

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.787/2001

Date of Decision: 01.12.2004

C.N. Yadav

Applicant

Shri S.P. Inamdar

Advocate for Applicant/s

Versus

Union of India & Ors.

Respondents

Shri V.S. Masurkar. Advocate for Respondents

CORAM

HON'BLE SHRI A.K. AGARWAL,  
HON'BLE SHRI MUZAFFAR HUSAIN.

VICE CHAIRMAN  
MEMBER (J)

1. To be referred to the Report or not ✕
2. Whether it needs to be circulated to other Benches of the Tribunal? ✕
3. Library. ✓

  
(MUZAFFAR HUSAIN)  
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 787/2001

THIS THE 01<sup>ST</sup> DAY OF DECEMBER, 2004

CORAM: HON'BLE SHRI A.K. AGARWAL. VICE CHAIRMAN  
HON'BLE SHRI MUZAFFAR HUSAIN .. MEMBER (J)

Chunairam Yadav,  
S/o Nanakuram Yadav,  
Age 56 years working as HSG  
Wireman (Adhoc OTBP),  
Telephone Exchange Versova,  
Andheri, Mumbai.

.. Applicant

By Advocate Shri S.P. Inamdar

Versus

1. Union of India through  
Assistant General Manager (A-V),  
Mahanagar Telephone Nigam Limited,  
Office of the Chief General  
Manager, Telephone House, 13th floor,  
V.S. Marg, Dadar (West)  
AT PO Mumbai-400 028.
  2. General Manager (West-1),  
Santacruz (West), M.T.N.L.,  
At PO Mumbai-400 054.
  3. Assistant General Manager (SR),  
Office of CGM (Union Cell),  
Telephone House, 9th floor,  
V.S. Marg, At PO Mumbai-400 028.
  4. Secretary, Department of  
Telecommunications, (Bombay  
Telephone Cell), Sanchar Bhawan,  
20, Ashoka Road, At PO  
New Delhi-110 001.
- .. Respondents

By Advocate Shri V.S. Masurkar.

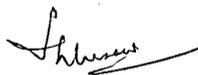
O R D E R  
Hon'ble Shri Muzaffar Husain. Member (J)

The applicant in this OA has challenged the order dated 12.12.2000 by which name of the applicant has been deleted from adhoc One Time Bound Promotion (OTBP) from the order dated 21.3.1994 and he was reverted from the scale of Rs.5000-7775 to the scale of Rs. 3050-4590 without any notice.

...2.

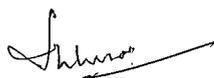


2. The facts giving rise to the filing of this OA in brief are that the applicant was recruited as wireman in Telephones Department (Department of Telecommunications) from 23.8.1976. He is on deemed deputation to MTNL since 1986, but he has not been absorbed. He is presently working as Higher Grade Wireman in the scale of Rs.5000-7775 with basic pay of Rs.7590/- from 01.8.2001, his pay was fixed in above scale from 01.11.1998. Thus, he was placed in adhoc OTBP scale vide order dated 21.03.1994 and he is continuously holding the post of higher grade wireman since then. The adhoc promotion was given to the applicant although a charge memo under Rule 14 of CCS (CCA) Rules, 1965 was issued to him on 11.01.1989. The disciplinary proceedings continued without any progress. The Inquiry Officer delivered the copy of inquiry report on 04.8.1990. Although more than 12 years and 9 months have elapsed since 11.01.1989, the disciplinary proceedings are not finalised. the applicant is now forced to sign relieving charge report from the post of selection grade wireman and he is likely to be reverted from his adhoc promotion in which he has drawn increments since 21.3.1994. Since the applicant is threatened with reversion from the post of selection grade wireman which he is holding since 21.3.1994, he is seeking judicial intervention in the interest of justice and fair play. It is also stated that leave taken by the applicant was treated as dies-non as a result of



OTBP given already cancelled by deleting his name from the list of OTBP retrospectively without any notice, hence this OA.

3. The respondents in reply stated that the disciplinary proceedings pending against the applicant are finalised and the disciplinary authority has passed the order dated 12.12.2001 imposing the penalty. The action of the respondents is strictly in accordance with the rules. The applicant is entitled for consideration for promotion whether adhoc or regular, only after proceedings are over or vigilance clearance is given by the vigilance department. The order for OTBP was issued due to oversight by the concerned officer, which was deleted by order dated 12.12.2000 and the said order was received by the applicant on 30.01.2001, whereas the present application is filed on 29.10.2001. It is also stated that as per instructions regarding implementation of the said order, the promotion order was not to be implemented in case of pending/contemplated vigilance/disciplinary proceedings against any of the official. No such report was received from the controlling administrative / accounts unit of the applicant. Now the disciplinary proceedings are over and the punishment order is imposed upon the applicant, he has to exhaust the departmental remedy before his right of promotion retrospectively, otherwise it is to be considered and hence OA is devoid of merit and deserves to be dismissed.



...4.

4. Learned counsel for the applicant contended that although the applicant has been promoted on adhoc basis, his name has been wrongly deleted vide order dated 12th December, 2000 and this is nothing but reverting him from promotional post without any notice. The respondents are acting arbitrarily and are resorting to reversion without any notice. His pay will be reduced as reversion is being made after seven years. He has also contended that it is well settled that an action of the civil consequences cannot be taken without giving an opportunity to the Government servants likely to be affected by such order. In this case, the applicant will be reverted from 21.3.1994 and his pay will be reduced retrospectively resulting in huge recovery without any show cause notice, such action is violative of principles of natural justice.

5. Learned counsel has placed reliance on the following decisions:

- i) L.M. Medar Vs. Union of India AT Full Bench judgments 1997-2001 page 143. The Full Bench in para 17 observed as under:

"In the result, we are of the opinion that the promotion on adhoc basis on local seniority for 180 days in the Department of Telecommunication and continued from time to time in spells of 180 days with breaks of one or two days for more than a year cannot be denied on issue of chargesheet or pendency of disciplinary proceedings on expiry of 180 days period or earlier.



...5.

- ii) Billeswar Saha Vs. Union of India & Ors. 2002 (1) CAT AISLJ 153 in this case the Calcutta Bench held -

"Applicant was promoted despite pending disciplinary case - Penalty orders not followed for years - Years later penalty given effect to and applicant was reverted and recovery ordered. Held no recovery can be made from the applicant, if at all the authorities are serious they should fix responsibility of officer committing negligence and amount recovered from his pay with compound interest."

- iii) T. Narayan Kutty Vs. General Manager, MTNL & another. - (1998) 7 ATC 692. In this case Applicant was promoted as Assistant Engineer on adhoc basis as local arrangement for more than three years - placed under suspension Continued under suspension for about nine months - Suspension revoked and reverted as Junior Engineer - Held, reversion was founded on misconduct and was not simpliciter - Hence, could not be ordered without enquiry.

- iv) Than Singh Vs. Union of India & Others. - 2003 (3) ATJ 42. In this case the High Court held -

"Promotion - When promotion is made without any demur - Any charge or misconduct would be presumed to have been condoned unless it is shown that the promotion was subject to the order of disciplinary proceedings pending or contemplated."

6. Learned counsel for the respondents on the other hand contended that the promotion of the applicant was purely on adhoc basis with the condition that the promotion should not be given effect in case any vigilance / disciplinary proceedings are pending or contemplated or punishment is current. In this case the order for adhoc OTBP was issued due to over sight by the then concerned officer. The applicant is entitled for consideration of promotion whether adhoc or regular only after disciplinary case is over or vigilance clearance is given by the department. Now the disciplinary proceedings are over and the punishment order has been



passed by the competent authority. Therefore, applicant has to exhaust the departmental remedies before his right of promotion retrospectively or otherwise has to be considered and hence this OA is devoid of merit.

7. We have considered the rival contentions raised by learned counsel for the parties and perused the material placed on record.

8. At the outset it is to be mentioned that this OA was dismissed by this Tribunal by order dated 12.11.2002 for want of jurisdiction. Writ Petition was filed by the applicant before the Hon'ble High Court of Judicature at Bombay against the order of the Tribunal. The Hon'ble High Court held that the Tribunal has jurisdiction to entertain this OA and remitted the matter to this Tribunal for disposal on merit.

9. The entire thrust of the submission of learned counsel for the applicant is that the reversion of the applicant from the promotion given even on adhoc basis cannot be brought to an end even if the official was holding the post for more than one year. Such promotion cannot be recalled without notice. In this case, it is not disputed that the memorandum of charge under Rule 14 of CCS (CCA) Rules was issued to the applicant on 11.01.1989, inquiry was conducted and copy of the inquiry report was submitted on 04.8.1990, but the



...7.

disciplinary authority did not pass any order. In the meantime, the applicant was promoted vide letter dated 21.3.1994 purely on adhoc basis and the name of the applicant appears at Sl. No.76 of the order. The condition No.5 of the order stipulates as under:

"In the event of any Vig/Disc. proceedings are pending/contemplated or any punishment is current, this order should not be given effect to in respect of such officials and facts should be brought to the notice of this office."

It is stated by the respondents in para 10 of their written statement that as per the vigilance clearance obtained from Vigilance Section vide No.V-115/HGO/92-93 dated 06-04/93, adhoc order for placing the said applicant in OTBP was issued. It is also stated in para 15 that before deleting the name of the applicant from OTBP order, the clarification was sought from the vigilance section regarding the issue on the said adhoc OTBP order pertaining to the applicant vide letter dated 27.3.2000 (Exhibit R4). The required clarification was submitted stating that after receipt of vigilance clearance from the vigilance section and the said adhoc order was issued vide order dated 16.5.2000 (Exhibit R5), then directions were issued from the vigilance section for cancellation of the said OTBP order pertaining to the applicant vide order dated 27.9.2000 (Exhibit R6). This letter reads as under:

"With reference to letter cited above, ad-hoc OTBP promotion was given to Shri c.N. Yadav,

...8.



W/M 17780 vide order No.ST/98-8/16  
yrs/Ad-hoc/wm dtd 21.3.94. Charge-sheet was  
issued vide order No.AMX-69/PF/17780/88-89 dtd.  
11.01.89 against Shri C.N. Yadav.

Hence you are requested to issue  
reversion order against the said official as  
vigilance case is still pending."

After this letter, two reminders dated 24.10.2000 and  
04.12.2000 (Exhibit R7 and R8) were issued. Thus, it  
appears that the adhoc OTBP was issued due to over sight  
without following condition No.5 laid down in letter  
dated 21.3.94. Whereas the applicant was entitled for  
consideration for promotion after disciplinary  
proceedings are over or the vigilance clearance is given  
by the vigilance department. In this case without  
obtaining the clearance from vigilance department or  
without noticing the fact that disciplinary inquiry is  
pending against the applicant, the said promotion order  
was issued. Now the disciplinary proceedings are over  
and the Disciplinary Authority has passed the order  
dated 10.12.2001 Exhibit R1 in the following terms -

"It is therefore ordered that the pay of Shri  
c.N. Yadav, W/M, St. No.17780, be reduced by  
three stages from Rs.3890/- to Rs.3650/- in the  
time scale of pay of Rs.2750-70-3800-75-4400  
for a period of three years with immediate  
effect. It is further directed that Shri c.N.  
Yadav, W/M St. No.17780 will earn increments  
of pay during the period of reduction and that  
on expiry of this period, the reduction and  
that on expiry of this period, the reduction  
will not have the effect of postponing his  
future increments of pay."

In this case, the OTBP was purely on adhoc basis and the  
order of adhoc OTBP was issued due to over sight by the  
concerned and the applicant was wrongly granted the OTBP



scale by the concerned Accounts Officer without observing the condition No.5 in the said order. Since the promotion was granted by mistake by the respondents and it was corrected by deleting the name of the applicant by order dated 12.12.2000 and communicated to the applicant on 30.01.2001 after obtaining the clarification from the vigilance department, there is no legal infirmity in the action taken by the respondents.

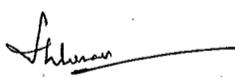
10. Learned counsel for the applicant has relied upon the case of L.M. Medar (supra) in which it was held that promotion on adhoc basis on local seniority for 180 days in the Department of Telecommunications and continued for 180 days cannot be denied on issue of charge sheet or pending disciplinary proceedings on expiry of 180 days or earlier. But in the present case the charge sheet was already given and the disciplinary inquiry was already conducted and the punishment order was yet to be passed and therefore, the ratio of this case does not help the applicant. In the case of Billeswar Saha (supra) it was held that no recovery can be made from the applicant after reversion. Therefore, this decision deals with recovery only not relevant to the point in issue. In case of T. Narayan Kutty (supra) the reversion of Assistant Engineer as Junior Engineer was ordered without any inquiry and in case of Than Singh it was held that any charge of misconduct would be presumed to have been condoned unless it is shown that the promotion was subject to the order of



disciplinary proceedings pending or contemplated. the ratio of these two cases, also does not help the applicant because in the order of promotion it was clearly mentioned that in the event of any vigilance / disciplinary proceedings are pending / contemplated or any punishment is current, promotion order should not be given effect.

11. So far as the recovery of pay and allowance as a result of reversion of the applicant on the ground that the applicant was promoted by mistake to the higher grade wireman, since he continued to discharge the duties and responsibilities of the post, he is entitled to the pay of the post till he was ordered to be reverted with effect from 10.12.2000. In view of Apex court ruling in case of Shyambabu Verma Vs. Union of India 1994 SCC (L&S) 689 case, we do not find any justification for recovery of pay and allowances if any.

12. For the reasons stated above, we partly allow this OA. No order as to costs.

  
(MUZAFFAR HUSAIN)  
MEMBER (J)

  
(A.K. AGARWAL)  
VICE CHAIRMAN

Gajan