

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.109/99

Friday, this the 1st day of June, 2001.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

V.M.Narayanan,
Telephone Operator,
Telephone Exchange,
Thalassery. - Applicant

By Advocate Mr E.V.Nayanar

Vs

1. The Chief General Manager,
Telecommunications,
Government of India,
Department of Telecommunications,
Kerala Circle,
Trivandrum.
2. The General Manager,
Telephones,
Government of India,
Department of Telecommunications,
Kannur. - Respondents

By Advocate Mr Shri Hari Rao, ACGSC

The application having been heard on 21.3.2001, the Tribunal on 1.6.2001 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant was working as a Telephone Operator in the Telecom Exchange, Thalassery at the material time. This O.A. is filed against A-VIII order dated 25.9.98 whereby the Chief General Manager, Telecommunications, Kerala Circle, Trivandrum, rejected the applicant's detailed representation dated 21.2.97 (A-VII) praying for grant of benefit of

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Efficiency Bar(E.B. for short) crossing from the due date of 1.7.83 as against 1.7.88, allowed as per A-II order dated 28.7.92 and allowing him the One Time Bound Promotion (O.T.B.P. for short) due in 1993. The applicant seeks the following reliefs:

- i) set aside Annexure A-IV and A-VIII and A-X orders rejecting the representations of the applicant;
- ii) declare that the applicant is entitled to be permitted to cross his E.B. with effect from 1.7.83 at the stage of pay of Rs.300/- in pre-revised scale of pay and to get his OTBP promotion in 1994 and to get all consequential benefits.
- iii) direct the respondents to give the applicant all the benefits permitting him to cross the E.B. with effect from 1.7.83 in the stage of pay of Rs.300/- in the pre-revised scale of pay and also allowing him OTBP promotion as and when due.

2. There is no serious dispute with regard to the material facts which are clearly stated in the O.A. It is not, therefore, considered necessary to narrate the facts again. Suffice it to say, that the crucial question to be answered in this O.A. are two fold: (a) whether the applicant was not eligible to cross the E.B. with effect from 1.7.83 as

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against 1.7.88, allowed by the respondents as per A-II order and (b) whether the applicant's had a right to be considered for the benefit of OTBP and if so, what is the scope thereof, vis-a-vis the disciplinary proceedings against him.

3. We have heard Mr EV Nayanar, counsel for the applicant and Mr Shri Hari Rao, counsel for the respondents.

4. Shri EV Nayanar, learned counsel for the applicant explained the facts and grounds highlighted in the application. According to the learned counsel since the entire disciplinary proceedings were quashed and the department was given only the liberty to initiate fresh disciplinary proceedings, if found necessary, as per the order of the Tribunal in O.A.581/90 dated 28.9.91, the postponement of the benefit of E.B. crossing from 1.3.83, till 1.7.88 at the pre-revised stage of Rs.300/had no justification. The mere fact that the disciplinary proceedings were permitted to be initiated *denovo*, was not adequate ground for withholding the applicants rightful due, it is urged. Counsel would highlight the fact that the applicant has been put to 'triple jeopardy' on account of denial of crossing of E.B. due on 1.7.83, imposition of reduction of pay by 3 stages for a period of 2 years without cumulative effect from 1.12.94, and the denial of OTBP benefit due in 1994—all attributable to a single misconduct. Counsel would draw our attention to the decision of the C.A.T., Bombay Bench in O.A.221/91 in S.P.Mallick Vs Union of India and another, ATR 1992(1) C.A.T.,

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149 wherein, the Tribunal relied on the principle of law laid down ~~by~~ the Chandigarh Bench of the Tribunal in the case of Parveen Kumar Aggarwal Vs Indian Council of Agricultural Research & others, 1988 (8) ATC, 496, and held that withholding of promotion on the ground of the officer concerned being under another punishment would amount to double jeopardy. It was decided that the applicant in the said case was entitled to promotion, if approved by the D.P.C. and the same should not be withheld on the ground of currency of minor penalty, states counsel for the applicant.

5. Mr Shri Hari Rao, counsel representing the respondents resists the application and opposes the further contentions putforward by the counsel for the applicant by stating that the crossing of E.B. could not be considered till the completion of the disciplinary proceedings and that the benefit of OTBP could not be given since the review D.P.C. held in that regard did not clear the applicant's case. It is further pointed out by the learned counsel for respondents that de novo disciplinary proceedings were initiated in July, 1993 and the proceedings were concluded only when the penalty order was passed on 9.11.94. Since the applicant was undergoing punishment for 2 years from 1.12.94, he could be considered for further promotion only after the expiry of the period of penalty. This was the reason why the benefit was given only in 1996, according to the counsel for respondents. It is submitted by the learned counsel for the respondents that the Chandigarh Bench's decision which forms the basis of

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the findings of the Bombay Bench's subsequent decision relied on by the applicant in this case has been in effect set aside by the Hon'ble Supreme Court in the case of K.V.Jankiraman's case, AIR 1991 SC, 2010 and that therefore the findings in that case would be of no assistance while deciding the matter on hand.

6. We have perused the records and have carefully considered the contentions putforward in support of and against the O.A. We find that the applicant was to cross the E.B. at the stage of Rs.300/- in the scale of pay of Rs.260-8-300-EB-340.. etc. with effect 1.7.83. Had he been allowed to cross the E.B., his pay as on 1.7.83 would have been Rs.340/- per month plus admissible allowances in the pre-revised scale. He would have been entitled to consequential arrears also upto the date of passing the order of E.B. crossing. But pending disciplinary proceedings stood in the way of his crossing the E.B. His pay in accordance with the recommendations of the IVth Pay Commission also was revised applying the restrictive conditions of E.B. and the benefit was thus not available to him. The original disciplinary proceedings were concluded in January, 1988. The award of penalty in pursuance thereof was however, set aside as per order of this Tribunal in O.A.581/90 dated 28.8.91. The operative part(i.e. Para 7) of the said order to which one of us (Hon'ble V.C. in his capacity as Judicial Member) is reproduced hereunder:

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"In the facts and circumstances considering that the rules of natural justice have been violated at various stages of the disciplinary proceedings by the Enquiry Officer and the disciplinary authority, we allow the application, set aside the impugned order dated 6.1.88 at Annexure-V with liberty to the respondents to initiate disciplinary proceedings de novo if they are so advised and in accordance with law."

It is clear from the above that with effect from 28.8.91, the penalty order had no validity and the applicant was entitled to cross the E.B. with effect from 1.7.83 immediately with all consequential benefits. However, respondents were given liberty to initiate fresh disciplinary proceedings, if deemed necessary and in accordance with law. For nearly one year matters were allowed to rest. On 26.7.92, A-II order allowing the applicant to cross the E.B. with effect from 1.7.88 instead of 1.7.83 was passed. This, we find led to the filing of O.A.1255/93. A Single Bench of this Tribunal vide order dated 18.8.93 held as follows:

"I am of the view that the respondents are bound to complete the disciplinary proceedings as early as possible without any further delay. I am also not satisfied with the reasons given in the impugned orders for denying the benefit of crossing of efficiency bar from 1.7.83 particularly when the second respondent has advised to pass orders

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permitting the applicant to cross efficiency bar with retrospective effect. However, since Annexure-IX representation is pending before the second respondent, I am not giving any final opinion about the legality of the orders at Annexure-V and Annexure-VIII."

Accordingly, the applicant's representation (A-IX of that O.A.) was ordered to be considered and disposed of within a period of three months. The disciplinary proceedings recommenced afresh were also ordered to be concluded expeditiously. From A-VI dated 15.11.94, we find that the applicant's representation dated 5.7.93 ordered to be considered had been rejected allegedly in the light of a Review DPC's findings. The disciplinary proceedings initiated afresh were concluded eventually sustaining the imposition of penalty of reduction of pay by 3 stages for 2 years without cumulative effect. A-VII representation dated 21.12.97 was for the purpose of removal of anomaly with regard to the applicant's E.B. crossing with effect from 1.7.83 and considering him for OTBP promotion with effect from 1993.

7. In our considered opinion, A-II order dated 26.7.92 which in effect sought to postpone the E.B. crossing date from 1.7.83 to 1.7.88 is erroneous. The applicant ought to have been allowed the benefit from 1.7.83 since in any case, no fresh disciplinary proceedings were in progress as on 26.7.92. There was no difficulty, legally or administrative,

in this regard in view of the findings in the C.A.T'S order dated 28.8.91 in O.A.581/90. The respondents could have proceeded against the applicant for the alleged misconduct and passed appropriate orders thereon expeditiously. From the order dated 28.7.92 cited as A-II, it would appear that the applicant was allowed the benefit of E.B. crossing from ~~the~~ 6.1.88 as against 1.7.83 which was actually ~~the~~ due date. It should have been with effect from 1.7.83 itself in the first instance. This would be the natural consequence of the Tribunal's order cited above i.e. O.A.581/90. In O.A.1255/93, the same principle was accepted and highlighted despite the direction to the department to complete the disciplinary proceedings initiated against the applicant at an early date. The cumulative effect of the two orders was that the applicant ought to have been given the benefit of E.B. crossing with effect 1.7.83 with all the consequential benefits upto the date of issue of the fresh memorandum of charges i.e. 5.7.93. It is important to note that from 1.7.83 to 6.7.88, the applicant was denied the benefit because of inexplicable postponement. Thus, the applicant suffered the punishment for a period of over 5 years in the first instance, i.e. from 1983 to 1988. Again, with effect from 1.12.94, his pay was reduced by 3 stages from Rs.1360/- for 2 years. Further, he was not considered for the OTBP due in 1993 or thereabout. All these punishments are due to the misconduct committed in the year 1980. In our view, there is no justification for subjecting the applicant to a three fold jeopardy on account of the same misconduct. It is nobody's

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case that the disciplinary proceedings were unsustainable. But in view of facts covered in the foregoing paragraphs, we are compelled to draw the following conclusions: The penalty that the applicant was subjected to suffer because of the denial of the benefit of E.B. crossing from 1.7.83 to 6.7.88 is unsustainable particularly in view of the fact that the applicant's plea in this regard received approval from this Tribunal in the 2 orders in O.A.581/90 and O.A.1255/93. The applicant ought to have been allowed the benefit of E.B. crossing with effect from 1.7.83 as well as the consequential benefits arising out of such action until the disciplinary proceedings were recommenced in accordance with the law and rules in force. Such consequential benefits would include not only annual increments in the appropriate scale of pay, but also promotions under the extant rules, regulations and orders. Having regard to the fact that de novo disciplinary proceedings were in full swing with effect from 5.7.93 the applicant's eligibility for grant of OTBP benefit could be considered only upto 5.7.93. The Review D.P.C. that met on 29.1.94 and 15.2.95 found the applicant unsuitable. This position, we find, is unassailable in view of the Supreme Court's judgement in K.V.Janakiraman's case reported in AIR 1991 SC, 2010.

8. Since the Supreme Court's judgement in K.V.Janakiraman's in effect invalidates the principle laid down by the C.A.T., Bombay Bench which in turn is based on the earlier decision of the C.A.T., Chandigarh Bench, the case law

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relied on by the applicant's counsel and referred to in Para 3 above, would be of no assistance to him. The applicant was granted promotion soon after the expiry of the penalty period and hence there was no question of granting any promotion between 5.7.93 being the date of proper Memo of Charge and 30.11.96 being the date of expiry of the penalty period. However, the applicant's A-VII representation dated 21.2.97 with regard to removal of anomaly concerning E.B. crossing due on 1.7.83 has been unfairly rejected by the first respondent as per impugned order A-VIII dated 25.9.98. The impugned order in A-VIII to that extent is liable to be set aside. On the facts and circumstances of the case, we grant the following reliefs:

Annexure-VIII is set aside in so far as it rejects the applicant's eligibility to cross E.B. with effect from 1.7.1983. The applicant shall be allowed to cross E.B. at the appropriate stage of the pre-revised scale with effect from 1.7.83 and shall be granted all the consequential benefits flowing out of it including revision of pay and annual increments and promotions of any kind, subject to the relevant rules and regulations and orders in that regard. The respondents shall objectively go through the records and give well reasoned findings with regard to the applicant's eligibility for career advancement otherwise due to him during the period between 1.7.1983 and 4.7.1993. A comprehensive well reasoned

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communication giving effect to the above directions shall be issued and the consequential benefits including monetary benefits made available to the applicant at an early date and, in any case, not later than four months from the date of receipt of copy of this order.

9. The O.A. is disposed of as above. There will be no order as to costs.

Dated, the 1st June, 2001.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-II: True copy of order No.E20/TOS/59 dated 28.7.92 of the General Manager, Telecom District, Kannur.
2. A-IV: True copy of order No.DGM/CE/VMN/8 dated 8.9.95 of the General Manager, Telecom District, Kannur.
3. A-VII: True copy of representation dated 21.2.97 of the applicant to the 1st respondent.
4. A-VIII: True copy of order No.STAP-140/96 dated 25.9.98 of the Chief General Manager, Telecommunications, Kerala Circle, Trivandrum.
5. A-IX: True copy of letter No.E.48/OTBP/93-94/10 dated 4.2.94 of the Asst. Engineer, Tellichery.
6. A-X: True copy of letter No.E.48/OTBP/93-95/28 dated 20.4.95 of the Sub Divisional Engineer, Thalassery.