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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH

AT HYDERABAD.

O.A.No. 481 of 1997.

Date of decision: 17. Feb. 99

Between:

C.Chinnappa Reddy. Applicant.

and

1. The Union of India represented by the Director General Telecom, New Delhi.
2. The Chief General Manager, A.P., Circle, Hyderabad - 500 001.
3. The Telecom Dist. Manager, Telecommunications Dept., Kurnool. Respondents.

Counsel for the Applicant: Mr. P.Veera Reddy.

Counsel for the Respondents: Sri V.Rajeswara Rao.

CORAM.

Hon'ble Sri R.Rangarajan, Member (A)

Hon'ble Sri B.S.Jai Parameshwar, Member (J)

JUDGMENT.

(by Hon'ble Sri B.S.Jai Parameshwar, Member (J))

None on either side.

2. We are deciding this O.A., on the basis of the material available on record under Rule 15(1) of the Central Administrative (Procedure) Rules, 1987.

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3. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 15.4.1997.

4. During the year, 1983, the applicant was appointed as the Junior Engineer (now designated as Junior Telecom Officer) in the Respondents' Department. While working as such in Kurnool Division, the applicant was served with a major penalty Charge-Memo No. E-30/351/CCP/1 dated 22.6.1994 alleging certain financial irregularities committed by the applicant which resulted in pecuniary loss to the tune of Rs.1,00,000 (one Lakh) and odd to the Department. The applicant has submitted his explanation dated 8.7.1994.

5. A combined gradation list was prepared as on 1.7.1995 in respect of the JTOS and ASTTS in the Andhra Pradesh State Telecom Circle by Pros. No.TA/STB/18/12-CGL/95 dated 8.4.1996. The name of the applicant in the said list is found at Sl.No.942.

6. On and from 26.6.1990 a Lateral Advancement Scheme was introduced in the Department. By the said Scheme JTOS on completion of 12 years of service was to be placed in the Higher scale of pay of Rs.2,000--3,500.

7. On completion of 12 years, the applicant was placed in the pay scale of Rs.2,000--3,500 under the Lateral Advancement Scheme through Pros.No.TA/STB/18/8/VII dated 1.5.1996 (Page 14 to the O.A). These Proceedings

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were issued by the Respondent No.2.

8. Further, the applicant was promoted on officiating basis to the cadre of Telecom Engineering Services Group-B cadre by Pros.No. TA/STA/70/4/Offg.SDES/1 dated 6.6.1996 issued by the 2nd respondent.

9. However, the Respondent No.3 by his Pros. No. TA/STA/70/4/Offg.SDES/11 dated 18.6.1996 (Page 24, Annexure A-5 to the O.A.) cancelled the officiating promotion of the applicant to the TES Group "B" due to the pendency of disciplinary proceedings against him. As a consequence thereof, the 2nd respondent by his Pros. E-5-12/92-93/97 dated 19.6.1996 (page 25 - Annexure VI to the O.A.) kept the Order dated 1.5.1996 placing the applicant in the higher scale of pay under the Lateral Advancement Scheme in abeyance.

10. The applicant has filed this O.A., for the following reliefs:

"to declare the Proceedings No.TA/STA/70/4/Offg.SDES/1 dated 18.6.1996 of the Respondent No.2 and the Pros. No. E5-12/92-93/97 dated 19.6.1996 of the Respondent No.3 are illegal, irregular, arbitrary, unjustified and unsustainable and to set aside the same holding the inaction of the respondents in promoting the applicant to the post of TES Group-B cadre and in placing in the higher scale of Rs.2,000 to 3,500 under the Lateral

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Advancement Scheme as illegal, irregular, arbitrary, unjustified, unwarranted unreasonable, unfair and unsustainable."

11. The main contention of the applicant is that pendency of the Disciplinary Proceedings against him was not at all a bar, for, the Respondents' Authority after obtaining vigilance clearance placed him in the higher scale of pay and promoted him on officiating basis. He contends that there was no irregularity as such. His placing in the higher scale of pay and promotion on officiating basis to the cadre of Telecom Engineering Service, Group "B" were strictly according to Rules.

12. The respondents have filed their counter. On going through the counter, it appears that when they came to know that the Disciplinary Proceedings initiated against the applicant by Charge Memo dated 22.6.1994 was pending, his placement in the higher scale of pay was kept in abeyance and the officiating promotion was cancelled. However, they submit that even though the orders were passed on 1.5.1996 and 6.6.1996 respectively they were not at all given effect to and no loss is caused to the applicant. Further, they submit that though the Disciplinary Proceedings initiated against the applicant were concluded by the Disciplinary Authority by imposing



a lenient punishment of censure, vide his order dated 31.3.1998, the General Manager, Telecom, Hyderabad, has ordered notice suo motu to revise the punishment of censure to that of 'withholding of increments of pay by his order dated 28.7.1998 (Annexure R-2 to the reply).

The applicant has submitted his representation on 18.8.1998 and the same is pending with the General Manager, Telecom.

13. The applicant has not filed any rejoinder to the reply.

14. The Lateral Advancement Scheme was introduced in the Department from 26.6.1990 (Annexure A-1 Page 12 to the O.A. Instruction (iv) of the said Scheme reads as under:

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(i) to (iii) *** **** ***

(iv) Placement in the higher scale, as stipulated above, will be subject to fitness and vigilance clearance."

15. It is not in dispute that as on 1.5.1996 and even on 6.6.1996 the Charge Memo dated 22.6.1994 issued against the applicant was still pending. It was concluded on 31.3.1998. When that is so, it cannot be imagined that the Respondents Authority had obtained vigilance clearance from the Department to place him in the Higher Scale of pay under the Lateral Advancement Scheme.

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16. That apart, the applicant was promoted on officiating basis to the post of TES Group "B". The Respondent No.3 has cancelled the officiating promotion by the impugned order dated 18.6.1996. The reason put forth by the Respondent No.3 is the pendency of Disciplinary Proceedings against the applicant. The applicant cannot have any grouse against the cancellation of his officiating promotion, as he has no right to claim officiating ~~promotion~~ ^{promotion} provision.

17. The Lateral Advancement Scheme is clear and it cannot be given as a matter of routine, if an employee completes 12 years of service. The Respondents Authority should have verified the service record and should have ascertained whether any Disciplinary Proceedings were pending against the applicant.

18. The Respondents in support of their claim that the ~~case~~ ^{case} of the applicant could not have been considered for placement in the higher scale of pay in the Lateral Advancement Scheme and for his officiating promotion to TES Group 'B' have relied upon Rule 156 of P & T Manual Vol. III (Annexure R-3 to the reply).

19. The Hon'ble Supreme Court in the case of UNION OF INDIA vs. JANAKIRAMAN (A.I.R., 1991 SC 2010) has clearly laid down that promotion cannot be given to an official whose conduct is under cloud and that



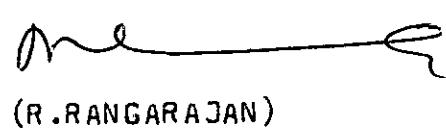
in such a case the Authorities should follow the sealed cover procedure. On the basis of the decision of the Hon'ble Supreme Court and on the face of Rule 156 of P & T Manual Vol.III, we fail to understand how the Respondents Authorities took a decision to place the applicant in the Higher scale of pay and to promote him to TES Group 'B' on officiating basis. However, they realised their folly and issued the impugned orders.

20. Since the Disciplinary Proceedings had not been concluded as on 1.5.1996 and 6.6.1996, the applicant is not entitled to any of the reliefs claimed in the O.A. His contention that his earlier placement and officiating promotion to the cadre of TES Group 'B' were in accordance with the rules cannot be accepted. In that view of the matter, we find no merits in the O.A., and the O.A., is liable to be dismissed.

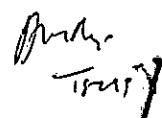
21. We caution the respondents to be careful in future and to avoid such lapses on their part.

22. In the result, the O.A., is dismissed.
No costs.


(B.S. JAI PARAMESHWAR)
17.2.99 MEMBER (J)


(R. RANGARAJAN)
MEMBER (A)

Date: 17.2.99



Copy to:

1. HDHND
2. HHRP M(A)
3. HSSDP M(J)
4. D.R. (A)
5. SPARE

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Ist and IIInd Court.
Typed By
Compared by

Checked by
Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR:
VICE - CHAIRMAN

THE HON'BLE H. RAJENDRA PRASAD:
MEMBER (A)

THE HON'BLE R. RANGARAJAN:
MEMBER (A)

THE HON'BLE MR. B.S. JAI PARAMESHWARI:
MEMBER (J)

DATED: 17. 2. 99

ORDER/JUDGMENT

M.A./R.A/C.P.NO.

IN :
O.A.NO : 481/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

