

Departmental
Proceeding & Promotions (No.)

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No.
~~Case No.~~ 38 of 1992

DATE OF DECISION 21.02.1992

Mr. G.K. Nayi **Petitioner**

Petitioner in person Advocate for the Petitioner(s)

Versus

Union of India & Ors. **Respondent**

Mr. B.B. Naik Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.Y. Priolkar Member (A)

The Hon'ble Mr. R.C. Bhatt Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

CJ
✓

Shri Girdharlal Kalidas Nai,
11, Gayakwadi,
'Meena Kunj',
Rajkot.
(Petitioner-in-person)

.. Applicant

Versus

1. Union of India,
Through :
Secretary,
Communication,
Govt. of India,
New Delhi.

2. Director,
Telecommunication,
STG-II Section,
Sanchar Bhavan,
Parliamentary Street,
New Delhi.

3. Chief General Manager,
Opp. Khanpur Post Office,
Gujarat Telecom Circle,
Ahmedabad.

.. Respondents

(Advocate-Mr. B.B. Naik)

O.A. No. 38 of 1992

O R A L - J U D G M E N T

Present : Petitioner in person present.

Mr. B.B. Naik, learned advocate
for the respondents present.

Date : 21.02.1992

Per : Hon'ble Mr. M.Y. Priolkar .. Member (A)

The grievance of the applicant, in this application is that although the Departmental Promotion Committee had found him **fit** for promotion on 19.11.1990, the promotion has been denied to him on the ground that he was involved in a fraud case and the C.B.I. had recommended departmental action against the officials concerned.

(3)

2. Admittedly, a charge sheet has been served on the applicant on 2.2.1990 whereas the Departmental Promotion Committee, which considered the case of the applicant and found him fit for promotion was held in November, 1990. The charge sheet had been provided to the applicant prior to the Departmental Promotion Committee ~~was held~~ in which the applicant's case has been considered. In the case of Union of India v. K.V. Janki Raman ~~decided~~ decided on 27.8.1991 (AIR 1991 SC 2010), it has been held by the Hon'ble Supreme Court that the disciplinary/criminal proceedings can be said to have commenced only when a charge memo or charge sheet is issued to the employee. This observation is in the context of the Government instructions dated 30.1.1982 which lay down that while a Government servant has to be considered for promotion if he is eligible, the recommendation of the D.P.C. regarding his fitness or otherwise for promotion has to be kept in sealed cover if disciplinary/criminal proceedings had already been commenced against him.

3. Since there is no dispute that in the present case, the charge sheet had been served on the applicant prior to the date of the meeting of the Departmental Promotion Committee and the employee

had been considered by the D.P.C. which had met after the issue of the charge sheet but the recommendations are not being given effect to, pending finalisation of the disciplinary proceedings, we see no merit in the prayer of the applicant that he should be straight-way promoted in pursuance of the D.P.C.'s recommendation. We have perused some of the decisions of the Tribunal extracts of which the applicant has annexed with the application on the subject of overlooking the claim for promotion during the pendency of the disciplinary proceedings. All these decisions are earlier to the Supreme Court judgment cited above and are in the context of withholding of promotion in contemplation of disciplinary proceedings or because the proceedings are pending. In the instant case, the disciplinary proceedings had actually commenced in the sense that the charge sheet had been served on the delinquent employee prior to the date of the meeting of the D.P.C. which considered the applicant for promotion.

The Supreme Court's ^{decision} ~~direction~~ in Janaki Raman's case (supra) is quite clear on the point that promotion can be withheld if the charge sheet had been served prior to the DPC's meeting which considered that employee for promotion. The decision is fully applicable to the facts of the present case. This O.A. is accordingly rejected at the admission stage itself with no order as to costs.


(R C Bhatt)
Member (J)


(M Y Priolkar)
Member (A)