

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 735 OF 1996.

Date of Decision : 7.4.97.

Shri S. C. Verma Petitioner.

Shri G. K. Masand Advocate for the Petitioner.

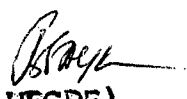
VERSUS

Union Of India & Others Respondents.

Shri V. S. Masurkar Advocate for the Respondents.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

- (i) Whether it needs to be circulated to other Benches of the Tribunal ?
- (ii) To be referred to the Reporter or not ?


(B. S. HEGDE)
MEMBER (J).

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 735 OF 1996.

Dated this 7th, the Monday day of April, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Shri S. C. Verma,
Executive Engineer (E),
M.T.N.L.,
41/A, 2nd. floor,
Sanchar Bhavan,
B.L. Bajaj Marg,
Andheri (East),
Bombay - 400 093.

... Applicant

(By Advocate Shri G. K. Masand)

VERSUS

1. Union Of India through
The Secretary,
Ministry of Communications,
Department of Telecommunication,
Sanchar Bhavan,
Parliament Street,
New Delhi - 110 001.
2. The Chairman,
Telecom Commission,
Ministry of Telecommunication,
Sanchar Bhavan, Parliament Street,
New Delhi - 110 001.
3. Sr. Deputy Director General,
(Electrical),
Ministry of Communication,
Sanchar Bhavan,
Parliament Street,
New Delhi - 110 001.
4. Chief Engineer (Elec.),
Department of Telecommunication,
Bombay.

... Respondents.

(By Advocate Shri V. S. Masurkar).

: ORDER :

! PER.: SHRI B. S. HEGDE, MEMBER (J). !

Heard Shri G. K. Masand for the applicant and
Shri V. S. Masurkar for the respondents.

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2. In this O.A., the applicant has sought direction to the respondents to consider him for the post of Superintending Engineer (E) by holding a review D.P.C. of the D.P.C. held in the year 1992 or in the alternative, to direct the respondents to hold review D.P.C. meeting from the year 1994 onwards to consider his claim for promotion to the post of Superintending Engineer (E) on adhoc basis.

3. The brief facts are - the applicant is a graduate in Electrical Engineering from Delhi College of Engineering, New Delhi and initially, he joined the B.H.E.L. as Engineer Trainee and also appeared for the All India Engineering Services Examination conducted by the U.P.S.C. in the year 1977 and he joined the Indian P & T Department in March 1979. After six months training during probation period in Delhi, he was transferred to Bombay in October 1979 to work in P & T Electrical Circle at Bombay. On having been promoted to the post of Executive Engineer, he was again retransferred to Delhi as Surveyor of Works (E) in P & T Electrical Circle, in October 1982 and in June 1983, he was again posted as Surveyor of Works (E) in the office of the Chief Engineer (E) at New Delhi and he worked till 1988. Thereafter, he was transferred to Bhopal in June 1988 to work as Executive Engineer (E). In the year 1990, the applicant was again transferred to Calcutta to work as Executive Engineer (E), Telecom Electrical Division-II. Although he was not due for transfer in 1990 and it was in the mid of the academic session of his school going children,

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he obeyed the transfer order and joined at Calcutta.

4. As per the recruitment rules, the Executive Engineers with five years regular service in the grade are eligible to be considered for promotion to the grade of Superintending Engineer (E). The seniority in the grade of Executive Engineer had to be revised due to the C.A.T. decision in O.A. No. 113/89 | G.R. Pandey V/s. Union Of India & Others |. Till the senior officer was not regularised, it was not possible to hold a D.P.C. for regular promotion to the grade of Superintending Engineer but at the same time, it is not in public interest to keep the posts vacant, therefore, the department took initiative in appointing eligible engineers on adhoc basis.

5. The respondents in their reply submitted that the prayer made by the applicant is not sustainable as his grievance^{is} for cadre promotion either from 1992 or 1994 onwards and the applicant has filed this O.A. in 1996, which is clearly barred by time. Further, the contention of the respondents is, many of the applicant's juniors have been promoted on adhoc basis but the applicant has not been considered only because of the pending enquiry against him. The respondents in their reply further contended that since the affected parties have not been impleaded in the O.A., the application is therefore required to be dismissed on account of non-joinder of necessary parties. It is further stated that the applicant, while working as an Executive Engineer (E), Telecom Electrical Division, Calcutta,

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during September 1990 to June 1991, he committed serious irregularities in the award of contracts and in local purchase of stores. A Chargesheet was issued against the applicant on 28.04.1993, against which he made representation but no reply has been sent by the respondents. The only ground taken by the respondents is, due to non-completion of the departmental enquiry, the applicant could not be considered for promotion either on regular or adhoc basis. It is further submitted that the disciplinary proceedings are in the final stages of conclusion. The Inquiry Officer submitted his report in the year January 1996 and immediately thereafter, the applicant made a representation on 08.02.1996 but no final decision has been taken by the respondents till now. The stand of the department is that the representation of the applicant is under consideration by the Appointing Authority and the final decision is expected soon. It is conceded in the reply that the applicant is though eligible for selection for promotion to the post of Superintending Engineer, however, due to pending of major penalty proceedings against him since 1993, though the promotion of others have been considered, he could not be considered for adhoc-promotion.

6. The learned counsel for the applicant, during the course of hearing brought to our notice the O.M. of the Department of Personnel & Training dated 14.09.1992 in which it specifically states that adhoc promotion can be given to the charged officer after expiry of two years from the date of initiation of inquiry. The admitted facts are, a charge-sheet was

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issued against the applicant in the year 1993 and as per this O.M., the applicant is eligible to be considered for the post of Superintending Engineer on adhoc basis in the year 1995. Nevertheless, the applicant has not been considered alongwith others for the post of Superintending Engineer (E) on adhoc basis. The only reason given by the respondents is that the Vigilance Branch has not given the clearance, as seen from letter dated 29.03.1996 which reads as below :

"A copy of the inquiry report was furnished to Shri S.C. Verma and his representation against the findings of the Inquiring Authority is under the consideration of the competent disciplinary authority. The disciplinary case is, thus, in the final stages and is likely to come to a conclusion in the next few months.

In view of the position stated in the preceding paragraph, the promotion of Shri S.C. Verma at this stage may not be in the public interest."

On perusal of the reply of the respondents, we find the narration made by the respondents is nothing but repetition and no convincing reasons have been given why the applicant could not be considered alongwith others, though he was senior among the Executive Engineers who have been considered for the post of Superintending Engineer on adhoc-basis. Even in the D.P.C. held on 14.5.1996 other candidates have been considered except the applicant. Not only his juniors have been appointed on adhoc basis right from 1992 onwards but the adhoc appointment has been extended by the competent authority under the plea that till a regular vacancy is filled up and the seniority dispute

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is settled, they are allowed to continue in the higher grade. Though a recommendation has been made by the departmental heads to consider his case for promotion to the post of Superintending Engineer, the same has been turned down merely on the pretext of pending case against him and that the Vigilance Branch has not cleared his case for consideration to the post of Superintending Engineer. It is stated in the O.A. that the reason for issuing the charge-sheet against the applicant is that he sent an advance copy of the representation to the Chief Engineer (E) and the original copy was sent through the department, which the concerned Superintending Engineer took offence against him and returned the original representation. Thereafter, he started enmity towards the applicant and later created documents and issued a charge-sheet against him for the alleged lapse of irregularities in the award of contracts and local purchase of stores, etc. On perusal of the D.P.C. records and the original record in which the matter has been dealt with, we are satisfied that the respondents have not considered his case even for adhoc promotion and over-looked his case both in the year 1994 and 1996, which is otherwise entitled to be considered alongwith his juniors. In view of the D.O.P & T. O.M. dated 14.09.1992. Although the applicant had given his reply to the enquiry report more than a year back, the respondents did not take any effective steps in giving their final verdicts, thereby, the interest of the applicant has been greatly prejudiced.

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7. For the reasons stated above, we are of the opinion that there is no justification on the part of the respondents not to consider the applicant for the post of Superintending Engineer merely on the pretext of pending case against him and not on any other ground. Accordingly, we hereby direct the respondents to consider the applicant for the post of Superintending Engineer on adhoc-basis strictly in terms of D.O.P.&T. Memo dated 8/14.09.1992 either by holding a review D.P.C. or regular D.P.C. and pass a speaking order within a period of two months from the date of receipt of a copy of this order.

8. The O.A. is disposed of with the above directions. There will be no order as to costs.

M R Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A).

B S Hegde
(B. S. HEGDE)
MEMBER (J).