

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

OA No. 175 of 1991

Date of decision 30-7-91

Shri Naresh Chand

Applicant

versus

1. Union of India through Member
(Services), Telecom Commission,
Sanchar Bhawan, New Delhi

2. Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Delhi Telephones,
Kurshid Lal Bhawan, New Delhi.

Respondents.

Coram: Hon'ble Mr. B.S.Sekhon, Vice Chairman.
Hon'ble Mr. I.K.Rasgotra, Administrative Member.

For the applicant - Mr. B.K. Aggarwal, Advocate
For the respondents - Mr. A.K. Sikri, Advocate.

B.S. SEKHON:

The instant Application is directed against the order dated 28-12-90 (Annexure A-1). By virtue of the impugned order, applicant, who was officiating in Senior Time Scale of ITS Group 'A' as A.G.M.(EP) in local arrangement was reverted to his original post of A.D.E. with immediate effect and was posted as such under DGM(X).

2. The facts necessary to be noticed for adjudication of the instant Application, in brief, are:-

Applicant was selected as a direct recruit to Class-I (Group 'A') service of the Indian Telecom Service (for short 'the Service'). Applicant, who belongs to 1984 batch of the Service, was appointed on probation of two years with effect from 31-7-86. Vide order dated 10th March, 1988 (Annexure A-2), applicant was suspended. The suspension orders were, however, revoked as per order dated 27-9-88 (Annexure A-3). He was confirmed with effect from 20th May, 1989.

After referring to his supersession in the promotion list dated 17th January, 1990 pertaining to the officers of 1984 batch of the Service, as also to the filing of OA No.2100/90 and MP 50/90, applicant has averred that his promotion orders were issued vide letter dated 20th July, 1990 (Annexure A-4) in the Senior Time Scale as no chargesheet had been issued to him as a result of suspension orders which have also been revoked. According to the applicant, the impugned order is violative of Articles 14, 16 as also 311 of the Constitution as his juniors have been allowed to continue, but he has been reverted. Another grievance made by the applicant is that no reasons for passing the impugned order have been disclosed and the action of the respondents is illegal, arbitrary and malafide. With the aforesaid averments, applicant has prayed for quashing the impugned order and for a direction to the respondents to allow him to continue till the post is available.

3. The defence set out in the counter is that the promotion in local arrangement does not confer any right; the Application is thus mis-conceived and untenable. Applicant was given promotion wrongly vide order dated 20.7.90 and respondents have the right to rectify the mistake by withdrawing the order. Denying the averments about infraction of Articles 14, 16 and 311 of the Constitution, respondents have averred that there are serious charges against the applicant for which he was suspended on 10.3.88 in contemplation of the departmental enquiry. The matter was referred to CBI, who has seized the records and investigations into charges of serious irregularities is being conducted. According to the respondents, it is open to them to keep the matter of promotion in abeyance in such a case. The probation period of the applicant is stated to have been extended for a period of ten months.

4. In the rejoinder, applicant has more or less reiterated his case.

5. We have heard the arguments addressed by the learned counsel for the parties and have considered the pleadings and the documents on record.

6. During the course of arguments, the learned counsel for the applicant, inviting our attention to the order of promotion dated 20.7.90 (Annexure A-4), submitted, and rightly so in our opinion, that the impugned order is violative of Articles 14 and 16(1) of the Constitution inasmuch as juniors of the applicant, who had also been promoted on officiating basis in local arrangement, are still continuing in Senior Time Scale of the Service, Group 'A'. A bare perusal of Annexure A-4 goes to show that applicant was the seniormost amongst Asstt. Divisional Engineers, who were appointed to officiate in the Senior Time Scale of the Service, Group 'A'. in local arrangement. The factum of the juniors of the applicant continuing to officiate in the Senior Time Scale of the Service, Group 'A' has not been disputed. Annexure A-10 is, therefore, without any manner of doubt, violative of Articles 14 and 16 of the Constitution and is thus unsustainable. The impugned order has been made without giving an opportunity of hearing to the applicant or issuing a show cause notice. This vital omission also renders the impugned order unsustainable.

7. During the course of arguments, the learned counsel for the respondents contended that the respondents are within their rights to keep an order of promotion

in abeyance where investigations are being conducted in respect of serious charges against the officer concerned such as the case here. It is not necessary to pronounce upon the validity of the aforesaid submission in view of the infirmities and vital lacunae in the impugned order referred to hereinabove and for the reason that the question of validity or otherwise of the aforesaid submission has no effect whatsoever on the validity of the impugned order.

Annexure A-1

8. In the premises, the impugned order is hereby quashed and the respondents are directed to continue the applicant in the Senior Time Scale of ITS Group 'A' as if the impugned order had not been passed. Application is disposed of accordingly. No costs.

Deputy
(I.K.Rasgotra)

30/7/91 AM

B. S. Sekhon
(B.S. Sekhon)
VC

30-7-91