

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. No.295/2004

This the 17th day of September, 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Brij Bhushan sharma (St. No.GO-9197)
(Retired SDE, Department of Telecom),
GS S-II, House No.1083A, Sector 29,
Faridabad (Haryana).

... Applicant

(By Shri S. N. Anand, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Communications
(Department of Telecommunications),
Sanchar Bhawan, 20 Ashoka Road,
New Delhi-110001.
2. The Chief General Manager,
Mahanagar Telephone Nigam Limited,
Khurshid Lal Bhawan, Janpath,
New Delhi-110050.
3. The Chief General Manager,
Northern Telecom Region,
Kidwai Bhawan, Janpath,
New Delhi-110050.

... Respondent

(By Shri V. K. Rao, Advocate)

ORDER

Hon'ble Shri V. K. Majotra, Vice-Chairman (A) :

Applicant who has been a JTO with the respondents is alleged to have been bypassed in promotion to the post of STS Group-A by orders dated 30.9.1998, 10.8.1999 and 20.6.2000 by which several

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persons junior to the applicant have been promoted to STS Group-A. It is also claimed that applicant became entitled for placement in the scale of Senior Assistant Engineer/Senior Sub Divisional Engineer w.e.f. 1.2.2000 after completion of 12 years of service in TES Group-B. However, no such financial upgradation was accorded to him. Applicant retired on superannuation on 30.6.2000. Disciplinary proceedings on the basis of chargesheet dated 30.3.1998 were initiated against the applicant which were stated to have been dropped.

2. Earlier on applicant had approached this Tribunal through OA No.2687/2002 which was disposed of vide order dated 19.5.2003 with the following directions to the respondents :

- “(a) respondents would consider the claim of the applicant for grant of the scale of Senior Assistant Engineer on completion of 12 years regular service i.e. 1.12.2000 in accordance with rules.
- (b) respondents would further consider the claim of the applicant for promotion from the date his juniors had been promoted on ad-hoc basis; and
- (c) if any arrears are due, the same should be paid to the applicant after taking a conscious decision within three months from the receipt of the certified copy of the present order.”

3. Respondents have passed impugned order dated 28.10.2003 declaring the applicant as unfit for promotion as Senior SDE from due date.

4. The learned counsel of applicant stated that the applicant is given to understand that his ACRs were downgraded and his

1/2

integrity was recorded as doubtful in the ACRs without following the prescribed procedure.

5. On the other hand, the learned counsel of respondents stated that applicant was found unfit for promotion by the DPC meeting held on 2.9.2003 on the basis of adverse entries in the ACRs. The learned counsel further stated that in the disciplinary proceedings against the applicant 'displeasure' was conveyed to the applicant which was never set aside and as such it would have an adverse affect on the claims of the applicant.

6. After hearing the arguments in the case on 8.9.2004, we had granted time to the respondents' counsel till 10.9.2004 for production of relevant ACRs as well as the minutes of the DPC meeting for perusal of the Court. Respondents have failed to produce these records till 14.9.2004, however, we have considered the contentions made on behalf of both sides.

7. As per Tribunal's orders dated 19.5.2003 in OA No.2687/2002 respondents were required to consider claim of the applicant for grant of the scale of Senior Assistant Engineer on completion of 12 years' regular service, i.e., 1.12.2000, as also his claim for promotion from the date his juniors were promoted on *ad hoc* basis. The respondents have stated in the counter reply that DPC having considered applicant's claims once, cannot be compelled to conduct the review meeting. Then respondents have made a contradictory statement that DPC had considered applicant's claims and found him unfit on 2.9.2003 on the basis of certain adverse

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entries in the ACRs. Respondents have not produced the relevant records of the review DPC or even the ACRs of the applicant. It could not be ascertained, therefore, whether or not a review DPC was conducted by the respondents, and whether there were any adverse entries in applicant's ACRs, or there had been any downgrading in the ACRs which remained uncommunicated. Impugned orders of the respondents are also extremely sketchy and do not clarify whether applicant's claims were considered by a DPC meeting held in pursuance of Tribunal's directions. Mere statement that the competent authority considered applicant's case as per directions of the Tribunal is a vague statement not revealing any facts.

8. So far as the result of the disciplinary proceedings against the applicant is concerned, admittedly vide order dated 16.7.2001 (annexure-E) the disciplinary authority dropped the charges. However, it was stated, "Government's displeasure is conveyed to him for the lapses proved during the inquiry." It was stated in these orders that charge in Article-I "of making the payment of carbon copy of GRR without obtaining payment and charging it in the ACE-2 account No.8 P.E.6.1.97 without verifying that its payment on the original GRR has already been charged in I.B. No.7 P.E. 19.12.96, is established and charge contained in Article II and III are not established." It means that the charge of lack of integrity etc. on the basis of Article-I was established against the applicant, however, taking an overall view of the charges against the applicant, a mere

42

'displeasure' was conveyed to the applicant and the charges were dropped. It has been held in order dated 23.2.2004 passed by the Ahmedabad Bench of the Tribunal in OA No.411/2003 : **Nikunjrai P. Patel v. Union of India & Ors.** [2004 (2) ATJ116] that displeasure is not a minor penalty under the Rules. Full Bench of the Tribunal (Chandigarh) has held on 31.8.2004 in OA No.1198/CH/2004 : **B.K.Kapoor v. Union of India & Ors.** that censure is not a complete exoneration from the charges in a disciplinary enquiry and is a punishment consequential to a blameworthy conduct proved against the applicant. In the present case applicant may have been found blameworthy, article-I having been proved against him, but not even the minor penalty of censure having been imposed upon the applicant, such an action of the Government would not have an adverse effect in consideration of the applicant's claim for promotion etc. When the respondents have not produced any records as directed by the Tribunal, adverse inference is drawn against the respondents also in connection with non-existence of adverse remarks and downgrading in the ACRs of the applicant.

9. In the light of the above discussion, impugned order dated 28.10.2003 is quashed and set aside. Respondents are directed to pass detailed and speaking orders by holding a review DPC ignoring communication of 'displeasure' to the applicant in disciplinary proceedings against him. Respondents shall consider the claim of the applicant for grant of the scale of Senior Assistant Engineer on



completion of 12 years regular service, i.e., 1.2.2000 in accordance with rules. Respondents shall further consider the claim of applicant for promotion from the date his juniors had been promoted on *ad hoc* basis, and if any arrears are due, the same should be paid to the applicant. It is further directed that respondents shall complete the action in terms of the above directions within a period of one month from communication of these orders.

10. With the above directions, OA is disposed of.

S. Raju
(Shanker Raju)
Member (J)

/as/

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)

17.9.04