

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 95/94

Transfix Appx 2000 X Not

5-9-1994
DATE OF DECISION:

Sudhakar Trimbak Papalkar Petitioner

Shri N.V. Vechalekar Advocate for the Petitioners

Versus

The Chief General Manager Respondent
Telecom. Maharashtra Circle
Bombay. and others.

Shri P.M. Pradhan Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R.Kolhatkar, Member (A)

The Hon'ble Shri

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar
(M.R.Kolhatkar)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 95/94

Sudhakar Trimbak Papalkar

... Applicant.

V/s.

The Chief General Manager,
Telecom., Maharashtra Circle
Bombay.

The General Manager,
Telecom, Pune.

The Deputy General Manager,
Telecom (OC)
G.M. Telecom, Pune.

... Respondents.

CORAM: Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearance:

Shri N.V. Vechalekar, counsel
for the applicant.

Shri P.M. Pradhan, counsel
for the respondents.

JUDGEMENT

Dated: 5-9-1994

(Per Shri M.R. Kolhatkar, Member (A))

This O.A. has been filed under Section 19 of the Administrative Tribunals Act. The applicant has challenged the order dated 24.6.1992 at Annexure A, appointing Shri S.S. Dehankar, who was working as ASTT CTO Pune to the post of ASTT DTO Pimpri, Pune. It is the contention of the applicant that he is senior to S.S. Dehankar and he was also higher in the waiting list for posting as ASTT. His independent charge of DTO was deliberately overlooked because his CR was considered. At the time of considering his case for posting as independent ASTT in charge of DTO, there were adverse remarks in his CR which were recorded by an officer who was also at that time working as Assistant General Manager in the Circle Office and thus an injustice was caused to him through violation of Rules as well as malafides.

The applicant contends that he was in financial loss by not being posted as ASTT DTO Pimpri for which the following facilities are given:

1. i. Free service telephone connection
ii. Posting nearby residence.
iii. Additional HRA (Rs. 110/- P.M.)

2. The applicant therefore, claims the relief of setting aside the order dated 24.6.1992 and giving him the posting of ASTT in charge of DTO Pimpri and also to order reimbursement to him of the financial loss suffered by him. According to him, the action of the department is in violation of circular instructions namely DGP &T No.213/20/74-STB I dated 1.2.73.

3. The respondents have resisted the claim of the applicant stating that according to them the applicant had relied on circular instructions which have since been modified. In this connection they have enclosed copy of circular dated 8.5.75, Annexure R1. In this circular it is stated that the Heads of Circles can also relax these instructions in specific cases when any TTS class III official is considered to be unfit ~~for~~ holding independent charge of ~~a~~ Telegraph Office. The respondents further state that the senior most official amongst the volunteers is to be posted as Incharge provided that he has not held any independent charge of any Telegraph Office earlier. The applicant, however, had earlier held independent charge of Telegraph office at Khadki and it was at his request vide Annexure R 2 letter dated 6.8.88 that he was posted to the Division office. According to them, the adverse remarks entered in the C.R. did not weigh with the respondents in deciding the posting.

4. Subsequently, the applicant has filed a rejoinder stating that the adverse entries in the CR of the applicant have been expunged by the Competent Authority by the letter dated 5.7.93. More over the applicant has since been posted to an independent charge CTO viz. Shrirampur by the order dated 17.6.94 but this posting is only for six months.

5. We have considered the position in the Rules. Our attention has been drawn to the Teletraffic Digest issued in September 1993. On pages 43 to 45, the circulars about transfer and posting of ASTT have been reproduced. Circular dated 1.2.73 has been modified by circular dated 6.5.75 and has further been modified by circular dated 19.7.76 which lays down that TTS class III officials to be posted as in-charge of telegraph office should have put in at least 3 year's service as TTS, and further modified by circular dated 20.8.79 which laid down in para (d) that Heads of circles have complete powers to deviate from the above general principles either in exigencies or interest of service including the incapacity of the official for efficient discharge of duties.

6. The position in the Rules therefore, is that while seniority is an important factor to be considered in posting of ASTT in charge of DTO, Heads of circles have complete powers to deviate from the above general principles either in exigencies or in interest of service including the incapacity of official for efficient discharge of duties. The official has no vested right to be given a posting as an independent in charge of DTO. There is no bar to consider the CRs of the officers concerned.

7. In this particular case there were three types of adverse remarks in the C.R. of the applicant for the year 91-92 vide page 23 of the application.

1. Censure

2. Participation in strike.

" A good Supervisor but having held a post of ASTT Instructor of Telegraph Training Class he should not have taken part in Sit-in strike of November '90."

3. Laxity in Supervision,

The adverse remarks in respect of item (3) ^{were} made known to the applicant by a separate memo and the same were expunged by the competent authority. But the other adverse remarks remain.

8. We also asked the department to produce the original file in which the matter regarding the transfer and posting, in particular of Shri S.T. Papalkar as in charge of DTO Pimpri were considered. We note that the case of the applicant and Shri S.S. Dehankar were considered together and the competent authority has considered the adverse entries in the CR of the applicant. We have also noted that the competent authority also considered the postings at some other places in the same file. It is clear that there was no discrimination against the applicant in considering his CR because that appears to be the normal practice of the competent authority for deciding about the posting for which the competent authority is fully empowered by the relevant instructions.

9. We, therefore, consider that the applicant's being overlooked ^{for} the posting ⁱⁿ charge DTO Pimpri was

in accordance with Rules and was not discriminatory and the matter of seniority of the applicant cannot give him an over riding right to be posted at Pimpri in preference to the other more meritorious employees. The applicant, therefore, has also no right to claim reimbursement of any financial loss.

10. At the same time, we notice that the adverse CR entries relate to a previous period which are no longer fresh. The applicant is also senior and on the strength of seniority, he was considered fit to be posted as in charge CTO Shrirampur but this posting is only for a short period of six months and the applicant is liable to be reverted from the position of being in charge ASTT of independent DTO thereafter. It is therefore just and proper to direct the respondents not to revert the applicant. We therefore, dispose of this O.A. by passing the following order.

ORDER

OA is dismissed. The claim of the applicant for getting a posting at Pimpri in preference to Dehankar is hereby rejected as well as any relief of re-imbursement of financial loss. The respondents are, however, directed not to revert the applicant from independent charge of ASTT of DTO. When the vacancy at Shrirampur expires, respondents should continue him as independent in charge ASTT of DTO in some other available vacancy. There would be no order as to costs.

M.R.Kolhatkar
(M.R.Kolhatkar)
Member (A)