

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.887/99

Dated this the 5<sup>th</sup> day of January 2001.

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

Hon'ble Shri S.L.Jain, Member (J)

Hanumanthappa S. Kattimani,  
Divisional Engineer (Officiating),  
Mahanagar Telephone Nigam Ltd.,  
Ghatkopar, Mumbai.

... Applicant

By Advocate Shri S.P.Kulkarni

V/S.

1. The Chief General Manager,  
Mahanagar Telephone Nigam Ltd.,  
Telephone House, 15th Floor,  
Veer Savarkar Marg,  
Prabhadevi, Mumbai.

2. Union of India through  
The Director General,  
(Telecommunications),  
Dept. of Telecommunications,  
Ministry of Communications,  
Government of India,  
Sanchar Bhawan, New Delhi.

... Respondents

By Advocate Shri V.S.Masurkar

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act,1985 seeking the relief of declaration that order dated 8/11.10.99 is punitive in nature, without giving an opportunity and in curtailment of promotion order of 180 days effective from 25.6.1999, to quash and set aside the same, with a direction to the respondents not to revert the applicant till final outcome of the OA. and promote the applicant on regular adhoc basis along with costs.

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2. The applicant was promoted to the post of Divisional Engineer on officiating basis. (which was not granted on the basis of selection or DPC) for 180 days from 2 February, 1996, after break for one day again the applicant was repromoted as Divisional Engineer on officiating basis for 180 days continuously. The said 180 days were treated to be over on 22.12.1999. The applicant was reverted as SDE with effect from 8.10.1999. The cause for reversion is that a charge-sheet is issued to the applicant hence vigilance clearance is with-held.

3. The grievance of the applicant is that to with-held the promotion on the officiating basis on account of issuance of the chargesheet amounts to prejudging the guilt of the applicant which is based on unfounded and baseless allegation. The juniors to the applicant are promoted on officiating basis. Hence, this OA. for the above said relief.

4. The claim of the applicant is resisted by the respondents on the ground that the present application is not maintainable in view of the pendency of the chargesheet and challenge is totally premature, after expiry of 180 days promotion on officiating basis, the applicant was every time reverted as S.D.E., vigilance clearance is required every time before promotion in view of order dated 7.9.1999 issued by D.O.T.(R-3). The juniors in respect of whom such vigilance clearance is received, are repromoted on officiating basis. Hence, prayed for dismissal of OA. along with costs.

S. Venk /

.3/-

5. The Division Bench of this Tribunal has referred the following question to be answered by the Full Bench and the Full Bench has answered the question vide its' order dated 11th October, 1999 in negative :-

" Whether promotion on adhoc basis on local seniority for 180 days in the Department of Tele-communication and continued from time to time in spells of 180 days with breaks of one or two days for more than a year can be denied on issue of chargesheet/pendency of disciplinary proceedings on expiry of 180 days period or earlier?"

6. In view of the answer by the Full Bench, the order of the respondent to revert the applicant on account of chargesheet deserves to be held illegal one.

7. The learned counsel for the respondents relied on A.I.R. 1991 S.C. 2010 Union of India etc. vs. K.V.Jankiraman etc. Firstly, it deals with O.M.No.2011/1/79 Estt.(A) dated 30.1.1982 which is subsequently amended vide O.M. dated 31.7.1991 and later on a new O.M.No.22011/4/91 Estt. A dated 14.9.1992 is issued by Deptt. of Personnel & Training.

8. The learned counsel for the respondents have relied on para 6 of the judgement in K.V.Jankiraman which is as under :-

" The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.

We, therefore, repel the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal."

9. The learned counsel for the respondents relied on R/3 which was considered by the Full Bench and answered in para 14 of the order which is as under :-

"In view of the above fact when the applicant who has been on adhoc basis (in the nature of adhoc basis) for more than 4 years, it was not legal for the respondents to revert him to the post held by him only on the ground that disciplinary proceedings have been initiated against him."

10. Hence, proposition of law laid down on the said basis has no bearing in view of change in O.M. in the present case. Further more, the proposition of law laid down relates to promotion - regular promotion/adhoc promotion and not officiating promotion/ continuation of promotion.

11. The applicant was promoted on adhoc basis vide order dated 10.8.1999 which is cancelled vide order dated 7.12.1999 (Ex. 'R-1') is of no consequence, in view of the fact that we are considering only promotion on officiating basis.

12. The charge-sheet was issued on 25.8.1998. Even after issue of the charge-sheet, the applicant was considered for promotion on officiating basis on 30.12.1998 and 20.7.1999 and promoted as such.

13. In the result, we are of the considered opinion that the reversion of the applicant on officiating basis as Divisional Engineer on the basis of chargesheet deserves to be quashed and set aside.

S. (JN)

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14. In the result, OA. is partly allowed. The order of the respondents dated 8.10.1999 to revert the applicant on the basis of charge-sheet is quashed and set aside. No order as to costs.

*slm*  
(S.L.JAIN)

MEMBER (J)

*B.Bahadur*

(B.N.BAHADUR)

MEMBER (A)

mrj.

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Shri G. K. Masand and Shri V. S. Masurkar states that the operation of the judgement dated 11/10/2000 in OA No. 887/99 has been stayed by the Hon'ble High Court.

In such circumstances, no action for wilful dis-obedience of the order remains.

Shri G. K. Masand argued that in case the CP-76/2001 is disposed of, then there'll be no ground for new CP. We do not agree. In case the judgement is upheld by the High Court, then it will always be open for applicant to approach this tribunal by moving a fresh CP; in case the respondents wilfully disobey the order of this Court in that event.

The notice on CP-46/2001 is discharged and CP-76/2001 stands disposed of.

B. Dikshit

(M. P. Singh)

Adv.

M(A).

(B. Dikshit)

V.C.