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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. No.689/90

NEW DELHI THIS THE 21<sup>st</sup> DAY OF SEPTEMBER, 1994.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)  
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Shri S.C. Gupta,  
S/o Shri Kashi Ram Gupta,  
R/o Kedar Bhavan, Chitwapur Pajawa,  
Lucknow (U.P.)

...Applicant

(By Advocate : Shri GD Gupta,

VERSUS

1. Union of India, through  
Secretary to the Govt of India,  
Ministry of Communication,  
Deptt of Telecommunication,  
Sanchar Bhavan, 20 Ashoka Road,  
NEW DELHI-110001.
2. The Telecommunication Commission, through  
its Chairman,  
Sanchar Bhawan, 20 Ashoka Road,  
New Delhi-110001.
3. The Member (Services),  
Telecommunication Commission,  
Sanchar Bhawan, 20 Ashoka Road,  
New Delhi.
4. The Chief General Manager (Civil Wing),  
Tele-communication Commission,  
Telecom Circle,  
Sanchar Bhavan, 20 Ashoka Road,  
New Delhi.
5. The Assistant Director General,  
(Civil Wing),  
Telecommunication Commission,  
Telecom Circle,  
Sanchar Bhavan, 20 Ashoka Road,  
NEW DELHI-1.

....Respondents

(By Advocate : Shri PH Ramchandani)

JUDGEMENT

Shri B.K. Singh, Member (A)

The admitted facts of this case are that the applicant is currently employed as Junior Engineer (Civil) in the Telecom Civil Wing of Telecom Commission under the Ministry of Communication.

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The department held a qualifying examination for promotion to the post of Assistant Engineer (Civil) on 27th and 28th October, 1987. The applicant cleared the written examination in December, 1987 in which he was asked <sup>to</sup> appear (Annexure A-1 of the paper book).

2. On the basis of the Departmental Promotion Committee (D.P.C. for short) meeting held, the name of the applicant was included along with several others and his name is at Serial No.30 which is at (Annexure A-2 of the paper book). This list was prepared on 21.12.89. By order dated 2.01.90 the name of the applicant was ordered to be deleted. A copy of this order is at Annexure A-3 of the paper book. The applicant submitted a representation against deletion of the name and copy of the said representation is marked as Annexure A-4. After getting no response the applicant filed this O.A.689 on 18.4.90. The applicant was placed under suspension vide order dated 10.04.85 on account of criminal cases having been registered against him. A copy of the order of suspension dt 10.04.85 is enclosed with the O.A. which is at Annexure A-5. The suspension of the applicant was revoked subsequently by the respondents vide order dated 3.12.85. In pursuance of this order the applicant resumed duties on 10.12.85 as Junior Engineer. It is annexure A-6 of the paper book.

3. The department filed criminal cases against him relating to cement and steel and in that connection 2 F.I.R.s - one relating to shortage of cement and the other relating to shortage of steel were lodged. The trial in both these cases

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is still pending.

4. The grievance of the petitioner is that during the pendency of the criminal trial there was no justification for not giving benefit of ad hoc promotion which was allowed to other colleagues. It is also alleged that the ad hoc promotees whose names figure in the list of 21st December, 89 have since been regularised also. The prayer is (i) to quash the impugned order dated 2.01.90 ordering the deletion of the name of the applicant from the list of ad hoc promotees declared on 21.12.89; (ii) to declare the applicant entitled to <sup>be</sup> promoted to the post of Assistant Engineer (Civil) with all consequential benefits & (iii) to direct the respondents to promote <sup>the</sup> applicant in accordance with the promotion order dated 21.12.89 and issue posting orders .

5. A notice was issued to the respondents who filed their reply and contested the application and the grant of reliefs prayed for. We heard the learned counsel Shri G.D. Gupta for the applicant and Shri J.C. Madan for the respondents and perused the record of the case. The main thrust of the arguments of the learned counsel for the applicant was that <sup>applicant</sup> the applicant was denied the ad hoc promotion pending completion of the trial of the criminal cases registered against him. He argued that there is no bar to the ad hoc promotion even when departmental/criminal proceedings are pending. In this connection he also cited the provisions contained in the O.M. dated 14.9.92 issued by the Deptt of Personnel & Training wherein a reference has been made to O.M.

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No.22011/2/88-Estt(A) issued on 12.01.88 containing the procedure and guidelines to be followed in the matter of promotion of government servants against whom the disciplinary/court proceedings are pending or whose conduct is under investigation. The Circular contains the guidelines for periodical review of such cases every six months for expediting disciplinary proceedings or making efforts to complete the criminal trial. In this connection, he also cited the ratio established in the judgement dated 27.08.91 of the Hon'ble Supreme Court in the case of Union of India Vs K.V. Jankiraman reported in AIR 1991 SC 2010. The cases of government servants under suspension, ~~government servants~~ in respect of whom the prosecution has been launched may be reviewed prior to the meeting of the DPC or the facts and the progress of the case may be placed before the D.P.C. where a Sealed Cover Procedure has been adopted in the case of a particular civil servant. The DPC shall assess the suitability of the government servant coming within the purview of the guidelines mentioned above along with other eligible candidates without taking into consideration the disciplinary/criminal prosecution pending. In the case of K.V. Janikaraman (Supra) it has been held that once the government servant is exonerated of the charges, the sealed cover will be opened and he will be entitled to all the consequential benefits including his promotion from the date his junior was promoted in that grade. The O.M. also envisages all efforts to ensure expeditious disposal of the criminal disciplinary proceedings so that the government servant is not put to severe hardship. The learned counsel for the applicant placed his reliance on review of the case of the applicant

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vis-a-vis his juniors who have not only been promoted but regularised also. It was further argued <sup>that</sup> / even 'sealed cover procedure' has not been adopted in his case. It is a simple order of deletion of the applicants name on 2nd January, 1990. The applicant is apprehensive that even if he is acquitted of the charges in the criminal trial, a departmental proceeding may again be initiated if it is found that it is not a clean acquittal. This was confirmed by the learned counsel for the respondents who said that if the applicant is held not guilty and his innocence is <sup>not</sup> completely proved and he is given only benefit of doubt on technical grounds and let off by the criminal court; the respondents reserve their right to initiate disciplinary proceedings against him. There are different norms adopted by the Courts in U.K. and in India. In U.K., if the jury finds that they do not have enough evidence to convict a person, they normally use the word 'not guilty' in Scotland county courts even go to the extent of saying that 'charges not proved'. Where a person is found to be totally innocent, the court in U.K. at times uses the word 'honourably acquitted' which means that the charges were falsely levelled against him and that he is not only acquitted of the charges but he is finally exonerated of all the charges. The effect of 'honourable acquittal' means innocence of the person so charged. But where evidence is not sufficient for purposes of conviction the jury normally in U.K. returns verdict of 'not guilty' and not that of 'honourable acquittal'. The Hon'ble Supreme Court has discussed all the aforesaid expressions in Raghavachari Versus State of Assam reported in 1992 SLR 915 SC.

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6. It is admitted by both the parties that 'sealed cover procedure' has not been adopted in this case and that the names of three candidates along with the applicant who figured in the list of 21.12.89 were removed from the panel as a result of the orders issued on 2.01.90. The respondents instead of initiating departmental proceedings or going in for both criminal proceedings and disciplinary proceedings have filed a criminal case against the applicant, presumably, reserving the right to start disciplinary proceedings, in case his innocence is not established and he is given the benefit of doubt in the criminal case. If he is completely exonerated of all the charges in that case, they will grant him all the benefits as has been laid down by the Hon'ble Supreme Court in the case of Union of India vs K.B. Jankiraman reported in 1991(2) SC-423 wherein an employee <sup>if he</sup> <sub>1/2</sub> has been completely exonerated of the charges, he is to be given the benefit of the salary of the higher post from the date on which he would have normally been promoted but for disciplinary/criminal proceedings. The same view was reiterated in Judgement Today 1993 SC 705 in the case of Union of India Vs Keval Kumar. Even in the case of K Venkat Reddy Vs Union of India & Ors reported in 1984(3) ATC 174, it has been said that withholding of promotion of an official after finding him fit on the ground that the disciplinary or criminal proceedings are pending against him cannot be treated to be a penalty under Rule 11(ii) of the CCS (CCA) Rules 1965.

7. It is also <sup>a</sup>well settled law that in a criminal trial the guilt has to be established beyond all shadow

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of doubt and there is always a scope for the accused getting benefit of doubt on account of some lacune or the other. In such cases, there cannot be a bar on initiation of a disciplinary proceeding for certain omissions and commissions which could not be proved during the course of the criminal trial. Even if a man is not found guilty of misappropriation or embezzlement charge he can be held guilty of lack of supervision etc. in departmental proceedings.

8. Both departmental proceedings and criminal prosecutions are possible and there is no strait-jacket formula to lay down any norm in this regard. The Hon'ble Supreme Court has left it to the facts and circumstances of each case to be determined by the competent authority whether a disciplinary proceeding should also be initiated along with the criminal trial. In regard to penal law a government servant like any individual is liable to <sup>be</sup> prosecuted in a criminal court for its breach, at the same time he is also liable to be dismissed, removed or demoted as a result of the disciplinary proceedings. The conduct of civil servant is thus exposed to departmental enquiry on the one hand and criminal trial on the other. The question of double jeopardy i.e. liability both to the disciplinary proceedings and to criminal prosecution was considered by the Hon'ble Supreme Court in Venkatraman Vs Union of India and the Hon'ble Supreme Court rejected the <sup>of double jeopardy</sup> plea on the ground that a departmental enquiry is to be initiated for an act if it amounts to misconduct under the CCS (CCA) Rules, 1965.

9. In view of the clear law laid down on the

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subject by the Hon'ble Supreme Court that a person cannot be rewarded when he is facing a criminal trial and his integrity is under a cloud - no judicial intervention is called for at the past stage. It is true that if he is honourably acquitted as has been discussed by the Hon'ble Supreme Court in the case of K.V. Jankiraman (Supra) he will be entitled to all the consequential benefits including his promotion from the date his junior was promoted. But if he is simply acquitted as a result of benefit of doubt and the verdict of clean acquittal is not returned and he is let off on account of certain technical grounds in that case it cannot preclude the respondents from initiating departmental proceedings against him for major or minor penalty. Thus, the reliefs prayed for cannot be granted during the pendency of the criminal trial for it would amount to rewarding a person when he is under a cloud. In a case like this the applicant will have to wait till criminal proceedings are concluded. If he is completely exonerated of the charges he will be entitled to all the consequential benefits including his promotion from the date his juniors were promoted.

10. During the course of arguments the learned counsel for the respondents stated that they reserve their right to initiate disciplinary proceedings if he is given only benefit of doubt in regard to two sets of trial which he is facing on account of shortage of cement and shortage of steel under his charge. No direction, therefore, regarding adoption of sealed cover procedure can be given in the light of this categorical assertion since

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criminal trial does not preclude them from taking such departmental action for lack of supervision in case of benefit of doubt. Thus, the application is dismissed as devoid of any merit or substance leaving the parties to bear their own costs.



(B.K. SINGH)  
MEMBER (A)



(J.P. SHARMA)  
MEMBER (J)

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