

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

2/5

O.A. No. 103 & 104 of 2001 109 07.09.2001
T.A. No.

DATE OF DECISION 7.9.2001

D.C.JAIN AND ANOTHER

Petitioner

MR.J.K.KAUSHIK

Advocate for the Petitioner (s)

Versus

UNION OF INDIA AND OTHERS

Respondent

MR.VIJAY BISHNOI

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. A.K.MISRA, JUDICIAL MEMBER

The Hon'ble Mr. A.P.NAGRATH, ADMINISTRATIVE MEMBER

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

(A.P.NAGRATH)
Administrative Member

(A.K.MISRA)
Judicial Member

J/6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH JODHPUR.

OA No.103/2001

Date of Order: 7/9/2001

OA No.104/2001

1. D.C. Jain son of Shri Bheru Lal Jain, aged about 49 years resident of 2-D-37, RC Vyas Colony, Bhilwara, at present employed on the post of JTO (EWSD), Telephone Exchange, Bhilwara.Applicant (OA 103/0)
2. V.K. Agarwal son of Shri Ramjilal Agarwal, aged about 48 years, resident of 15/881, Private Bus Stand Petrol Pump, Love Garden, Bhilwara, at present employed on the post of JTO in the office of GMTD, Bhilwara.

....APPLICANT (OA 104/0)

VERSUS

1. Union of India through Secretary to Govt. of India, Ministry of Communication, Deptt. of Telecom, Sanchar Bhawan, New Delhi.
2. Member Telecom Commission, Govt. of India, Ministry of Communication, Deptt. of Telecom, Sanchar Bhawan, New Delhi.
3. Chief General Manager Telecom, Rajasthan Circle, Jaipur.

....RESPONDENTS

.....

Mr. J.K. Kaushik, counsel for the applicant.
Mr. B.L. Bishnoi, Adv. Briefholder for
Mr. Vijay Bishnoi, counsel for the respondents.

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CORAM

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. A.P. Nagrath, Administrative Member.

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ORDER

(per Hon'ble Mr. A.P. Nagrath)

These two applications involve the same issues of facts and law which arise from not giving effect to the order of promotion dated 5.5.2000(Annexure A/3) in respect of the applicants. Thus, these are being decided by this common order.

2. Grievance of both the applicants is that though they were ordered to be promoted alongwith others by order dated

26.4.2000 (Annexure A/2) to Telecom Engineering Services (TES) Group 'B' but while others have been promoted vide letter dated 5.5.2000 (Annexure A/3), the promotion orders in respect of the applicants have not been implemented in view of letter dated 1.11.2000 Annexure A/1. The applicants have challenged this order by filing these OA with a prayer that this order be declared illegal and the same may be quashed. Their further prayer is that the respondents may be directed to give effect to their promotion to TES Group 'B' from the date their junior has been promoted as per order dated 5.5.2000 and to allow them all consequential benefits at par with such juniors.

3. The applicants submit that they had made representations against the action of the respondents but without success. They have both been separately issued charge-sheets dated 3.6.2000 alleging violation of Rule 3(i)(ii)(iii) of CCS (Conduct) Rules, 1964. These charge-sheets have culminated into imposition of penalty of 'censure' on both the applicants. They have stated that their cases were recommended by the Controlling Authority for promotion vide letter dated 22.9.2000. The respondents have decided vide impugned letter dated 1.11.2000 not to implement the orders of promotion in respect of the applicants, on the ground that promotion order of the applicants shall not be implemented in view of OM dated 14.9.92. The applicants' plea is that in their cases sealed-cover procedure is not applicable as that would apply only in the event, a disciplinary proceeding or a criminal charge is pending at the time when DPC considers the cases for promotion. The applicants' claim is that at the time they were considered by the DPC, neither a charge-sheet nor any criminal case against them was pending and thus, sealed-cover procedure had no application in their cases. They have termed the impugned order as ex facie illegal, arbitrary and discriminatory.

being violative of Articles 14, 16, 21 and 211 of the Constitution.

4. In reply, the respondents admit that the promotion orders had in fact been issued in favour of the applicants but these orders could not be implemented because the disciplinary proceedings had been contemplated against the two applicants at the time their promotion orders were issued. Their case is that, it had already been decided by the Department of Telecommunication (DOT for short) to initiate disciplinary proceeding against the applicants but due to non-receipt the clarifications from DOT regarding the appointing authority the charge-sheets could not be served upon the applicants. The charge-sheets were issued to both the applicants on 6.6.2000 and thereafter punishment of censure was also imposed on the applicant D.C. Jain vide letter dated 4/6-7-2000 and applicant V.K. Agarwal by letter dated 20-7-2000. Plea of the respondents is that in the order dated 26.4.2000 it had specifically been mentioned that the officials in the list enclosed therewith were to be promoted provided no disciplinary/vigilence case was pending or initiated against any official after issue of these promotion orders but before joining of the officials on the promotion. It has been stated that since the applicants were under cloud after issuance of the said promotion orders and prior to their actual promotion and joining on the post of TES Group 'B' their promotion could not be given effect to. Such cases are governed under Para 7 of letter dated 14.9.92 (Annexure R/3). It is submitted by the respondents that there is no illegality in the impugned letter and promotion to the applicants has rightly been refused.

5. Heard, the learned counsel for the parties and perused the documents on record as also the rule position. Learned counsel on either side, interestingly, placed reliance on the

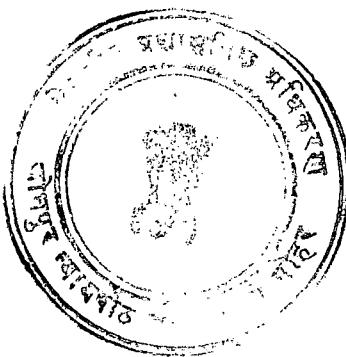
same policy letter dated 14.9.92 (Annexure R/3) issued by the DOPT, in support of their respective contentions.

6. Learned counsel for the respondents, while admitting that the promotion orders were issued on 26.4.2000 (Annexure A/2) and that the charge-sheet was issued only on 8.6.2000, stated that it had already been decided by the department to issue a charge-sheet against the applicants by the time, their promotion orders were received from DOT. This charge-sheet could not be issued as the matter in respect of disciplinary authority/appointing authority was under clarification with the DOT. The learned counsel contended that in terms of para 7 of DOPT's letter dated 14.9.92, the applicants were rightly not promoted even though DPC had recommended their promotions. His stand was that the applicants were to be considered as if their cases had been placed in a sealed-cover by the DPC. In such a situation, an employee unless completely exonerated of the charges, cannot claim promotion from the date, his juniors were promoted. The learned counsel submitted that since both the applicants were imposed with a penalty, even though of censure, they were not entitled to be actually promoted in spite of their names having been included in the promotion order dated 26.4.2000. The learned counsel submitted that the applicants' cases would now be considered by the subsequent DPC whenever held, as has also been mentioned in the impugned letter dated 1.11.2000.

7. Learned counsel for the applicant, on the other hand, countered the interpretation given to the rule by the learned counsel on the opposite side by stating that para 7 of the letter dated 14.9.92 has to be read in the context of the circumstances mentioned in para 2 as directed in the para 7 itself. The learned counsel contended that by virtue of the instructions in para 2 and para 7, the respondents' action of denying promotion to the applicants was irregular and illegal

and did not have the support of rules. The learned counsel also placed reliance on the decision of this Tribunal, Jodhpur Bench in OA No.312/99 decided on 10.11.99 in the case of Amit Srivastava Vs. U.O.I. and others and in the judgment of Hon'ble the Supreme Court in the case of Bank of India & Anr. Vs. Degala Suryanarayana reported in 1999 SCC (L&S) 1036.

8. We have perused the said letter dated 14.9.92 which has been issued as a result of review and in supersession of all the earlier instructions on the subject of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation. While issuing these instructions, the government have taken note of the judgment dated 27.8.1991 of Hon'ble the Supreme Court in U.O.I. & K.V. Jankiraman AIR 1991 SC 2010. Para 2 of this letter states as under:-



"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 servants 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 exonerate of the charges against

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him and the provisions contained in this OM will be applicable in his case also."

The question which comes up for consideration is whether the cases of the two applicants are covered by any of the circumstances mentioned in para 2. It is not the case of the respondents that after the DPC recommended the cases of the applicants for promotion and before the promotion orders were issued, any charge-sheet had been issued against them and was pending. It is also not the case of the respondents that any prosecution in a criminal charge was pending against the two applicants when DPC's recommendations were received. For the directions contained in para 7 to apply, we do find any of the conditions contained in para 2 as having been satisfied, in both the cases before us. The promotion orders were issued on 26.4.2000 while the charge-sheets were issued only on 8.6.2000. There is no provisions under the Rules that for a contemplated action, the promotion could have been withheld legally. In the case of Bank of India Vs. Degala Suryanarayana, it was observed by Hon'ble the Supreme Court that when the respondent was due for promotion in 1986-87, 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. In the facts and circumstances of the case, it was held by the Apex Court that order of punishment made in the year 1995 could not deprive the respondents of the benefit of promotion due on 1.1.86.

9. In the case of Amit Srivastava Vs. U.O.I., this Tribunal has held that the promotion of an official cannot be cancelled or kept in abeyance because of a contemplated action. The promotion order can only to be withheld, if a charge-sheet has been issued to the official before the issue

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of promotion order. In the instant case before us, the charge-sheet was issued much after the promotion order had been issued. We are of the view that action of the respondents is not covered by the instructions in para 2 and para 7 of the DOPT's letter dated 14.9.92. Consequently, the action of the respondents of withholding the promotion of these two applicants is not sustainable in law and is liable to be quashed.

10. We, therefore, allow this OA and quash the impugned order dated 1.11.2000 (Annexure A/1). The respondents are directed to promote the two applicants in terms of the promotion order dated 26.4.2000 w.e.f. the date their respective next juniors were promoted and to grant them all consequential benefits including arrears of pay. The respondents shall comply with this order within a period of three months from the date of order. No order as to costs.

lups
(A.P. Nagrath) 19/2/00
Admn. Member

AM
(A.K. Misra) 7/11/00
Judl. Member

P/d.

~~Received
8/20/67
(2pg)~~

~~Received copy
8/20/67
BAG/SHW~~

~~Part II and III submitted
in my presence 18-Sept
under the supervision of
Second Lt. [unclear] as per
order dated 13-Sept-67
N.G.M.
Section Officer [unclear]~~