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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH.

O A No. 2556/97

New Delhi; this the 13th day of August, 1998

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J) ..

Shri S. S. Jangpangi,
S/o Shri K. S. Jangpangi,
R/O 587, Munim Colony,
Muzaffarnagar and
employed as SDD Telegraph,
Muzaffarnagar.
(By Advocate: Shri D. R. Gupta) Applicant.

Versus

1. Union of India through
Secretary,
Ministry of Communications,
Department of Telecommunications,
and Chairman Telecom,
20, Ashoka Road, Sanchar Bhawan,
New Delhi.

2. Chief General Manager,
UP (West) Telecom Circle,
Dehra Dun

..... Respondents.

(By Advocate: Shri V. S. R. Krishna)

JUDGMENT

HON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A)

Applicant seeks quashing of charge

Memo dated 13.12.96 (Annexure-A IV) and alternatively to direct respondents to complete the enquiry within three months. He also seeks consideration for promotion as ^{Div. Engr.} with effect from the date his juniors were promoted with consequential benefits.

2. Applicant is a TES Group 'B' Officer.

Admittedly applicant was considered for promotion by a duly constituted DPC on 3.6.96, but could not be promoted, and instead his case was kept in a sealed cover owing to a pending charge sheet dated 30.4.94 (page 17-18 of OA) against him. In the charge sheet it was alleged that applicant while posted as SDD Telegraph, Haldwani during 1986-87 falsely verified

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and passed bills of M/s Grandeur Furnishers, New Delhi amounting to over Rs.5.67 lakhs without ensuring the correct quality and exact quantity of PVC coated G.I. wire supplied by the said firm.

3. That DE ended in applicant's exoneration on 18.9.97 (Annexure-A II) but meanwhile on 13.12.96 the aforementioned impugned chargesheet was issued to applicant alleging that while posted as SDO Telegraphs, Haldwani during 1987-88 he accepted substandard material from M/s Grandeur Furnishers and M/s Grand Timber Industries, New Delhi and falsely appended certificates on the bills preferred by the aforesaid firms to the effect that the material had been received in good condition without ascertaining its specifications and quality which led the Accts. Section of TDE Office Nainital to process the bills for payment.

4. We have heard applicant's counsel Shri D. R. Gupta and respondents' counsel Shri V. S. R. Krishna.

5. Shri Gupta has urged that applicant was in no way responsible for the purchases and despite having been exonerated in the charge sheet dated 30.4.94 is being deliberately harassed by respondents by serving upon him a second charge sheet on 13.12.96 on the same set of allegations. He contends that this charge sheet has been issued with great delay and is fit to be quashed. He submits that in any event, upon having been exonerated in regard to the earlier charge sheet dated 30.4.94 respondents should be directed to open the sealed cover and take further action accordingly and the pendency of the second charge sheet dated 13.12.96 cannot preclude respondents from doing so. Reliance is placed on the

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Hon 'ble Supreme Court's judgment in State of A.P. Vs. N.Radhakishan 1998 (4) SCC 154.

6. On the other hand Shri Krishna states that consequent to the pendency of the second chargesheet issued on 13.12.96, the DE initiated pursuant to the same has to be concluded before the sealed cover can be opened. Reliance is placed on the judgment in UOI Vs. K.V.Jankiraman 1991(2) SCALE 423.

7. We have considered the matter carefully.

8. As regards interference in the chargesheet at this stage, the Hon'ble Supreme Court in a catena of judgments has strongly deprecated the practice of Courts/Tribunals interdicting departmental proceedings at interlocutory stages, unless there are overwhelming reasons to warrant the same. In the present case, we find no such reasons, and applicant has himself prayed for an alternative relief to direct respondents to conclude the DE initiated vide chargesheet dated 13.12.96 within a specified period of time.

9. Furthermore we note that the facts in Radhakishan's case (supra) are different from the one before us. N.Radhakishan was working as City Planner in a Municipal Corporation. The D.G. Anti Corruption Bureau reported on 7.11.87 to the State Govt. about certain unauthorised constructions which were said to have taken place in collusion with the Municipal authorities. The report was prepared on the basis of inspection conducted in September, 1987. A charge Memo dated

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12.11.87 was issued to him under Rule 19 A.P.Civil Service (CCA) Rules, 1963. Upto March, 1995 several enquiry Officers were changed but the enquiry made no progress. On 31.7.95 another Charge Memo was issued to him on the ground that a new set of Rules namely A.P.C.S. (CCS) Rules, 1991 had come into force and therefore the procedure prescribed in these rules had to be followed. Even in the new charge Memo, three out of the 4 charges framed against Shri Radhakishan did not pertain to him. During the pendency of the second charge Memo, respondent became due for consideration for promotion for which D PC met on 16.8.95. Two more charge Memos dated 27.10.95 and 1.6.96 were issued to him. The AP Admn. Tribunal quashed the Memo dated 31.7.95 and directed that Shri Radhakishan be promoted on the basis of the D PC's recommendations dated 16.8.95 after ignoring the Memos dated 27.10.95 and 1.6.96, which decision was held by Hon'ble Supreme Court to be valid.

10. The present case is not one where the charges do not pertain to the applicant. It is true that considerable time elapsed in framing the chargesheet dated 13.12.96, against the applicant in regard to alleged misconduct said to have been committed during 1987-88 but that alone is not a ground sufficient to warrant quashing of the chargesheet as has been held by the Hon'ble Supreme Court in Secretary to Govt. Prohibition & Excise Deptt. Govt. of Tamil Nadu Vs. L. Srinivasan JT 1996(3) SCC 202. Nor can it

be said that the charges in regard to alleged misconduct said to have been committed in 1987-88 are identical with the chargesheet dated 30.4.94 in regard to which applicant was exonerated because in the impugned chargesheet which relates to a different year (1987-88), mention is made not only to M/s Grandeur Furnishers, New Delhi but also to another firm M/s Grand Timber Industries, New Delhi in regard to supplies from which misconduct is alleged to have committed. Furthermore it is not for the Tribunal to assess the extent of applicant's responsibility in making purchase from the firms in question.

11. In Janakiraman's case (Supra), the Hon'ble Supreme Court has observed thus

"To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interest. An employee found guilty of a misconduct cannot be placed on par with the other employee and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in presentii. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration

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and denies him the promotion, such denial is not illegal and unjustified. If, further, promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion."

12. In the light of the above, we hold that we would not be justified in quashing the impugned chargesheet dated 13.12.96, or in directing the respondents ^{at this stage} to open the sealed cover in which applicant's name was put by the D PC on 3.6.96. However, having regard to the alternative relief prayed for by the applicant, we partly allow the OA in as much as we call upon respondents to conclude the DE initiated against applicant on the basis of chargesheet dated 13.12.96 within six months from the date of receipt of a copy of this order in which applicant should fully cooperate and upon conclusion of the DE, respondents should open the sealed cover and thereafter proceed in accordance with law. No costs.

Lakshmi Swaminathan
(MRS. LAKSHI SWAMINATHAN)
MEMBER (J)

S.R. Adige
(S.R. ADIGE)
VICE CHAIRMAN (A).

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