

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1438/1999

New Delhi, this the 24th Day of August, 2000.

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)
Hon'ble Sh. Govindan S. Tampi, Member (A)

Sh. Parasanjeet Pandey,
s/o Sh. Ram Adhar Pandey,
r/o M-20-A, Shyam Nagar,
Vishnu Garden,
New Delhi - 110 018

officiating S.D.E.
MTNL, Karol Bagh Exchange,
New Delhi.

.....Applicant.

(By Advocate Sh. B.T. Kaul & Sh. Vinod Kumar)

VERSUS

1. Union of India
through Secretary,
Department of Telecommunications,
Sanchar Bhawan,
New Delhi - 1.
2. Director General
Telecommunications,
Sanchar Bhawan,
New Delhi - 1.
3. Chief General Manager,
Mahanagar Telephones Nigam Ltd.,
Delhi Circle, Khurshid Lal Bhawan,
Janpath, New Delhi - 1.

.....Respondents

(By Advocate Sh. N.C.Sikri, Sr. Advocate with Ms.
Geetanjali Goel.)

ORDER

By Hon'ble Sh. Govindan S. Tampi, Member (A)

The moot point in this application is whether the respondents were correct in adopting the 'Sealed Cover' procedure, with regard to the DPC held in 1998, in which the case of the applicant was considered.

2. The applicant, who joined the Deptt. of Telecom on 13-06-1984, and worked as Junior Telecom Officer in MTNL, became eligible for promotion to

cadre of TE-Group B in 1989, in which he came to be officiating as SDE. Though in the DPC held in December, 1998, for promotion on seniority-cum-fitness basis, he was very much in the consideration zone, he was not promoted, his case having apparently been placed in Sealed Cover by the DPC on account of some alleged case pending against him with CBI. In fact, no proceedings have been initiated against him though he was summoned by the CBI, and that too, not as an accused. As no proceedings had been initiated against him or were pending at the time when the DPC was held, the respondents had acted incorrectly by resorting to Sealed Cover procedure in his case and holding back his promotion. With the result, two of his juniors have been regularly promoted, but he was continuing as officiating SDE, with the likelihood of reversion. He, therefore, seeks the Tribunal's intervention to declare the Sealed Cover procedure adopted in his case as irregular, grant him regular promotion from the date of his juniors were promoted to the post and to stay the threatened reversion. (He has in the meanwhile, been reverted on 31-05-99.)

3. Respondents contest the application stating that as the applicant was only an officiating SDE, his reversion was correct in law. The action was taken in view of the two separate cases registered against him by CBI, (a fact which he had concealed in the application) and as it had been recommended by the G.M. (Vigilance) that he should be reverted before prosecution was sanctioned, which in both the cases was ordered on 15-07-1999. His case was considered for regular promotion ^{for} SDE in

October, 1997 not in December 1998, as stated by the applicant and the findings were sent with the remarks about the pending CBI case. Vigilance, therefore, did not clear the applicant and his case was accordingly kept in the Sealed Cover. This procedure has the approval of the Hon'ble Supreme Court also. The reversion order of 31-05-99, stayed on 15-06-99 was issued by the MTNL and, therefore, the Tribunal had no jurisdiction to deal with the case. Merely because some posts were lying vacant in the Respondent's office, the applicant cannot have any claim for promotion. He also can have no grudge on the promotion of two of his juniors, as they had not been involved in any penal proceedings. Sealed Cover procedure has been legally and correctly adopted by the Department in his case. In view of the above, the application merits dismissal, urge the respondents.

4. Heard both the counsel. On 1-8-2000. Arguing fervently for the applicant, the learned counsel Sh. B.T.Kaul stated that the adoption of the Sealed Cover procedure in respect of the applicant was wrong and motivated. He points out that, none of the pre-requisites for placement of a case in the Sealed Cover in terms of the procedure in force since 1992 i.e.

- i) Suspension
- ii) pendency of disciplinary proceedings and/or
- iii) pendency of criminal proceeding,

had existed in the case, on the date when the DPC had considered the applicant's case. Neither was any chargesheet issued to him nor any criminal proceedings initiated against him. He was also not under suspension. Therefore, placing the findings about his suitability or otherwise for promotion in the Sealed Cover, promoting his juniors and reverting him subsequently from his officiating post were illegal incorrect and called for reversal argued the counsel.

5. Replying on behalf of the respondents, Sh. N.C.Sikri, Sr.counsel reiterated that the procedure adopted by the Deptt. was correct and legal. He pointed out that in the circumstances of the case, the findings about the individual was justifiably placed in the Sealed Cover and the applicant should not have any quarrel with the procedure adopted, especially in view of the judgment of the Hon'ble Apex Court in R.S. Sharma Vs. UOI reported at J.T 2000 (4) SC 649 which, according to the counsel, had been handed down in similar circumstances. He also dwelt at length on the judgment but could not explain as to whether the decision, related to the Sealed Cover Procedure, detailed in 1992 O.M. or earlier. However, he promised to submit written submissions, which he did a week later.

6. In the written submissions, the respondents reiterate their plea and state that the case is squarely covered by the decision of the Apex Court in Union of India and others Vs. R.S. Sharma, (JT 2000 (4) SC.644) which has overruled the decision

in Jankiraman's case (JT 1991 (3) SC 527) in respect of sealed cover procedure by placing reliance on para 7 of the O.M. Further, reliance has been placed on the decision of the Larger Bench of the Apex Court in Union Of India Vs. Madras Telephones SC&ST Social Welfare Association JT 2000 (6)- 471 SC, in which the Court had resolved the conflict between the orders in Union Of India & Ors. Vs. P.N. Lal & Others in SLP 3384-86 and Madras Telephones SC/ST Association decided in 1997. In the latest decision dated 26.04.2000, the Apex Court has held that para 206 of the P&T Manual being administrative instructions cannot override statutory rules and that seniority of JTOs has to be fixed by the year of recruitment. This Tribunal has also held on 05.07.2000 that in view of the Apex Court's decision a number of OAs pending, have become infructuous. The counsel further points out that the applicant's reliance on the revised instructions on Sealed Cover procedure dated 14.09.1992 was misplaced as the same also had provisions in para 7 as in the earlier procedure. Therefore, unless a person was totally exonerated he could not have been promoted, which was the case with the applicant. The learned counsel summarised his pleas as below :-

- i) decision in R.S. Sharma's case squarely covered the dispute on hand;
- ii) in view of the Apex Court's decision dated 26.04.2000, the OA has become infructuous and
- iii) since the officiating and ad hoc promotion was ordered by MTNL, this Tribunal lacked jurisdiction.

7. Written submissions were received from the applicants' counsel also. Pleas therein are enumerated as below :-

(a) resorting to Sealed Cover Procedure was illegal as none of the circumstances mentioned in para 2 of the OM dated 14-4-92 existed.

(b) by adopting the wrong procedure the applicant was denied promotion and there of his juniors were promoted

(c) reliance placed by the respondents on the judgement in R.S.Sharma's Case was inappropriate, as it dealt with the situation envisaged in the OM dated 12-1-1988 which has since then been replaced.

(d) reference to para 7 also was incorrect as the sanction for prosecution was accorded on 15-7-99, whereas the promotions have taken place much earlier on 21-10-98

(e) decision in the case of the Union of India Vs. Madras Telephone SC/ST Welfare Association as well as that in OA No. 1173/96 were not relevant for this OA.

(f) It was wrong to say that the decision in R.S.Sharma's case has overruled the earlier decision in Janakiraman's case. Applicant's case should succeed, is the counsel's plea.

8. We have given careful consideration to the rival pleas raised by the parties, in their pleadings, during the hearing as well as in their subsequent written submissions. In this case, the

findings about the suitability or otherwise of the applicant, a J.T.O., for promotion to the grade of SDE in TE-group "B" was placed in the Sealed Cover and two or three of his juniors had been promoted. This was in connection with some penal proceedings begun by the CBI concerning the applicant. While the applicant states that the relevant procedure in force on the day when the DPC took place did not permit such a step as the restrictions in that regard did not exist, the respondents plead that the procedure was valid even after the old scheme of 1988 was replaced by the scheme of 1992. It is, therefore, essential for the correct appreciation of facts and law that the relevant schemes are examined.

9. Government of India, Deptt. of Personnel and Training Office Memorandum No. 22011/2/86 Estt (A) dated 12-1-88 reads as below in para 2.

"At the time of consideration of the cases of Government servants for promotion, details of the Government servants in the consideration zone for promotion, falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee.

i) Government Servants under suspensions:

ii) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings:

iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution.

iv) Government servants against whom an investigation on serious allegation of corruption, bribery or similar grave misconducts is in progress either by the CBI or any agency, departmental or otherwise".

Para 7 of the Office Memorandum is also relevant. It reads as below :-

"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 has 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 Office Memorandum will be applicable in his case also".

10. corresponding provisions in DOPT's Office Memorandum No.22011/4/91-Estt (A) dated 14-9-92 which replaced the earlier Office Memorandum of 12-1-88 read as below :-

"2. At the time of consideration of the cases of the Government Servants for promotion details of Government servants in the consideration zone for promotion, falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee :-

- i) Government servants under suspension
- ii) Government servants in respect of whom a chargesheet has been issued and the disciplinary proceedings are pending and
- iii) Government Servants in respect of whom prosecution for a criminal charge is pending"

Para 7 is the same in the subsequent Office Memorandum as well.

11. It would thus be seen that restrictions placed by para 2 have been relaxed in the Office Memorandum dated 14-9-92 from that of 12-1-1988. Not only that the restriction placed by 2 (iv) has been deleted but in 2 (ii) and 2 (iii) also changes have been brought in. Reference to decision taken to initiate disciplinary proceedings in para 2 (ii) and to grant of sanction for prosecution given as well as decision taken to accord sanction for prosecution, no longer exists in the present scheme of things. Notwithstanding the retention of para 7 of the old procedure as such in the new procedure, the nature of restrictions has changed in the scheme envisaged by the amended procedure of 1992. It is in this

scenario the present case has to be examined.

12. In this case, the applicant states that the impugned DPC was conducted in December, 1998, while the respondents say it was done in October, 1997. Evidently, therefore, the convening of the DPC was clearly after the issue of the DOPT's Office Memorandum No. 22011/1/91-Estt. (A) dated 14-9-92 and, therefore, the proceedings could have taken place only under the instructions contained in the Office Memorandum dated 14-9-92 and not in the previous Office Memorandum of 12-1-1988 which it had replaced and superseded. In such a situation para 2 of the new instructions would come into play. The three circumstances which should be brought to the notice of the DPC, are reproduced below :-

- i) Government servants under suspension.
- ii) Government servants in respect of whom a chargesheet has been issued and the disciplinary proceedings are pending and
- iii) Government servants in respect of whom prosecution for a criminal charge is pending.

No other circumstances are envisaged by the procedure. The applicant says on the day when his case was considered by the DPC (it is immaterial whether it was took place in December 1998 or October 1997) he was not under suspension, he was not served with any chargesheet and no disciplinary proceedings were pending against him and no prosecution for a

criminal charge was pending against him. These are facts brought out on records as well. Para 6 of the respondent's reply to the OA reads as below :-

"That contrary to the averment of the applicant that a DPC was held in December 1988, it is submitted that no such DPC was held in December, 1998. Rather the name of the applicant was considered for regular promotion as S.D.E. in October, 1997. It is submitted that the papers in respect of the applicant were forwarded along with those of others by the letter dated 10-11-97 with the remarks that a CBI case is pending against the applicant. Hence as the case of the applicant was not cleared by the Vigilance because of the pendency of a CBI/Vigilance case against the applicant, the recommendations in respect of the applicant were kept in a Sealed Cover. It is submitted that the procedure in such cases has also been approved by the Hon'ble Supreme Court in a catena of decisions to which the respondents crave leave of this Hon'ble Tribunal to refer to at the time of arguments. Thus it is submitted that the question of promotion of the applicant does not arise". What emerges from the above that as a CBI/Vigilance case against the applicant was pending, his case was kept in the Sealed Cover. It is not the case of the respondents that the applicant was under suspension, that a charge sheet was issued to him and disciplinary proceedings were pending against him and that a prosecution for a criminal charge was pending against him. It is only that a CBI/Vigilance case was pending. It would have been registered and some

investigations would have taken place. But it had not reached the stage for suspending the applicant or issuing a chargesheet to the applicant or sanctioning his prosecution. Only in such cases placement of the findings about the Government servants in Sealed Cover could have been, as per the instructions in force, resorted to. Despite the absence of the above three circumstances, Sealed Cover proceedings have been resorted to by the respondents in this applicant's case. To say the least, it was illegal, improper and contrary to the instructions. It would appear that the respondents had gone by the instructions contained in para 2 of the DOPT's Office Memorandum dated 12-1-1988, though the same had been replaced by the Office Memorandum dated 14-9-1992, nearly five years before the DPC took place in October, 1997. We have to say the above action smacks of total violation of the procedure, non-application of mind and incorrect appreciation of the circumstances of the case. The applicant's case that findings about his suitability or otherwise for promotion recorded by the DPC in December 1998 (or October 1997) should not have been placed in the Sealed Cover, in the light of the instructions in force on that day is correct and has to be endorsed.

13. The learned counsel was at considerable pains to elicit the support of this Tribunal for the action taken by the respondents, by taking recourse to para 7 of the procedure; which has been retained even after amendment. The same reads as follows :-

"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 he will be considered as if his case had been placed in a sealed cover by the DPC (emphasis supplied). He shall not be promoted until his is completely exonerated of the charges against him and the provisions contained in this Office Memorandum will be applicable in his case also" This paragraph also does not come fully to the rescue of the respondents. What is envisaged in this paragraph is a post DPC situation where circumstances enumerated in para 2 arise in the case of Government servants, recommended for promotion between such recommendation and the actual promotion. In such cases a deeming provision has been introduced to treat the cases of such Government servants, as if they had been placed in the Sealed Cover by the DPC. Placing the case of an individual by the DPC in the Sealed Cover on the basis of the existence of the restrictions in para 2 and treating the cases of individuals recommended for promotion as having been placed in the Sealed Cover by DPC on account of subsequent occurrence of the restrictions in para 2 are two different situations altogether. What has happened in this case is the first situation and it is being sought to be justified by the procedure meant to deal with the second situation. One cannot be substituted for the other. On that count also, the applicant's case that his case was originally placed in the Sealed Cover, without any justification by the respondent is valid

and merits acceptance.

14. We have also had the benefit of perusing the judgment of the Hon'ble Apex Court in the case of Union of India and Anr. Vs. R.S.Sharma, Civil appeal No. 6995-6996 of 1994, reported at JT,2000 (4) SC 649. However, we are not convinced that the said decision squarely covers the facts of this case, as propounded by the respondents. In that case, CBI had registered an enquiry against the individual, he was placed under suspension which was subsequently revoked. Therefore, his case fell within the purview of the restriction placed by para 2 (iv) of the Sealed Cover Procedure scheme as envisaged by DOPT's Office Memorandum dated 12-1-1998 and the findings were accordingly placed in the Sealed Cover. Therefore notwithstanding the deletion of para 2 (iv) on 31-7-91, the position was upheld by the Hon'ble Apex Court in view of the clarifications issued for dealing with such cases, read with para 7 of the procedure. Here the situation is entirely different as the impugned DPC has taken place nearly five years after the new procedure has been introduced on 14-9-92. With the nature of restrictions in para 2 considerably modified. The respondent cannot seek any protection from the said judgment, which was issued in different set of circumstances and when different instructions were in operation.

15. We have also tried, but in vain to find out any observation in the Apex Court's decision in R.S. Sharma's case to the effect that the earlier finding in the case of Union of India Vs. K.V.Jankiraman (JT 1991 (3) SC 527 = 1991 (4) SCC 109) has been unsettled; as argued by the

respondents. The Hon'ble Court has only distinguished it as the clauses of the second paragraph of the Sealed Cover procedure considered in Jankiraman's case were not there in the case of Sharma and, therefore, the decision was not applicable. We are at a loss to understand as to how such a dicta would come to the rescue of the respondents in this case. This also would go to support the applicant's plea that his case was wrongly placed in the Sealed Cover by the DPC, against the instructions in force on the day.

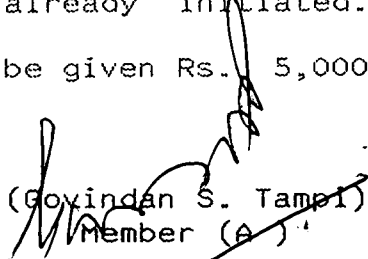
16. It is also the case of the applicant that in addition to having placed his case wrongly in the Sealed Cover against the existing instructions, three of his juniors were also promoted on 21-10-98, overlooking his eligibility and seniority. Even recourse to the instructions in para 7 would not help the respondents, as the sanction for his prosecution was issued only on 15-7-99 i.e. much after his juniors were promoted on 21-10-1998; argues the applicant. We do find considerable strength in the plea by the applicant, as the respondents had sat over the sanction for prosecution for nearly two years yet placed the findings in respect of the applicant in the Sealed Cover two years earlier and promoted his juniors. In the circumstances of the even if the instructions in para 7 had to be followed, the applicant should have been promoted, on the day his juniors were promoted, provided of course DPC had found him fit for promotion, as the restrictions of para 2 came to inhibit the promotion order only on a much later date i.e. in July 1999, when the DPC had taken place in October 1997 and the

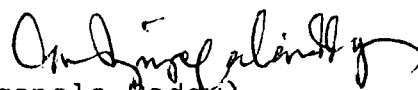
recommendations by the DPC were in fact given effect to in October 1998, except in the case of the applicant. Respondents had thus acted incorrectly on this count also.

17. We have also carefully gone through the decision of the Hon'ble Apex Court in the case of Union of India Vs. Madras Telephone S.C. & S.I. Social Welfare Association reported at JT 2006 (6) SC 471 as well as the decision of this Tribunal dated 5-7-2000, in OA No. 1173/1996. The orders, however, are of no help to the respondents, as they deal with the selection process and eligibility conditions for promotion to group A in Telecom Service from the cadre of Engineering Supervisors and do not cover the aspect of Sealed Cover procedure. The reliance placed by the respondents on those decisions is clearly inappropriate.

18. In view of the above observations we have no doubt in answering the question placed before us in favour of the applicant. Respondents action in placing the findings about the applicants's suitability or otherwise for promotion in the Sealed Cover was clearly incorrect and improper. So also illegal was their action in not promoting him along with his juniors in October 1998, had he been fit for promotion by the DPC, as the sanction for prosecution has been ordered only in July 1999. He could not have been denied the benefit, which was his as of right, on account of an event that occurred nearly a year later. Respondent's action cannot be upheld in law or equity, as it was done on wrong premises, improper appreciation of facts and incorrect applications of mind.

19. In the result, the application succeeds and is accordingly allowed. The Sealed Cover Procedure adopted in the case of the applicant by the DPC is quashed. The respondents are directed to give him all the consequential benefits including the promotion to the higher post, from the date on which his immediate junior has been promoted, if he has been found fit for promotion by the DPC. This would not come in the way of the prosecution proceedings already initiated. The applicant is also ordered to be given Rs. 5,000/- towards costs of this OA. ~~at~~.


(Govindan S. Tampl)
Member (A)


(V. Rajagopala Reddy)
Vice Chairman (J)

/vikas/