

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 885/94

Date of Decision:

Shri V.G.Choudhary

Applicant.

Shri S.P.Kulkarni

Advocate for  
Applicant.

Versus

Assistant General Manager &  
3 Urs. MNL

Respondent(s)

Shri R.C.Kotiankar

Advocate for  
Respondent(s)

CORAM:

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

Hon'ble Shri. B.N.Bahadur, 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? *May No*

*B.N. Bahadur*

(B.N. BAHADUR)  
MEMBER(A)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO:885/94.

DATED THE 28<sup>th</sup> DAY OF September, 1994.

CORAM:HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN.

HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

Shri V.G.Choudhary, Asstt. Engineer,  
Office of the General Manager(Admn.),  
Mahanagar Telephone Nigam Ltd,  
Bombay Telephone House, Prabhadevi,  
Bombay.

... Applicant.

By Advocate Shri S.P.Kulkarni.

v/s.

1. Asstt. General Manager(A-I),  
Mahanagar Telephone Nigam Limited,  
Bombay Telephone House, Prabhadevi,  
Bombay - 400 028.
2. The Union of India,  
Ministry of Communications,  
Through the Director,  
Department of Telecommunications,  
Sanchar Bhavan,  
New Delhi-110 001.
3. The Chief General Manager,  
Telecommunications,  
Maharashtra Circle, G.P.O.Compound,  
Bombay - 400 001.
4. The Chief General Manager,  
Mahanagar Telephone Nigam Ltd,  
Bombay Telephone House, Prabhadevi,  
Bombay - 400 028.

... Respondents.

By Advocate Shri R.C.Kotiankar

I ORDER I

[ Per Shri B.N.Bahadur, Member(Administrative) ]

This is an application by Shri V.G.Choudhary,  
working in the Mahanagar Telephone Nigam Ltd, Mumbai(MTNL)  
seeking relief as follows:-

- a) to quash and or set aside the impugned order  
at Exh/A to the extent of the reversion of

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the Applicant at Sr.No.22u from the post of Asstt. Engineer to his substantive post of Junior Telecom Officer.

- b) to grant such other further reliefs as may be just and expedient in the facts and circumstances of this case, including costs of this application.

2. In short, the applicant is seeking the quashing of his reversion order consequent upon the posting of Shri C.N.V.Nair in his place.

3. The facts of the case, as put forth by the applicant, are that he entered service as Junior Engineer and was regularised in the post by order dated 15/1/1977. After passing Telecom Engineering Service (TES) Group 'B' examination in April, 1988; he was qualified for promotion as Assistant Engineer and was promoted as Assistant Engineer on 4/3/91 (Copy at Exhibit-B). Applicant states that he has continued as Assistant Engineer from that time till date.

4. By order dated 3/6/94 issued by Department of Telecommunications, New Delhi, applicant was promoted to Group 'B' of Telecommunication Engineering Service (Annexure-C). However, by the Impugned order dated 12.7.94 (at Exhibit-A) he was reverted.

5. Applicant contends that this order of reversion is punitive in nature, and hence illegal. He states that reversion is on account of some disciplinary proceedings, and thus cannot be a ground for reversion, even if it is assumed that his promotion is on an adhoc basis. This is

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against the instruction in O.M. dated 24/12/86 issued by Department of P&T. No separate orders of reversion have been received except through the Impugned order. The applicant, however, states that he still continues to hold the charge as Assistant Engineer (at the time of application.)

6. A statement has been filed in reply, by the respondents, in which it is stated that the relieving-cum-posting order of the applicant was issued on 29/7/94., but could not be served for reasons explained in reply. Thereafter, as described, the applicant continues only in view of the interim order of the Tribunal.

7. The respondents further state that the applicant, alongwith others, were initially promoted as Assistant Engineer purely on temporary basis locally w.e.f. 14/3/91. Later, as per policy decision of Government to the effect that local official appointments in TES Group 'B' should not continue beyond 180 days, orders were issued reverting the applicant, and others, as per this policy. The applicant was reverted from 9/11/93 vide respondent's order dated 5/11/93 and 18/11/93. However, since the posts could not be filled up on regular basis, applicant and others were again promoted to officiate for a period of 180 days w.e.f. 11/11/93 and ceased to be in officiation w.e.f. 9/5/94.

8. Respondents further state that on 3/6/94, regular promotion orders of <sup>JTOs were</sup> / issued and the name of the applicant was included at Sr.No.1427, as stated by applicant, but these orders were subject to the condition that no vigilance/disciplinary enquiry was pending.

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In the case of applicant an enquiry was indeed pending and a charge memo had been issued to him on 25/2/94 on charges of acceptance of illegal gratification. Hence Department of Telecommunication's promotion order dated 3/6/94 was not given effect <sup>to</sup> in regard to the applicant. It is denied that the applicant continued to officiate as Assistant Engineer from 4/3/91 till date as alleged by him.

9. Respondents deny that this is a case of a reversion or non-promotion of Government servant, or an action taken as a punitive measure.

10. We have seen all papers in the case including the rejoinder filed. Counsel on behalf of both sides have been heard. Records produced by the respondents for our perusal has been seen.

11. The arguments advanced on behalf of the applicant by his learned counsel in brief are as follows:-

(a) The counsel took us over the relevant rules, and contended that the adhoc promotion accorded to the applicant was also a promotion and this point needs to be established since the action of the respondents amounts to wrongful reversion.

(b) The learned counsel took recourse to the judgements cited at 1988(7)ATC-692 in the case of Narayan Kutty v/s. MTNL.

(c) Another case cited for support by learned

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counsel for applicant was the judgement in OA-1139/95, decided by this bench of the Tribunal on 13/10/95. It was contended that it is not a case of nonavailability of posts since a plethora of posts was available. It is clearly a reversion. Even an adhoc arrangement cannot be terminated, even if the applicant had to wait for regular promotion till after the enquiry was complete.

(d) It was stated that the enquiry was very much in progress and have not yet been completed and a copy of a Daily order sheet submitted during arguments.

(e) The judgement of the Apex Court in the case of New Bank of India v/s. N. Saigal Reported in 1991 SLJ -268 was cited.

12. Arguing the case on behalf of the respondents, the learned counsel made the following points:-

- (a) It was contended that a stay order was obtained initially by suppression of facts of the case, since Annexure-A-1 clearly says that applicant was already relieved on 29/7/94, the stay was obtained later on 1/8/94 by with-holding of facts.
- (b) The applicant was working on a higher post of Assistant Engineer on purely officiating arrangement, on adhoc promotion, and this arrangement was terminated as per rules.
- (c) Local officers have no power to make

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officiating arrangement on promotion beyond a period of 180 days and it was as a consequence of this policy decision that general reversions were made including that of the applicant (Exhibit-D).

- (d) The order of promotion was only made for 180 days.
- (e) The action of respondents was not one of reversion arising out of pendency of departmental enquiry against the applicant only but/the implementation of general conditions attached to the Promotion order from Head Quarters in New Delhi, to the effect that none of the officers in the list would be promoted if departmental enquiry/vigilance case etc was pending against him.
- (f) The learned counsel for Respondent drew support from the citation of the case reported at 1987-CAT(FB) -59 (Vol.I) in support of this contention. It was argued that the case of Narayan Kutty quoted by the counsel for applicant was not relevant, and was easily distinguishable. In Kutty's case, the fixation was for more than three years whereas here it was less than 180 days. No penalty is involved in this case. The facts of the two cases are also distinguishable..

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13. The basic fact that emerges here is that the applicant was indeed promoted on adhoc basis on 04.03.1991 (exhibit-B). Also, orders were issued dated 03.06.1994 (exhibit-C) by the Ministry at New Delhi promoting a large number of Junior Telecom Officers to the Telecommunication Engineering Services (T.E.S.) Group 'B'. It is clear from this order that the conditions attached to this order, inter-alia, included the condition that no vigilance or disciplinary enquiry should be pending and if such an action was pending, no action to promote the officer should be taken. Pursuant to this order dated 03.06.1994, the Mumbai Office of the Chief General Manager issued promotion orders and against one of the promotion orders issued, reverted the applicant. Infact, this is the impugned order.

14. It has been stated by the respondents that as per the order issued on 29.07.1994 the applicant stood relieved but due to the peculiar circumstances of applicant not being available/leave, etc., the order was not served. Infact, the respondents aver that the applicant got a stay and on which strength he continues in the senior position, by misrepresenting the fact of his having been relieved on 29/7/94.

15. Now the point to be seen here is, whether it can be inferred that the reversion of applicant is punitive in character. If it is so, obviously the law settled in this regard by the highest court would come to apply. In other words, if reversion is made in view

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of the pending disciplinary action against the applicant, then clearly such a reversion is not legally valid without the process of departmental enquiry, etc.

16. In this case promotion orders of large number of officers are issued from the central level in New Delhi in normal course and it is the normal practice that, as a part of the promotion order, it is stipulated in the order itself that in case any disciplinary or vigilance action is pending, then orders of promotion in respect of such an official should be issued. This is a practice that cannot be held to be objectionable. Now, here the officer of the M.T.N.L. at Mumbai was following these instructions and in the process of filling up these posts, has reverted the applicant. Actually what was required was that the applicant could not be promoted, but since the applicant was already working in an adhoc capacity on the higher post, what has really happened is that the implementation of the orders received at exhibit-B has really amounted to reversion of the applicant.

17. Now it cannot be *said* that the adhoc promotion has created a right in favour of the applicant to continue on the higher post. It is also an admitted fact that disciplinary proceedings are in progress against the applicant. It is a well-established position that a person under a cloud of disciplinary proceedings cannot be expected to get a promotion till that cloud is not lifted, on completion

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of departmental enquiry. All that is different in this situation is that the applicant happened to have continued in the higher post. Infact, the instructions were that no one should be continued beyond 180 days. Mere officiation for a longer time in an adhoc capacity cannot become the only basis for allowing the applicant to continue in the position he is. After <sup>the interim orders, BNB</sup> ofcourse, he is there only because of interim orders of this Tribunal.

18. In the case of T.Narayan Kutty cited by the learned counsel for the applicant, it is seen that the facts are distinguishable, specially because it has been held there that "it was obvious that the purpose of reverting his client as Junior Engineer was none other than the misconduct attributed to him in the pending vigilance case and disciplinary proceedings contemplated." As such, it was held that that was <sup>a</sup> reversion constituting imposition of penalty without proper enquiry. This is not the position, as explained above, in the present case before us and hence the case of T.Narayan Kutty cannot help the applicant.

19. In the second case cited namely, K.Balasubramaniam v/s. Union of India, in OA-1139/95 decided by this Bench on 13/10/95, it is seen that the facts and circumstances are such that the decision in that case will not apply to the present case. Here it is a clear ~~nexus between~~ reversion and disciplinary proceedings. Another case has been cited namely New Bank of India v/s. N.P.Sehgal and Anr. (1991 SLJ-268).

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The point decided here is that just because a departmental enquiry is pending, it cannot be a ground for not considering the incumbent for promotion, if the incumbent is in the zone of consideration. Also that the incumbent cannot be denied promotion if he is otherwise considered fit. Here also a detailed reading<sup>of</sup> the judgement shows that firstly <sup>it is Bmb</sup> ~~it is~~ an interpretation of rules governing promotion policy of Appellate Bank which is a Public Sector Bank. It is <sup>Bmb</sup> ~~not~~ the case of the employee of the Government of India as such. Further, the emphasis in the quoted judgements is on the factum of consideration for promotion. Thus, a detailed reading of the judgement in this case shows that it will not help the case of the applicant at all.

20. Thus, it will be seen that this is not a case where a nexus can be established between the reversion of the applicant and the fact of departmental proceedings being in process against applicant. It cannot be held, in the facts and circumstances of the case, that the reversion made amounts to <sup>an</sup> ~~act~~ of punishment. It is a well-accepted principle that when an officer is under the shadow or vigilance proceedings, he cannot be promoted. It so happens that an adhoc promotion was in operation for the applicant and what has been done is that this benefit has been withdrawn. It cannot be said that applicant has been punished. After an enquiry, etc are over, further rights of the applicant would be available to him depending upon

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the result of the enquiry and the relevant rules.

21. It must be noted here that the stay granted through Interim order is hereby withdrawn. Further, the fact that the applicant continued in the higher post in view of the Interim order of this Tribunal cannot give him any unintended benefit either of seniority or anything else.

22. In view of the above discussions, the application deserves to be dismissed and is hereby dismissed. The Interim orders granting statusquo are hereby vacated. There will be no orders as to costs.

B. N. Bahadur

(B.N. BAHADUR) . . . 28/9/99 .  
MEMBER (A)

R. G. Vaidyanatha  
28/9/99

(R.G. VAIDYANATHA)  
VICE CHAIRMAN

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