IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(7)

Regn.Nos. OA 1671/89,
OA 1672/89 &
OA 1694/89

Date of decision: 08.06.1990.

1. OA 1671/89

Shri Alok Mittal ...Applicant

Vs.

Union of India through the Secretary, Ministry of Communications & Others ...Respondents

2. OA 1672/89

Shri L.K. Ahuja ...Applicant

Vs.

Union of India through the Secretary, Ministry of Communications & Others ...Respondents

3. OA 1694/89

Shri R.K. Mathuria ...Applicant

Vs.

Union of India through the Secretary, Ministry of Communications & Others ...Respondents

For the Applicants in 1 to 3 ...Shri E.X. Joseph, Counsel

For the Respondents in 1 to 3 ...Shri P.P. Khurana, Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to to see the Judgment? Yes

2. To be referred to the Reporters or not? Yes

(The judgment of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

Common questions of law have been raised in these applications filed under Section 19 of the Administrative Tribunals Act, 1985 and it is proposed to deal with them

in a common judgment.

2. The applicants are working as Junior Engineers (Civil) under Respondent No.3 (The Superintending Engineer, Telecom (Civil) Circle). The applicant in OA 1671/89 was appointed as Junior Engineer in 1977 while the applicants in the other two applications were appointed in 1973. The next promotional post for them is that of Assistant Engineer. The two conditions of eligibility for promotion are that (1) Junior Engineers have to qualify in the departmental examination and (2) they have to put in 8 years of regular service in the grade of Junior Engineer. All of them have passed the departmental examination in 1987. The applicant in OA 1671/89 completed 8 years of regular service in the grade of Junior Engineer in 1985 while the applicants in the other two cases fulfilled it in 1981. Their main grievance is that they have neither been confirmed in the post of Junior Engineer nor have they been considered for promotion to the post of Assistant Engineer though many of their juniors have been confirmed and promoted.

3. The respondents have stated in the common counter-affidavit filed in these cases that before the due date of confirmation of the applicants on 1.4.1988, they were implicated in a vigilance case, that preliminary investigations against them revealed that serious allegations lie against them, that the case has been referred to the Central Bureau of Investigation for

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investigations, that charge-sheets against them are in the process of being finalised and that they will be considered for promotion to the next higher grade only after conclusion of disciplinary proceedings against them. The findings of the DPC kept in the sealed cover can be acted upon only on the conclusion of the disciplinary proceedings contemplated against them. They have added that if the applicants are fully exonerated in the disciplinary cases against them, they will get the full benefits of confirmation, promotion etc. on the basis of the findings of the DPC placed in sealed covers.

4. We have gone through the records of the cases carefully and have heard the learned counsel for both parties. The learned counselfor the applicants stated that charge-sheets have been issued to the applicants in OA 1671/89 and OA 1694/89 but not so far to the applicant in OA 1672/89. He also relied upon the decision of the Full Bench of this Tribunal in K. Ch. Venkata Reddy Vs. Union of India, 1987(2) SLJ (CAT) 115 and of the Supreme Court in C.O. Arumugam Vs. State of Tamil Nadu, JT 1989(4) 377.

5. The admitted factual position is that though disciplinary proceedings were contemplated against the applicants, no charge-sheet had been issued to them on the date when their suitability for confirmation and promotion was considered by the DPC and when the DPC placed their findings in sealed covers. The fact that charge-sheets may have been issued to them on subsequent dates is not relevant.

6. The legal position in this regard has been set out in the decisions of the Supreme Court in C.O. Arumugam's case, 1989(2) SCALE 1041 and in The State of Madhya Pradesh Vs. Bani Singh & Another, 1990(1) SCALE 675.

7. In C.O. Arumugam's case, the Supreme Court observed as follows:-

> " As to the merits of or of the matter, it is necessary to state that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certai uniform principle. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded".

8. If on the date of consideration by the DPC of the confirmation or promotion of a Government servant, no charge or charge-sheet had been issued to him, there is no justification to resort to sealed cover procedure, as was done in the cases before us.

9. In Bani Singh's case, the Supreme Court observed as under:-

> " Normally, pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon his right to be considered. If the departmental inquiry had reached the stage of framing of charges after a prima facie case been made out, the normal procedure followed as mentioned by the Tribunal was 'sealed cover' procedure but if the disciplinary proceedings had not reached that stage of framing of the charge after prima facie case is established, the consideration for the promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings. Deferring the consideration in the Screening Committee meeting held on 26.11.1980 o this ground was, therefore, unsupportable".

10. In the conspectus of the facts and circumstances, the

applications are disposed of with the following orders and directions:-

(i) We set aside and quash the decision of the respondents that sealed cover procedure is applicable to the case of the applicants in respect of confirmation and promotion. As no charge-sheet had been issued to the applicants when the D.P.C. considered their cases for confirmation and promotion, there is no justification for deferring their confirmation and promotion, if DPC had found them otherwise suitable. The respondents shall open the sealed covers of the applicants and if the DPC has found them fit for confirmation and promotion, they should be considered for confirmation and promotion from the due dates without awaiting the results of the pending disciplinary action.

(ii) The respondents shall comply with the above directions within a period of three months from the date of communication of this order.

(iii) There will be no order on the other reliefs sought in these applications which were not considered by us, as they were not pressed by the learned counsel for the applicant. We do not express any opinion on the merits of the other reliefs claimed by the applicants.

(iv) There will be no order as to costs.

Let a copy of this order be placed in all the three case files (OA 1671/89, OA 1672/89 and OA 1694/89).

(D.K. CHAKRAVORTY)
MEMBER (A)

(P.K. KARTHA)
VICE CHAIRMAN(J)