

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL ADDL.BENCH, ALLAHABAD.

Allahabad The 5th Day January 1999.

ORIGINAL APPLICATION NO: 199 of 1997.

(11)

CORAM: Hon'ble Mr. S.Dayal, A.M.,
Hon'ble Mr. S.K.Agrawal, J.M.,

Gulab Chand son of Sri Teerath prasad,
resident of village and post: Bansgaon,
district: Gorakhpur.
(Working as JTO at Gorakhpur, Distt:Gorakhpur)

(Sri A. B.Singh, Advocate.)

... ... Applicant.

Versus:

1. Union of India, through its' Secretary, Telecommunication Commission, Sanchay Bhawan, New Delhi.
2. Chief General Manager, Tele-communication(N/Z), Eastern Court Complex, Janpath, New Delhi.
3. General Manager, Telcome Project (N/Z), A-1/4, Sector-4, Aliganj, Lucknow.
4. Director Telcome Project(N/Z)S-18/38, 5-B, Sadhana Kunj, 6, Patel Nagar Colony, Nadesar, Varanasi. 221 002.
5. D.E., Telcome project, Subh Nath Kunj, Nahar Road, Daudpur, Gorakhpur, district Gorakhpur.

(Sri N.B.Singh, Advocate.)

... Respondents.

ORDER:

(By: Hon'ble Mr. S.K.Agrawal, J.M.)

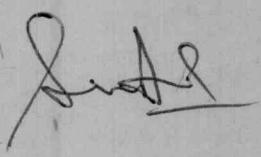
In this O.A., applicant makes a prayer to

- (i). direct the respondents to consider the claim of the petitioner for promotion in TES Group 'B' (Cadre from the date on which, his juniors have been promoted).
- (ii) -to direct the respondents to decide the representation of the applicant pending with the respondent for the promotion of the applicant in 'TES Group 'B' Cadre.

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In brief, facts of the case as stated by the applicant are that he was initially appointed and joined on 1.7.1971 alongwith Shri K.G.Vishnoi and both were promoted as Telephone Inspector on 24.4.1974 and both were appeared in the departmental examination for JTO but the result of the applicant was not declared whereas, the result of Shri K.G. Vishnoi was declared and he was promoted in TES Group 'B' Cadre. Appdicant filed O.A.No: 666/89 but during the pendency of this O.A result of the applicant was also declared and his pay on the post of JTO was fixed on 3.9.1993.

Applicant filed representation on 19.7.1996 claiming his promotion in T.E.S group (B) Cadre which was forwarded by Respondent No2 to respondent No.7 on 27.8.1996. Thereafter, applicant was promoted on adhoc basis in TES group 'B' Cadre vide order dated 17.12.1996 but respondent No2, while preparing the list promoted candidates of JTO deliberately deleted the name of the applicant in the list of promoted JTO's whereas no order was issued for deleting the name of the applicant. It is stated that the name of the applicant was deleted on the ground of pendency of disciplinary proceedings against the applicant. Applicant made representation to G.M. (Telcome), Lucknow. The representation was forwarded to the Director Hq/the CHIEF General Manager, Telcome Project, New Delhi with the remark that the name of the applicant was deleted due to the pendency of the disciplinary proceedings against which is still pending. It is stated that the charge sheet issued in 1993 is still pending and because of the pendency of the disciplinary proceeding, the claim of adhoc promotion of the applicant cannot be ignored. It is also stated that Sri K.G.Vishnoi, who is junior to the applicant has already been given promotion in the TES Group 'B' ignoring the claim of the



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applicant, which is illegal. It was, therefore, requested that the applicant is entitled to the relief sought for.

Counter was filed. It was stated that the petitioner's claim is purely against the adhoc promotion for which no body has any legal right. It is also stated that the applicant was not promoted because of the pendency of disciplinary enquiry against him. It is admitted that the Chief G.M. (Telcom) New Delhi issued the promotion order of the applicant on 17.12.1996 with the condition that no disciplinary case is pending/contemplated against the applicant. Therefore, the G.M Telcome project, Lucknow deprived off the applicant from promotion vide order dated 30.12.1996 due to the pendency of the disciplinary Enquiry pending against the applicant. The case of the regular promotion of the petitioner is pending consideration. The order of promotion dated 17.12.1996 was issued without any knowledge of pendency of disciplinary enquiry against the applicant. Therefore, the name of the applicant was rightly deleted by respondent No3, from the list of promotees and the applicant is not entitled to any relief sought for.

Rejoinder, Supplementary Counter and supplementary rejoinder have also been filed.

Heard the learned lawyer for the applicant and the learned lawyer for the respondents and also perused the whole record. The legal citation by the learned lawyer for the applicant as referred to above are distinguishable is not applicable in the instant case as per the facts and circumstances of the case and, therefore, the applicant fails to make out any case in his favour.

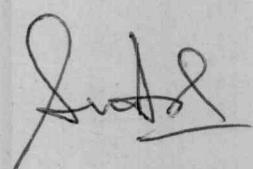
Learned lawyer for the applicant has submitted that the pendency of the disciplinary proceeding is no ground to ignore the applicant for promotion. In support of his contentions, he has referred to 1996(2) SC 568 Allahabad High

Court) " J.P.Srivastav V. State of U.P and others". On the other hand, learned lawyer for the respondents have submitted that the applicant was also promoted on ad-hoc basis provided, no disciplinary/Vigilance case is pending against the person concerned. The Disciplinary Proceeding was pending against him, therefore, the name of the applicant was rightly deleted from the list.

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It is admitted fact that the Chief G.M., Telcome, New Delhi issued promotion Order of the applicant dated 17.12.1996 alongwith others with the stipulation that it to be ensured that the disciplinary/Vigilance case is pending against the person, who is promoted. It is also an admitted fact that a disciplinary Enquiry was pending against the applicant, therefore, his name was deleted by the Respondent No3, from the list of promotees.

In " Union of India Vs. K.Krishnan" (1992) 21 ATC 822 842, it was held that there is no double jeopardy where the promotion is denied during the currency of penalty. This view was upheld by Hyderabad Tribunal in " G.Dakpappa Vs. Supdt. of Post offices, Mahabubnagar and another" (1992) 21 ATC 880 ' Hon'ble S.C in Union of India and others Vs K.V. Jankiraman' has held that while considering the employee for promotion, his whole record is taken into consideration and if a promotion Committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified ..."

As per Rule 156 of P & T Manual, it is specifically provided " 156.(1). An officer under suspension or whose conduct is under investigation should not be considered for promotion in short-term vacancies till the termination of suspension or conclusion of disciplinary proceedings."



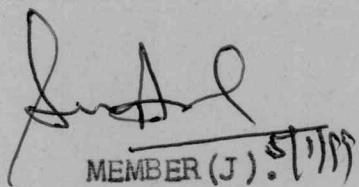
In the instant case, applicant was denied promotion on Ad-hoc/Temporary basis because a disciplinary Enquiry was

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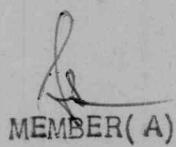
pending against him. Therefore, in view of the law laid down by the Apex Court in JankiRaman Case (Supra) and provisions given in Rule 156 of the P & T Manual, respondents did not commit any error in deleting the name of the applicant from the list of promoted candidates.

Therefore, the applicant failed to make out any case in his favour.

We, therefore, dismiss the O.A with no order as to cost.



MEMBER (J) S. T. J. P.



MEMBER (A)