

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.NO. 490/86

Shri S.B.Mestry,  
O/O the Asstt.Engineer (Extl.II),  
Matunga Sub-Division (AMT-II),  
Mahanagar Telephone Nigam Ltd.,  
Wadala Telephone Exchange Bldg.,  
Bombay 400 014.

Applicant

V/S.

Union of India  
through  
The Under Secretary,  
Ministry of Communication,  
New Delhi.

AND 3 OTHERS.

Respondents

CORAM: Hon'ble Vice Chairman Shri B.C.Gadgil  
Hon'ble Member (A) Shri P.S.Chaudhuri

Appearances :

Mr.D.V.Gangal  
Advocate  
for the Applicant

Mr.S.R.Atre (For Mr.P.M.Pradhan)  
Advocate  
for the Respondents

ORAL JUDGMENT

Dated: 5.9.1988

(PER: B.C.Gadgil, Vice Chairman)

The applicant is working with the Bombay Telephones as a Lower Division Clerk. He was suspended on 12.5.1976 as he was involved in some criminal offences which were under investigation. Cases nos. CC/738/P/78 and CC No. 739/P/78 were filed against the applicant under various sections such as 468, 477, 471, 417 etc. of the Indian Penal Code. These cases were heard and decided by the Metropolitan Magistrate, Bombay on 21.2.1985. The applicant has been acquitted. On the basis of this acquittal, the suspension was revoked. On 1.11.1985 applicant joined duties. The period during suspension was treated as on duty and applicant has been paid all the arrears of salary for the suspension period.

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2. The only grievance of the applicant that now remains is about the promotion to the post of Upper Division Clerk. A DPC was held in 1977 for considering Lower Division Clerks for the promotion to the post of Upper Division Clerks. The applicant was not promoted to that post though his juniors have been promoted. During the course of hearing we are told that in 1977 and 1978 the applicant was considered for the post of Upper Division Clerk and that the result has been kept in a sealed cover. The applicant's contention is that in view of the acquittal of the applicant and subsequent incidental orders about payment of full salary, the review DPC be held to open the sealed cover and appropriate action on the recommendations (contained in that cover) should be taken. Mr. Gangal also argued that in case the contents of the sealed cover show that the applicant was not found fit it would be necessary for that review DPC to find out as to on what date the applicant would be eligible for the post of Upper Division Clerk. He also submitted that in this process it would be necessary that the review DPC should not take into account the suspension of the applicant, the criminal prosecution, and the confidential report based thereon. In our opinion, this prayer of Mr. Gangal is quite legal, and it would be very difficult for Mr. Atre to object to the order which we intend to pass.

3. The application partly succeeds. The respondents are directed to hold a review DPC in which the sealed covers of 1977 and 1978 pertaining to the applicant and maintained by the earlier DPC should be opened. In case the contents of the sealed covers indicate that the applicant deserves to be promoted, the respondents should pass appropriate order promoting the applicant from the date his juniors have been promoted. It is true that Mr. Atre submitted that the Government's orders are that

in case where the sealed cover procedure is followed and subsequently an employee is exonerated, the employee will be entitled to a promotion from an early date but he would not get his salary during the intervening period. However, we are not inclined to accept this submission. Thus, the respondents should pay all the salary and allowances depending upon that promotion. In case the applicant has not been recommended by the above mentioned DPC for the promotion as UDC, the said review DPC will consider the case of the applicant for the promotion to the post of UDC and if found fit the date from which the applicant should be promoted. In the latter case, the review DPC should not take into account the fact that the applicant was under suspension or that he was criminally prosecuted. Similarly, the confidential report passed during the period of suspension also should not be taken into account. It is needless to say that appropriate orders on the basis of this review DPC would be passed within three months from today. Parties to bear their own costs.



(B.C. Gadgil)  
Vice Chairman



(P.S. Chaudhuri)  
Member (A)