

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/631/93

Date of Decision : 22-12-2000

Shri. Madhusudan Mansukhlal Vyas : Petitioner (s)

Mr. B.B. Gogia : Advocate for the petitioner [s]

Versus

Union of India & Ors. : Respondents [s]

Mr. B.N. Doctor : Advocate for the Respondent [s]

CORAM :

THE HON'BLE MR. A.S. SANGHAVI : **MEMBER (J)**

THE HON'BLE MR. G.C. SRIVASTAVA : **MEMBER (A)**

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

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Shri Madhusudan Mansukhlal Vyas,
Hindu, Adult, aged about _____ years,
Occupation : Service,
Address : Sr. Gr. Telephone Operator,
Jubilee Baug Auto Exchange,
Rajkot.

: Applicant.

(Advocate : Mr. B.B. Gogia)

Versus

1. Union of India,
Through : Its Secretary,
Telecom Department,
Govt.of India, New Delhi.
2. Asstt. Engineer (Trunks) TMX,
Jubilee Baug Auto Exchange,
Rajkot.
3. Divisional Engineer Phones (I/D)
Jubilee Baug Auto Exchange,
Rajkot.
4. Dy. General Manger,
O/O the General Manager,
Telecom District,
Near Girnar Cinema,
Rajkot.

Respondents

(Advocate : Mr. B.N. Doctor)

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JUDGMENT
OA/631/1993

Date

PER : HON'BLE Mr. G.C. SRIVASTAVA : MEMBER (A)

This is the second round of litigation.

2. The applicant who is working as Senior Grade Telephone Operator in the scale of Rs. 1400-2300 under the respondents is aggrieved against non inclusion of his name in the promotion order to the post of Telephone Operator in the scale of Rs. 1600-2600 and seeks the following reliefs:-

A) It may be declared that letter No. 1249/90 dated 5.7.1993 from Dy. General Manager, GMTD Rajkot's office to the applicant vide which he was advised that the DPC found him unsuitable for promotion is illegal, ineffective, null and void and the respondents may please be directed to promote the applicant to the grade of Rs. 1600-2600 under the scheme of biennial cadre review on completion of 26 years service with all the consequential benefits, such as due pay and allowance, seniority etc.

B) Any other better relief/reliefs as deemed just and proper in view of the facts and circumstances of the case may kindly be granted to the applicant.

C) The cost of the application may kindly be granted to the applicant from the respondents.

3. According to the applicant he became due for time bound promotion to the scale of Rs. 1600-2600 in the year 1992 after having completed 26

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years of service in terms of biennial cadre review (BCR) scheme contemplated vide Director (T.E) Dept. of Telecom New Delhi letter dated 16.10.1990 (Annexure A-1) but he was ignored and his juniors were promoted vide order of January, 1993 (Annexure A-2). As per his understanding his promotion has been withheld on account of imposition of penalty of stoppage of increment for a period of two years without future effect communicated to him vide respondent's order dated 29.9.1992 (Annexure A-3). According to him, he has a clear record of service with no adverse remarks in his C.R. ever communicated to him. However, he was issued a charge sheet vide memo dated 7.4.92 for his alleged use of unparliamentary words in his meeting along with others with General Manager, Telephone, District Rajkot on 1.4.92 when he was Assistant District Secretary of the Union. Despite his request for a copy of the report in support of the charge the Disciplinary authority refused to supply the same to him and he was forced to submit his representation without this on 23.4.1992. Finally the aforesaid penalty was imposed vide order dated 29.9.1992. According to the applicant, though he appealed against the order of penalty the same has not been decided. He contends that withholding his promotion on account of penalty of stoppage of increments amounts to double punishment. He has represented to the authorities several times and he has been informed that he was not given promotion because he was found unsuitable by the DPC for promotion. The applicant has cited a few judgments in support of his contention that denial of promotion on account of penalty imposed amounts to double jeopardy and has claimed that he is eligible for promotion despite penalty in terms of GOI instruction No. 24 below Rule 11 of CCS (CCA) Rules, 1965.

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4. In their reply, the respondents have stated that BCR promotion though time bound is based on seniority subject to selection after assessment of performance and determination of suitability for advancement. They deny that the promotion of the applicant was withheld on account of penalty imposed. According to them, the appeal of the applicant against the order of penalty was decided by the appellate authority and was rejected vide order dated 25.10.1993 (Annexure R-2) They contend that while punishment was awarded on 29.9.1992 the DPC meeting for promotion was held on 28.8.1992 i.e. one month prior to the order of punishment and therefore the allegation that the promotion was denied on account of penalty is baseless. The respondents contend that judgments cited by the applicant are not applicable to the facts of the case and hence the allegation of double jeopardy is also denied. According to them, while considering his case for promotion the DPC has gone by the DOPT OM dated 14.9.92 (Annexure R 8) and found him unsuitable. They also contend that the applicant has not exhausted all remedies before filing the O.A. as he has failed to represent to the appellate authority against his supersession in promotion as also file a review petition against the order of the appellate authority in regard to punishment.

5. We have heard Mr. B.B. Gogia and Mr. B.N. Doctor, learned counsels for the applicant and respondents respectively and have gone through the pleadings and documents produced. We find that the applicant has separately challenged the order of punishment imposed vide order dated 29.9.92 in OA No. 714/1993 and the order passed on 12.4.2000 by this Tribunal in that O.A. reads as follows :-

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In the light of the foregoing discussion, we hold that the order of the disciplinary authority confirmed by the appellate authority that the charge was proved is based on no evidence and can not be sustained. We accordingly quash the order of the disciplinary authority dated 29.9.92 as at Annexure A/7 as also the order of the appellate authority dated 25.10.93 as at Annexure A/10. The applicant shall be given consequential benefits flowing out of quashing of both the orders within three months from the date of receipt of a copy of this order. The O.A. is finally disposed of with no order as to costs.

In view of the above order of the Tribunal the order of penalty of stoppage of increment for two years without future effects is rendered void ab initio and the restrictions envisaged in OM dated 15.5.1971 and dated 16.2.79 that promotion can be given only after the expiry of penalty in the instant case as contended by the respondents in their reply are also rendered inapplicable in the instant case.

6. In this back ground we now deal with the questions whether the case of promotion of the applicant under BCR scheme has been considered by the DPC at the relevant point of time in accordance with the requirements of the scheme/rules as also the basis on which the DPC found the applicant unsuitable for promotion contrary to the averment made by the applicant and not denied by the respondents that there is no adverse entry ever communicated to him. We find contradiction in the reply of the respondents in as much as while on the one hand they contend that promotion was withheld on account of his unsuitability for promotion and not on account of penalty imposed on him vide order dated 29.9.92 at the same time they claim

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that his case was considered by the DPC in terms of the DOPT OM dated 14.9.92. This OM deals with promotion of employees against whom disciplinary/court proceedings are pending or whose conduct is under investigation and is of a date subsequent to the date of DPC meeting held on 28.8.92 and hence the above claim that the promotion case of the applicant was considered in the light of the aforesaid O.M. which could not have been in existence at the relevant point of time is only fallacious hence rejected. Moreover, in cases of promotion of employees where disciplinary case is pending even in accordance with rules in existence at the time of DPC meeting seal cover procedure was required to be followed which does not appear to have been followed in this case.

7. A perusal of the copies of the reports of DPC which met on 28.8.92, 25.10.94, 30.3.95 and 16.8.95 made available to us by the learned counsel for the respondents reveals that while considering the case of the applicant the DPC has gone by the confidential reports, special reports from the unit officers and service certificates from Accounts officer and has found him not suitable for promotion under ST BP BCR scheme. The report of the ^{DPC meeting held} on 28.8.92 shows that according to the special report of the unit officer while the applicant has been given a clean chit regarding his performance etc, he has still not been recommended for promotion evidently on account of remark in Col. 12 (g) to the effect that disciplinary case is pending. In report of the DPC which met on 25.10.94 it is mentioned that the case of the applicant is not recommended as the punishment is current. In view of this, it becomes amply clear that the promotion of the applicant has been withheld all along right from the time when DPC met on 28.8.92 upto the DPC

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meeting held on 16.8.95 initially on account of disciplinary case pending against him and subsequently on account of the penalty imposed on him vide order dated 29.9.92. It is also borne out from the proceedings of the DPC which met on December, 1995 and recommended his promotion w.e.f. 1.5.95 as by that time the period of two years of currency of the penalty imposed in September, 92 had already ended. In view of this the contention of the respondents that withholding of his promotion on account of the above penalty is totally untenable.

8. However, since the penalty order of the disciplinary authority dated 29.9.92 as also the order of the appellate authority dated 25.10.93 has been quashed as per judgment dated 25.4.2000 of this Tribunal as reproduced in para-4 supra and as no evidence has been produced by the respondents to the effect that there has been anything adverse against the applicant except the disciplinary case ending in a penalty which has also since been quashed, the applicant becomes entitled for promotion under BCR scheme in the higher scale of Rs. 1600-2600 w.e.f. the due date as per his seniority.

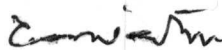
9. In facts and circumstances, we allow the O.A and quash and set aside ^{the} ~~impugned~~ order of July, 1993 communicating the applicant that his case has been considered by the DPC and he has been found unsuitable for promotion. We also direct the respondents to grant promotion to the applicant with effect from the date his junior has been promoted along with the arrears of pay and allowances as per rules. We also direct the respondents that if in the meanwhile the applicant has lost seniority on account of withholding of

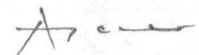
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promotion the same shall be restored. We further direct that this entire exercise shall be complete within a period of three months.

10. With the above directions, the O.A. stands disposed of. No order as to cost.


(G.C. Srivastava)
Member (A)


(A.S. Sanghavi)
Member (J)

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दिनांक
Date

कार्यालय टिप्पणी
Office Report

आदेश
Order

1.5.2001

X MA/357/2001 :-

This MA is moved by the respondents for seeking extension of time upto 22.6.2001 to implement the order 22.12.2001 passed in OA/631/1993. The order of this Tribunal is as follows :-

"In the facts and circumstances, we allow the OA and quash and set aside the impugned order of July, 1993 communicating the applicant that his case been ~~xxx~~ considered by the DPC and has been found ~~xxx~~ unsuitable for promotion. We also direct the respondents to grant promotion to the applicant with effect from the date his junior has been promoted along with the arrears of pay and allowances as per rules. We also direct the respondents that if in the meanwhile the applicant has lost seniority on account of withholding promotion the same shall be restored. We further direct that this entire exercise shall be completed within a period of three months."

Heard Mr. B.N. Doctor. MA is allowed and the time asked for implementation of the order upto 22.6.2001 is permitted. MA stands disposed of; ~~with the above~~

(G.C. Srivastava)
Member (A)

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Date	कार्यालय टिप्पणी Office Report	आदेश Order
1.5.2001		<p><u>MA/357/2001 :-</u></p> <p>This MA is moved by the respondents for seeking extension of time upto 22.6.2001 to implement the order 22.12.2001 passed in OA/631/1993. The order of this Tribunal is as follows :-</p> <p>*In the facts and circumstances, we allow the OA and quash and set aside the impugned order of July, 1993 communicating the applicant that his case been xxx considered by the DPC and has been found xxxx unsuitable for promotion. We also direct the respondents to grant promotion to the applicant with effect from the date his juniors has been promoted along with the arrears of pay and allowances as per rules. We also direct the respondents that if in the meanwhile the applicant has lost seniority on account of withholding promotion the same shall be restored. We further direct that this entire exercise shall be completed within a period of three months."</p> <p>Heard Mr. B.N. Doctor. MA is allowed and the time asked for implementation of the order upto 22.6.2001 is permitted. MA stands disposed of; xxxxxx</p> <p style="text-align: right;">(G.C. Srivastava) Member (A)</p> <p>Pkn</p>