

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.2930/92

(3)

New Delhi this the 10th Day of November, 1995.

Hon'ble Shri N.V. Krishnan, Acting Chairman
Hon'ble Dr A. Vedavalli, Member (J)

Banarsi Dass
S/o Shri Manni Lal
Assistant Engineer, AE (TMS) III,
Nehru Place, New Delhi.Applicant

(By Advocate : Shri G.D. Bhandari)

VERSUS

1. The Chairman,
TELECOM BOARD,
Sanchar Bhavan,
New Delhi.
2. Chief General Manager,
Northern Telecom Region,
IInd Floor, Kidwai Bhavan,
New Delhi.Respondents

(By Advocate : Shri A.K. Sikri)

ORDER (ORAL)

(By Hon'ble Shri N.V. Krishnan, Acting Chairman)

The applicant is aggrieved by the non-implementation of the order of promotion which was passed on 16.11.90 . By that order (Annexure E) he was promoted to officiate in the Telecom Group B Engineering service, along with a member of other persons. But the order was not implemented in this case. The Applicant made a representation to the Chief General Manager (C.G.M) on 6.3.91 (Annexure G) which reads as follows;

" SUB : PROMOTION FOR T.E.S. GROUP 'B'"

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Respected Sir,

With due regards I beg to state that I was promoted to T.E.S. Group 'B' vide letter No.232-4/89-STG-II on dated 19.11.90 at Sl.No.2734 and posted at M.T.N.L. New Delhi. But my orders were detained due to pending of disciplinary case. Now, the case has been finalized vide letter No.DGM(CM)/Disc/BD/JTO/90-91 on dated 5.3.91 and amount required to be deposited as penalty has been deposited to A.O.(Cash) MTNL, New Delhi on 6.3.91 vide receipt No.97 Book No.517.

It is, therefore, requested that my posting orders may kindly be released and the orders in lateral advancement scheme may also be issued.

I shall be grateful and obliged for your kind sympathetic consideration.

Thanking you,

Yours faithfully,

Sd/-

(Banarsi Dass)

Encl : Attested Photo-
stat copy of receipt
No.97 Book No.517 "

His case was referred ^{by} the C.G.M. to the Ministry on 21.3.91 to intimate whether the promotion orders can be implemented as the penalty had been paid in D.E. which has thus come to an end and no other ^{irrigance} D.E. was pending. To this letter, he received the following reply dated 11.9.91 for communication to the applicant (Annexure K)

"Copy of DOT Memo No.232-4/90-STG-II dt 11.9.91

Sub : Promotion to TES Group 'B' - Case of Shri Banarsi Dass, JTO

Sir,

I am directed to refer to your letter No.STA/1/-2/TFR/91/43 dt. March, 91 on the above cited subject and to say that the case of Shri Banarsi Dass has been considered in consultation with Department of Personnel and Training. Shri Dass cannot be promoted as per order of even No. dated 16/19.11.90. He will be considered for

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promotion to TES Group 'B' by the next Departmental Promotion Committee.

Yours faithfully,
Sd/-

(M.K. Khatua)

Asstt. Director General (SGT)

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Endst.No.STA/1-2/TFR/91/II/70 dated at ND the 18.9.91."

The applicants subsequent representations did not bear fruit. He was informed by the letter dated 10.1.91 (Annexure N) that his case is treated as closed.

2. Hence he filed this O.A. seeking the following reliefs :-

(i) Set aside and quash respondents orders 11.9.1991 (Annexure K) whereby the claim of the applicant for promotion to TES Group 'B' service has been rejected, alongwith respondents letter dated 10.1.91 (Annexure N) whereby the respondents have treated the case of the applicant as closed.

(ii) Direct/Command/Order the respondents to operated upon the promotion orders of the applicant dated 16/19.11.90 (Annexure 'e') wherein his name has been shown at Sr No.2374 and he was promoted as Group 'B' Officer subject to the Vigilance clearance which was also given by the respondents vide their letter dated 21.3.91 (Annexure 'H'). All consequential benefits which

may accrue from his promotion with effect from 16/19.11.90 as also restoration of the seniority to its original position be also granted.

3. The respondents have filed their reply stating the reasons why he was not promoted.

4. We have heard the learned counsel for the parties.

5. The learned counsel for the applicant, Shri G.D. Bhandari, admitted that a D.E. case had been initiated against him on 22.10.90 (Annexure C-1) i.e. before the Annexure E orders of promotion was issued. But that D.E. ended on 5.3.91, when the Annexure D order was passed imposing on the applicant "the penalty of recovery of whole loss of Rs.7740/- only in lump sum from the delinquent". This amount was deposited on 6.3.91. Therefore, contended the learned counsel, nothing was pending after 6.3.91 against the applicant and he, therefore, submitted that at any rate, the order of promotion should be given effect immediately. It may be noted that this was also his prayer in the representation dated 6.3.91 (Annexure G) reproduced above. The learned counsel for the applicant states that this is a case where the penalty got exhausted on the day the penalty was paid. In other words, it is not as if a penalty was continuing, ^{continuing} ~~continuing~~ which alone would have justified ~~non~~-denial of promotion during its

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currency. He, therefore, submitted that the applicant was entitled to be promoted at least from 7.3.91. Instead, he has been promoted only from 11.7.91 and that too on a local arrangement basis. He further pointed that though the applicant has been informed on 11.9.91 (Annexure K) that he could be considered for promotion only by the next Department Promotion Committee, the applicant is still working only under local arrangement basis meaning thereby that his case has not been considered by any of the subsequent DPCs for regular promotion.

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6. Thus, the only legal issue is whether, in the above circumstances, the order of promotion at Annexure E should have been given effect to in the applicant's case as soon as the penalty amount was deposited on 6.3.91.

7. The learned counsel for the respondents pointed out that what has been done by Government is strictly justified in terms of the instructions issued by the Ministry of Personnel in regard to promotion. These instructions are contained in Chapter 53 "Promotion" of "Swamy's Complete Manual on Establishment and Administration" (Vth Edition 1994). The relevant instructions are given under the heading "Sealed Cover Cases" - Action after completion of disciplinary case/Criminal

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prosecution ". We are concerned with instructions contained in Para 17.6.2 which read as follows :

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"17.6.2 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him."

8. The learned counsel submits that, in view of these instructions, the applicant was entitled to be considered for promotion only by the next DPC in the normal course. In so far as the question whether his case was considered in the subsequent DPC or not, the learned counsel submits that there are no such averments in the O.A. and therefore those aspects have not been covered in the reply of the department. In fairness, however, he agreed that in case the applicant was not considered in the DPC which might have been held after the penalty was imposed, the Department would hold a review DPC to consider this case for such promotion.

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9. It is in view of these submissions that we felt that there was no scope for further arguments in this case and hence the request of learned counsel for an adjournment was refused. He was however, permitted to continue his arguments with a rider that the applicant would be saddled with costs. He declined the offer on the ground that he was not in a proper frame of mind to continue the arguments.

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10. We have carefully considered the matter. We notice that, as seen from the Annexure D Order u dated u 5.3.91, the Charge memo was issued on 22.10.90. The DPC was held later on 7.11.90. Therefore, in the ordinary course, the sealed cover procedure should have been adopted, which was not done by mistake. The order u of promotion was no doubt issued on 16/19.11.90. However, the Ministry took care to mention in Para 2 of that order as follows :-

"2. In case any disciplinary/vigilance etc case of the type referred to in this Office Memo No.56/7/77-Disc.I dated 13.12.77 is pending against any of the official mentioned in the list or where in respect of any of these officials any punishment like stoppage of increment etc is current, the facts should be reported to this Office immediately and the concerned officer should not be promoted or relieved of posting without specific order from this office."

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11. We also notice that the penalty order has become final. The applicant himself paid the penalty on 6.3.91. In this background the question is what would be the right of the applicant vis-a-vis the order or promotion issued on 17.11.90.

12. That stands fully answered by the instructions in Para 17.6.2. which we have extracted in para 7 supra. This is a case where an order of promotion has been issued on the basis of recommendations of the DPC, which ought to have been kept in a 'Sealed Cover' but was not so kept. But that does not mean that the instructions in para 17.6.2 should not be applied to this case when this mistake is noticed. In this regard, the applicant cannot be placed in a better position than one in respect of whom the sealed cover procedure had been correctly followed. The applicant has also not challenged the validity of Rule 17.6.2.

13. In the circumstances, we find that this application has no merit and accordingly it is liable to be dismissed. We do so.

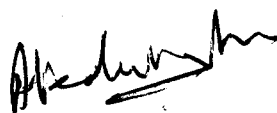
14. However, in view of the submissions made by the learned counsel for the applicant that the applicant is still continuing on a local arrangement basis on the higher Group B post, meaning thereby that he has not been regularly promoted; we direct the respondents that, in case

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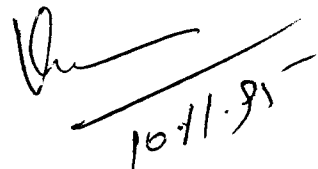
any regular DPC has been held after the penalty was imposed on the applicant on 5.3.91 for considering the case of the juniors, for promotion to Group B post and in case the applicant has not been considered either in that DPC or any subsequent DPC, the respondents shall now constitute a Review DPC to consider the case of the applicant for promotion to the post of Group 'B' in terms of para 17.6.2. Even if a DPC was not held at all for considering the case of others, the respondents should consider whether the case of the applicant should have been considered individually after the penalty order got exhausted, keeping in view the provisions of para 17.6.2 referred to above. In case the applicant is found fit for promotion by the DPC, he shall be granted all the consequential benefits flowing from the decisions taken on that recommendation. This shall be done within a period of three months from the date of receipt of a copy of this Order.

15. O.A disposed of as above with no order as to cost.



(Dr A. Vedavalli)

Member (J)



(N.V. Krishnan)

Acting Chairman

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