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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 1633/2000
New Delhi this the 9th day of November 2001

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Sh. Ajay Kumar Singh, ITS
Staff No. 08113
Dy. General Manager (Dev.)
West-II, MTNL,
22 Bhera Enclave, Paschim Vihar
New Delhi.

.....Applicant
(Applicant in person)

VERSUS

1. Union of India,
through the Secretary Telecom,
Min. of Communications,
Deptt. of Telecomn. Sanchar Bhawan,
20 Ashoka Road,
New Delhi
2. Director (ST-II)
Min. of Comn.
Deptt. of Telecomn.
Sanchar Bhawan, 20 Ashoka Road,
New Delhi.

.....Respondents
(By Shri R N Singh, learned proxy counsel)

O R D E R

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

Shri A.K. Singh, the applicant seeks to challenge order No. 314-1/99-STG-III dated 1.6.99 issued by the respondents, granting him promotion to JAG in ITS, on ad hoc basis w.e.f. that date instead of from 10.11.1995, when his immediate junior was promoted, in view of his total exoneration from the charges in the chargesheet issued on 27.1.92 as well as on 3.1.97.

2. Heard the applicant in person and Shri R N Singh, learned proxy counsels for the respondents.
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3. The applicant is working as Dy. General Manager - JA Grade in ITS - since June 1999. He is a direct recruit in the service in 1983. Proceedings were initiated against the applicant on 27.1.92, proposing penalty on him for events which had occurred during 1987-88. During the pendency of the proceedings, respondents by their order dated 10.11.95, promoted a few of his juniors to JAG, without considering his claim. A second chargesheet was issued to him on 3.1.97, alleging misconduct in his work during the period 1993-94. The applicant challenged the delay in the finalisation of the proceedings before the Tribunal in OA 32/96 at Guwahati, following whose order, the proceedings initiated on 27.1.92, were dropped on 13.2.97. Applicant's OA 273/95, against his non-promotion and supersession was allowed by the Tribunal's order dated 8.1.99, directing his promotion retrospectively from 10.11.95. This was followed by a few representations from the application. In the meanwhile proceedings initiated by the second chargesheet of 3.1.97, also ended in his exoneration on 20.4.99. Thereafter, Govt. promoted him to J.A. Grade on ad hoc basis on 1.6.99, w.e.f. the said date which was clearly illegal on facts of the case as well as in terms of Tribunal, Guwahati Bench order dated 8.1.99. Applicant's further representation also did not yield any result. Hence this O. A. Grounds raised by the applicant in the OA are that:

- i) long delay in finalisation of proceedings led to the applicant being denied training/postings abroad.
- ii) his timely promotion to JAG due in 1995 was delayed.

- iii) the delay was in violation of all principles in respect of conducting disciplinary matters, issued by the Govt;
- iv) the delay had caused him monetary loss, which was not justified.

In view of the above the applicant seeks his retrospective promotion from 10.11.95, from the date his immediate junior Sh. H C Mehta was promoted, with all consequential benefits like seniority, fixation of pay and grant of pay and allowances with interests as well as foreign training and deputation and costs.

4. Respondents strongly rebut the pleadings raised in the O.A. It is pointed out that the DPC meeting held on 19.9.95 for promotion to JA Grade held the applicant to be 'not yet fit' on account of the pendency of the vigilance case. The same was the position in DPC meeting held on 14.8.97 and 28.8.97 as well as on 8.9.98. The decision of the Tribunal Guwahati Bench dated 8.1.99, holding that the subsequent disciplinary proceedings cannot debar the applicant being promoted by DPC meeting held on 10.11.95, was examined in the light of DoPT's OM No. 22011/4/91-Estt (A) dated 14.9.92, issued after the decision of the Hon'ble Supreme Court in Union of India Vs K.V. Janakiraman (AIR 1991 SC 2010) and a Writ Petition has been filed in the High Court, Gauhati against the Tribunal's order. In the meanwhile, the applicant has been promoted on ad hoc basis to JAG w.e.f. 1.6.99.

5. Preliminary objections raised by respondents are that the OA is not maintainable on account of principle of re-judicata, as no cause of action has a reason, as he had not impleaded necessary

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charges and also sought multiple reliefs have been asked. According to the respondents the order of the Tribunal Gauhati Bench in OA No. 273/1995 does not direct retrospective promotion of the applicant and the said order is already under challenge. As the promotions cannot be allowed during the pendency of the disciplinary case in terms of DoPT's OM No. 22011/4/91-Estt (A) dated 14.9.92, the applicant could not have been promoted earlier. The question of sealed cover procedure was also not applicable as the same had been introduced for ad hoc promotions only on 23.2.1999. The respondents admit that the proceedings issued against the applicant have been dropped subsequently but state that it is ^{the unchallenged} the right of the disciplinary authority to act on the findings of the preliminary investigations and to initiate the disciplinary proceedings under CCS (CCA) rules if prima facie misconduct is taken notice of. So long as the charged officer has been given full opportunity for explaining/defend his case, he cannot complain that he has been discriminated or treated in any illegal or unauthorised manner. The applicant in this case has been provided all such opportunities and he cannot therefore claim that he has been discriminated against. He also cannot claim retrospective promotion as the instructions of the DoPT do not cover his case. The application, therefore, deserves to be rejected outright is what the respondents pleas.,

5. During the oral submissions both the applicant and Shri R N Singh, learned proxy counsel reiterated their written submissions. On being pointed

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out about the multiplicity of the reliefs the applicant did not press his request for foreign training/deputation.

7. We have carefully considered the matter. The preliminary objections raised by the respondents do not have any merit. The present OA has been filed by the applicant challenging the action of the respondents for granting him promotion w.e.f. 1.6.99 instead of 10.11.95. This has been, according to him, against the spirit of the order passed by Gauhati Bench of the Tribunal while disposing OA No. 273/95 on 8.1.99. This is, in fact, a fresh cause of action and not reiteration of what has been decided in the earlier OA. The OA is therefore maintainable. His request that he should be declared to be placed above one Shri M C Gupta is also not improper as he has only asked for his correct placement in the seniority list and Shri Gupta is immediate junior but for his not being considered for promotion earlier.

8. Coming to the merits of the case we observe that the applicant was due for promotion in 1995 when his juniors were promoted to JAG by the respondents' order dated 10.11.95. It is evident that he has not been considered for promotion only on account of the charge sheets issued to him on 27.1.92 as well as on 3.1.97. It is interesting to note that the proceedings initiated against the applicant on 27.1.92 was finalised only after the Tribunal directing the same while allowing OA 32/96 exonerating him. Just a month before that, obviously when the first proceedings were about to be closed the second charge sheet has been

issued which has ended in ^{-6- his} (exonerat^hion) on 20.4.99. Needless to say the pendency of this proceedings alone had come in the way of his promotion. That being the case he is correctly entitled to the benefit of promotion if he was otherwise found fit when his immediate junior came to be considered for promotion and so promoted. This had happened on 19.11.95. The respondents have not stated that the applicant was otherwise unfit to be denied consideration. That being the case the findings of the Hon'ble Supreme Court in K.V. Jankiraman's case (AIR 1991 SC 2010) would come to his help. The relevant paragraph of the Judgement reads as below:

" We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given benefit of the salary of the higher post alongwith the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings".

It is evident that the applicant's promotion if he is otherwise fit has been delayed only on account of the pending proceedings which have ended in his exoneration on 13.2.97 and 20.4.99 respectively. He cannot therefore, be denied the benefit. The respondents had strenuously argued that the Tribunal's order dated 8.1.99 disposing of OA 273/95 does not call for retrospective promotion of the applicant. We are unable to agree. The said order of the Tribunal reads as below:

"In view of the above, we allow this application and direct the respondents to open the sealed cover if the sealed cover procedure had been adopted. If the sealed cover procedure was not adopted then the assessment made at the time of the Departmental Promotion/Screening Committee meeting held on 10.11.1995 should be taken into consideration and on the basis of such assessment examine whether the applicant was

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entitled to be promoted. If no such assessment was made at that time the respondents shall hold a review Departmental Promotion/Screening Committee meeting for assessment of the applicant as on 10.11.1995, the date of meeting of the DPC. This must be done as early as possible, at any rate within a period of three months from the date of receipt of this order.

5. The application is accordingly disposed of. No order as to costs."

9. Reading of the above, makes it clear that the Tribunal had meant that the Review DPC should take place and decision should be taken for assessment of the applicant as on 10.11.95 and such an assessment cannot be for promotion from 1.6.99 onwards, as the respondents would like us to believe, ^{for} no DPC would make an assessment in respect of an officer for a period of 4 years ahead. The fact that the respondents have filed a CWP against the order of the Tribunal before the Hon'ble High Court of Gauhati and the same has been admitted, according to the letter dated 12.7.2001 brought on record does not alter the situation, ^{as} the Tribunal, Gauhati Bench order has not been stayed, as yet ^{and} is still holding the field. It is true that the respondents could not have promoted the applicant even if he has been approved if disciplinary proceedings were already on, in terms of DoPT's letter dated 14.9.92 but once the charges have been dropped and the charged officer has been exonerated, he should ^{have} invariably ~~got~~ the benefit of promotion from the date he was found fit by the DPC with all consequential benefits in terms of the Hon'ble Supreme Court's directions in K.V. Jankiraman's case (supra). The same cannot be denied.

10. Applicant has sought reliefs in respect of foreign training/foreign deputation which definitely do not flow from his non-promotion on account of

disciplinary proceedings. We do not think these to be fit for being considered at all. Even otherwise the applicant himself did not press for them during the oral submissions. They are therefore rejected.

9. In the above circumstances the application succeeds and is accordingly allowed. The respondents are directed to Consider~~the~~ case of the applicant for promotion from the date on which immediate junior was promoted by order dated 10.11.95 by the review DPC as directed by the Gauhati Bench of the Tribunal dated 8.1.99 treating as if the two disciplinary proceedings did not exist as they had ended in his exoneration, and if found fit, to promote him from the date on which his immediate junior was promoted with all consequential benefits of seniority, pay and allowance along with the arrears. Needless to say, the above promotion order when passed will be subject to the decision which would be passed by of the Hon'ble High Court of Gauhati in WP (C) 128/2001 filed by UOI against A.K. Singh challenging the order of the Tribunal. No costs.

S. Raju

(Shanker Raju)
Member (J)

(Govindan S. Tampl)
Member (A)

Patwal/