

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

O.A.No.2/99

Date of Order : 3.2.2000

BETWEEN :

B.Sreenivasa Murthy

Applicant.

AND

1. The Union of India,  
Rep. by its Secretary,  
Department of Telecommunications,  
Ministry of Communications,  
Sanchar Bhavan, 20, Ashoka Road,  
New Delhi.
2. The Chairman,  
Telecom Commission,  
Sanchar Bhavan, New Delhi.
3. The Senior Dy.Director General(BW),  
Ministry of Communications,  
Sanchar BHvan, 20, Ashoka Road,  
New Delhi.
4. Sri M.K.Singhal,  
Chief Technical Examiner,  
Central Vigilance Commission,  
New Delhi.
5. Sri H.Bagchi,  
Chief Engineer, Telecom Civil Zone,  
Trivendrum, Kerala State.

Respondents.

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Counsel for the Applicant

Mr.V.Venkateswara Rao

Counsel for the Respondents

Mr.B.N.Sharma

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CORAM :

HON BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

HON BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

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O R D E R

)(As per Hon'ble Shri R.Rangarajan, Member (Admn.) )(  
Mr.V.Venkateswara Rao, learned counsel for the

applicant and Mr.B.N.Sharma, learned standing counsel for the respondents. Notice served on R-5, called absent.

2. The applicant in this OA while working as Superintending Engineer was considered for promotion to the post of Chief Engineer on adhoc basis from 11.4.94 which is in the Senior Administrative Grade.

3 posts of Chief Engineers were created in the ~~Telecom (DOT) on 29.10.93 and another post of CE~~ Department of ~~L~~ Engineer became available w.e.f.

31.10.93 because of the voluntary retirement on one of the officers of the department. A proposal for filling up of 3 posts was forwarded to UPSC by DOT on 14.12.93. The meeting of DPC for promotion to Superintending Engineer to the post of Chief Engineer was held in UPSC on 21.9.94. The UPSC considered 12 Superintending Engineers being 3 times the vacancies for promotion to the grade of Chief Engineer (Civil).

The method of promotion is by way of selection. The applicant was considered along with his seniors and juniors. 2 of his juniors namely S/Shri M.K.Singhal (R-4 herein) and H.Bagchi (R-5 herein) were also considered and they were empanelled by the DPC

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which met on 21.9.94. The applicant was not selected.

Subsequently, the applicant was promoted by the later DPC and he was promoted w.e.f. 19.4.95.

3. The applicant submits that his supersession by his juniors is arbitrary and he should also be deemed to have been promoted along with his juniors when the DPC held on 21.9.94 inspite of promoting him w.e.f. 19.4.95.

4. This OA is filed to set aside the DPC and the notification No.1-3/93-CWG dated 6.10.94 issued by R-3 promoting R-4 and 5 as Chief Engineer (Civil) and for a consequential direction to the respondents that the applicant is entitled to be promoted to the post of Chief Engineer (Civil) w.e.f. 21.9.94 with all consequential benefits such as seniority, promotion etc.

5. The main contention of the applicant in this OA is that the DPC has not considered the case of the applicant suitably in accordance with the rules and that resulted in the supersession of the applicant by his juniors. He further adds that the adverse remarks if which may be treated as adverse for the present promotion even/it is good/should be conveyed to him and that was not done as the bench mark for promotion to the post of Senior Administrative Grade is very good. He also submits that the applicant is holding his job

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excellently and there is no adverse remarks conveyed to him and the supersession by his juniors is uncalled for.

6. Inorder to see the truth in the submission of the respondents we have called for the DPC proceedings as well as the CRs which were considered by the DPC for empanelling to the post of Chief Engineer which was held on 21.9.94.

7. The rules in regard to the promotion in Central Government to the post of Senior Administrative Grade i.e. the Chief Engineer herein <sup>were</sup> perused. It is an admitted fact that the promotion is by way of selection. It is prescribed in recruitment rules that the officers in the scale of Rs.3700-5000 (pre 1.1.96) or those who are with 12 years of service in Group 'A' posts including the scale of Rs.3500-5000 (pre 1.1.86) are eligible <sup>and</sup> the DPC may consider the record of all officers with 8 years of service if necessary.

8. From the above recruitment rules it is to be seen whether all the officers mentioned <sup>had</sup> put in the required years of service. The record shows that they fulfilled the conditions of service as quoted above. Hence no further examination is necessary in this connection.

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9. As stated earlier the post of Chief Engineer is in the Senior Administrative Grade and is a selection post. For empanelling an officer to Senior Administrative Grade the rule stipulates that "in respect of posts which are in the level of Rs.3700-5000 (pre 1.1.96) and above, the bench mark should be very good and will be filled by method of selection as indicated in sub-para (iv). The present post of Chief Engineer is above Rs.3700-5000. Hence the bench mark, for promotion is very good. This is also not contraverted.

10. With the above rules in mind the DPC proceedings were examined. The DPC proceedings dated 21.9.94 indicates that the applicant is graded good whereas his 2 juniors were graded as very good. Even 2 of his seniors were not found fit for promotion as in one case the grading is good and in another case the proceedings are kept in a sealed cover. As per the gradation given by the DPC the applicant has not fulfilled the bench mark required for promotion to the post of Chief Engineer which is in the Senior Administrative Grade whereas the 2 of his juniors had fulfilled the bench mark of very good and promoted to the higher grade. Hence the next point to be examined is whether the DPC assessed the applicant properly on the basis of the records placed before ~~to them~~.

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11. A court or a Tribunal has no power to sit on the assessment made by the DPC. The Apex Court in Anil Katiar's case clearly stipulated that the ~~of the~~ reappraisal/grading given by the DPC cannot be done by a court ~~or~~ a Tribunal. Hence this Bench cannot question the validity of the remark/assessment/grading given by the DPC. However we ventured to see whether the grading given by the DPC is not very much different ~~from~~ <sup>to</sup> what is given in his CRs in past 8 years. We have examined the CRs of 8 years of the applicant as well as ~~his~~ juniors. From a perusal of the CRs it indicates that his 2 juniors have got higher grading of very good and outstanding whereas the applicant has got predominantly good reports. In view of the above reports, the DPC has graded him as good, whereas the DPC has graded very good to his juniors. How far we further go in this examination ~~is~~ a mute point. We do not think we can further analyse and reapprise the grading given by the DPC unless we come to the conclusion that the basic records were not placed <sup>properly</sup> before the DPC. We do not come to the conclusion that the basic records were not placed properly before the DPC. As stated earlier the Apex Court prohibits the court or a tribunal to reapprise and re-examine the proceedings of the DPC unless the malafides are <sup>intended</sup> attributed against the DPC. No such malafides are attributed.

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12. The applicant stated earlier that when the bench mark is very good even if he got good grading in the confidential report it should have been conveyed to him so that he is aware of his shortcomings. The above submission would mean that if an officer is given a grading by the departmental authorities which is short of the bench mark required for his further promotion such gradings should be treated as an adverse remark and conveyed it to the employee. Such a view in our opinion is not in order in view of the Full Bench judgement of this Tribunal in OA.777/93 decided on 19.2.95. It was categorically held in that judgement even an average remark also need not be communicated to the employee. If that be the position we do not see any reason to convey the grading good to that officer treating it as adverse remark. Hence we do not see any substance in this contention raised by the applicant.

13. The applicant herein submits that the DPC should make its own assessment ~~entirely~~ <sup>entirely</sup> on perusal of the confidential reports.

14. As stated earlier we have perused the confidential reports of the applicant as well as his juniors. The grading given has also been explained in the previous paragraphs. A reading of the confidential report and the grading given by the DPC

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does not appear to be contradictory. In our opinion the DPC decided the grading of the applicant and others on the basis of the material available. We are also unable to appreciate the submission that the grading of the applicant was brought down for some reasons. The grading given in the confidential reports of the applicant is less than the grading given to his juniors. Hence the DPC had graded the applicant below that of his juniors and that resulted in his ~~nonemployment~~ <sup>for</sup> ~~for~~ the post of Chief Engineer. The rule referred to above in our opinion has been followed by the DPC.

15. As we did not see any irregularity in the DPC, the question of review of the DPC <sup>precedings</sup> ~~does~~ not arise.

16. The applicant relied on the judgement reported in 1996 (33) ATC 802 C.A.T., Allahabad (Udai Krishna v. Union of India). A perusal of the judgement leads us to believe that the Bench had expressed their views in regard to the preparation of the confidential reports and other details. It only states that the confidential reports should be prepared objectively and not subjectively. We have no quarrel with that observation. But how far that judgement can be pressed into service to give a relief to the applicant herein is a point for consideration. We do not think what is stated in that in any way helps the applicant

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to get the relief as prayed for. Hence this judgement does not give any relief to the applicant. Similar are the views in the other judgement reported in 1995 (30) ATC 10 (Krishna Dnyanba Nandgave v. Union of India and others).

17. Considering the above points we are of the opinion that the application has no merit and hence it has to be dismissed and accordingly it is dismissed. No costs.

  
(B.S.JAI PARAMESHWAR)

Member (Judl.)

  
(R.RANGARAJAN)

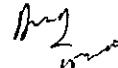
Member (Admn.)

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Dated : 3rd February, 2000

(Dictated in Open Court)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

1ST AND 2ND COURT

COPY TO:

1. HON. J.
2. HON. M. (ADMN.)
3. HON. M. (JUDL.)
4. D.R. A (ADMN.)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY  
COMPILED BY

CHECKED BY  
APPROVED BY

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

THE HON'BLE MR. R. RANGARAJAN  
MEMBER (ADMN.)

THE HON'BLE MR. S. S. JAI PARAMESWAR  
MEMBER (JUDL.)

\* \* \*

DATE OF ORDER: 32/02

MA/RA/CP NO.

IN

OA NO. 2/99

ADMITTED AND INTERIM DIRECTIONS  
ISSUED

ALLOWED

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED ✓

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

2 copies

