

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No. 63/87.

V.K. Venkata Raghavan,
C-1/3, P. & T. Colony,
Vakola, Santaxruz (E),
Bombay - 400 029.

... Applicant.

V/s.

- 1) Union of India, through
the Secretary, Ministry of Communication,
Door Sanchar Bhawan,
New Delhi 110 001.
- 2) The Chairman,
Telecom Board,
Dept. of Telecommunication,
Door Sanchar Bhawan,
New Delhi 110 001.
- 3) The General Manager,
Telecom,
Maharashtra Telecom Circle,
2nd Floor, C.P.O.,
Bombay 400 001.
- 4) The General Manager,
Telephones, Bombay Telephones,
Mahanagar Telephone Nigam, Ltd.,
Bombay 400 005.
- 5) Superintendent of Police,
Central Beareau of Investigations,
5, Tanna Building,
Wood House Road,
Bombay.

... Respondents.

Coram:- Hon'ble Member, Shri J.G. Rajadhyaksha
Hon'ble Member, Shri M.B. Mujumdar.

JUDGEMENT:

Date: 25-8-1987.

The applicant, who is working as Assistant Engineer, Works Planning II in the Office of the Deputy General Manager (Cable) (Planning), Bombay Telephones, Mahanagar Telephone Nigam Ltd. has filed this application under section 19 of the Administrative Tribunal's Act, 1985 claiming mainly the following reliefs:-

- i) The respondents may be directed that the applicant's officiating promotion over his juniors is given effect to with

immediate effect.

- ii) The respondents may be directed to stop issuing any chargesheet against the applicant, if the incident had come to notice prior to one year and the incident does not involve any forgery or misappropriation, etc.
- iii) The respondents may be directed that the pending issue (i.e. Vigilance case) should not be considered at the ensuing Departmental Promotion Committee.
- iv) The respondents may be directed to pay damages of Rs.10 lakhs to the applicant in view of the humiliation undergone by him for 10 years, damage to his elder son's education, damage to the applicant's health, his wife becoming totally deaf, mental torture to the applicant and his family, etc.

2. We have heard the applicant in person and Shri P.M. Pradhan, the learned Advocate for the respondents. We have also considered the relevant record and the written arguments submitted by the applicant.

3. It was submitted by the applicant that 20 to 25 of his juniors are given ad hoc promotion as Divisional Engineer Group 'A', but the promotion is denied to him because of investigation of same vigilance case said to be contemplated against him.

4. In this connection he has referred to a letter dated 25th August, 1986 sent to the Additional General Manager (Personnel) by the Assistant General Manager Admn. III Telephone Nigam Limited. The relevant portion of the letter reads as follows:

"Kindly refer to your letter cited above it is intimated to Shri V.K.V. Raghvan, Asstt. Engineer has not

given promotion in I.T.S. Gr.'A' as the vigilance case is contemplated against him intimated by Dy. G.M. (A), Telecom Maharashtra Circle vide D.O. No./T/Vig./Opt./DMT/P dt. 8.5.1986. From the above letter it is clear that the applicant was not given promotion in I.T.S. Gr.'A' which is equivalent to Divisional Engineer Group 'A', because a vigilance case was contemplated against him.

5. In this respect Mr. Pradhan has relied on a telegram from the Deputy Director General (Vigilance) of the Department of Telecommunications, New Delhi dated 22nd June, 1987. The telegram shows that the Central Vigilance Commission have advised major penalty proceedings against the applicant and that a charge sheet is under preparation, and on that account a vigilance clearance cannot be given.

6. Hence we have to consider whether the respondents were justified in denying promotion to the applicant on ad hoc basis because of the pendency of the investigation by the Central Vigilance Commission.

7. Mr. Pradhan has relied on the instructions given in the letter dt. 13.12.1977 from the Deputy Director General (Vigilance). The first part of the letter is not relevant for our purpose. But the second paragraph deserves to be quoted as it is:

" A question has been raised whether a vigilance/disciplinary case should be deemed to be pending against an officer whose conduct is under investigation. The matter has been considered and it is clarified that in respect of an officer whose conduct is under investigation, a vigilance/disciplinary case should be deemed to be pending against him only when the competent authority after the conclusion of the investigation and on consideration of the result thereof, a either by the CBI or the Department, has formed the opinion that

a charge-sheet may be issued to him on specific imputations where departmental action is contemplated, or that sanction for prosecution may be accorded where prosecution is proposed. Until the competent authority arrives at such a decision the officer may be treated on par with other in the matter of grant of vigilance clearance for promotion, confirmation etc." But, we find that the competent authority or the department had not taken any decision, at least till June, 1987, either to file a charge sheet against the applicant or to start departmental proceedings against him. In view of this position it was incumbent upon the respondents to treat the applicant on par with other Officers so far as his ad hoc promotion was considered.

8. In this connection it will be relevant to refer to a decision of a Full Bench of this Tribunal in Ch. Venkata Reddy V/s. Union o f India (1987) 3 A.T.C. 174. Though the decision was regarding the sealed cover procedure, one of the points which was required to be considered was when the sealed cover procedure should be followed. In para 39, the Full Bench has held that consideration for promotion cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceeding against an official. Though that finding is given regarding regular promotion it will apply with more force to a promotion to be given on ad hoc basis.

9. Hence we are of the opinion that not considering the applicant for ad hoc promotion merely because a vigilance case was contemplated against him was improper and bad in law. We are informed that after the application was filed, the DPC for regular promotions was held in January or February, 1987, but at that time the applicant was not considered. We do not know why he was not considered. If it is a fact that the applicant was not considered because of the pendency

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of the vigilance case, then that would be improper and incorrect and contrary both to the letter and spirit of the letter dt. 13.12.1977 from the DDG (Vig) of the Department; ^{and} to the decision of this Tribunal referred to above.

10. As regards the other prayers, we do not think that the applicant has a good case. As already pointed out the applicant has requested that the respondents should be prevented from submitting any charge sheet against him. We cannot give such a ~~flat~~ direction to the respondents.

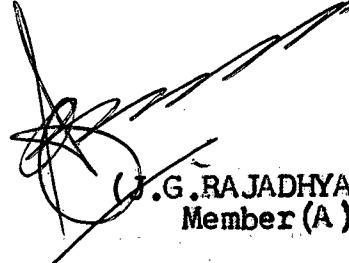
11. The applicant has also requested for compensation of Rs.10 lakhs on certain grounds which we have enumerated earlier. We do not think that this Tribunal has jurisdiction to award compensation in this manner. It is possible that the applicant might have certain grievances against the respondents, but he had taken action about these grievances at appropriate times. We may point out that the applicant had filed three Writ Petitions against respondents and all of them were disposed of by giving appropriate directions. Hence the prayer of the applicant for granting compensation to him is mis-conceived. With this we pass the following orders:

O R D E R

- 1) The respondents shall consider the case of the applicant for promotion as Divisional Engineer Group 'A' on ad hoc basis, on the basis of his seniority, by ignoring the vigilance case which was then said to be contemplated against him and he should be promoted on ad hoc basis, if not otherwise found unfit, from the date his next junior was promoted with all consequential benefits.

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- 2) If the applicant was not considered by the DPC held in January or February, 1987 for promotion to the post of Divisional Engineer Group 'A', on the ground that vigilance case was contemplated against him, then the respondents shall convene a special DPC and consider his case by ignoring the ~~xx~~ contention that a vigilance case was contemplated against him at that time.
- 3) The rest of the prayers made by the applicant in para.7 of the application are rejected.
- 4) Parties to bear their own costs.


(J.G. RAJADHYAKSHA)

Member (A)


(M.B. MUJUMDAR)

Member (J)