. Facts as alleged by the applicant are that he is a three year Diploma holder in Engineering and was initially employed as Technician and was subsequently promoted as Junior Engineer/Junior Telecom Officer in Delhi Telephones.

3. The applicant was placed under suspension by General Manager Telephones Faridabad vide order dated 16.2.1994 with effect from 25.1.1994.

4. The applicant was promoted by respondent No.1 to the Telecom Engineering Service Group 'B' vide their order dated 8.9.94. However, his promotion could not be brought into effect since the applicant was under suspension. In the meanwhile the charge-sheet was filed by the CBI against the applicant in the court of Special Judge, Tis Hazari Courts, Delhi. However, the suspension of the applicant was revoked on 25.11.1999 vide Annexure-H but the applicant has been denied promotion to TES Group 'B' though order for promotion was passed on 8.9.94.

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5. The applicant further says that since sealed cover procedure was not adopted in the case of the applicant and his promotion order has been issued so the applicant should have been allowed to take charge of the higher post when his suspension was revoked and he claims that his case is also covered by the judgment given in the case of Ajay Kumar VS. Government of NCT Delhi and Others in OA No.623/2000 dated 5.2.2001 so he has prayed that the respondents be directed to promote the applicant to TES Group 'B' or in the alternate he should be considered for ad hoc promotion in the light of the instructions issued by the Government of India vide OM dated 14.9.1992.

6. The respondents are contesting the OA. The respondent in their reply pleaded that the order dated 8.9.94 vide which the applicant was shown to be promoted to TES Group 'B' cannot be given effect as the Hon'ble Supreme Court and this Tribunal has also issued various judgments holding that the courts and Tribunals should not issue any direction in the nature of mandamus promoting an officer to the next higher post and the consideration for promotion should be left to the competent authority so it is stated that the present application is liable to be dismissed.

7. It is also pleaded that the OA of the applicant is time bared as the applicant is seeking promotion pursuant to the order dated 8.9.94 after expiry of nearly six years.

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8. It is further pleaded that the charge-sheet filed by the CBI against the applicant will show that the charges against the applicant are of very serious nature inasmuch as he was involved in a racket of providing ISD calls at cheap rates and he also got 3 telephone numbers sanctioned in fake names so he was not rightly promoted to TES Group 'B' so it is prayed that the OA be dismissed.

9. We have heard the learned counsel for the parties and gone through the material on record.

10. The main contention of the learned counsel for the applicant is that since his case has been duly considered by the DPC and he has been given promotion vide 8.9.94 though during the said period he was under suspension but after his suspension was revoked he should have been allowed to assume charge of the next higher post particularly so when in his case sealed cover procedure was not followed and the applicant has relied upon a judgment in the case of U.O.I. Vs. K.V. Jankiraman, 1991 (2) Scale SC 423 and submitted that since on the day when the DPC was held no charge-sheet has been issued either under Rule 14 of the CCS (CCA) Rules, 1965 nor any charge-sheet has been filed before the Criminal Court so no action was commenced against him and merely some action was contemplated does not debar the applicant from being promoted to the next higher post.

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11. The counsel for the applicant has also referred to a judgment in the case of Ajay Yadav (Supra) wherein also the criminal prosecution was pending and direction was given to re-examine the case of the applicant in terms of the OM dated 14.9.92 issued by the DOP&T. The applicant has also referred to the said instructions and submitted that the applicant is entitled to be promoted on ad hoc basis to the next higher post.

12. As against this Shri V.K. Rao appearing for the respondents referred to a judgment of the Hon'ble Apex Court in the case of Union of India and Another Vs. R.S. Sharma reported in JT 2000 (4) SC 649 wherein the Hon'ble Supreme Court referred to paragraph 7 of the instructions with regard to sealed cover procedure and the Hon'ble Supreme Court after referring to para 7 of the DOP&T circular observed as under:-

11. Without conceding to the above position, Shri Mukul Rohtagi, Additional Solicitor General, adopted an alternative contention based on Paragraph 7 of the Sealed Cover Procedure which reads thus:-

'Sealed cover applicable to officer coming under cloud before promotion:- A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also'.

12. The conditions necessary to invoke the said clause are:

(1) Recommendations of the DPC should have been made for promoting the Government servant.

(2) After such recommendations and before he is actually promoted any, one of the circumstances in clause (ii) of the second paragraph (supra) should have arisen.

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13. Two factual aspects are admitted. One is that respondent was not actually promoted even now. The other is that formal sanction has been accorded to prosecute him in the meanwhile. If that be so, paragraph 7 of the Sealed Cover Procedure would entirely apply and the recommendations made by the DPC in respect of the respondent have to remain in the sealed cover 'until he is completely exonerated of the charges against him' (emphasis supplied)".

13. After referring the same the learned counsel for the respondents submitted that in this case also the cloud over the applicants still stands as the applicant has not been fully exonerated. The case against him is still pending so the applicant cannot be allowed to take charge of the next higher post until and unless he is acquitted from the criminal court.

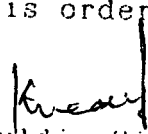
14. After going through the judgment of the Hon'ble Apex Court we are also of the view that since at the time of recommendation of the DPC the applicant was already under suspension for a serious lapse on his part that he had provided ISD calls at cheap rate and also got 3 telephone numbers sanctioned in fake names and though no charge-sheet had been issued by the department but the fact remains that an FIR had been registered against him and had been subsequently filed by the CBI in the court of Special Judge, Tis Hazari Courts and since the applicant has not assumed the charge so the department was within its right to keep the applicant away from the promoted post. The judgment relied upon by the applicant are distinguishable and do not help the applicant whereas judgment of Apex Court in the case of Sharma (Supra) fully applied to the fact of the case. So as far this promotion is concerned, we find that no direction cannot be given to the respondents to give effect to the orders dated 8.9.94 directing the respondents to allow

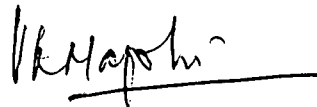
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the applicant to assume the charge to the next post of TES Group 'B' (emphasis supplied).

15. As far the alternate prayer is concerned, the applicant has also provided for ad hoc promotion in the light of the Government of India instructions vide Office Order dated 14.9.92 as per Annexure-A. We have gone through the instructions as placed on record by the applicant. Paragraph 5 of the same prescribes a detailed procedure for consideration of ad hoc promotions such like circumstances to the applicant and since this aspect for providing ad hoc promotion has not been considered by the department so far, so we direct the respondents to consider the case of the applicant for ad hoc promotion to the next higher post in accordance with the instructions as given in paragraph 5 of the OM dated 14.9.92 and if the applicant is found fit for grant of ad hoc promotion as per the said instructions, the applicant may be given ad hoc promotion.

16. OA is partly allowed with a direction to the respondents that they shall consider the case of the applicant for ad hoc promotion as per instructions contained in paragraph 5 of the OM dated 14.9.92 within a period of 3 months from the date of receipt of a copy of this order. No costs.

  
(Kuldip Singh)  
Member (J)

  
(V.K. Majotra)  
Member (A)

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