CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2051/90
OA No.2026/92

NEW DELHI THE 2nd DAY OF FEBRUARY, 1994.

HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
HON'BLE MR.B.K.SINGH, MEMBER(A)

(1) OA No.2051/90
Shri R.S.Sharma
Assistant Divisional Engineer
(T)(I.T.No.2), 4th Floor
Karol Bagh Exchange Building
New Delhi. ... Applicant

BY SHRI D.R.GUPTA, ADVOCATE

vs.

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

2. Chief General Manager
Mahanagar Telephone Nigam Ltd.
Kidwai Bhawan
New Delhi. ... Respondents

BY SHRI A.K.SIKRI, ADVOCATE.

(2) OA No.2026/92
Shri R.S.Sharma
A.D.E(IT-N II)
Mahanagar Telephone Nigam Ltd.
4th Floor, Karol Bagh Telephone Exchange
New Delhi-110005. ... Applicant

BY SHRI D.R.GUPTA, ADVOCATE

vs.

Union of India through
the Secretary,
Government of India,
Ministry of Communication,
Department of Telecommunications,
Sanchar Bhavan,
Ashok Nagar, New Delhi-110001. ... Respondent

BY SHRI A.K.SIKRI, ADVOCATE.

ORDER

JUSTICE S.K.DHAON:

The controversy raised in these two applications is similar. They have been heard together and, therefore, they are being disposed of by a common judgement.

2. The controversy centres round the promotion of the applicant to the post of Senior Time Scale of the Indian Telecommunication Service Group 'A' 1983-84 batch. On 17.1.1990, the Divisional Officer

concerned, issued an order stating therein that the President had been pleased to promote 82 officers of the Junior Time Scale of ITS Group 'A'. The applicant's name did not figure amongst those 82 officers. Thereafter, he made a representation but in vain. He came to this Tribunal by means of OA No.2051/90 with a number of prayers. However, during the course of the arguments, only first relief has been pressed. That is, this Tribunal may direct the Respondent, Union of India through Secretary, Ministry of Communication to hold a review Deparatmental Promotion Committee (DPC) for considering the case of the applicant for promotion to Senior Time Scale with effect from the date on which 1984 batch officers were considered and to fix his seniority between Sl.Nos.11 and 12 in the list of officers promoted.

3. During the pendency of OA No.2051/90, a review DPC was held sometimes in 1991 and the recommendations of the Committee with respect to the applicant were kept in a sealed cover.

4. In May, July and December,1992 the DPC again met to consider the candidates for promotion. Again, the applicant's case was considered and the recommendations of the DPC were put in a sealed cover. The decisions of the DPC put in sealed cover, , the recommendations made by it in May,1992, July,1992 and December,1992 are the subject-matter of OA No.2026/92.

5. Counter-affidavits have been filed on behalf of the respondents in both the

cases. In them, it is not averred that either any departmental proceedings are pending against the applicant or any decision has been taken by the competent authority to initiate such proceedings against the applicant. The only averment is that the inquiry is going on. In the counter-affidavit filed in OA No.2051/90, it is stated : " in view of the investigation into serious charges of irregularities against the applicant, there is no question of his promotion. However, it may be mentioned that the applicant has since been considered and his result is kept in sealed cover".

3. It appears that the applicant had been suspended from service. However, the order of suspension was revoked much before the DPC met to consider the case of the applicant for promotion. In fact, it is not the case of the respondents that the applicant could not be considered for promotion on account of the orders of suspension. We may note that, according to the order dated 17.9.1990 passed by the Assistant Director General(STG), the applicant had completed his period of probation on 20.5.1989 i.e. before the date on which the DPC considered his case for promotion.

4. In **UNION OF INDIA ETC.ETC. Vs.K.V. JANKIRAMAN ETC.ETC.(JT 1991(3) S.C.527)**, it is held that "sealed cover procedure" can be resorted to only when a chargememo or charge sheet is issued to the employee concerned.

5. In **DELHI DEVELOPMENT AUTHORITY Vs. H.C.KHURANA(JT 1993(2) S.C.695)**,it is held that 'issue' of the charge sheet in the context of a decision taken to initiate the disciplinary proceedings must mean the framing of the charge sheet and taking of the necessary action to despatch the charge sheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the charge sheet on the employee.

6. In **UNION OF INDIA Vs.KEWAL KUMAR(JT 1993(2) S.C.705)**,the facts are these. Decision to initiate disciplinary proceedings against the Government servant concerned was taken on 20.11.1989 on the basis of a FIR filed by the C.B.I. The DPC met on 23.11.1989 and followed the "sealed cover procedure". Charge sheet was actually issued to the Government servant concerned on 1.8.1990 subsequent to the meeting of the DPC. It is held that "sealed cover procedure" should be resorted to.

7. We have already stated that in the instant case, it is not the case of the department that any decision was taken to initiate ~~the~~ disciplinary proceedings against the applicant at any time before the DPC met to consider his case for promotion. We have already indicated that it is ~~not~~ the department's own case that on the relevant dates, investigations were going on and that position according to the counter-affidavit filed, obtains even now. The respondents, therefore, cannot take any advantage of the

decision of the Supreme Court in **KEWAL KUMAR**'s case(supra). We accordingly hold that the DPC committed an error in putting its recommendations with respect to the applicant in a sealed cover.

8. In the result, these OAs succeed and are allowed. The decisions of the DPC taken on different dates to put its recommendations with respect to the applicant in a sealed cover are quashed. The respondents are directed to open the sealed cover and give effect to the recommendations of the DPC qua the applicant. If the applicant has been found fit for promotion, the respondents shall act upon the said recommendations on merits and in accordance with law and also, if necessary, fix the seniority of the applicant. The sealed cover shall be opened within a period of three weeks of the service of a certified copy of this order upon the authority concerned and a decision shall be taken thereafter within a period of two weeks. Effect shall be given to the recommendations, if in favour of the applicant, within a period of two weeks from the date of opening of the sealed cover.

9. There shall be no order as to costs.

(B.K.SINGH)
MEMBER(A)

(S.K.DHAON)
VICE-CHAIRMAN(J)

SNS

Original orders are in OA 2051/90

Allowed the copy
Anil Srivastava
21/7/94
Co. Cll
C.A.T. P.B.
New Delhi.