

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.:

711 / 2000

D.M. Ramkeke

(By Advocate Shri S.S. Karkar)


VERSUS

Union of India & ors.

(By Advocate Shri V.S. Masurkar)

CORAM : Hon'ble Shri S.G.Deshmukh - Member (J)
Hon'ble Shri S.P.Arya - Member (A)

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


(S.G.Deshmukh)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Tuesday the 16th day of September, 2003

Coram: Hon'ble Shri S.G.Deshmukh - Member (J)
Hon'ble Shri S.P.Arya - Member (A)

O.A.711 of 2000

D.M.Ramteke,
Sub-Divisional Engineer,
O/o Telephone Exchange, CIDCO,
District Nasik
R/o 60, Muktai Colony,
Kamatwade, Nasik.
(By Advocate Shri S.S.Karkera)

- Applicant

Versus

1. Union of India
through Director General,
Department of Telecom,
Sanchar Bhawan,
Ashoka Road, New Delhi.
2. The Chief General Manager,
Maharashtra Telecom Circle,
Fountain Telecom Building No.II,
8th Floor, M.G.Road, Fountain,
Mumbai.
3. The General Manager,
Telecom Nasik, Canada Corner,
Sharanpur Road, Nasik.

- Respondents

(By Advocate Shri V.S.Masurkar)

O R D E R

By Hon'ble Shri S.G.Deshmukh - Member (J) -

The applicant filed this application for quashing and setting aside the impugned order dated 12.1.2000, 16.2.2000 and 9.3.2000 (Exhibits - A, B, & C) and for a declaration that the applicant is entitled for promotion to TES Group 'B' w.e.f. 2.1.1997 and/or from the subsequent DPC year w.e.f. 29.10.1998 in the pay scale of Rs.7500 - 13,500/- and all consequential benefits such as fixation of pay, seniority, increments and arrears thereof and also for a declaration that he is entitled for lateral promotion w.e.f. 2.1.1997 and consequential benefits such as fixation of pay scale of Rs.7500 - 13,500/-.

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2. It is the case of the applicant that he joined in the Telecom Department as Phone Inspector in October, 1975. He passed the departmental competitive examination of Junior Engineer (now redesignated as J.T.O.) in 1981. He was promoted as Junior Engineer in March, 1984. At present the applicant is working as TES Group 'B' on regular basis w.e.f. 13.1.2000. The main grievance of the applicant is his non-granting regular promotion in TES Group 'B' and lateral promotion after completion of disciplinary case/punishment imposed by the respondents. The applicant was promoted vide Department of Telecom, New Delhi's order No.2-41/94-STG-II dated 27.5.1994, order No.2-43/94/STG-II dated 3.6.1994 and Order bearing No.2-43/94/STG-II dated 1.7.1994 along with others and the said orders have been implemented by respondent no.2 vide order No.Staff-B/AE-20/B-7/12 dated 8.7.1994 (Exhibit -D). The promotion of the applicant was not implemented by the respondents in view of the contemplated disciplinary proceedings pending against him. The disciplinary authority imposed the punishment of one year which ended on 1.1.1997. It is also contended that the applicant had challenged the punishment by filing OA 44 of 1998. It is the contention of the applicant that the respondents did not grant any regular promotion even after completion of one year of the punishment. The applicant therefore filed another OA No.43 of 1998 wherein the Tribunal directed the respondents to consider the case of the applicants for grant of regular promotion to TES Group 'B' as on 1.1.1997. According to the applicant he is entitled for regular

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promotion w.e.f. 2.1.1997. It is further contended that as per the decision of the Tribunal the respondents ought to have reviewed the case of the applicant for promotion w.e.f. 2.1.1997. However, the respondents illegally and arbitrarily issued promotion order of the applicant w.e.f. 13.1.2000 vide order No.A/STA/AE-20/TES GR-B/Posting/II/39 dated 16.2.2000. The respondents refixed the applicant Staff No.18042 to 37567. It is also his contention that the respondents conducted DPC for granting promotion in TES Group 'B' and also issued promotion order to the juniors of the applicant vide order No.STaff-10/TES Gr.B/ENG/Folder dated 20.11.1998 which were given effect to from 29.10.1998. According to the applicant, he was entitled for consideration by review DPC w.e.f. 29.1.1998. He was also entitled for lateral promotion after completion of 12 years' service in JTO cadre. The respondents ought to have granted lateral promotion after completion of punishment. The applicant had made representation to the respondents on 28.3.2000 requesting for reconsideration of his case for granting regular promotion with retrospective effect i.e. 29.10.1998. However, he did not receive any reply from the respondents. Thus the applicant has filed the present OA.

3. The respondents contested the OA by filing reply. The respondents state in their reply that the applicant is seeking promotion in TES Group 'B' w.e.f. 2.1.1997 and the applicant has

filed the present OA on 26.9.2000. Therefore, unexplained delay in approaching the Tribunal is sufficient to dismiss OA. According to the respondents they have complied the judgment and order of the Tribunal dated 2.8.1999. The applicant has been duly granted regular promotion in TES Group 'B' and also lateral advancement as and when his turn came strictly in accordance with the rules. The applicant was promoted to TES Group 'B' and posted as SDE (M), CIDCO, Ambad and he assumed the charge on 13.1.2000. Thus the respondents complied with the judgment of the Tribunal. It is also contended that the applicant was re-considered in the DPC which was held in 1998. The applicant was found unfit. Thus he could be promoted to TES Group 'B' at that time. They contend that in the next DPC held in 1999, he was found fit and was duly promoted. It is also contended that the applicant has suppressed that one OA was pending before the Tribunal. It is also contended that the respondents approved the date of giving effect to the lateral advancement w.e.f. 1.1.1997 i.e. that the punishment period had expired. Lastly the respondents contend that the OA is required to be dismissed.

4. Both the learned counsel for the applicant and the respondents are heard at length.

5. The learned counsel for the respondents submitted that the applicant did not mention regarding OA 44 of 1998 but suppressed this fact and this is sufficient ground to dismiss the

OA. It is true that the applicant did not refer regarding OA 44 of 1998 in his OA. However, we see that the applicant has mentioned this fact in Para 4.5 of his application that the action of the respondents in imposing the punishment has been challenged by him in OA 44/98. Thus the applicant cannot be said to be guilty of suppression of fact.

6. The learned counsel for the respondents tried to submit that the OA deserves to be dismissed as the same is filed on 26.9.2000 for promotion w.e.f. 2.1.1997. The OA in question is not within limitation and delay is not explained. The applicant had brought on record that he had preferred a representation on 28.3.2000 requesting therein to grant proper promotion as per judgment of the Tribunal in OA 43/99. The said representation was forwarded by the respondents vide their letter dated 28.3.2000 for taking further action. Copy of the representation and the forwarding letter are brought on record by applicant not only that but it also appears that as the applicant did not receive any reply from the respondents, he preferred one more representation to the respondents on 28.8.2000 and requested to reconsider his case for granting regular promotion. The said representation was forwarded by the respondents vide letter dated 28.8.2000 (Exhibit -I at page 35). Even to this representation, the applicant did not receive any reply. Considering these facts it cannot be said that the applicant had delayed in filing the OA in question.

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7. It is apparent from the above documents and pleadings that the applicant was granted regular promotion in TES Group 'B' on regular basis w.e.f. 13.1.2000. It is not disputed that though the respondents had regularly promoted the applicant but the order of promotion was not implemented as disciplinary proceedings were pending against the applicant. It is also not disputed that the disciplinary proceedings ended in minor penalty of withholding of two increments for two years. However, the order was modified by the appellate authority on 18.12.1996 reducing the penalty to that of withholding of increment to one year with cumulative effect. It is further not disputed that the said punishment ended on 1.1.1997. It is seen that the said punishment was challenged by the applicant in OA 44 of 1998 which was dismissed thereafter.

8. It is the grievance of the applicant that after completion of one year i.e. after expiry of the punishment period the respondents did not grant him promotion and thus he had filed OA 43/99 seeking directions against the respondents for grant of regular promotion in TES Group 'B'. In the said OA the Tribunal directed the respondents to consider the claim of the applicant for promotion on or after 2.1.1997 and if necessary by holding a review DPC and if he is found suitable for promotion, *huv* he may be granted all the benefits as per rules.

9. It is not disputed that one DPC was held in 1998 which was after expiry of the punishment period. The respondents in Para 14 of their reply have submitted that the case of the applicant was considered by the DPC which was held subsequent on 2.1.1997 in which the applicant happened to be declared unfit and hence he could not be promoted to TES Group 'B' at that time.

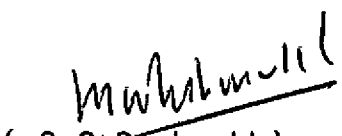
10. It is to be noted that no rejoinder has been filed by the applicant denying the contents of Para 14 of the reply of the respondents. The respondents did not deny that he was considered in the DPC held in 1998 and was declared as unfit. The contention of the respondents has gone unchallenged. As the applicant was found 'Unfit' in the DPC held in 1998, he could not be promoted to TES Group 'B' at that time. In OA 43/99, this Tribunal had directed the respondents to consider the claim of the applicant for promotion on or after 2.1.1997 and if necessary by holding a review DPC and if he is found suitable for promotion, he may be granted all the benefits as per rules. It appears from the order that review DPC was to be held if it was necessary. It is clear from the contention of the respondents that the applicant's case was considered in the DPC which was held in August, 1998 i.e. subsequent to 2.9.1997 after expiry of the punishment period. As the DPC was held subsequent to 2.9.1997 and as the applicant's case was considered in the said DPC, there was no necessity to hold a review DPC as the applicant was found 'Unfit' in the DPC held in August, 1998, he could not

be promoted at that time. It is also come on record that the next DPC was held in 1999. The applicant's case was considered in the same DPC and he was found fit and he was promoted to TES Group 'B' and posted as SDE (M), CIDCO, Ambad vide Department of Telecommunications, O/o General Manager Telecom Nasik order dated 12.1.2000. All that shows the order of the Tribunal in OA 43/99 was implemented by the respondents. It is seen that as the DPC had not found the applicant 'Fit' in 1998, he could not be promoted.

11. The respondents contend that the Staff Number is not a criteria for contesting the seniority of the employee. The same will be decided by Department of Telecommunications, New Delhi as per decision of the Hon'ble Supreme Court in the case of Union of India Vs. Madras Telephone S.C. & S.T. Social Welfare Association, 2000 (2) SC SLJ 1.

12. On perusal of the record, it is seen that the applicant has already been given lateral promotion w.e.f. 2.1.1997 as he was considered by DPC in the meeting held in August, 1998. In the circumstances, the OA deserves to be dismissed. OA stands dismissed. No order as to costs.


(S.P. Arya)
Member (A)


(S.G. Deshmukh)
Member (J)

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