CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1/99 & 396/99.
DATED THE 29TH DAY OF SEPTEMBER, 1999.

CORAM:HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN.
HON'BLE SHRI B.N.BAHADUR, MEMBER(A).

Shri Riaz Ahmed Khan,
Sub-Divisional Engineer.
(Staff No.17711), M.T.N.L.,
(Ext.III), Chembur,
Mumbai - 400 072.
Residing at:New Vijay Cinema Bldg,
TES Group B (Offg.),
3rd Floor, Kurla, P.O.Kurla,
Mumbai - 400 072. ... Applicant.

By Advocate Shri S.P.Kulkarni

v/s.

Union of India
Through
1. The Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House,
V.S.Marg, Prabhadevi,
Dadar(West) At P.O.,
Mumbai - 400 028.

2. The Member(Services)
Telecom Commission,
through The Director General
Telecommunications, Deptt.
of Telecom, Ministry of Communications,
Sanchar Bhavan,
20 Asoka Road, New Delhi-110 001.

3. The General Manager(East-I),
Telephones' M.T.N.L., p.o.,
MUMBAI - 400 083.

4. The Asstt. General ManagerA.I.)
Office of the Chief General Manager,
M.T.N.L., Telephone House,
V.S.Marg, Prabhadevi, Dadar(W),
Mumbai - 400 028. ... Respondents.

By Advocate Shri V.S.Masurkar

...2/-

(ORDER) (ORAL)

(Per Shri R.G.Vaidyanatha, Vice Chairman)

These are two OAs filed by the same applicant for certain reliefs. Respondents have filed short reply opposing admission. We have heard both counsels regarding admission of the OAs.

2. The Applicant Shri R.A.Khan, was appointed as JTO. The applicant was promoted on officiating basis as Senior Divisional Engineer by order dated 5/7/95. It appears that the said order was only for 180days. It is also not disputed that after the expiry of 180days, there was an artificial break and fresh orders were given from time to time. The department took up the question of regular promotion. A regular DPC was constituted which considered the official records of all the concerned officials including the applicant and prepared a list of officers who are due for promotion which included the name of the applicant. On that basis the department issued an All India Promotion Order of Senior Divisional Engineer, dated 26/10/98 which also included the name of the applicant, but the name has been deleted later. In the meanwhile the department issued an order dated 25/11/98 reverting the applicant to his original post from the officiating promotional post. In view of these developments the applicant has come up with these two OAs.

3. In OA-1/99, the applicant wants this Tribunal to give a direction to the department to enforce the order of promotion dated 26/10/98 and to give regular promotion to applicant as Senior Divisional Engineer.

...3/-

In the second OA, i.e 396/99 the applicant wants the order of reversion dated 25/11/98 to be quashed.

4. The stand of the respondents in the first case is that though regular promotion order was issued dated 26/10/98, it was subject to Local verification of the pending vigilance cases against officials and in such a case the official concerned should not be promoted. It transpires that there was a disciplinary case pending and therefore the order of promotion in respect of applicant was not given effect to till the applicant is cleared in the disciplinary enquiry proceedings, he cannot be given regular promotion.

As far as the second case is concerned, the stand of administration is that the officiating period is of 180 days only and it comes to an end on expiry of 180 days unless a fresh order is issued extending officiating promotion for another 180days.It is also stated that after 1/11/98, no fresh order is issued in favour of applicant granting officiating promotion for another 180 days. The order of reversion was passed due to administrative reasons.

5. As far as the question of regular promotion is concerned, the DPC has met some time in September/October,98 and order of promotion is dated 26/10/98. But charge sheet was issued against the applicant only on 16/4/99. The learned counsel for applicant rightly argued that when no charge sheet was pending on the date of order of promotion or on the date of DPC, the department has no right to withhold promotion.

As far as this point is concerned, there is no dispute at all and it is well settled in the leading case of Jankiraman

...4/-

reported at 1991(5)SLR SC 602. It is also observed in Jankiraman in one of the paras that Tribunal should not give effect to the decision mechanically. Each case has to be examined on its own facts and circumstances. Though the arguments of learned counsel for applicant is that when no charge sheet was pending on 26/10/98 and charge sheet was issued after six months, the order of promotion cannot be withheld, we find there is some more administrative material to show that a concious decision had been taken by administration in 1997 itself to issue charge sheet against applicant.

6. It is seen from the record, that in respect of certain illegality and misconduct complaint was lodged with police and CBI took up investigation and submitted a report that as far as the applicant is concerned there is sufficient material against the applicant for departmental action and stated that departmental proceedings should be started against applicant by issuing charge sheet. This letter is dated 17/2/97. On the basis of the said letter, the Chief General Manager, MTNL, Bombay who is the Disciplinary Authority of the applicant made a reference to the Ministry of Communications, who in turn consulted the Chief Vigilance Commission and wrote a letter dated 9/10/97 to the Chief General Manager stating that the Competent Authority has approved the Chief Vigilance Commission's advice and directed the Chief General Manager to take necessary action as mentioned in that letter. The Chief Vigilance Commission also recommended that departmental Charge Sheet should be issued against the applicant. On this letter dated 9/10/97, the Chief

General Manager passed an order assigning the papers to the department for necessary action which amounted to issue of charge sheet.

7. We have perused the original records now produced by the learned counsel for respondents. From the records, we find that in October and November 97, the Competent Authority has taken a conscious decision of issuing major penalty charge sheet against the applicant, though the charge sheet was issued long after. If we go strictly by the law laid down by Supreme Court in Janakiraman's case, in para-38, it is stated that Courts or Tribunals should not act mechanically in a matter like this. Then in Kewal Kumar's case reported at 1993(31)ATC-770, the Supreme Court pointed out that though Charge Sheet has been issued after the DPC, conscious decision had been taken by Competent Authority before DPC and therefore in such a case promotion can be withheld.

8. In view of the law declared by Supreme Court in Kewal Kumar's case the relevant date is the date of the conscious decision to initiate Disciplinary proceeding against the official. We have already pointed out from perusal of the original record that conscious decision to initiate Disciplinary Proceedings was taken long prior to DPC meeting and prior to issue of order of promotion dated 26/10/98. A person under a cloud cannot be granted promotion. Then we may also mention that even order of promotion dated 26/10/98 is not a unconditional order of promotion since it is mentioned that the

...6/-

promotion should not be given effect to in respect of Officers against whom Vigilance Case is pending. This shows the intention of the Competent Authority that a person under cloud cannot be granted promotion.

9. Taking the facts and circumstances into consideration, we find that the stand of the administration for not giving effect to the order of promotion is fully justified. In case the applicant is exonerated in the Disciplinary Enquiry, he can move the Court or Tribunal to enforce the order of promotion with all consequential benefits.

10. Now going to the question of continuation of officiating promotion and the legality of order of reversion, we may say that on the same point we had occassion to consider a similar issue in OA-885/94 in the case filed by one Shri V.G.Choudhary in respect of same department viz. Telecom. We have passed an order dated 28/9/99 that in identical circumstances if an order of reversion is passed, it is not illegal or invalid. We respectfully follow the decision made above.

11. The learned counsel for applicant while not disputing that this case is similar to OA-885/94, pressed into service one extract from Swamy's Book on Disciplinary Proceedings, an extract of which is placed on record at page 39 of the paperbook.In the OM dated 24/12/86, in particular, the learned counsel for applicant invited our attention to para-4(ii) which reads as follows:-

> "where the appointment was required to be made on adhoc basis purely for administrative reasons (other than against a short term vacancy or a leave vacancy) and the

...7

Government servant has held the appointment for more than one year, if any disciplinary proceeding is initiated against the Government servant, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him."

12. The learned counsel for applicant emphasised that even if Disciplinary Proceeding pending against as official, he need not be reverted to the lower post. The very words "need not be reverted" which means discretion is again with the Competent Authority and normally an official need not be reverted dwhen a Disciplinary Enquiry is pending, but the Office Memorandum does not prescribe a mandatory direction that in such a case an official shall not be reverted. However, the said OM refer44s to adhoc promotions. Normally, even adhoc promotion has to be on the basis of seniority.

The local officiating promotion in Department of Telecom is on the local seniority. But normally, regular promotions and adhoc promotions are on the basis of General Seniority and in a case of this type it is of All India basis. Now, we find that even though the applicant's name has been mentioned in the order of promotion, but the same is not given effect to since a Disciplinary Enquiry is pending against him.

13. The respondents have stated that due to Administrative reasons, they have not issued fresh order and the officiating promotion has come to an end by flux of time and therefore a formal order of reversion is passed against applicant. Therefore, for a case of this nature, the discretion whether to

...8/

continue the applicant on officiating promotion or not rests with Competent Authority.

14. Even granting for a moment that the order of reversion is bad as challenged by learned counsel for applicanand the order of reversion is quased, it will not help the applicant since the applicant cannot continue in the promoted post even if the order of reversion is quashed since the officiating promotion has come to an end by flux of time. Even if an order of officiating promotion is passed for a period of 180 days, then also the applicant can continue in the promotion post for a period of 180days only. In view of the pendency of charge sheet, the Department issuing order of regular promotion will not arise at all. It may be that if the Disciplinary Enquiry is pending for more than two years, the applicant can press for adhoc or officiating promotion which can be considered by Competent Authority as per rules.

15. Before parting with the case, we would like to mention few facts. Though the order of reversion is dated 25/11/98, the applicant has continued in the officiating post by virtue of Stay order passed by Tribunal in OA-1/99. Since, we now hold that the order of reversion is perfectly valid, we direct the Department, that they should not make any recovery from the pay of the applicant for the period of stay from 4/1/99.

16. Learned counsel for applicant made one another point that we should make a direction to the respondents to expedite the Disciplinary Enquiry against the applicant. Even the learned counsel for applicant stated that the applicant will cooperate in

...9/-

the expeditious disposal of the Disciplinary Enquiry. Even the learned counsel for respondents submitted that they have no objection in expeditious disposal of the case.

17. In the facts and circumstances of the case, we feel that department should expedite the completion of the Disciplinary Enquiry as early as possible and preferably within a period of six months from the date of receipt of copy of this order by Competent Authority.

18. In the result, both the OAs 1/99 and 396/99 are rejected at Admission Stage. The Interim Statusquo order dated 4/1/99 and extended from time to time is hereby vacated. In the circumstances of the case, there will be no orders as to costs.

(B.N.BAHADUR)
MEMBER(A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN

abp