

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. : 1034 of 1996.

Dated this Thursday, the 31st day of May, 2001.

B. R. Mangalur, Applicant.

Shri S. P. Kulkarni, Advocate for the
Applicants.

VERSUS

Union of India & Others, Respondents.

Shri S. S. Karkera, Advocate for the
Respondents.

CORAM : Hon'ble Shri Justice B. Dikshit, Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

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

B.N.B.

(B.N. BAHADUR)
MEMBER (A).

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Hon'ble Shri B. N. Bahadur, Member (A).

B. R. Mangalur
J.T.O. ST.No. 15178,
Mahanagar Telephone Nigam Ltd.,
Mumbai.

...

Applicant.

(By Advocate Shri S. P. Kulkarni)

VERSUS

1. Union of India through
The Divisional Engineer,
E-10-B, Vile Parle - 3,
Mahanagar Telephone Nigam Ltd.,
Vile Parle Telephone Exchange,
Nanda Patkar Road,
Mumbai - 400 057.
2. The Deputy General Manager,
Tech.-I (West-I),
Mahanagar Telephone Nigam Ltd.,
Vile Parle Telephone Exchange,
Mumbai - 400 057.
3. Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House,
Mumbai - 400 028.
4. Deputy General Manager (COF),
Maharashtra Telecom Circle,
2nd Floor, Telephone House,
V.S. Marg, Dadar (West),
Mumbai - 400 028.
5. Union of India,
Department of Telecommunication,
Through the Chairman,
Telecom Commission,
Sanchar Bhavan,
New Delhi - 110 001.

... Respondents

(By Advocate Shri S. S. Karkera)

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OPEN COURT ORDER

PER : Shri B. N. Bahadur, Member (A).

This is an application made by Shri B. R. Mangalur, who comes up to the Tribunal seeking the relief as follows :

Order No. DMX-611/E-10-B/V-3/95-96 dated 01.03.1996 issued by Divisional Engineer E-10-N-VPL-3 at Exh. A to this O.A. be quashed and or set aside.

The Order No. DCM/COF/Appeal/MTNL/BRM/JTO/15178 dated 24.09.1996 issued by the Deputy General Manager (COF), Mahanagar Telecom Circle, Mumbai, be quashed and set aside.

The Respondents be ordered to give applicant lateral promotion with effect from 21.03.1992 and vertical promotion with effect from 3/6/1994 as Sub-Divisional Engineer and also all other consequential benefits.

To grant such other further reliefs as may be just and expedient in the facts and circumstances of this case including costs of this application."

2. The core facts of the case as brought out by Applicant are that he was working as Junior Telecom Officer (J.T.O. for short) in Mumbai Telephones, now M.T.N.L. and was issued a charge-sheet by the Divisional Engineer dated 31.07.1992 (page 43) making out certain charges regarding unauthorised movement of scrapped P.V.C. cables with dishonest intention. An enquiry was held and consequent upon the said enquiry, the Applicant was imposed with the penalty of withholding of two increments, with cumulative effect. This order is dated 19.09.1994 (page 104). The Applicant preferred an Appeal, which came to be allowed by the Appellate Order dated 01.11.1995 (page 128). In view of the



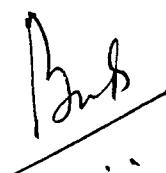
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fact that the order was issued by an authority which did not have the legal competence to do so, the matter was remanded and finally a fresh order was made dated 01.03.1996 (exhibit A-1) imposing the same penalty viz. withholding of two increments with cumulative effect. Importantly, this order was to take effect from the date on which the next increment fell due after this order. The Applicant has taken various grounds, both in regard to the relief sought for quashing of these orders of penalty as also in regard to the promotion to the post of S.D.E., which he claims should be allowed from 03.06.1994. The grounds taken were argued by the Learned Counsel for Applicant and these will be brought out ahead.

3. The Respondents have filed a Written Statement of reply, where the claims of the Applicant have been resisted, and the defence taken that a detailed enquiry with proper procedure has been conducted. The Inquiry Officer has held the charge to be proved and the Disciplinary Authority has also considered the matter and has imposed the penalty correctly. The facts of the progress of the enquiry and the developments relating to the order of Appellate Authority have then been described in detail in the Written Statement.

4. We have seen the records in the case and have heard the Learned Counsel on both sides.

5. Learned Counsel for the Applicant, Shri S. P. Kulkarni, argued the case in detail, first making the point that the



evidence that is available in the case clearly shows that the Applicant was not at the scene, when the crucial truck was illegally loaded and allowed to proceed to the gate before being intercepted. He repeatedly made the point that the Applicant had gone to the office of the D.M.X. to secure permission to allow the other two trucks to leave, since the appointed hour had elapsed. He was not aware of the third truck and all that has been alleged had been done behind his back. Similarly, the Learned Counsel drew our attention, at some length, to other portions of evidence on record, to make the point that wrong conclusions have been drawn by the Disciplinary Authority. He went over the statement of other witnesses like Mr. Rai, and portions of the Enquiry Officer's report to make this point. He also made the point that circumstantial evidence was depended upon by the Enquiry Officer, to arrive at conclusions, and given the facts and circumstances of the case, this was not justifiable on the part of the Enquiry Officer. Shri Kulkarni delved at length into the evidence and tried to make the point that this case was, in fact, a case of no evidence.

6. The Learned Counsel, Shri Kulkarni, also argued on the point regarding the delay in the promotion of the Applicant in view of the two year difference in the operation of penalty given the circumstances needing issue of fresh order. He made the point that issue of orders by non-competent authority has operated against the interest of the Applicant and he was made to suffer in regard to promotion for a fault admittedly that of the Respondents.



7. Arguing the case on behalf of the Respondents, their Learned Counsel, Shri S. S. Karkera, first made the point that the case was definitely not one of "no evidence". Copious evidence have been drawn up in the process of enquiry, and the circumstantial evidence was very clear. He also referred to the portions of the evidence to make the point that the conclusion drawn by the Inquiry Officer were justified and that it was important to bear in mind that the standard of proof required in a departmental enquiry was one of preponderance of probability, and not proof beyond doubt.

8. Learned Counsel for Respondents, further took the position of settled law in regard to the limitation of Courts and Tribunals in reassessing evidence and referred to case law on this point to seek support to his argument. The case cited by him are as follows :

- (i) Govt. of Tamil Nadu V/s. S. Velraj reported in 1997 (1) SC SLJ 226.
- (ii) Union of India & 2 Others V/s. B. K. Srivastava reported in 1998 (1) ATJ 166.
- (iii) State of Rajasthan V/s. M. C. Saxena reported in 1998 (2) ATJ 163.

9. On the point of delay in promotion, Shri Karkera took a technical stand that even if it was for the fault of an officer under the Respondents that orders of penalty by the non competent authority came to be issued, the fact remains that the final order of penalty was issued on 01.03.1996 and hence it has to be construed that the Applicant could not be considered for promotion for a period of two years after this date (01.03.1996).

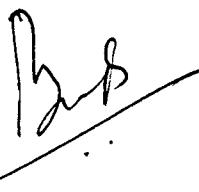


On query by us on delay, he informed that after the D.P.C. of 1994, the next D.P.C. on the basis of which juniors were promoted, came to be held in 1998 and on those basis, promotion orders were issued through which juniors of the Applicant also came to be promoted.

10. We have carefully gone through all aspect of merits of the case vis-a-vis the relief sought for the quashing of the order of penalty. We have considered the detailed arguments made on both sides and papers on record for facts and grounds, etc., and are convinced that this cannot be a basis of no evidence. A finding on the basis of circumstantial evidence has been discussed, and nothing was brought to our notice by which we can conclude that this evidence had no basis. There is justification in the conclusion drawn by the Inquiry Officer and the decisions by the Disciplinary Authority and it cannot be said that the Applicant has been booked without any evidence. Facts and assessment have been adequately discussed in the Enquiry Officer's report and the Written Statement filed by Respondents, and we do not find it necessary to discuss this in any further detail. In regard to reassessment of the evidence, as was indeed sought on behalf of the Applicant, the law in the matter is well and clearly settled by the Hon'ble Apex Court and we cannot in any manner proceed to reassess evidence or take a view as if we were an Appellate authority. Thus, on the relief sought for quashing of the order of penalty by the Disciplinary Authority/Appellate Authority, we are convinced that no relief can be provided to the Applicant.



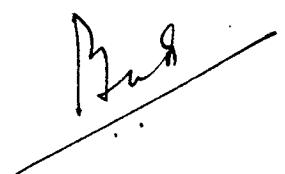
11. In regard to the other relief sought to the effect that the promotion should be made w.e.f. 1994, we have gone into the matter at some length with the assistance of the Learned Counsel on both sides during arguments and have also gone through all the facts available on records. Normally, it is true that the period during which promotion cannot be granted to a person under penalty is taken from the date of issue of the order. In fact, that was the argument of the Learned Counsel for Respondents through which he stated that this two years period in the present case shall operate from 1996. However, the peculiar position in this case stares us in our face in that the first order imposing penalty, made on 19.09.1994, was admitted and clearly an ineffective order, as it was made by a non-competent authority. Here is a case of a mistake made by an officer of the Respondents. What is peculiar here is that, because of this mistake of Respondents leading to the officer having to go in appeal, there is a lapse of two years before the further order came to be issued. The mistake made by the officer of Respondent has come to affect the applicant in an adverse manner. In fact, as was observed during arguments, if the applicant had not at all gone in appeal against the defective order, he would have become eligible for consideration for promotion in 1996 itself. Can we allow such a kind of state of affairs merely on the technical argument that the period of two years will operate from the date of (second) order. It is obvious and need not be laboured that this kind of action would be unfair to the Applicant. We, therefore, hold that it is fully justified that the Applicant should be considered eligible for promotion two years after the



date of first order, namely 19.09.1994 or ofcourse from the date on which his first junior was promoted, whichever is later. We are informed that the next D.P.C. was held in 1998, however, there are no details either on record or with the Learned Counsel for Respondents, as the records are in New Delhi. Be that as it may, we have no doubt that it would be fully justified to give directions to the Respondents to consider the applicant's case for promotion, if not already considered by the D.P.C. from 19.09.1996 or for promotion from the date on which his next junior was promoted.

12. In view of the discussions above, this O.A. is allowed to the extent, and in terms of the following orders :

- (i) The prayers made at para 8 (a) and 8 (aa) for quashing the penalty order dated 01.03.1996 and order in appeal dated 24.09.1996 are hereby rejected.
- (ii) In regard to the relief sought for promotion, the Respondents are hereby directed to check their records and in case the Applicant's case was considered in 1998 D.P.C. and he was found fit, he shall be promoted from the date of promotion of his first junior. In case the Applicant's case was not considered at the D.P.C., a D.P.C. shall be held, within three months, and the case of the Applicant considered as if in the D.P.C. of 1998 and should the Applicant be found fit, promotion and all



other benefits, including arrears of pay and allowances, shall be granted with effect from the date of promotion of his first junior. (No interest on arrears).

(iii) Full implementation of this order will be made within four months from the date of receipt of a copy of this order.

(iv) No order as to costs.

B. Bahadur
(B. N. BAHADUR)
MEMBER (A).

B. Dikshit
(B. DIKSHIT)
VICE-CHAIRMAN

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