

Central Administrative Tribunal
Mumbai Bench

OA No.851/1998

Mumbai, this the 13th day of June, 2002.

Hon'ble Mrs. Shanta Shastry, Member (Admnv)
Hon'ble Mr. Shanker Raju, Member (Jud1)

Shri R.D. Mahamunkar,
at present working as
Telegraph Assistant,
CTO, Mumbai,
R/o Joseph Koli Chawl Room No.6,
Ban Dongri Kandivili (East),
Mumbai-400 101.

-Applicant

(By Advocate Shri S.S. Karkera)

-Versus-

1. Union of India through
the Director General,
Department of Telecom,
Sanchar Bhawan, Ashok Road,
New Delhi.
2. Chief General Manager,
Maharashtra Telecom Circle,
Fountain Telecom Bldg. No.II,
8th Floor, M.G. Road,
Fountain, Mumbai-400 001.
3. Chief Superintendent,
Central Telegraph Office,
Fountain, Mumbai-400 001. -Respondents

(By Advocate Shri V.S. Masurkar)

O R D E R (ORAL)
Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 16.12.97 as well as 31.7.98, whereby his claim for promotion under OTBP Scheme w.e.f. 1.8.95 after completion of 16 years of service has been turned down due to unsatisfactory record of service. He claims promotion w.e.f. 1.8.95 with all consequential benefits.

2. Applicant joined the Department as Telegraphic Assistant on 1.6.79. As per the OTBP Scheme which envisages upgradation/promotion after completion of 16 years service applicant was due on 1.8.95. He was served

upon a minor penalty chargesheet on 2.5.95, which culminated into a minor penalty on 11.4.97. Thereupon the respondents in a DPC promoted applicant under the OTBP Scheme w.e.f. 10.2.98.

3. Learned counsel by placing reliance on a decision of a coordinate Bench in OA No.396 of 1996 in the matter of Dilbagh Singh v. Union of India & Others, decided on 18.11.96 stated that a minor penalty of censure does not affect the promotion and further stated that the sealed cover procedure should be given effect to by promoting applicant w.e.f. 1.8.95, with all consequential benefits. One of the contentions of applicant is that respondents placed his case in sealed cover in the year 1995 and thereupon he has been informed on 16.1.96 as to rejection of his case for promotion. On review, by a letter dated 16.12.97 it is stated that the respondents have opened the sealed cover and promoted applicant w.e.f. 10.2.98 and in view of the minor penalty of censure having no effect over the promotion sealed cover should be given effect to from 1.8.95. It is also stated that subsequent DPCs which are to be held as per rules after every six months have not considered the case of applicant, which is violative of Articles 14 and 16 of the Constitution of India. After the minor penalty of censure applicant should have been promoted from the date his junior was accorded the same as he had unblamished record of service.

4. Respondents' counsel Shri Masurkar by referring to the ratio of the Apex Court in State of M.P. and another v. I.A. Qureshi, 1999 (1) SCSLJ 165 contended that in case of culmination of an enquiry in imposition

of a minor penalty sealed cover procedure cannot be opened and employee can be considered for promotion on prospective basis. In this back drop it is stated that as per the OTBP Scheme the time bound promotion is to be accorded on the basis of the satisfactory performance of the applicant during the 16 years of service. It is stated that the applicant was facing disciplinary proceedings in 1995 and, therefore, the matter has been placed under sealed cover and was opened on finalisation of the disciplinary case. As he was not found fit on account of the minor penalty of censure he was not promoted. It is further stated that completion of 16 years of service is not the only criteria but approval of the DPC is also necessary. As the case of the applicant was considered on 15.11.95 and was placed under a sealed cover, which was informed to him on 16.1.96, his case was not taken up till the disciplinary case was finalised on 11.4.97. Juniors to him who have been due for promotion having clean record and found fit by the DPC have been promoted, which does not attract Articles 14 and 16 of the Constitution of India. On a DPC held after 11.4.97 as nothing adverse was found against the record of the applicant he was promoted w.e.f. 10.2.98 and the penalty of censure which has a bearing on the assessment of his merit cannot be isolated and was considered, which does not render the action of the respondents as illegal.

5. We have carefully considered the rival contentions of the parties and perused the material on record. Though the learned counsel of the applicant vehemently stressed upon calling the record of the enquiry and stated that in one of the judgements by the Calcutta Bench of the Tribunal distinction has been made

between the regular promotion and the promotion under OTBP Scheme, but the same would have no application in the present case.

6. It is not disputed that applicant who had been served upon a minor penalty chargesheet at the time when his case was considered for promotion under OTBP Scheme was rightly placed under sealed cover, information of which was sent to him on opening the sealed cover. As the applicant was imposed upon a minor penalty of censure he was declared unfit to be promoted and in view of the decision of the Apex Court in Qureshi's case (supra) no illegality is committed by the respondents as ~~the~~ disciplinary proceeding culminated into a minor penalty of censure sealed cover should not be acted upon and promotion is to be accorded prospectively. As the penalty of censure was imposed on 11.4.97 DPC met thereafter and found applicant fit and he was rightly promoted on 10.2.98.

7. In so far as promotion of juniors and discrimination is concerned, as the juniors who were eligible and found fit by the DPC have been promoted, whereas applicant having unsatisfactory record, and the Scheme requires satisfactory service of 16 years, has been rightly declared unfit. Being unequal he cannot be treated equally with the juniors and we do not find any hostile discrimination meted out to him.

8. In this view of the matter and for the reasons recorded above, the OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

Shanta Shastray

(Smt. Shanta Shastray)
Member (A)

Shanta