

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

Original Application No: 864/92

Transfer Application No: ---

DATE OF DECISION 20-1-1993

Baburao s/o Sambhaji Lawathre Petitioner

Mr.R.N.Labde Advocate for the Petitioners

Versus

Union of India and ors. Respondent

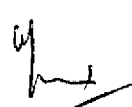
Mr.Ramesh Darda Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y.Priolkar, Member(A)

The Hon'ble Shri V.D.Deshmukh, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgement ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ?
- } No


(M.Y.PRIOLKAR)
M(A)

MD

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

(4)

O.A.864/92

Baburao s/o Sambhaji Lawathre,
Higher Grade Telecom Office
Assistant
in the Office of Telecom
District Manager,
Engineering Section,
Nagpur.

.. Applicant

-versus-

1. The Union of India
through
The Director General,
Telecom Department,
Sanchar Bhavan,
New Delhi - 110 001.
2. The Chief General Manager,
Telecom,
Maharashtra Circle,
Bombay - 400 001.
3. The General Manager,
Telecom,
Vidarbha Area, 5th Floor,
Central Telegraph Office Bldg.,
Nagpur - 440 001.
4. The Telecom District Manager,
Near Zero Mile, Sanchar Bhavan,
Nagpur - 440 001.
5. The Divisional Engineer, Phones,
(Planning) 4th Floor,
Central Telegraph Office Building,
Nagpur - 440 001. .. Respondents

Coram: Hon'ble Shri M.Y.Priolkar,
Member(A)

Hon'ble Shri V.D.Deshmukh,
Member(J)

Appearances:

1. Mr.R.N.Labde
Advocate for the
Applicant.
2. Mr.Ramesh Darda
Counsel for the
Respondents.

ORAL JUDGMENT:
(Per M.Y.Priolkar, Member(A))

Date:20-1-1993

The reliefs prayed in this application
are to quash and set aside the order dt. 13/14/3-90
withholding the next increment of the applicant
and the appellate authority's order dt. 29/30-11-90

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rejecting the appeal and, further, grant promotion to the applicant to the next higher post with retrospective effect on the basis of the seniority with all consequential benefits of seniority, pay and allowances etc.

2. The applicant who is stated to be a higher grade Telecom Office Assistant contends that his immediate superior Asstt.Engineer(Planning) arbitrarily ordered him to deal with a letter received in the Section though according to the applicant, dealing with such letters was not part of the duties allotted to him nor had he at any time previously dealt with such letters. The AE(Planning) is stated to have reported the matter to the Divisional Engineer(Phones(Planning) who issued to the applicant a memo proposing to take action against him for this misconduct. The memo was accordingly issued to him on 1-11-1989 and the applicant submitted his reply on 4-12-1989. After considering his reply the Divisional Engineer Phones (Planning) passed the order on 13/14-3-90 awarding the punishment of withholding next increment without affecting future increments. Thereafter on 21-4-1989 the applicant preferred an appeal stating that the Divisional Engineer(Administration) is the competent authority to initiate punishment and not the Divisional Engineer Phones under the CCS(CCA)Rules and as such the disciplinary proceedings and the order of punishment is void ab-initio and is liable to be quashed. As stated above his appeal also came to be rejected by the appellate authority ^{on} 29-11-90.

3. The learned counsel for the applicant contended that as provided in P&T Manual Vol.III (IVth Edition corrected upto 1-11-80) the authority competent to impose minor penalties for upper and lower division clerks and Stenographers in Telephone Districts under the charge of GM Telecom is the Gazetted Officer (in respect of staff under his Administrative Control). The learned counsel stated that the post held by the applicant was equivalent to UDC but that the Gazetted Officer who had administrative control over him was Divisional Engineer(Administration) and not Divisional Engineer Planning. The learned counsel, however, admitted that his immediate superior was the Assistant Engineer Planning and the next superior officer was Divisional Engineer Phones(Planning). When a specific query was made ^{at} to which officer was granting him casual leave etc. and check his daily attendance etc. the learned counsel could not give any answer nor he could produce any evidence that Divisional Engineer ^(Admin.) should be treated to be the Gazetted Officer having ^{over the applicant although} control ~~himself with~~ his immediate superior and the next higher officer were the AE Planning and the Divisional Engineer(Planning) respectively. According to the learned counsel there should be one officer under the rules who can be the Gazetted Officer empowered to impose minor penalties. In our view such Gazetted Officer can only be Divisional Engineer Phones(Planning) who has actually issued the chargesheet in question. We do not ^{therefore} agree with the learned counsel for the applicant that the chargesheet was issued by an officer who was not authorised to do so.

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4. The learned counsel next contended that the DPC which had met to consider the promotion during the currency of the penalty had not recommended the applicant in view of the penalty imposed on him. His grievance is that he has been promoted two months after the expiry of the currency of the penalty although according to him the promotion should have been ordered immediately on the next date of the last date of the penalty. In support of this contention the applicant relies on the Supreme Court judgment in the case of Union of India v. K. Krishna, decided on 20-11-91 in which case it was held that denial of promotion during the currency of punishment does not subject an employee to double jeopardy and it also directed that the applicant in that case should be promoted on 15-9-90 which was immediately after the expiry of the currency of the penalty i.e. on 14-9-90. The facts in the present case before us are distinguishable. In the case decided by the Supreme Court the petitioner had already appeared for the required test for the purpose of promotion and was successful in the test and it is admitted that order for promotion would have been issued but for the fact that he was punished in a disciplinary proceeding. There is no such admission in the case before us. The only argument of the counsel for the applicant is that the applicant is due for promotion. Merely becoming due for promotion, in our view, ^{does not earn the} ~~the~~ promotion ^{which} could be ordered only after a competent DPC pronounces the applicant fit for promotion. The fact that the respondents have taken two months for arranging promotion ~~probably~~ after the expiry of the currency

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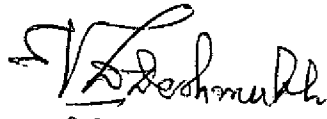
of the penalty does not amount to their acting arbitrarily or vindictively as ^{Sough to be} made out.

5. The learned counsel also argued that dealing with ^{the} letter in question for which he has been charged does not come under ~~the~~ his ^{which have been specified in} ~~statutory~~ duties. ^{Statutory probably means} an office order issued by the Divisional Engineer Phones, in which ~~certain~~ duties ^{have been} ~~of~~ to various clerks ~~were~~ allocated. Admittedly, when the applicant had represented to the same Divisional Engineer Phones about his being asked by the AE to deal with the letter which according to him does not pertain to his charge, ^{the} ~~but~~ DE Phones had confirmed the AE's action and had insisted ^{that} the applicant ^{should} ~~do~~ carry out the order of AE. But still the applicant seems to have declined to do so. In our view there was nothing ^{very rigid} ~~statutory~~ as claimed by the applicant in the allocation of duties and it is always open to the Supervisor incharge to make minor variations to suit day-today requirement of the office work. We do not therefore see anything arbitrary or unreasonable in the applicant being asked to deal with ^{the} ~~a~~ single letter ^{in question} although according to the applicant ^{it} does not pertain to his charge, ^{even} when this order was confirmed by the DE Phones who had issued the original order and therefore was competent to make any change in the order, at least at that stage the applicant should have obeyed the order but he was adamant in refusing the order. We do not find any justification

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in such action of the applicant.

6. We do not therefore see any merit in this application which is accordingly dismissed with no order as to costs.


(V.D. DESHMUKH)
Member(J)


(M.Y. PRIOLKAR)
Member(A)

MD