

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.
CAMP AT NAGPUR.

ORIGINAL APPLICATION NO.307/98.

Dated this the 28th Day of January, 2004.

Coram : Hon'ble Shri Anand Kumar Bhatt, Member (A)
Hon'ble Shri S.G. Deshmukh, Member (J).

Sureshchandra Sitaram Unhale,
Senior Sub Divisional Engineer,
Office of the Chief General Manager,
Telecom, Rly. Electrification Project,1
46, Bajaj Nagar, Nagpur.

.. Applicant.

(By Advocate Shri N.A. Deshmukh).

Vs.

1. Union of India, Ministry of
Telecommunication, Department of
Telecom, Sanchar Bhawan, through
Its Secretary, New Delhi.
2. The Deputy Director General (STG-1),
Office of Director General
Telecommunication, Sanchar Bhawan,
New Delhi.

.. Respondents.

(By Advocate Shri R.S. Sunderam).

ORDER

{S.G. Deshmukh, Member (J).}

The present O.A. is filed for directing the respondents to consider the applicant
for promotion to Senior Time Scale of Indian Telecommunication Services Group 'A' on

ad hoc basis from the date of his juniors have been promoted alongwith all consequential benefits of pay etc.

2. The applicant's case is that he is a Science Graduate, passed Engineering Degree in Electronics and Telecommunications and Masters Degree in Industrial Relations and Personal Management. He was initially appointed as Engineering Supervisor in erstwhile post and telegraphs Department from 18.9.1973. It is contended that on the bifurcation of the Posts and Telegraphs Department new department i.e. Telecommunication Department was created and the post of Engineering Supervisor is having a nomenclature as Junior Telecom Officer. After passing the Limited Departmental Competitive Examination, the applicant was promoted to Telecom Engineering Service Group 'B' (pre-revised scale of Rs.2000-3500) from 12.8.1995. He has been recently promoted as a Senior Sub-Divisional Engineer from 8.9.1997 (pre-revised scale of Rs.2200-4000) which is a selection post as per recommendations of Departmental Screening Committee. It is contended that the respondent No.1 published a revised seniority list of officers belonging to Telecom Engineering Service Group 'B' vide its letter dated 3.3.1997 and the All India seniority is shown as 2619 (Staff No.7979) at a Sr.No.633. S/Shri Saryanarayana PVV, Misra P.G., Narayanan T.K. Soni Narmada Prasad, Singh Balbir, Shrivastava S.P. are shown juniors to the applicant in the said seniority list. However, they have been promoted to S.T.S. of I.T.B. Group 'A' by the Government of India Telecommunications order dated 19.12.1997 their names appear at Sl.No.158 to 163. The applicant though senior to these persons has not been promoted for the reasons not known. It is contended that the exclusion of applicant's name from

the said list of Officers promoted is either error or his name has been deliberately omitted for extraneous reasons. It is contended that entire service of 24 years rendered by the applicant is unblemished. The promotions are purely officiating temporary and adhoc basis and the officers so promoted shall have no claim for seniority in JTS/STS based on this promotion. These promotions have been made pursuant to the guidelines laid down in Government of India, Department of Personnel & Training O.M.No.28036/8/87-Estt.(D) dated 30.3.1988 and 10.4.1989 and thus this O.A.

3. The respondents have filed their counter affidavit, and contended that the applicant is not entitled to claim any promotion whatsoever as claimed in the application, because the Screening Committee held on 19.12.1997 has found the applicant unfit because sanction to prosecute him had been issued in respect of the applicant for entering into the criminal conspiracy with private persons in granting P.C.O.'s unauthorisedly vide order dated 2.4.1997 and accordingly applicants vigilance clearance has been withheld vide Vigilance Branch letter dated 12.12.1997 and thus applicant cannot be promoted until his clearance from vigilance angle and recommendation of Screening Committee as per Memorandum dated 14.9.1992 issued by the Department of Personnel & Training. It is also contended that the departmental enquiry is also proposed against the applicant for inflicting major penalty. As the departmental proceeding is also initiated against the applicant he cannot be promoted. The prosecution and the departmental proceedings are initiated against the applicant he cannot claim promotion during the pendency of the prosecution as well as enquiry proceedings and thus this application is liable to be dismissed. It is also contended that his case was not considered in DPC held in

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November, 1997 alongwith other officers but due to incomplete Annual Confidential Report.

4. The applicant also filed the rejoinder.
5. The learned counsel for the applicant, Shri N.A. Deshmukh submitted that the applicant has rendered unblemished service so far. He submitted that according to DOP&T's O.M. dated 10.4.1989 and 30.3.1988 in case ad-hoc promotions are made, such promotions should be made solely on the criteria of seniority and fitness. The applicant is quite senior and fit. The action on the part of the respondents in not promoting the applicant is illegal. The learned counsel submitted that the applicant was denied promotion on ad-hoc basis to S.A.G. grade though his juniors were promoted on ad-hoc basis because the respondents had compared the relative merits of all the officers coming in the consideration zone. The learned counsel submitted that the procedure adopted by the respondents is wrong. The instructions issued by the DOP&T should have been followed and applied to and the seniority should have been the main criteria subject to rejection of unfit. The learned counsel in that respect relied on the order in O.A.No.1237/97 P.Sita Ram Krishna Vs. Union of India and others of Principal Bench, New Delhi dated 24.10.1997. The learned counsel further submitted that sealed cover procedure is to be resorted to only if the chargememo in the case of disciplinary proceedings and the chargesheet in criminal prosecution is issued to the employee. The learned counsel in that respect relied on State of M.P. vs. Bani Singh and another 1990(2)SLR 798, New Bank of India Vs. M.P. Sehgal and another 1991(2)SLR 50 and

Union of India Vs.K.V. Jankiraman AIR 1991 SC 2010. The learned counsel submitted that when the DPC was held on 19.12.1997 the disciplinary proceedings were not initiated by issuing the chargesheet. The disciplinary proceedings were initiated by issuing the chargesheet on 14.12.1998. He has also submitted that the criminal prosecution was commenced by filing chargesheet after the date of D.P.C. meeting.

6. On the other hand, the learned counsel for the respondents, Shri Khamborkar submits that Screening Committee held on 19.12.1997, found the applicant unfit because sanction to prosecute him for entering into the criminal conspiracy with private person in granting PCOs unauthorisedly had been accorded vide order dated 2.4.1997. Vigilance clearance has been withheld by 12.12.1997. He also submitted that the departmental proceedings was proposed against the applicant in inflicting major penalty. In view of the departmental proceedings and the prosecution initiated against the applicant he cannot claim the promotion .

7. It is apparent from the above that Screening Committee meeting for the promotion to officers on adhoc basis was held on 19.12.1997. The disciplinary proceedings against applicant have been initiated on 14.12.1998 when the chargesheet was served on applicant. It is also apparent that sanction to prosecute the applicant for entering into the criminal conspiracy with private person in granting PCO's unauthorisedly was accorded on 2.4.1997. Vigilance clearance has been withheld vide Vigilance Branch letter dated 12.12.1997. As per applicant's rejoinder the criminal prosecution is commenced by filing chargesheet on 1.12.1997. The applicant himself has mentioned this fact in his
rejoinder in para 2 page 2.

8. Thus it is apparent from the pleadings of the applicant that Screening Committee meeting was held on 19.12.1997 for the promotion on adhoc basis, when criminal prosecution was already commenced against the applicant by filing a chargesheet on 1.12.1997. As per Jankiraman's case sealed cover procedure is to be adopted when charge sheet was already filed against the applicant when DPC meeting is held. As the charge sheet was filed against applicant on 1.12.1997 and Screening Committee Meeting was held on 19.12.1997 the ratio in Jankiraman's case is not helpful to applicant.

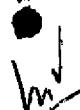
9. If it is presumed that the chargesheet in criminal case is filed against the applicant after the date of Screening Committee Meeting then question is whether the decision of Screening Committee to follow the sealed cover procedure is faulted or not?

10. There is no dispute that the competent authority had accorded the sanction to prosecute the applicant for entering into the criminal conspiracy with a private person inigrating PCO's unauthorisedly on 2.4.1997. The applicant's vigilance clearance is also withheld vide Vigilance Branch letter dated 12.12.1997. The learned counsel for the applicant while arguing the matter submitted that no chargesheet was filed against the applicant before the date of meeting of Screening Committee.

11. It be remembered that for obtaining sanction to prosecute the necessary facts collected during the investigation constituting the offence have to be placed before the sanctioning authority. Then sanctioning authority has to consider the material before him and to apply the mind thereafter to decide whether sanction to prosecute is to be granted

or not In the instant case the necessary facts collected during the investigation had been placed before the competent authority by the Investigating Officer and then the competent authority by going through the material placed before him applied his mind and accorded the sanction to prosecute the applicant on 2.4.1997. The competent authority on the basis of investigation papers and FIR after applying the mind had taken the decision to prosecute the applicant and accordingly gave sanction to prosecute, thus it cannot be said that after according sanction by the competent authority the case regarding serious allegation against the applicant is still in preliminary investigation.

12. In Union of India Vs.Kewal Kumar AIR 1993 Supreme Court 1585, it is observed by their Lordships that "the question to examine in each case, is whether, the decision to initiate the disciplinary proceedings had been taken or steps for criminal prosecution initiated before the date on which the D.P.C. made the selection? The decision would depend on the facts of the case, keeping in view the object sought to be achieved by adopting the sealed cover procedure. It would be incongruous to hold that in a case like the present, where the C.B.I. had recorded the F.I.R. sent the same to the superior authorities of the respondent for taking necessary action and the competent authority had taken the decision on the basis of F.I.R. to initiate the disciplinary proceedings against the respondents for imposition of the major penalty, there can be any doubt that the sealed cover procedure is attracted to avoid promoting the respondents, unless exonerated of those charges. These facts, which laid to the adoption of sealed cover procedure, are undoubtedly very material to adjust the suitability of a person, for promotion to a higher



post. A decision to follow the sealed cover procedure in these circumstances, cannot, therefore, be faulted."

13. In Union of India Vs. R.S.Sharma (AIR 2000 SC 2337), their Lordship held that:-

"Constitution of India, Article – 16 – promotion – "sealed cover procedure" adopted by Government of India – Investigations for financial misdemeanors pending against candidate – recommendations of departmental promotion committee had to remain in sealed cover in view of clause (iv) of para – 2 of Office Memorandum providing procedure – subsequent deletion of clause (iv) not material as candidates case was covered also under clause (iii) in view of order granting sanction to prosecute was by President"

14. In Kewal Kumar's case and R.S.Sharma's case, their Lordships of the Apex Court have clarified the principles laid down in Jankiraman's case.

15. According to DOPTs O.M. dt. 30.3.1988 where the ad-hoc appointments is by promotion of the officers in feeder grade, it may be done on the basis of seniority-cum-fitness basis, even where promotion is by selection method. It is also mentioned that granting promotion may be made only after proper screening by the appointing authority of the record of the officer only those officers who fulfill eligibility conditions prescribed in the Recruitment Rules should be considered for ad-hoc appointment. It is also mentioned that ad-hoc promotion with respect to the officers whose cases are kept in sealed cover in accordance with letter dt. 12.1.1988 will however, continue to be governed by these instructions. In the instant case the competent authority had given sanction to prosecute the applicant for committing serious offence on 2.4.1997. Thus, the screening committee meeting for ad-hoc promotion was held on 19.12.1997. Vigilance clearance has been withheld as per vigilance branch letter dt. 12.12.1997. The decision to

follow the sealed cover procedure of the screening committee in the above circumstances cannot be said to be faulted.

16. The ratio in P.Sita Ramkrishna's decided by CAT, Principal Bench New Delhi is not helpful to the applicant in the instant case. In the said case, the screening committee while making ad-hoc promotions had resorted the comparative merit rather following the instructions issued by DOPT. The ad-hoc promotions were not made on the basis of seniority-cum-fitness but were made by selection method as per regular promotions. Such is not the case, in the instant case.

17. In view of the above discussion, the O.A. is dismissed. No order as to costs.

J.N. Bhattacharya
(S.C. DESHMUKH)

MEMBER(J)

Anand Bhatt
(ANAND KUMAR BHATT)
MEMBER(A)

H.

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

REVIEW PETITION NO: 2006/2004 IN
ORIGINAL APPLICATION NO: 307/98

CORAM: Hon'ble Shri Anand Kumar Bhatt - Member(A)
Hon'ble Shri S.G. Deshmukh - Member(J)
Sureshchandra Sitaram Unhale ... Applicant.

V/s

Union of India and others ... Respondents.

ORDER ON REVIEW PETITION NO 2006/2004 IN OA
307/98 BY CIRCULATION:

DATED: 25-4-2005

The present CP is filed by the applicant for reviewing the order dated 20.1.2004 in OA 307/98 passed by Division Bench of the Tribunal.

2. The OA was filed for directing the respondents to consider the applicant for promotion to Senior Time Scale of Indian Telecommunication Services Group 'A' on adhoc basis from the date of his juniors have been promoted along with all consequential benefits of pay etc.

3. The applicant sought review of the order in question on the ground that the Tribunal confused the Screening Committee and Departmental Promotion Committee as one and the same. Thus the findings of the Tribunal in para 8 and 9 of the order are erroneous. It is the contention of the applicant that ratio in Jankiraman's case cannot be said not applicable and finding in para 10 of the order are otiose. It is also contended that undue stress has been laid down in para 11 of the order in regard to the sanction for prosecution. There are many cases where the sanctions for prosecution are issued but the charge sheets are not filed because the material of preliminary investigation fall short of filing a charge sheet. Thus the Review Petition,

4. In Ajit Kumar Rath Vs. State of Orissa and others 1999 (9) Supreme 321 the Lordships have observed that " the power available to Tribunal is same as available to the Court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order

47 CPC. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the fact of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier that is to say, the power can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it.

An erroneous view of the evidence or law cannot be a ground for review, though it may be a ground for an appeal. The contention of applicant that a judgement proceeds on incorrect exposition of law cannot be the ground for review. Review does not re-open the question already decided between parties. We do not find any patent error apparent on the face of

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record. The applicant has not made out any ground for review the order of the Tribunal dated 28.1.2004. Accordingly the Review Petition is dismissed.

S.G. Deshmukh
(S.G. Deshmukh)
Member(J)

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Member(A)

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