

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 977 OF 1998.

Date of Decision: 05.02.1999.

P. Subramanian, Petitioner/s

Shri S. P. Kulkarni, Advocate for the
Petitioner/s.

v/s.

Union Of India, Respondent/s

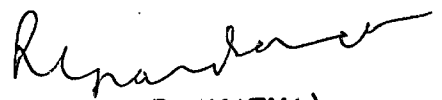
Shri S. S. Karkera, Advocate for the
Respondent/s

CORAM:

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

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

- (1) To be referred to the Reporter or not? NO
(2) Whether it needs to be circulated to NO
other Benches of the Tribunal?


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 977 OF 1998.

Dated this Friday, the 5th day of February, 1999.

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

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

P. Subramanian,
Staff No. 41021,
Sub-Divisional Engineer (Bldg.),
Vile Parle Telephone Exchange,
M.T.N.L., Mumbai - 400 057.

Residing at -

B-211, SAI Mahal,
R.N.P. Park, Bhayander (E) P.O.,
Dist. Thane, Pin - 401 105.

(By Advocate Shri S.P. Kulkarni)

... Applicant

VERSUS

1. Union Of India through
The Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House,
Veer Savarkar Marg,
Prabhadevi, At P.O.,
Mumbai - 400 028.
2. The Dy. General Manager (Vig.),
14th Floor, Telephone House,
V.S. Marg, At P.O.,
Mumbai - 400 028.
3. The Asstt. General Manager
(Admn) W-1,
O/o. General Manager (West-I),
M.T.N.L., Jeevan Seva Extn.
Bldg., L.I.C. Complex,
S.V. Road, Santacruz (W),
At P.O. Mumbai - 400 054.
4. The Member (Services),
Telecom Commission (Through
Director General,
Communications), Deptt. of
Telecom, Ministry of Communi-
cations, G.O.I., Sanchar Bhavan,
20, Asoka Road, At P.O.,
New Delhi - 110 001.

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5. Shri R.M. Joshi,
A.V.P.L.6,
C/o. A.G.M. (Administration),
M.T.N.L., C/. A.G.M. (Admn),
W-1, Jeevan Seva Extn. Bldg,
L.I.C., Santacruz (West),
At. P.O. Mumbai - 400 054.

... Respondents.

(BY Advocate Shri S.S. Karkera)

: OPEN COURT ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is an application filed by the applicant challenging the order of reversion and further challenging the decision of the respondents to with-hold his regular promotion and for other consequential reliefs. The respondents have filed reply opposing the application. There is an interim order granted by this Tribunal dated 13.11.1998 that status-quo of the applicant's post as on 13.11.1998 should be continued and this order is being extended from time to time. Today, we have heard the Learned Counsels appearing on both sides. Since the point involved is a short legal point, after hearing both the counsels, we are disposing the application at the admission stage.

2. The admitted facts are - that the applicant who was a Junior Telecom Officer in the department of Telecommunication, was promoted on local officiating basis on 25.07.1996. This promotion is being extended from time to time till 02.11.1998. It appears that there was no further extension given to the applicant after 02.11.1998. In the meanwhile, the respondents had already issued a regular promotion order dated 21.10.1998 under which the applicant has been regularly ordered to be promoted as Sub-Divisional Engineer. But the Local Office issued a memo that the said regular

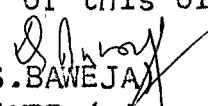
promotion in respect of applicant and another official should not be given effect to. Then subsequent to the filing of the O.A., the respondents have issued an order dated 25.11.1998 which is now brought to our notice, reverting the applicant from the post of Officiating Sub-Divisional Engineer to Junior Telecom Officer with retrospective effect from 29.10.1998. Therefore, the applicant has approached this Tribunal for the reliefs mentioned above.

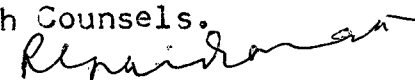
3. The respondents in their reply have justified the action taken against the applicant. Their case is that, though the applicant was considered and granted regular promotion, the benefit of the same was with-held, since the administration has taken a decision to initiate disciplinary action against the applicant. That as per the conditions of the earlier order of adhoc promotion, the applicant was ordered to be reverted w.e.f. 03.11.1998. It is further stated that the applicant has been actually reverted. In these circumstances, it is stated that the applicant is not entitled to continue as officiating Sub-Divisional Engineer nor he is entitled to the regular promotion as Sub-Divisional Engineer in view of the vigilance case pending against the applicant.

4. After hearing both the sides, we find that the action of the respondents cannot be justified in law. As observed by the Supreme Court in K.V. Janakiraman's case [AIR 1991 SC 2010], the promotion can be with-held and the findings can be kept in sealed cover only if a charge-sheet in a departmental enquiry or charge-sheet in a criminal case was pending against the delinquent official on

the date of D.P.C. In the present case, we do not know on what date the D.P.C. was held. No charge-sheet was pending as on that date and we can even say, not even till today. If even till today no charge-sheet has been issued to the applicant and granting that some vigilance case is pending against the applicant, it is no ground to with-hold the promotion of the applicant. Therefore, in our view, the action of the respondents in reverting the applicant from the officiating promotion and the action in with-holding the regular promotion is not sustainable in law and liable to be quashed. We ^{hasten} ~~hasn't~~ to add that this order of ours does not come in the way of the respondents for issuing the charge-sheet and then holding the departmental enquiry according to law.

5. In the result, the application is allowed. The order of the respondents reverting the applicant from the local officiating promotion of Sub-Divisional Engineer to the lower post of Junior Telecom Officer and the further order of the respondents in with-holding the regular promotion of the applicant to the post of Sub-Divisional Engineer are hereby quashed. The respondents are directed to immediately implement the regular order of promotion dated 21.10.1998. The applicant is entitled to the benefits of promotion from 03.11.1998. We make it clear that this order is without prejudice to the rights of the respondents to take any action that is permissible under law against the applicant by holding a regular departmental enquiry. The respondents are granted six weeks time from today to comply with this order. No order as to costs. Copy of this order be furnished to both Counsels.


(D.S. BAWEJA)
MEMBER(A).


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.