

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. NO.938/1997

Monday, this the 8th October, 2001.

HON'BLE SHRI S.L.JAIN, MEMBER (J)

HON'BLE SHRI V.K.MAJOTRA, MEMBER (J)

Shri Vishwakarma K.P.
at present working as TOA
in the Telegraph Office,
Kalbadevi, and residing at
Urus Building, Room No.2,
Dr. Blalerao Marg,
Mumbai-400004.

... Applicant

(By Shri S.S.Karkera, Advocate)

-versus-

1. Union of India through
Director General,
Department of Telecommunications,
Sanchar Bhawan, Ashoka Road,
New Delhi-110001.
2. The Chief General Manager,
Maharashtra Telecom Circle,
Fountain Telecom Building,
No.2, M.G.Road, Fountain,
Bombay-400001.
3. Chief Superintendent,
Central Telegraph Office,
Fountain, Mumbai-400001.

... Respondents

(By Shri V.S.Masurkar, Advocate)

Hon'ble Shri S.L.Jain, Member (J) :

ORAL ORDER

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking quashing and setting aside of order dated 16.1.1996 with a declaration that non-inclusion of applicant's name in the DPC held on 15.11.1995 is illegal and bad in law. A further relief is sought to quash and set aside the orders dated 14.3.1996 and 2.4.1997 with a

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direction to the respondents to conduct review DPC and grant consequential benefits which are due in accordance with rules w.e.f. 3.4.1995.

2. The applicant was appointed on 1.4.1979. He was due for promotion under the One Time Bound Promotion (OTBP) scheme in the year 1995. He was imposed a penalty of censure on 7.7.1994. In a DPC conducted on 15.11.1995 the applicant was not considered fit for promotion under OTBP scheme. The applicant was communicated the decision of the respondents vide Ex.A on 16.1.1996. The applicant represented against the same on 19.2.1996. His representation was decided vide order dated 14.3.1996. The applicant further submitted an appeal (though it does not lie), which was rejected on 11.4.1997. Hence, the applicant filed this OA on 10.9.1997.

3. The learned counsel of the applicant claimed that the OA is filed within the period of limitation on the ground that his appeal has been decided on 11.4.1997. There is no provision of filing appeal against the order rejecting his representation for his promotion under the OTBP scheme which was passed on 14.3.1996. Thus, the OA is barred by limitation.

4. The applicant's appeal, at the most, be said to be a subsequent representation and subsequent representations do not give fresh cause of action to the applicant.

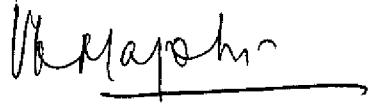
5. If we consider the case of the applicant on merits, the learned counsel for the applicant relied on 1996 (1) ATJ 232, Kantilal Madhavjibhai Hirani v. Union of India which lays down the proposition, "censure per se is not to be treated as a bar for promotion". The learned counsel for the respondents, on

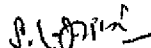
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the other hand relied on 1999 (1) SCSLJ 165, State of M.P. v. I.A. Qureshi, which lays down that censure is a penalty prescribed under rules.

6. Keeping in view the Apex Court's judgment in I.A.Qureshi (supra), the judgment of the Tribunal in Kantilal Madhavjibhai Hirani (supra) is no longer a good law. We are of the considered opinion that the applicant cannot claim that he was having 16 years' ^{satisfactory} service which is required for promotion under the OTBP scheme.

7. In the result, the OA is liable to be dismissed being barred by time as also devoid of merit. The same is accordingly dismissed. No order as to costs.


(V.K.Majotra)
Member (A)


(S.L.Jain)
Member (J)

/as/

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