

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.80/96

Date of order: 23/9/99

Jaswant Singh Cambow, S/o late Shri Kishan Singh Cambow, R/o Sector 94/14, Mansarowar Colony, Jaipur presently employed on the post of Senior Sub Divisional Engineer, Telecom, O/O the Chief General Manager, Telecom, Rajasthan Circle, Jaipur.

...Applicant.

vs.

1. Union of India through Secfetary Telecom Department, Govt. of India, New Delhi - 110 001.
2. Shri A.N.Prasad, Chief General Manager Telecom, Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur.
3. Asstt.Director General (STG-I), O/O Director General Telecom, Sanchar Bhawan, New Delhi-110 001.
4. Asstt.General Manager (Admn.), O/O Chief GMT Rajasthan Circle, Jaipur-8.

...Respondents.

Mr.Shiv Kumar - Counsel for applicant

Mr.U.D.Sharma - Counsel for respondents

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 filed under Sec.19 of the Administrative Tribunals Act, 1985, the prayer of the applicant has been to declare the order dated 9.1.96 as illegal and to direct the respondents to release the promotion of the applicant with all consequential benefits.

2. Facts of this case as stated by the applicant are that while working as Senior Sub Divisional Engineer, Jaipur, the respondents issued an Office Order dated 20.10.94 for promoting certain officers in Senior Time Scale of Indian Telecom Service Group-A. The applicant was also promoted in pursuance of that order and was posted at Jammu Tavi vide order dated 10.11.94. The applicant was not relieved to join this post and this order was superceded by another order dated 25.7.95 by which he was posted as Divisional Engineer (Survey), Jaipur. The applicant filed a representation but with no result. Thereafter the applicant filed an O.A No.525/95 before this Tribunal which was disposed of with a direction to the respondents to dispose of the representation of the applicant vide order dated 17.11.95. Respondent No.4 rejected the representation of the applicant

...2.

vide order dated 9.1.96 on the ground that a charge sheet dated 29.12.95 has been issued to the applicant on 9.1.96. It is stated by the applicant that there was nothing adverse against him so as to obstruct/restrain the respondents for his promotion, but due to arbitrary action of the respondents he was not relieved to join the promotion post and thereby he has been put to financial loss. Therefore, the applicant filed this O.A for the relief as mentioned above.

3. Counter was filed. It is stated in the counter that the Memorandum of charge sheet dated 29.12.95 was issued to the applicant on 9.1.96. It is also stated that the promotion order dated 20.10.94 was subject to the condition that no disciplinary/vigilance case was pending against the applicant and ultimately the disciplinary authority punished the applicant with un-recorded warning vide order dated 27.8.97. Therefore, the respondents were within their rights not to relieve the applicant to join the promotion post. Therefore, this O.A is devoid of any merit.

4. Rejoinder has also been filed which is on record.

5. Heard the learned counsel for the parties and also perused the whole record.

6. It is not disputed that the applicant was promoted alongwith others on 20.10.94 but he was not relieved to join on the promotion post on the ground that disciplinary proceedings were initiated against him and a Memorandum of Charge sheet was given to him on 9.1.96. It is also evident from a perusal of the order dated 27.8.97 passed by the Chief General Manager Rajasthan Telecom Circle, Jaipur, that the applicant was let off with non-recordable warning.

7. The learned counsel for the applicant has submitted that on the basis of unrecorded warning, promotion of the applicant could not have been with-held.

8. In Ranajit Kumar Das Vs. Coal India Limited & Ors, 1999(1) SLR 58, Calcutta High Court, it was held that recorded warning is not one of the penalties specified in the Conduct Rules. Recorded warning does not come within the purview of either minor penalty or major penalty. The petitioner's case, therefore, could not have been refused to be considered for promotion only on the ground

9. In the instant case, the promotion of the applicant was with-held because a Memorandum of charge-sheet was issued against the applicant and a disciplinary proceeding was initiated against him. But that disciplinary enquiry has ended

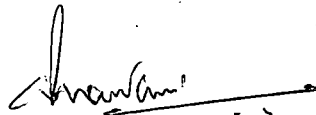
with a result that unrecorded warning was imposed upon the applicant which does not come within the purview of either minor penalty or major penalty. Therefore, the applicant is entitled to promotion in pursuance of the order passed by the respondents on 10.11.94.

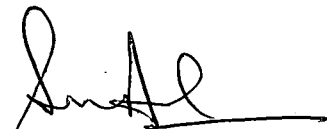
10. During the course of arguments, it has been made clear that the applicant has already been superannuated. Therefore, the applicant is entitled to promotion with all consequential benefits.

11. We, therefore, allow this O.A and quash the order dated 9.1.96 and declare that the applicant is entitled to promotion in pursuance of the order dated 10.11.94 passed by the respondents. He is also entitled to the arrears of pay and allowances of the promotion post and all consequential benefits.

12. Therefore, we direct the respondents to pay the applicant the arrears of pay and allowances of the promotion post with all consequential benefits in pursuance of the order dated 10.11.94, within two months from the date of receipt of a copy of this order.

13. No order as to costs.


(N.P. Nawani)
Member (A).


(S.K. Agarwal)
Member (J).