

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 29th day of September 1995.

Original Application no. 599 of 1994.

Hon'ble Dr. R.K. Saxena, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member.

A.K. Nigam, S/o Sri M.P. Nigam, R/o 107/223, Nehru Nagar,
Kanpur.

..... Applicant.

C/A Sri R.K. Nigam.

Versus

1. E.S.I. Corporation through its Chairman, Standing Committee, Shram Shankti Bhawan, New Delhi.
2. Director General, E.S.I. Corporation, Panchdeep Bhawan, Kotla Road, New Delhi.
3. Regional Director, E.S.I. Corporation, U.P. Region, Sarvadaya Nagar, Kanpur.
4. Ram Rajsingh, Upper Division Clerk, C/o Regional Director, E.S.I. Corporation, U.P. Region, Sarodaya Nagar, Kanpur.

..... Respondents.

C/R Sri P.K. Asthana.

O R D E R

Hon'ble Mr. S. Dayal, Member-A.

In this application under section 19 of the
Administrative Tribunal Act, 1985, ^{the applicant} seeks that the
reliefs:-

direction be given to the respondents to 'Release' the promotion of the applicant as Manager/Insurance Inspector from the date of promotion of his junior counter part with consequential benefits/EB etc.

2. The ground on which the relief has been asked for, are that the respondents have got prejudised against the applicant because of complaints made against the respondent no. 4, that the applicant has unnecessarily been dragged into departmental enquiry which is being conducted against principles of natural justice, and that the promotion, increments and EB can not be withheld, in view of Janki Ramars case.

3. Arguement of Sri R.K. Nigam learned counsel for the applicant and Sri P.K. Asthana learned counsel for the respondents were heard. Learned counsel for the applicant cited, Union of India and others versus K.V. Janki Raman (AIR 1991 SC 2010), Kundan Lal versus G.M. (Mech) N. Rly and others 1994 (2) ATJ 629, Sri Dilip Kumar Mukherji and others versus Union of India and others 1995 ATJ 73, Yashpal Singh versus Union of India and others (1995/1/UPLEBC/37).

4. The brief facts of the case are that the applicant has working as Head Clerk in the pay scale of Rs. 1400-2300 since the year 1983. He claimed that his juniors have been promoted to the post of Manager/Insurance Inspector in the pay scale of Rs. 1640-2900 (RPS) with effect from 1989. He claimed that no proceedings for disciplinary action was pending against him at that time and that

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his promotion was withheld without any justification, and, as a matter of fact, the charge sheet was served on him only on 10.03.92. He was being victimised because he was an active union leader. The withholding of promotion has resulted in deadlocking of the career of the applicant who was due to retire in a couple of years. He claimed that inspite of a number of representations his promotion has been released. He has also claimed that main person who was involved in the enquiry for which the applicant was also served the chargesheet has been let off without any effect on his promotion or pension.

5. The main issue in this case is whether the promotion of the applicant had considered in 1989 when persons junior to the applicant were considered for promotion and were promoted. The relief claimed by the applicant makes it appear that the applicant is seeking regular promotion. The respondents have understood the claim of the applicant in that light. However, the applicant also speaking about the date of promotion of his junior counter parts and has mentioned in Annexure A-1 of the application that ad-hoc promotions were given to the juniors vide office order no. 1292/81 dated 26.10.89. It is, therefore, to be construed that the applicant is seeking ad-hoc promotion at the time his junior were promoted.

7. The respondents in their counter reply have contended that the application is barred by time limit

that the applicant's promotion was not considered because the vigilance Branch had not given clearance from vigilance angle. Later the promotion could not be considered because a major penalty charge sheet was issued to the applicant on 10.03.92. It is also stated that no juniors to the applicant had been promoted to the pay scale of Rs. 1640 - 2900 in the cadre of Manager/Insurance Inspector on regular basis except Sri Gyan Chandra Diwan who was regularly promoted against the post of reserved for handicapped. As regard Sri V.K. Pandey, manager, about whom the applicant was said that he was let off without any punishment, the respondents have mentioned in the counter reply that he was allowed to get his gratuity after deducting the amount involved in the charge sheet in compliance with the order passed by the Central Administrative Tribunal in O.A. no.847 of 1991. It has also been contended the responsibility of the applicant in the case of departmental enquiry was greater than that of Sri V.K. Pandey the Manager. They have contended that the judgement of Janki Ram's stipulate that the promotion of Government Servant can be stopped only if the chargesheet or charge memo in Criminal or disciplinary proceeding is issued to him. They have stated that the applicant could not have been granted ad-hoc promotion, in view of the office memorandum no. 22011/2/86-Estt (A) dated 12.01.88 by the Department of Personnel and Training. They have also stated that ad-hoc promotion is a local arrangement.

7. A look at annexure 3 to the CA of the respondents that the name of the applicant appears at serial no. 12 of the seniority list of Head Clerks/Assistant as on

01.01.93. It is also seen that person upto serial no. 31 in the list have been promoted as ad-hoc manager or ad-hoc Insurance Inspector. Next person junior to him has been promoted as ad-hoc Manager grade II, at Aligarh, and Sri I.R. Singh at item no. 15 of the list has been promoted as Ad-hoc Insurance Inspector at Kanpur, thereafter, the person at serial no. 16, 18, 19, 24, 26 and 27 have also been promoted as ad-hoc Manager grade-I and ad-hoc Superintendent or Ad-hoc Insurance Inspector at Kanpur. These facts negative the contention of the respondents that no employee junior to the applicant was promoted or that the applicant was not given promotion on ad-hoc basis because ad-hoc promotions were local arrangements.. The case for major penalty could not have come to this way because the charge memo was issued only on 10.03.92 while the promotions on ad-hoc basis of applicants junior were made in 1989. The applicant could not have been ignored for ad-hoc promotion at that time even if promotion to his junior was to be given in a static station other than Kanpur because the respondents had the practice of continuing ad-hoc promotions for a number of years before considering regular promotion. Withholding of vigilance clearance to prevent consideration of the applicant for promotion before issuance of a charge memo for disciplinary proceedings for major penalty could not have been resorted to in view of the judgements of the Tribunal in a large number of cases which were dealt with by the apex court in Union of India Vs. K.V. Jankiraman (Supra). The respondents have erroneously referred to office memorandum of the Department of Personnel and Training dated 12.01.88 for denial of ad-hoc promotion to the

applicant because this office memorandum refers to ad-hoc promotion after denial of regular promotion by the D.P.C. due to pendency of departmental proceedings for a major penalty.

9. The applicant has cited three more cases in his support besides Jankiraman's case of these, Yash Pal Singh Vs. Union of India and others (Supra) follows the ratio of Janki Raman's case. In Dilip Kumar Mukherji and Others vs Union of India and others (Supra), Calcutta Bench of the Tribunal has laid down that normal rule of seniority should be followed in giving ad-hoc promotions where such promotions are likely to continue for more than three or four months. This case, however, does not deal with the issue of withholding of clearance from vigilance angle. The last case cited is that of Kundan Lal Vs General Manager (Mech) Northern Railway (Supra). This case is not relevant to the matter under consideration because it is a case of punishment order of withholding increments after disciplinary proceedings and not of non-grant of normal increments.

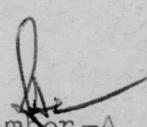
10. We find that the respondents have not shown any rules or instructions premitting non consideration of the applicant for the purpose of ad-hoc promotion in 1989 because he was not cleared from vigilance angle. On the other hand the ratio of Jankiraman's case will have to be applied to ad-hoc promotion barring the procedure of sealed cover. An employee whose conduct is under investigation cannot be denied ad-hoc promotion merely because

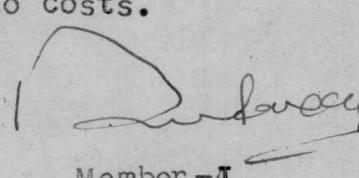
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of that fact and will have to be considered for ad-hoc promotion unless he has been given a charge memo for major punishment and the authority competent to promote comes to a conclusion that it will not be in a public interest to promote such an employee. It has rightly been said in Jankiraman's case that if the allegations are grave, investigation can be speeded up and charge memo issued and if it is felt that continuance of the employee on duty is not in public interest, he can be suspended.

11. We direct the respondents to give the higher scale of Rs. 1640-2900 to the applicant on an ad-hoc basis with effect from the date of ad-hoc promotion of the employee immediately below him in the seniority list. He should be given a post in the higher pay scale along with arrears of pay by a date not later than three months from the date of furnishing a copy of this order by the applicant to the respondents.

12. There shall be no order as to costs.


Member -A


Member -B

/pc/

Compared by
Puyal