

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Allahabad this the 06th day of MARCH 2002

Original Application no. 1246 of 1994.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman  
Hon'ble Maj Gen K.K. Srivastava, Member (A)

Shri Brihaspati Ram, R/o SA-1/164-7,  
Rahulnagar Colony, Pandey Pur,  
Varanasi Cantt.  
Varanasi-2.

.... Applicant

By Adv : Sri J.P. Singh  
Sri M.K. Updhayaya

V E R S U S

1. Union of India, through the Secretary,  
Ministry of Communications,  
New Delhi.
2. Chief General Manager, Telecom,  
U.P. Circle, Lucknow.

... Respondents

By Adv : Sri A Sthalekar

O R D E R

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this OA, filed under section 19 of the A.T. Act, 1985, the applicant has prayed for a direction to the respondents to allow him to resume ~~and~~ duties of his new assignment i.e. the post of promotion in group 'B' service in department of Telecommunication (DOT).

2. The facts of the case are that the applicant was serving as Junior Telecom Officer (in short JTO). He was

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selected for promotion on 22.07.1994. But before he could be actually posted on promoted post a memo of charge was served on him on 15.08.1994. The allegation against him was that during the period from 1991 to 1992 he submitted fake bills towards fabrication of Thermacol in the P.C.M. Repeater Housing Cabinet, purchase of Materials like Charcoal, Salt etc to the tune of Rs. 1.29 lacs. The Central Vigilance Commission recommended the disciplinary proceedings against the applicant on 01.07.1994. Then decision was taken by a ~~complaint~~ to initiate <sup>disciplinary proceeding for</sup> a major penalty against the applicant. On account of the aforesaid ~~charge~~ <sup>service</sup> of ~~of charges~~ memo the applicant was not allowed to join the post of promotion. Aggrieved by which he has filed this OA for the direction mentioned above.

3. Sri JP Singh, learned counsel for the applicant has submitted that on the date of promotion i.e. 22.7.1994. there was no memo of charge pending against the applicant, hence he ought to have been promoted. It is also submitted that infact the applicant was due for promotion in 1992 when the list of 1800 JTOs was published for promotion, but the name of the applicant was omitted and a suppl. list of promotees was published on 22.7.1994. In short the submission is that in case the applicant would have been promoted alongwith others in 1992 he would have allowed to join the post of promotion as the memo of charge was not in exsistence then. Learned counsel for the applicant has placed reliance in the judgment of Hon'ble Supreme Court in case of Bank of India and others Vs. Begala Suryanarayana (1999) 5 SCC 762.

4. Sri A. Sthalekar, learned counsel for the respondents on the other hand submitted that the charge against the applicant was very serious, as he was served memo of charge before he joined the post of promotion, ~~He has rightly been denied to avail the benefit of promotion during the pendency of disciplinary proceedings. It is also submitted that in disciplinary proceedings the applicant has been punished and the charges have been found proved against him.~~

5. Sri JP Singh, on the other hand submitted that it is true that the applicant has been punished, but the penalty awarded is of minor nature which has been challenged by filing OA in this Tribunal, which is pending.

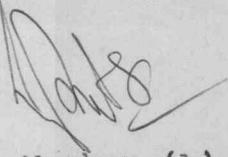
6. We have carefully considered the submissions of learned counsel for the parties. The undisputed facts are that the order of promotion in favour of the applicant was passed on 22.7.1994, but before he could join the post the memo of charge was served on him on 15.8.1994. The legal position in this regard is well settled that in case the employee who is promoted is allowed to join and then memo of charge is served on him, he could not be reverted to the lower post, from which he was already promoted, as promotion was given effect. In the present case the order of promotion though was passed but it was not given effect before the memo of charge was served. In the circumstances in our opinion the applicant is not entitled for a direction from this Tribunal to allow him to join the post of promotion. In this case we are not concerned with the delay which occurred in promoting the applicant as submitted by learned counsel for the applicant, that part is not under challenge before

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us. However, the fact remains that before the applicant joined the memo of charge <sup>or was</sup> served on him. The judgment relied on by learned counsel for the applicant does not help in the present case as in that case promotion was to be given effect on 1.1.1986. However, the memo of charge was served on 03.12.1991. There <sup>is</sup> a gap of about more than 6 years. Thus on the facts the judgment of Hon'ble Supreme Court cannot be applied on this case.

7. For the reasons stated above. The OA is dismissed.

8. There shall be no order as to costs.



Member (A)



Vice-Chairman

/pc/