

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 668/93

Date of Decision: 09-04-99

M.W.Gawde

.. Applicant

Shri B.Dattamurthy

.. Advocate for
Applicant

-versus-

Union of India & Anr.

.. Respondent(s)

Shri V.S.Masurkar

.. Advocate for
Respondent(s)

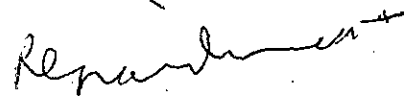
CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

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

(1) To be referred to the Reporter or not ? Yes

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? No


(R.G. VAIDYANATHA)
VICE - CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 668/93.

Pronounced, THIS THE 9th DAY OF APRIL 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

M.W.Gawde,
A-1, Shree Pooja Society,
Sayani Road,
Prabhadevi,
Bombay-400 025.
(By Advocate Shri B.Dattamurthy)

... Applicant.

V/s.

1. Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House,
Prabhadevi,
Bombay-400 025.

2. Union of India through
Secretary,
Department of Telecommunication,
New Delhi.
(By Advocate Shri V.S.Masurkar)

... Respondents.

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply opposing the application. We have heard Mr.B.Dattamurthy the learned counsel for the applicant and Mr.V.S.Masurkar the learned counsel for the respondents.

2. Few facts which are necessary for the disposal of this application are as follows.

The applicant joined service under the second respondent as a Junior Engineer in 1964. He came to be promoted first as Assistant Engineer and later as Divisional Engineer. He was due to be promoted as Senior Time Scale of Group 'A' of ITS. A promotion order was also issued which is dt.25.1.1993 in respect of number of officers including the applicant. However, the said

...2. *[Signature]*

order was not given effect to so far as the applicant was concerned. The applicant's earlier officiating promotion came to an end and he came to be reverted to the lower post. The applicant made representations, but with no success. The applicant was not under suspension and no charge sheet had been issued to him as on 25.1.1993. There was no criminal prosecution pending against the applicant as on that day. Hence, there was no legal impediment to withhold the promotion of applicant as on 25.1.1993. But, it appears the department has withheld the promotion on the ground of pendency of vigilance case against the applicant. The applicant's grievance is that pendency of vigilance case is not a ground to withhold promotion. Applicant's juniors have been promoted. It is also stated that withholding of promotion or denying promotion is contrary to the law declared by the Supreme Court in Janakiraman's case. The applicant was kept under suspension on 5.7.1993. Hence the applicant has approached this Tribunal for a direction to the respondents to implement the order of promotion dt. 25.1.1993 retrospectively from that date and promote the applicant with all consequential benefits and he also wants the order of suspension to be set aside.

3. In the reply the respondents have stated that the applicant was not promoted and the order of promotion dt. 25.1.1993 was withheld since applicant was involved in corrupt activities and vigilance case was pending. The C B I registered a case against the applicant on 14.8.1992 and issued an F.I.R. Both the office and residence of the applicant were raided by the CBI and the news was flashed in the leading Newspapers. Search warrants were prepared for recovering cash both from the office and the residence of the applicants on the basis of the CBI report the applicant was placed under suspension w.e.f. 5.7.1993. In view of involvement of the applicant in serious corruption case his promotion has been suspended. Hence the applicant is not entitled to any of the reliefs prayed for.

4. We may also notice some subsequent events which were brought to our notice at the time of final hearing of the application. The applicant has

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since attained the age of superannuation on 13.1.1998. On the basis of the CBI investigation a charge sheet was filed against the applicant in the criminal court. It is also brought to our notice that after trial the Session Judge convicted the applicant and sentenced him in August, 1997. It appears the applicant has preferred an appeal and it is pending in the Bombay High Court.

In view of the applicant attaining the age of superannuation the question of now promoting the applicant does not arise, except for monetary benefits. Applicant cannot now be promoted and posted anywhere in view of his attaining the age of superannuation. Now the applicant wants promotion only for the purpose of getting monetary benefits.

5. The learned counsel for the applicant raised only one contention before us viz. that as on the date of the order of promotion dt. 25.1.1993 there was neither criminal case nor departmental enquiry pending against the applicant and he was not under suspension on that date and therefore the respondents action in withholding the order of promotion so far as the applicant is concerned is illegal and contrary to the Circular regarding sealed cover procedure. He, therefore, wants a direction to the respondents to give effect to the promotion order dt. 25.1.1993 and on that basis the applicant should get the consequential monetary benefits. On the other hand, the learned counsel for the respondents maintained that in view of the subsequent suspension of the applicant and conviction by the criminal court the applicant cannot be rewarded by giving him retrospective promotion and consequential monetary benefits.

6. We find that the argument of Mr. Dattamurthy, the learned counsel for the applicant that applicant's promotion could not have been withheld on 25.1.1993 since the applicant was not under suspension and there was neither criminal charge sheet nor departmental enquiry appears to be well founded. In view of the law laid down by the Apex Court in Jankiraman's case (1991(5) SLR

SC 602) promotion cannot be withheld and sealed cover procedure cannot be adopted when no criminal case or departmental enquiry is pending against an officer. Therefore, in the usual course, we would have allowed this application and directed the department to give effect to the order of promotion and then grant consequential monetary benefits to the applicant. But, the question is whether in view of the subsequent events the Tribunal can give such a direction to the department to give promotion and consequential monetary benefits to the applicant? After giving our serious and anxious consideration we find that Courts and Tribunals should not mechanically pass orders ignoring subsequent subsequent events.

7. Even in Jankiraman's case, after laying down the law about 'sealed cover procedure', the Supreme Court considered individual appeals. Then, they gave directions in different individual appeals. For our present purpose, we are concerned with the observations of the Supreme Court regarding Civil Appeal Nos. 51 to 55/90 which is at page 615 of the reported Judgement and in particular in para Nos. 36 to 39. There it has been mentioned that though DPC met in 1996 and the departmental charge sheet was issued in December, 1987 still promotion could not have been ordered by the Tribunal by taking a "mechanical view" without considering the facts and circumstances of the case. Then the Supreme Court pointed out that though the departmental charge sheet was issued later, there was some circumstance to show that the officials themselves have pleaded guilty and they have even refunded the amount and in those circumstances, the Tribunal should not have adopted a mechanical view in granting the relief.

We have also come across another Judgment of the Apex Court reported in 1992 (5) SLR SC 618 in the case of (State of M.P. and Another V/s. Syed Naseem Zahir and Ors.). In our view, this decision applies in all force to the facts and circumstances of the present case. Even in that case, the DPC met on 28.10.1987, but the charge sheet had been issued on 15.4.1988.

Therefore, admittedly the charge sheet has been issued about 8 months after the DPC. But, still the DPC had observed the 'sealed cover procedure'. The official challenged the action of the administration in adopting the 'sealed cover procedure' by approaching the M.P. High Court which later came to be transferred to the M.P. Administrative Tribunal. By following Jankiraman's case the Tribunal held that the procedure adopted by the DPC in following 'sealed cover procedure' is illegal and gave a direction to the government to open the sealed cover and give effect to the recommendation of the DPC. The state took the matter in appeal before the Supreme Court. In fact, the Supreme Court observed that the Tribunal's view is correct. This is what the Supreme Court observed in para 5 of the reported Judgment which reads as follows:

"...Since in this case, admittedly, on the date when the DPC met the charge sheet had not been served on Syed, resort could not be had to the "sealed cover" procedure. The reasoning and the conclusion of the Tribunal are unexceptionable."

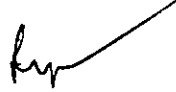
Therefore, the Supreme Court clearly upheld the view of the Tribunal that since on the date the DPC met no charge sheet was pending against the officer, Promotion cannot be withheld and sealed cover procedure cannot be followed. That is exactly the case of the applicant in the present case also. Having found that the order of the Tribunal is unexceptionable, the Supreme Court made the following observations in the last sentence of para 5 of the reported Judgment which reads as follows :

"The only question for our consideration is whether in the facts and circumstances of this case especially in view of the events subsequent to the meeting of the DPC, it would be in the interest of justice to promote respondent Syed to the post of Chief Engineer."
(underlining is ours)@@

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Having posed the question as above, the Supreme Court considered the facts of the case and in particular the subsequent events; it was noticed that there were serious charges of irregularity and mis-conduct against the officer. The departmental charge sheet has been subsequently issued. Enquiry

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has been completed. After the enquiry report, the government even took a tentative opinion that major penalty should be levied and consulted the Public Service Commission and the enquiry report had been supplied to the official. In view of the subsequent events, the Supreme Court observed that a mechanical approach should not be followed and placed reliance on K.V.Jankiraman's case and in particular, the observation regarding Civil Appeal Nos.51 to 55 which we have already referred to and then observed in para 7 as follows :

"Keeping in view the facts of this case we are of the view that the "sealed cover" containing recommendations of the DPC in respect of respondent Syed be not opened till departmental proceedings against him are concluded".

Then, the Supreme Court has observed that the official has already received the enquiry report and he could submit his reply and then the government should pass order in the departmental enquiry. Then, it is further observed if the official is exonerated then he will get retrospective promotion and consequential monetary benefits. However, if he is punished then action will be taken as per the guidelines in Jankiraman's case.

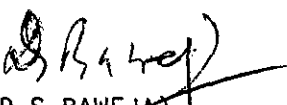
8. Therefore, though in Syed's case the charge sheet has been issued subsequent to the DPC and strictly observing of 'sealed cover procedure' was not valid in law, still the Supreme Court did not interfere in view of the subsequent event of issuance of charge sheet and enquiry has been concluded and only final order had to be passed.

In the present case, the applicant has been suspended after 25.1.1993, he was prosecuted in criminal court and he has been convicted by the criminal court. In such a situation, this Tribunal cannot give a direction to the respondents to promote the applicant. In the above case, the Supreme Court has observed that though the charge sheet was issued subsequently and now in the final order the officer is punished then he is not entitled to promotion at all. In the present case too, the applicant has been criminally prosecuted

in serious charges of corruption and he has been convicted and therefore we cannot mechanically grant promotion and given monetary benefits to the applicant. Therefore, in the facts and circumstances of the case and particularly in view of the subsequent events which are brought to our notice, we are not inclined to grant the applicant retrospective promotion from 25.1.1993 with consequential monetary benefits.

9. We can only add one sentence in favour of the applicant. It is stated that against the order of conviction, the applicant has preferred an appeal and the appeal is pending before the High Court. If in case, the appeal is allowed and the applicant is acquitted by the High Court, then we give liberty to the applicant to make a representation to the administration to give him notional promotion from 25.1.1993 and consequential monetary benefits as per rules. If such representation is made by the applicant, the administration may consider the same as per rules and pass appropriate orders. If the applicant is satisfied with the order of the administration there is nothing more to be done. However, if the applicant is dissatisfied with the order of the respondents, then he can challenge the same according to law.

10. In the result, the O.A. is dismissed subject to observation in para 9 above. In the circumstances of the case, there will be no order as to costs.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA) 9.4.99
VICE - CHAIRMAN

B.