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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 14.12.2001

O.A. No. 142/2001

Jai Ram Khatik son of Shri Beni Ram Khatik, aged about 56 years, resident of Qtr. No. 1, Type IV, Telecom Colony, Sumerpur, District Pali, at present employed on the post of S D E, Sumerpur, District Pali.

... Applicant.

versus

1. Union of India through Secretary to the Government of India, Ministry of Communication, Department of Telecom, Sanchar Bhawan, New Delhi.
2. Chief General Manager Telecom, Rajasthan Telecom Circle, Jaipur.
3. General Manager, Telecom District, Pali-Marwar : 306 401
... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. B.L. Bishnoi, Adv., Brief holder for Mr. Vijay Bishnoi, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice O.P. Garg, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice O.P. Garg)

The applicant, Jai Ram Khatik, who is presently posted as SDE, Sumerpur, District Pali, has come forward before this Tribunal by moving this application under Section 19 of the Administrative Tribunals Act, 1985, for a direction to the respondents to consider his case for promotion in the cadre of STS of ITS Group 'A' as per



rules in force and allow all consequential benefits at par with his next junior.

2. By virtue of order dated 01.06.2001, Annexure A/1 to the application, as many as 84 TES Group 'B' officers were promoted locally purely on temporary basis to officiate in the cadre of STS of ITS Group-A for a period not more than 180 days or till regular incumbents join whichever is earlier. The name of the applicant does not find a place in the list of the locally promoted officers though some of his juniors have been promoted. The reason for not promoting the applicant attributed by the department is that the competent authority had decided to initiate the major penalty case against the applicant after consultation with CVC and thereafter, reversion order was issued; that the Departmental Screening Committee did not find the applicant as fit for officiating promotion; that a charge sheet dated 21.06.2001 has been served on the applicant under Rule 14 of the CCS (CCA) Rules. It is maintained that the department was not required to communicate the reasons for not promoting the applicant.

3. In order to clarify the averments made in the reply by the department, this Tribunal passed an order dated 26th September, 2001, to produce the relevant records. It is before us. A perusal of the departmental record indicates that a proforma for special report for local officiating promotion was prepared in respect of each one of the candidates. The proforma prepared in respect of the applicant indicates that on the basis of the confidential reports for the last five years, i.e., during 1996-97, 1997-98, 1998-99, 1999-2000 and 2000-2001, his grading was termed as 'very good'. The only remark on account of which the applicant was denied the promotion was "not recommended due to vigilance case pending".



4. The learned counsel for the applicant urged that there was no vigilance case pending against the applicant and, therefore, the remark on the basis of which the applicant has not been found fit for promotion is factually wrong. It was further pointed out that those officials, whose performance was not rated high as 'very good', were recommended for promotion and the applicant has been wrongfully excluded from the zone of consideration for promotion on a flimsy and non-existent ground.

5. After having perused the documents on record, we find that as on 01.06.2001, there was no vigilance enquiry pending against the applicant. A charge sheet was served on the applicant for the first time on 21.06.2001, i.e., after the impugned promotion order has been issued in respect of 84 persons including the officers junior to the applicant.

6. The learned counsel for the respondents pointed out that there was serious allegations of squandering of public money by the applicant and other persons in laying underground cables and a criminal case, which was registered against the applicant and others, was under investigation by the CBI. Shri J.K. Kaushik, the learned counsel for the applicant, pointed out that after investigation, the CBI submitted a final report which was accepted by the competent Court - Special Judge, CBI, Jodhpur, on 21.11.2000, in Final Report Case No. 02/2000. A copy of this order has been placed on record as Annexure A/3 to the application. The submission of the learned counsel for the respondents that the applicant was not found fit due to the pendency of vigilance enquiry and investigation of a criminal case by CBI turns out to be wholly untenable as the case ended in acceptance of the final report much before the screening of the case of the applicant and

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others for promotion.

7. It was also urged by the learned counsel for the respondents that a decision had been taken to initiate the departmental proceedings against the applicant after consultation with CVC. On the date on which the Screening Committee met for the purpose of adjudging the suitability of the officers for promotion and on the date on which the order for promotion was issued, no departmental proceedings against the applicant had been initiated. Merely because some enquiry was contemplated against the applicant, his case for promotion could not be deferred. The departmental instructions and the law on the point are clear. The Government has laid down the procedure and issued the guidelines to be followed in case of promotion of Government servants against whom disciplinary proceedings are pending or whose conduct is under investigation. They are contained in O.M. No. 39/4/56-Estt.(A) dated 03.11.1958, and subsequent instructions issued from time to time, taking note of the various decisions of the Courts particularly that of the Apex Court in Civil Appeal No. 2964 of 1986, *Union of India and another vs. Tajinder Singh*, decided on 29.09.1986. Reviewing the earlier instructions, the elaborate procedure to be followed has been laid down in OM Nos. 39/3/59-Estt.(A) dated 31.08.1960; 7/28/63-Estt.(A) dated 22.12.64; 22011/3/77-Estt. (A) dated 14.07.1977; 22011/1/79-Estt.(A) dated 31.01.1982. The sealed cover procedure has been made applicable in para 2 of the said OM, which runs as follows:-

" 2. Cases of Government servants to whom Sealed Cover Procedure will be applicable: At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken

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to initiate disciplinary proceedings;

(iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution; "

In Para 2.1, the procedure to be followed by D.P.C. in respect of Government servants under cloud has been laid down as follows:-

" 2.1. Procedure to be followed by D.P.C. in respect of Government servants under cloud.- The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending or contemplated against them or where the investigation is in progress. The assessment of the D.P.C., including 'Unfit for promotion', and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of in respect of Shri..... (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution/investigation against Shri The proceedings of the D.P.C. need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the D.P.C. in respect of the suitability of a Government servant for his promotion are kept in a sealed cover."

Review of instructions on promotion of Government servants whose conduct is under investigation further took place and the instructions were issued under O.M. No. 22011/1/91-Estt.(A) dated 31.07.1991 by the Government of India, Department of Personnel and Training. The position was clarified in the following manner:-

" The undersigned is directed to refer to this Ministry's O.M. No. 22011/2/86-Estt.(A) dated 12.01.1988 (vide Sl. No. 67 of Swamy's Annual, 1988) regarding procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation and to say that in view of various judicial pronouncements subsequent to issue of aforesaid O.M. the question of applicability of sealed cover procedure in respect of Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the C.B.I. or any other agency, departmental or otherwise as envisaged in para 2 (iv) of that O.M., has been reviewed and it has been decided in consultation with the Ministry of Law that para 2(iv) of the O.M. No. 22011/2/86-Estt.(A), dated

12.1.1988, be deleted with immediate effect.

2. It is further clarified that -

(i) All cases kept in sealed cover on date of this O.M. on account of conditions obtainable in para 2(iv) of the O.M., dated 12.1.1988, will be opened. If the official had been found fit and recommended by DPC, he will be notionally promoted from the date his immediate junior has been promoted. The pay of the higher post would, of course, be admissible only on assumption of actual charge in view of provisions of F.R. 17(1). (Since only officiating arrangements could be made against the vacancies available because of cases of senior officials being in sealed cover, there may not be any difficulty in terminating some officiating arrangements if necessary and giving promotion in such cases).

(ii) If any case is in a sealed cover on account of any of the other conditions mentioned in para 2(i) to 2(iii) of the O.M., dated 12.01.1988, the case will continue to be in the sealed cover.

(iii) On opening of the sealed cover because of deletion of para 2(iv), if an officer is found to have been recommended as 'unfit' by the DPC, no further action would be necessary."

Taking note of the decision dated 27.08.1991 of Hon'ble the Supreme Court in **Union of India vs. Jankiraman**, AIR 1991 SC 2010, the letter was issued on 14.09.1992. Para 2 of this letter reads as follows:-

"2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- (iii) Government servant in respect of whom prosecution for a criminal charge is pending."

Para 7 of the same letter reads as under:-

"7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also."

8. In the instant case, sealed cover procedure could not have

been resorted to as no departmental proceedings were pending against the applicant at the time when his case for promotion was considered by the Screening Committee. In the case of **Bank of India and Anr. vs. Degala Suryanarayana**, 1999 SCC (L&S) 1036, the view taken by Hon'ble the Supreme Court is that when the respondent was due for promotion in 1986-87, and there was no departmental proceedings pending against him and sealed cover procedure could not have been resorted to, nor the promotion due in the year 1986-87 be withheld for the departmental proceedings which were initiated at the fag end of the year 1991, the subsequent order of punishment could not deprive an employee of the benefit for promotion due earlier when no departmental proceeding was pending.

9. There is a decision dated 10.11.1999 of this Bench in OA No. 312/99 in the case of **Amit Srivastava vs. Union of India and Others**, in which this Tribunal took the view that the promotion of an official cannot be cancelled or kept in abeyance because of a contemplated action. The promotion can only be withheld if the charge-sheet has been issued to the official before the issue of the promotion order. The said view was approved and reiterated in another decision of this Bench dated 07.09.2001 in OA Nos. 103/2001 and 104/2001 - **D.C. Jain vs. Union of India & Others and V.K. Agarwal vs. Union of India and Others**, respectively.

10. It is not disputed that the procedure prescribed in the aforesaid OM's and the law laid down by the Apex Court apply even to the case of ad hoc promotion or promotion for the stipulated period. In this context, a reference may be made to the OM No. 22011/4/91/Estt.(A) dated 14.09.1992 issued by the Department of Personnel and Training.

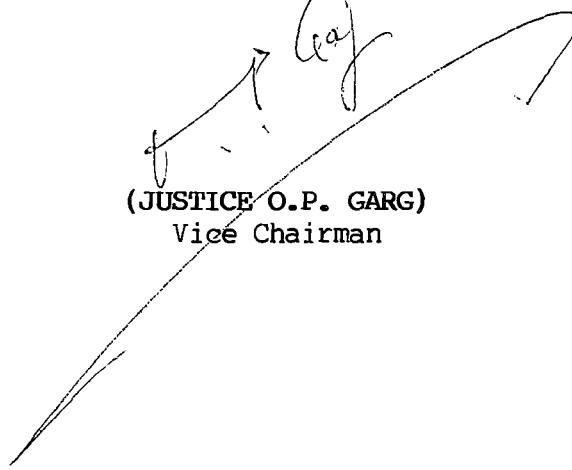
11. In the present case, as stated above, on the date on which

the Screening Committee considered the matter of promotion of the applicant, he was not facing any departmental enquiry; no charge sheet has been served upon him and there was no criminal case pending against the applicant. The observation to supersede the applicant that some vigilance enquiry was pending against him was also factually wrong. The applicant, therefore, could not be denied promotion. He has been illegally omitted from being considered for promotion on a factually wrong ground that was non-existent.

12. In the result, the OA succeeds and is allowed. Accordingly, we order as follows.

"The O.A. is allowed and it is directed that the case of the applicant for promotion to the post of STS of ITS Group-A shall be considered by the competent authority with all consequential benefits, preferably within a period of two months from the date of this order. No order as to costs."


Gopal Singh
(GOPAL SINGH)
Adm. Member


Justice O.P. Garg
(JUSTICE O.P. GARG)
Vice Chairman

cvr.

Part II and III destroyed
in my presence on 22-5-07
under the supervision of
section officer () as per
order dated 13/3/07

Naresh
Section officer (Record)

R/Copy
on 19/12
C/S

Received copy
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