

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1121 OF 1995

TUESDAY, THE 24TH DAY OF APRIL, 2001

SHRI B.N. BAHADUR.
SHRI S.L. JAIN.

.. MEMBER (A)
.. MEMBER (J)

V.T. Vasaikar, working as
Telegraph Master,
Telecom district Engineer,
Paabhani,
Maharashtra.

.. Applicant

By Advocate Shri G.S. Walia

Vs.

1. Union of India, through
Chief General Manager
(Telecommunications)
Maharashtra Circle,
Bombay.
2. Chief General Manager
(Telecommunications),
Maharashtra Circle,
Bombay.
3. Junior Telegraph Officer I/C
Telegraph Office,
Parabhani.

... Respondents

By Advocate Shri P.M. Pradhan

O R D E R (ORAL)

Shri B.N. Bahadur.

... Member (A)

This is an application made by one Shri V.T. Vasaikar, who was working as Telegraph Master with the respondents and who comes up to this Tribunal seeking the relief as follows:-

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- a) This Hon'ble Tribunal will be pleased to call for the records and proceedings which led to the passing of the impugned order dated 6.3.1995 and after going through its validity, constitutionality, propriety, quash and set aside the same.
- b) This Hon'ble Tribunal will be pleased to order and direct respondents to consider and/or promote the applicant to Grade-III post from 26.10.1990 and to Grade-IV post on the date of his junior was promoted i.e. 27.10.1990.
- c) Hon'ble Tribunal will be pleased to order and direct the respondents to pay all the consequential benefits and arrears to the applicant in respect of fixation of pay difference of back wages, stepping up of pay with 10% interest on the arrears and also consequential promotion therein.
- d) Cost of this application may be provided for.

2. The facts of the case as brought out by the applicant are that while he was working as Telegraphist, he was promoted to Selection Grade post in the pay scale of Rs. 425-640, with effect from 5.5.83. During that period a disciplinary proceedings was initiated, wherein a chargesheet was made on 28.5.1987. The details relating to this ^{MB} ~~matter~~ ^{are} provided in the OA. It is further stated that on 20.4.93, the enquiry was completed and final order dated 20th April, 1993 is at Exhibit "J". The

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order dated 20th April, 1993 is at Exhibit "J". The applicant was exonerated of the charge sheet against him. The applicant is aggrieved that in or around October 1990 a DPC was held and it is his contention that he should have been promoted at that time.

3. The case was argued on behalf of the applicant by his counsel Shri G.S. Walia. After taking us over the facts and other relevant documents, learned counsel reiterated the point that the applicant should have been promoted at that time in or around October 1990. One of the important contention made on behalf of the applicant was that a sealed cover procedure should have been followed as is contemplated in the rules and if that was not followed by the DPC then the applicant is eligible for promotion. The learned counsel for the applicant submits that the correctness or otherwise of the procedure would be discernible after seeing the record and pleaded that the Tribunal go through the record.

4. The respondents, in their written statement and in arguments made on their behalf by their learned counsel Shri P.M. Pradhan, stated that since the case of the applicant was considered in the DPC and since the DPC did not recommend the applicant due to unsatisfactory performance, the question of granting promotion under BCR scheme does not arise. Relevant records were made available by the learned counsel. The record consisted of the DPC proceedings of dates 13.12.91 and a later DPC of 5.1.94. The learned counsel argued that the case of the

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applicant was considered as per rules by a duly constituted DPC and CRs were also considered.

5. On the arguments about mandatory requirement of sealed cover procedure, it was pointed out by Shri Pradhan that it is not a promotion and it was necessary to follow the procedural formalities of sealed cover procedure. This is a promotion as per BCR scheme and hence it is a question of upgradation and not a promotion as such, it was argued.

6. The law settled in regard to judicial reviews regarding promotion is well known. Under the facts and circumstances, the basic material for deciding this case will be the papers brought before us in the matter of DPC proceedings. This has been accordingly seen by us. In the DPC proceedings held in December, 1991 a detailed note has been kept on record. The total number of 11 officers have been found fit and recommended for promotion on the basis of CRs and special reports. We have seen the papers relating to special reports and we do not find that there is any mention of departmental enquiry or much less of an enquiry against the applicant being the reason for holding him back from promotion. The applicant indeed has been found "unsuitable for promotion due to unsatisfactory record of service" as per the DPC proceedings.

7. We have also examined the record of DPC held on 5.1.94 and find the situation to be similar. The crucial point raised before us is, whether the fact of

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departmental enquiry was the basis of rejection of officers i.e. of his being found unsuitable for promotion. On a careful consideration of records it is clear that it is not so. Then the argument that sealed cover procedure not being followed. The applicant was considered all right but the formality of sealed cover was not followed. In the matter of service jurisprudence and in the facts and circumstances of the case we cannot come to the conclusion that the process of selection can be vitiated only because of this reason.

9. In view of the discussions made above, we do not want to interfere in the matter and therefore, dismiss the OA with no order as to costs.

S.L. Jain

(S.L. JAIN)
MEMBER (J)

B. N. Bahadur

(B.N. BAHADUR)
MEMBER (A)

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