

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 400/2000

18.8.2000  
Date of Decision :

L.M.Medar

Applicant.

Shri M.S.Ramamurthy

Advocate for the  
Applicant.

VERSUS

Union of India & Others,

Respondents.

Shri V.S.Masurkar

Advocate for the  
Respondents.

CORAM :

The Hon'ble Shri D.S.Baweja, Member (A)

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

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

  
(D.S.Baweja)  
Member (A)

mrj\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.400/2000.

Dated this the 18th day of August 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

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

L.M.Medar,  
Divisional Engineer,  
Mahanagar Telephone Nigam Ltd.,  
Goregaon (External) (West),  
Goregaon Telephone Exchange,  
S.V.Road, Goregaon (West),  
Mumbai.

... Applicant

By Advocate Shri M.S.Ramamurthy

V/S.

1. Union of India  
through the Secretary,  
Ministry of Communications,  
Government of India,  
Sanchar Bhavan,  
New Delhi.

2. Chief General Manager,  
Mahanagar Telephone Nigam  
Limited (MTNL),  
Prabhadevi, 15th Floor,  
Dadar (West),  
Mumbai.

... Respondents

By Advocate Shri V.S.Masurkar

..2/-

(P)

O R D E R

(Per : Shri D.S.Baweja, Member (A))

The applicant while working as Sub Divisional Engineer in Mahanagar Telephone Nigam Limited (MTNL) was promoted as Divisional Engineer on officiating basis for a period of 180 days as per order dated 5.1.1996. Thereafter with a technical break of one or two days, he has been continued on the post for the periods of 180 days each. The last order being dated 22.11.1999 effective from 3.12.1999. However, this officiation was not extended further and the applicant as per the order dated 31.5.2000 has been reverted as Sub Divisional Engineer w.e.f. 29.5.2000 without assigning any reasons. The applicant contends that he was orally informed that further promotion has not been allowed due to non receipt of vigilance clearance in view of the chargesheet dated 7.3.2000 issued to him. Feeling aggrieved by this action of the respondents, the present OA. has been filed on 13.6.2000 seeking the following reliefs :-

- (a) Order dated 31.5.2000 be declared punitive in nature and bad in law.
- (b) Respondents be directed to re-promote the applicant as Divisional Engineer on local officiating basis and continue to do so from time to time as may be done in similar other cases.

(c) Minor penalty proceedings be declared non-est and not coming in the way of promotion of the applicant.

2. The applicant has advanced the following grounds in support of his case :-

(a) Promotion for 180 days on local officiating basis is not a regular promotion based on selection by DPC and therefore it is not subject to vigilance clearance.

(b) Order passed by the respondents refusing repromotion as allowed to others is punitive in nature. Therefore, the respondents have prejudged the guilt of the applicant before <sup>Ss</sup> paying final order on the minor penalty <sub>A</sub> proceedings.

(c) Minor penalty chargesheet cannot come in the way of the applicant being repromoted.

(d) The minor penalty chargesheet is totally malafide and unfounded as the charge of failure to recover 43.2 meters of cable is not maintainable as this was not the part of the duty of the applicant.

3. The applicant has relied upon the following orders of the Tribunal :-

(i) Shri Dhirendra Kumar Das vs. Union of India

1997 (3) SLJ (CAT) 204 - Gauhati Bench.

(ii) K.Balasubramanian vs. Union of India

OA.NO.1139 of 1995 decided on 13.10.1995

- Mumbai Bench.

4. The respondents have filed written statement opposing the OA. As regards the relief of setting aside the chargesheet, the respondents contend that the present OA. is premature. The respondents submit that as per the settled law by the Hon'ble Supreme Court in catena of judgements such as Transport Commissioner Madras vs. Union of India, 1995 (1) ATJ 229 and DGIP vs. K.S.Swaminathan, 1997 (1) ATJ 378, the Tribunal/Court cannot go into the truthiness/correctness of the charges at the interlocutry stage of issue of chargesheet to determine that the same do not disclose any misconduct. Therefore, the OA. with this relief is not maintainable and deserves to be dismissed in limine. As regards the reversion from the post of Divisional Engineer, the respondents submit that the applicant was promoted for a period of 180 days as per order dated 22.11.1999 w.e.f. 3.12.1999 upto 30.5.2000. The applicant was reverted w.e.f. 29.5.2000 as per order dated 29.5.2000 and not repromoted like others due to non receipt of vigilance clearance as the applicant



..5/-

had been issued chargesheet. It is further stated that as per the laid down instructions, the officiating promotion for a period of 180 days is subject to vigilance clearance. In view of this position, the respondents plead that applicant has no case to seek this relief.

5. The applicant has not filed any rejoinder reply.

6. As per order dated 16.6.2000, it was provided that status quo of the applicant on the date on the post of Divisional Engineer shall be maintained till the next date. This order has been extended thereafter from time to time. The respondents, however, filed a Misc. Application against the grant of interim stay stating that the applicant has already been reverted from 31.5.2000 in the same office and the interim order did not survive. The applicant has, however, contested this stand of the respondents stating that there was no handing over and taking over of the charge and the applicant continued to be on the post of Divisional Engineer.

7. Heard Shri M.S.Ramamurthy for Shri R.Ramamurthy, learned counsel for the applicant and Shri V.S.Masurkar, learned counsel for the respondents.

8. The applicant in the present OA. has challenged not only non promotion to the post of Divisional Engineer but has also prayed for setting aside of the chargesheet. Remedies sought are

2

plural in nature as the reliefs do not flow from each other. OA. with plural remedies is not maintainable. The counsel for the applicant during the hearing, however, made a statement at the bar stating that he does not press for the relief of setting aside the chargesheet and confines the OA. to the relief of seeking re-promotion as Divisional Engineer.

9. With regard to the relief of re-promotion as Divisional Engineer, the short question which calls for answer is whether on issue of chargesheet, the local officiating promotion on 180 days basis which comes to end by flux of time, repromotion can be denied? The applicant's case is based on two grounds : (a) the local officiating promotion for 180 days and continued with breaks of one or two days is not granted on the basis of selection by DPC and therefore no vigilance clearance is required as vigilance clearance applies only for regular promotion. (b) applicant has been continuing on the local officiating promotion since 1996 and in terms of decision 4 dated 24.12.1986 (Dept. of P & T) under Rule 11 of CCS (CCA) Rules, if the adhoc promotion continues for period of more than one year, then the employee concerned on the issue of chargesheet need not be reverted. Therefore, chargesheet dated 7.3.2000 cannot come in his way of re-promotion. The applicant has relied on the two orders of the Tribunal in support of this defence as cited earlier in para 3 above. The respondents, on the other hand, have submitted that vigilance clearance is required to be taken as per rules

(R)

governing promotion for 180 days on local officiating basis pending regular promotion. Therefore, before re-promotion of 180 days can be ordered, vigilance clearance is to be obtained. In the case of the applicant, the respondents state further that the promotion came to end on 30.5.2000 and re-promotion was not done on account of non receipt of vigilance clearance due to the issue of chargesheet dated 7.3.2000.

10. Before we deliberate on the merits of the relief prayed for based on the rival submissions, it will be appropriate that the orders relied upon by the applicant are reviewed first :-

(i) Shri Dhirendra Kumar Das vs. Union of India

In this case the applicant was promoted as Telecom District Engineer on adhoc basis on 24.8.1993. After working on the post for 9 months, the applicant was reverted as per order dated 16.5.1994 to his substantive post of Senior Assistant Engineer. The applicant agitated the matter through the OA. taking the plea that reversion of the applicant was by way of punishment without giving protection under Article 311 (2) of the Constitution of India. No show cause notice was given to the applicant. The respondents while opposing the OA. contended that the applicant was chargesheeted and in terms of Rule 11 (4) of CCS (CCA) Rules, when adhoc officer is chargesheeted, then automatically he is to be reverted. It was also contended that the applicant had not completed one year of service. The Bench

observed that impugned reversion was not for any administrative reasons but as a result of chargesheet issued to the applicant and therefore was by way of punishment. The Bench after reviewing the law laid down by the Hon'ble Supreme Court on reversion in case of adhoc or temporary employee held that the reversion order cannot be sustained.

(ii) Shri K.Balasubramanian vs. Union of India

In this case the applicant was promoted initially as Divisional Engineer during the period from 1991 to 1993 and reverted on 18.6.1993. He was again promoted as Divisional Engineer from 21.9.1993 till 15.9.1995. The applicant filed the OA. with the prayer to direct the respondents not to revert the applicant from the post of Divisional Engineer beyond one day or in alternative promote the applicant after one day's break along with others who are similarly reverted and promoted. The applicant did not file the OA. against any specific order but on the apprehension that he will be reverted utilisation the scheme of promotion for a periods of 180 day each on issue of chargesheet. The applicant relied on the explanation (4) to Rule 11 of CCS (CCA) Rules and stated that he has been working on the post of Divisional Engineer for a period of more than 3 years. The respondents' stand was that the applicant was promoted as per order dated 24.3.1995 for a period of 180 days purely on local officiating basis. This promotion as per respondents comes to an

(V)

..9/-

end on expiry of 180 days and no separate order of reversion is required to be issued. For repromotion of the applicant along with others after a break, the respondents sought vigilance clearance but the same was not given against the applicant and therefore he could not be promoted. The Bench did not accept the stand of the respondents. The Bench observed that when the applicant was first promoted to the post of Divisional Engineer, there was no chargesheet pending. He has continued on the post for more than 3 years and therefore keeping in view the explanation (4) below Rule 11, disciplinary proceedings initiated against the applicant will not call for reversion as the applicant has worked on the post on adhoc basis for more than one year. It is also observed that the continuing of the applicant on the post of Divisional Engineer will not cause any prejudice in conducting the proposed departmental inquiry. With these observations, the Bench confirmed the interim order and directed that applicant be continued on the post of Divisional Engineer.

11. The applicant at Annexure-'G' of the OA. has brought on the record a copy of the interim order in OA.No.01/1999, V.G.Khan vs. Department of Telecommunication to support his prayer for grant of interim stay order to maintain status quo of the applicant on the post of Divisional Engineer. This OA. has been decided as per order dated 29.9.1999 along with OA.NO.396/99 filed by the same applicant. On going through this order, we note the facts and circumstances in case of OA.NO.01/99<sup>are</sup> as

follows :- The applicant belonging to the Telecommunication department as in the OA. at hand was promoted on adhoc basis purely as a local arrangement as Sub Divisional Engineer (SDE) for a period of 180 days first time as per the order dated 5.7.1995. Thereafter, the applicant was continued on the post with spells of 180 days each with breaks of one to two days. The last promotion was as per order dated 6.5.1998. However, after serving for 178 days, the applicant was reverted from 29.10.1998 as per the order dated 25.11.1998. In the meantime, the case of the applicant was considered by the Departmental Promotion Committee (DPC) and he was selected for regular promotion to the post of S.D.E. as per the panel dated 26.10.1998. However, the applicant was not allowed to take over the charge for regular promotion. The applicant filed OA.NO.01/1999 challenging his non promotion on regular basis seeking direction to enforce order dated 26.10.1998. OA.NO.396/99 was filed challenging his reversion as per order dated 25.11.1998 and direction to the respondents to repromote him as SDE. The applicant later on was issued chargesheet dated 16.4.1999. The facts and circumstances and reliefs prayed for in the present OA. are identical to that in the OA.No.396/99 except the designation of the post. The issue involved in both the OA.NO.396/99 and the present OA. is whether further non repromotion after lapse of 180 days due to disciplinary proceedings is legally sustainable. In both the OAs., the applicants have been continuing for a period of more than 3 years on adhoc basis. Therefore, we will review the

decision on merits in OA.NO.396/99. The respondents in this case have taken the same defence as in the present OA. that after the adhoc promotion of 180 days came to end, further promotion could not be given as the vigilance clearance was not given due to pending disciplinary proceedings. In the order dated 29.9.1999, the Bench has dismissed the claim of applicant for continuation on adhoc promotion on 180 days basis and also held that reversion on account of disciplinary proceedings was not bad in law. The Bench relied upon then earlier order dated 28.9.99 in OA.NO.885/99, V.G.Choudhary vs. Union of India wherein on identical facts and circumstances of promotion of 180 days basis and reversion on the issue of chargesheet of the Telecommunication Department has been examined and the claim of the applicant had been rejected. In the OA.No.396/99, took additional ground that reversion could not be done merely because chargesheet was issued in terms of decision dated 24.12.1986 of DG (P&T) under Rule 11 of CCS (CCA) Rules as the applicant had been working on promotion post on adhoc basis for more than one year. This is the same ground relied upon in the present OA. (referred to earlier in para 9 above) and also the basis for the decision in the case of OA.NO.1139/95, K.Bala Subramanium (supra), the ratio of which is pleaded by applicant for seeking the same decision in the present OA. The Bench in the OA.NO. 396/99 has not found merit in this plea and interpreting that this O.M. does not prescribe any mandatory direction and discretion lies with the competent authority. Further, the adhoc promotion on 180 days period was not on overall seniority basis but on local seniority basis and even if allowed for 180 days will again come to an end after 180 days.

12. In the OA.NO.885/94 the applicant was continuing on adhoc promotion of 180 days period from 1991-1994. He was regularly promoted in 1994 through selection by DPC as per the panel notified on 3.6.1994. This promotion was not given effect in view of this disciplinary proceedings. In V.K.Choudry's case, the Bench has concluded that the reversion on the facts and circumstances of the case does not amount to an act of punishment. It is further observed that it is well accepted principle that when an officer is under shadow of disciplinary proceedings, he cannot be promoted. In the instant case, the applicant was on adhoc promotion for 180 dyas and what has been done, this benefit has not been extended. Therefore, it cannot be said that the applicant has been punished. It is also stated that further rights of the applicant would be available to him depending upon the result of disciplinary proceedings and the relevant rules.

13. After careful consideration of the facts and circumstances of the present case and the orders cited by the applicant and those reviewed in the case of Dhirendra Kumar Das of Gauhati Bench and OA.No.1139/95 of this Bench (Supra), we with all respect are unable to agree with the decision particularly in OA.No.1139/95 which is on the identical facts as in the present case. We endorse the view taken in the order dated 29.9.1999 in OA.NO.396/99. Our endorsement of this view is supported by the following additional reasons :-

(N)

(a) As per the law laid down by the Hon'ble Supreme Court and the rules laid down thereof by the Government, if an employee is under disciplinary proceedings at the time of consideration of his name for promotion by the DPC, then the DPC will consider his fitness for promotion or otherwise along with others but the result of this consideration will be kept in 'sealed cover'. Further, if an employee is cleared for promotion by DPC but before his turn comes for promotion, a chargesheet is issued to him, then his case will be deemed to be kept in 'sealed cover' and he will be not promoted. The spirit behind these provisions is that an employee who is undergoing disciplinary or criminal proceedings is not given the benefit of promotion during the period to maintain the purity of the public administration. Such a denial of promotion has been held as not punitive in nature. Thus, when a regular promotion to an employee is denied when he is under disciplinary proceedings, then how an employee on adhoc promotion and that too on a local seniority basis can continue on promotion? Once the chargesheet, such a promotion if allowed to continue will defeat the very spirit behind the scheme of 'sealed cover' to prevent an employee with a cloud to be promoted.

(b) Continuing of any employee on adhoc promotion basis purely as a local arrangement even after issue of chargesheet, in accordance with the view taken by the Bench in OA.NO.1139/95 is supported, then this will lead to an anomalous situation. If during the period the employee is continuing on adhoc basis and

his turn comes for consideration of promotion on regular basis and DPC declares him fit for promotion, then his case will be kept in 'sealed cover'. Depending upon the final order, the sealed cover will be opened. If even any minor penalty including 'Censure' is imposed, the sealed cover will not be opened and the employee cannot get promotion till the penalty is minor or major is over. However, if the view taken in the OA.NO.1193/95 (supra) <sup>thereby</sup> is supported, will this mean that the employee will be continuing on adhoc promotion even after the penalty is imposed. This would imply that the employee will undergo punishment on the promoted post as the employee cannot be reverted as he has continuing on adhoc basis.

(c) The adhoc promotion as a local arrangement on local seniority on 180 days basis cannot be deemed to be an adhoc promotion on overall seniority as the same comes to end after 180 days. Therefore, the subsequent events are to be taken into account when the repromotion is to be ordered and repromotion cannot be sought as a matter of right.

14. In view of the conflicting view taken by the two Benches, we are of the considered opinion that <sup>the</sup> matter requires 'to be referred to Full Bench to resolve the conflict. The scheme of promotion on adhoc basis in the Telecommunication Department purely as a local arrangement for periods of 180 days each with breaks of one or two days is <sup>a</sup> regular practice. On issue of chargesheet further, adhoc promotion on 180 days is not being

allowed as this promotion is subject to vigilance clearance and no disciplinary proceedings are pending. We have come across a number of OAs. which are pending for decision where the same question of law has been raised. It is, therefore, imperative that a clear law on the issue is laid down. We, therefore, refer the matter to the Full Bench to answer the following question :-

" 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?"

15. In the light of the above deliberations, we refer the matter for adjudication by the Full Bench to answer ~~of~~ the question framed in para 14 above. Registry is directed to take further action accordingly.

S.L.JAIN  
(S.L.JAIN)

MEMBER (J)

D.S.BAWEJA  
(D.S.BAWEJA)

MEMBER (A)

mrj.