

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

**O.A. NO. 138 OF 1991**

~~138 OF 1991~~

DATE OF DECISION 29-11-1995.

Kantilal Madhavjibhai Hirani, Petitioner

Mr. B.B. Gogia Advocate for the Petitioner (x)

Versus

Union of India & Ors. Respondent s

Mr. Akil Kureshi, Advocate for the Respondent (s)

**CORAM**

The Hon'ble Mr. N.B. Patel, Vice Chairman.

The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

**JUDGMENT**

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

Kantilal Madhavjibhai Hirani,  
Assistant Engineer Cable  
Construction, Stand Chowk,  
Near Bank of Baroda,  
JETPUR 360 370.

.... Applicant.

(Advocate: Mr. B.B. Gogia)

Versus

1. Union of India  
through Chairman,  
Dept. of Telecom,  
Sanchar Bhavan,  
New Delhi.

2. Director Telecom.,  
STG/II Section,  
Sanchar Bhavan,  
New Delhi.

.... Respondents.

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

O.A.No. 138 OF 1991

Date: 29-11-1995.

Per: Hon'ble Mr. V. Radhakrishnan, Admn. Member.

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The applicant was originally appointed as Engineering Supervisor which has been redesignated as Junior Telecom Officer with effect from 21-5-1972. He had passed the qualifying examination for appointment to Grade B of Telegraph Engineering Services in November 1977. According to the Recruitment Rules 2/3 out of posts in Grade B of Telegraph Engineering Services are to be filled in on the basis of seniority-cum-fitness subject to clearance from vigilance angle. The applicant has been promoted on adhoc basis to Grade B of T.E.S at different times. The applicant was awarded minor penalty of censure in February 1989. The applicant's

..... 3/-

name appears in the list of eligible J.T.O in the zone of promotion, Annexure A-1. However, when the promotion list of J.T.Os approved for the post of Grade B of T.E.S was issued in April 1990 the applicant's name did not appear while his juniors have been promoted. The applicant submitted various representations on different dates regarding his non-promotion but he could not get any reply so far. Hence he has come to the Tribunal praying for the following reliefs:

"7. Reliefs sought:-

- (a) It may be declared that non-promotion of the applicant to the post of T.E.S Gr. B on regular basis in the order dated 25.4.90 as per Annexure A-4 is illegal wholly arbitrary and unjustified.
- (b) The respondents may please be directed to release regular promotion order of the applicant to the post of T.E.S Gr.B with effect from the date 25.4.90 i.e., of the order Annexure A-4 by which he was due to be promoted or from any other date earlier or later as found and deem fit from the record by the Hon'ble Tribunal which all the consequential benefits of seniority and salary etc.
- (c) Any other better relief which the Hon'ble Tribunal deem just in circumstances of the case.
- (d) The cost of this suit may be granted to the applicant from the respondent."

2. The respondents have contested the application. They have admitted that 2/3rd of vacancies in Gr. B of T.E.S. are required to be filled in on the basis

of seniority cum fitness of J.T.Os who have passed the qualifying examination. According to them, the applicant was considered by the D.P.C in 1990 and he was categorised as "not yet fit". They have denied that the applicant was not promoted because of the fact of censure imposed on him. They have also stated that the applicant was no longer on that post as Grade-B Officer. The applicant has filed rejoinder. He states that he has not received any adverse remarks at any time and the decision of the D.P.C to categorise him as "not yet fit" is arbitrary and unjustified. He has also stated that he was allowed to cross Efficiency Bar in the pay scale of Grade B in 1989 by the D.P.C and as such it is not possible that he should have been found unfit for promotion for Grade B post. He had officiated for more than 4 years in Grade B. If the criterion of the seniority-cum-fitness is considered he should be given promotion. The department has filed reply to the rejoinder. They have stated that Rules and Regulations of the Government have been followed strictly by the D.P.C and the D.P.C has adjudged the applicant as "not yet fit" for promotion. They have stated that even on the basis of seniority-cum-fitness the D.P.C has to adjudge an officer as fit for promotion then only he could be given promotion. The applicant was promoted on adhoc basis to Grade B on local seniority basis and this cannot be ground for claiming promotion on regular basis.

3. During arguments Mr. Gogia stated that the respondents have agreed that the promotion to the post


of Grade B post of T.E.S is on the basis of seniority-cum-fitness. In view of the fact that the applicant had not received any adverse remarks during any period he should have been considered fit by the D.P.C for promotion. In so far as the penalty of censure imposed on the applicant is concerned, it is not to be taken into account for denying the promotion to an officer. He pointed out that for several years the applicant had worked on adhoc basis in Group B post without any adverse remarks. He was also allowed to cross the Efficiency Bar in the higher post of Grade B. He also brought to our notice Government instructions item No.26 under Rule 11 of CCS(CCA) Rules according to which the censure is not a bar for promotion. He pointed out that as per the Rules the imposition of penalty of censure on a Government Servant does not by itself stand against the consideration of such person for promotion, as his fitness for the promotion has to be judged in the case of promotion by seniority on the basis of an overall assessment of his service record and in the case of promotion by selection on merit, on the basis of his merit categorisation which is again based upon an overall assessment of his service record. According to him, there are no adverse remarks in the service record of the applicant and having been found fit to work on adhoc basis in Grade B and also allowed to cross the efficiency bar in that post there was no reason for the D.P.C to categorise the applicant as "not yet fit" for promotion. Hence he pleaded that the applicant should be promoted in Grade B post from the date

his junior was promoted. Mr. Kureshi, learned Addl. Standing Counsel pointed out that the D.P.C which met in 1990 had considered his overall service record and declared him as "not yet fit" for promotion. He pointed out that normally five years record prior to the date of promotion is considered by the D.P.C i.e., from 1984 to 1989. He has also produced the minutes of the review D.P.C held in January 1993 which reviewed the findings of the D.P.C held in 1990 which also categorised the applicant as "not yet fit". He pointed out that the D.P.C has come to this conclusion on the basis of their assessment of Confidential Reports of the applicant for five years prior to 1988-1989 as was done by the D.P.C held in 1990. He could not say as to whether the fact of censure imposed on the applicant had any effect in declaring him as "not yet fit". He also produced the entire record file of the applicant. We have perused the record for the five years preceding 1988-89. We find that there are two reports for 1988-89 and the general trend of these two reports is "good". The fact of his being given penalty of censure is mentioned in the second report for the year. He has also been classified as fit for promotion in turn. The report for 1987-88 has been graded as "average". The report for 1986-87 has also been graded as "average". For 1985-86 there are two reports. There is no grading but the general tenor of the report is good. In 1984-85 there are three reports and the three reports contain general trend as good.

4. There is no dispute regarding the fact that the promotion to the post of Grade B of T.E.S post

is based on seniority-cum-fitness after qualifying in the examination. The applicant had qualified in the examination and he has been rates as "not yet fit" by the D.P.C. We have gone through the C.Rs for five years preceding the D.P.C meeting and we nowhere found any adverse remarks except for the factual mention of the penalty of censure awarded to the applicant in the report for second part of year 1988-89. Further more the applicant has worked in Grade B post on adhoc basis and has been allowed to cross the Efficiency Bar in that post. It was fairly conceded by the learned Addl. Standing Counsel that censure per se is not to be treated as a bar for promotion. If that is so, we do not find any material on the basis of which a conclusion can be arrived at that the applicant was unfit for promotion to Grade B of T.E.S on the basis of his service record for five years from 1984-85 to 1988-89. Promotion to a post on seniority-cum-fitness would imply that unless there is anything adverse or reports are poor making the officer unfit (i.e., having positive demerit), the officer gets promotion to the higher post. We have reason to believe that the applicant's case was not considered in proper prespective by the D.P.C and they were unduly influenced by the fact of censure awarded to the applicant. Accordingly, we direct that the case of the applicant be put up before a review D.P.C by the respondents for reconsideration in the light of the observations

made by us above. The D.P.C shall be convened within a period of three months from the date of receipt of a copy of this judgment and in case the applicant is adjudged fit by the review D.P.C he shall be deemed to be promoted from the date his immediate junior got promotion to Grade B post of T.E.S with all consequential benefits. No order as to costs.

  
(V. Radhakrishnan)  
Member(A)

  
(N.B. Patel)  
Vice Chairman

AS.