

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No. 546/95

Date of order: 22/8/2000

Balveer Singh, S/o Shri Girraj Singh, R/o Kothi Rose Villa, Bharatpur, at present working as Junior Telecom Officer. Bharatpur
...Applicant.

Vs.

1. Union of India through Secretary to the Govt, Telecommunication Deptt, New Delhi.
2. Chief General Manager, Telecom Rajasthan Jaipur.
3. Divisional Engineer, Telegraphs, Bharatpur 'Dn', Bharatpur.
4. Astt. General Manager (Admn) Rajasthan Telecom Circle, Jaipur.

...Respondents.

Mr.P.P.Mathur - Counsel for applicant.

Mr.M.Rafiq) - Counsel for respondents

Mr.Javed Choudhary)

CORAM:

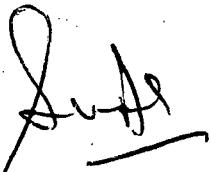
Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to direct the respondents to consider the case of the applicant for promotion as Grade-B Officer in Telecom Engineering Service with retrospective effect at par with his juniors with all consequential benefits.

2. In brief the case of the applicant is that he was due for promotion as TES Group-B officer for which his name was recommended by the Circle Office but his promotion was withheld due to pendency of a disciplinary case. It is stated that a charge sheet was issued to him on 24.11.94 much after the meeting of the DPC and sealed cover procedure is to be adopted if the officer is under suspension and chargesheet has been issued to the applicant against whom disciplinary proceedings are pending or a criminal case is pending. But in this case neither any



disciplinary case was pending nor the charge sheet was issued to the applicant before the promotion list was issued i.e. on 27.5.94. Therefore, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed by the respondents.
4. A promotion can be with-held or a sealed cover procedure can be adopted only -
 - i) when the government employee is being under suspension;
 - ii) Govt employees in respect of whom charge sheet has been issued and disciplinary proceedings are pending; and
 - iii) Govt employees in respect of whom prosecution for a criminal charge is pending.
5. In UCI & Ors Vs. K.V.Jankiraman & Ors, 1991(5) SLR 603 (SC), it has been observed by the Hon'ble Supreme Court that:

"On the first question, viz. as to when, for the purposes of the sealed cover procedure, the disciplinary/criminal proceedings can be said to have recommended the Full Bench of the Tribunal has held that it is only when a charge memo in a disciplinary proceedings or a charge sheet in a criminal prsecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure."

6. In the instant case, admittedly, the assessment committee for promotion to TES Group-B for the vacancies of the year 1992 met and forwarded the case of the applicant to IOT New Delhi with the remark that the case of the applicant may be kept in sealed cover because of vigilance case is pending against the applicant. It is not disputed that juniors to the applicant were promoted w.e.f. 27.5.94. It is also not

disputed that charge sheet was issued to the applicant on 24.11.94, after the assessment committee meeting.

7. Neither any criminal case was pending against the applicant on the date when the assessment committee met and considered promotions for TES Group-B in Telecom Engineering Department nor the applicant was under suspension. The charge sheet issued to the applicant was an outcome of the vigilance enquiry, therefore, adopting sealed cover procedure on the recommendations of the assessment committee was not proper. Merely there was a vigilance enquiry pending against the applicant is not a ground for adopting the sealed cover procedure or to withhold the promotion of the applicant.

8. This view is taken by the Punjab & Haryana High Court (D.B) in Ramesh Chander Vs. The State of Punjab & Ors, 1999(1) SLR 37.

9. In view of above all, we are of the opinion that the applicant is entitled to be considered for promotion w.e.f. 27.5.94, the date on which juniors to the applicant have been considered for promotion.

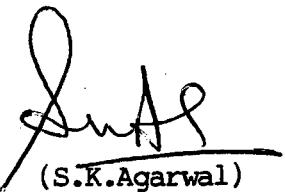
10. We, therefore, allow the O.A and direct the respondents to consider the case of the applicant for promotion on the post of TES Group_B w.e.f. 27.5.1994, the date on which his juniors have been considered for promotion, within a period of 2 months from the date of receipt of a copy of this order.

11. No order as to costs.



(N.P.Nawani)

Member (A)



(S.K.Agarwal)

Member (J).