

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 21st DAY OF APRIL 1987

Present : Hon'ble Shri Ch.RAMAKRISHNA RAO MEMBER(J)

Hon'ble Shri P.SRINIVASAN MEMBER(A)

APPLICATION No.1595/86(F)

R.P.Jalihal,
Working as Telephone Supervisor,
Telephone Exchange,
Belgaum. APPLICANT
(Shri R.U.Goulay ... Advocate)

v.

The General Manager,
Telecommunication,
Karnataka Circle,
Bangalore.

Sri K.A.P.Kamath,
working as Telephone Supervisor,
Telephone Exchange,
Mandy. RESPONDENTS
(Shri M.S.Padmarajaiah ... Advocate)

This application has come up before the court
today. Hon'ble Shri P.Srinivasan, Member(A) made the following :

O R D E R

The applicant who is currently working as Telephone Supervisor in Belgaum in the Telecommunications Department has, in this application, sought for a direction from us to declare two letters, one dated 28.11.1985(Annexure-C) and another dated 25.2.1986(Annexure-E) as illegal. By the first mentioned letter issued by the General Manager Telephones, the applicant was informed that the applicant's case for promotion as on 15.5.1971 had been considered and he had not been found fit for promotion as Telephone Supervisor from that date. By the second letter dated 25.2.1986 the General Manager reiterated what he had stated earlier. The second prayer in the application is that respondent-1

P.Srinivasan

should be directed to promote the applicant to the post of Telephone supervisor with effect from the date when respondent-2 was so promoted that is from 15.5.1971.

2. Sri R.U.Goulay, learned counsel for the applicant submitted that promotion to the post of Telephone Supervisor was only on the basis of seniority. The applicant was senior in the initial grade of Telephone Operator to Sri K.A.P.Kamath, respondent-2, because of having joined service earlier. However, he had not been considered for promotion to the post of Telephone Supervisor in the Departmental Promotion Committee ('DPC') held on 15.7.1971 while Sri Kamath was so considered, recommended for promotion and duly promoted w.e.f.15.5.1971. The seniority of the applicant in the grade of telephone operator was subsequently set right to his satisfaction in or about 1980 and thereafter a review meeting of the DPC was held on 7.10.1985 to consider his case as on 15.7.1971 for promotion as Telephone Supervisor when his junior Sri Kamath was recommended for promotion. In this DPC, the applicant was not found fit for promotion and so he could not be promoted w.e.f.15.5.1971. However, in the normal course, the applicant was promoted as Telephone Supervisor in 27th August, 1973, that is, after Sri Kamath was promoted. The applicant now challenges the aforesaid letters issued by the General Manager by which he was told that his case for retrospective promotion from 1971 had been considered, but he was not found fit for promotion. Sri Goulay contends that there was no reason why the applicant should not have been found fit for promotion in 1971 as the promotion was only on the basis of seniority and not on the basis of merit.

3. Sri M.S.Padmarajaiah, learned Central Government Senior Standing Counsel appearing for the respondents produced

P. S. Iyer

the records to show that the case of the applicant had been considered for retrospective promotion from 1971 in the review meeting of the DPC held on 17.10.1985. He pointed out that on 10.12.1970 a punishment of censure had been awarded to the applicant and in view of this the review meeting of the DPC came to the view that his service record was not satisfactory and he could not be promoted to the post of Telephone Supervisor in 1971. Though the promotion to the said post was on the basis of seniority, an adverse entry in the service record would disqualify a person for promotion. When the original DPC was held on 15.7.1971, not even one year had passed since the order of censure was passed against the applicant and, therefore, naturally the review DPC did not consider him fit for promotion.

4. Replying to Sri Padmarajaiah, Sri Goulay urged that a minor punishment of censure cannot stand in the way of promotion, where such promotion was on the basis of seniority. He cited in this connection a passage appearing at Page 488 of Swamy's manual of Establishment in Administration for Central Government Offices published in 1987. ^{of} ⁱⁿ ^{of} This passage which appears under the heading 'Promotion of employees on whom penalty has been levied' it has been clarified that "the imposition of minor penalty of censure on a government servant does not by itself stand against the consideration of such person for promotion, as his fitness for promotion has to be adjudged, in the case of promotion by seniority, on the basis of an overall assessment of his service record". Therefore, the order of censure passed on the applicant on 10th December, 1970 could not stand in the way of his being recommended for promotion on 15.7.1971 when the first meeting of the DPC was held. He also contended that when the original meeting of the DPC was held, the order of censure had not been communicated to the applicant. The review DPC had to put in itself in the position of

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the original DPC ~~as~~ on 15.7.1971 and if it had done so, it could not have taken into consideration an adverse remark which had not been communicated to the applicant. Therefore, the decision of the DPC held on 17.10.1985 not to recommend the promotion of the applicant as ^{on} 15.7.1971 was illegal and was liable to be struck down.

5. We have considered the rival contentions carefully. We have also perused the records of the DPC originally held in 1971 as well as the meeting held on 17.10.1985. In the original meeting, the applicant figured in the seniority list of Telephone operators much below Sri Kamath, respondent-2, and the select list fell short of the applicant and so, he was not recommended for promotion. Since the applicant's seniority in the initial grade was later revised and he was placed above Sri Kamath, the review meeting of the DPC considered him for promotion from 1971 and recorded a finding that the applicant was unfit for promotion to the cadre of Telephone Supervisor from 1971 due to unsatisfactory record of service. Though it has been clarified in Swamy's Manual relied on by Sri Goulay that the minor penalty of censure does not by itself stand against the consideration of an official for promotion, it does not mean that the DPC should not take into account ^{such a} the penalty for determining fitness for promotion. Censure was awarded to the applicant on the ground that he had approached higher authorities to get advancement in career without following the proper channel. The DPC obviously considered this to be a factor against the applicant for promotion and we cannot quarrel with that view. The contention that the order of censure had not been actually communicated before the original meeting of the DPC loses all significance when we notice that by the time the review DPC was held the order of censure had

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become final, the applicant not having challenged the same. The objection to consider an uncommunicated adverse remarks is based on the principle that the Government official should have an opportunity to make a representation against the adverse remarks before they can be taken into consideration. As it happens the applicant made no representation and the order of censure had become final. We find nothing wrong in the review DPC taking into account the order of censure in coming to the conclusion that the applicant was not fit for promotion in the year 1971.

6. In the result, the application is dismissed. Parties to bear their own costs.

Uncommunicated P.S. B
MEMBER(J) 20/4/87 MEMBER(A) 21/4/87

AN.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

APPLICATION No. 1595/86(F)

(WP. NO.

COMMERCIAL COMPLEX, (BDA)
INDIRANAGAR,
BANGALORE-560 038.

DATED: 4/5/87

APPLICANT

Shri R.P. Jalihal

TO

1. Shri R.P. Jalihal
Telephone Supervisor
Telephone Exchange
Belgaum
2. Shri R.U. Goulay
Advocate
90/1, 2nd Block
Thyagarajanagar
Bangalore - 560 028

VS

RESPONDENTS

The GM, Telecom, Karnataka and another

3. The General Manager
Telecommunication
Karnataka Circle
Bangalore
4. Shri K.A.P. Kamath
Telephone Supervisor
Telephone Exchange
Mandy
5. Shri M.S. Padmarajaiah
Senior Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Janardan
6/5/87
SUSPECT: SENDING COPIES OF ORDER PASSED BY THE
BENCH IN APPLICATION NO. 1595/86(F)

....

Please find enclosed herewith the copy of the Order
passed by this Tribunal in the above said Application on
21-4-87.

ENCL: As above.

*Deputy Registrar
(JUDICIAL)*