

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 04.07.2001

OA No. 278/1998

Shiv Sahai Balai s/o Shri Chhotu Ram r/o Brijlal Nagar, Malpura  
presently working as T.O. (S), Telephone Exchange, Malpura

..Applicant

Versus

1. Union of India through the Secretary, Department of Telecom, Sanchar Bhawan, New Delhi..
2. The Chief General Manager, Telecom Jaipur-7.
3. General Manager, Telecom East, Jaipur.
4. District Manager, Telecom, Sawaimadhopur.

.. Respondents

Mr. P.N.Jati, counsel for the applicant

Mr. Arun Chaturvedi, counsel for the respondents

CORAM:

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

Hon'ble Mr. A.P.Nagrath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagrath, Administrative Member

Vide order dated 31.12.1992 (Ann.A3), the applicant alongwith others were ordered to be promoted from Group-II to Group-III under the BCR scheme on completion of 26 years of service. However, this was not given effect to in respect of the applicant. He represented against this action of the respondents vide his application dated 2.7.97 and he was informed by order dated 22.7.97 (Ann.A1) that promotion was not given to him due to pending disciplinary case. The applicant is aggrieved with this order and has filed this OA with the prayer that the impugned order dated 22.7.97 (Ann.A1) be quashed and set-aside and respondents be directed to allow promotion under the BCR scheme to the applicant w.e.f. 30.12.92

alongwith all consequential benefits. In the alternative, the respondents be directed to allow the benefit of BCR promotion to the applicant w.e.f. 30.12.1994 because by then the punishment imposed vide letter dated 30.9.1992 was over.

2. In the grounds of the relief sought by the applicant, it has been stated that the order dated 31.12.92 was passed after the DPC had approved the case of the applicant for promotion after screening the whole record of service and he was declared fit for his promotion after having been declared fit. The applicant contends, the respondents had no reason to withheld his promotion, after having issued the formal orders thereof. It has been stated that applicant had been allowed promotion only w.e.f. 1.1.97 though he should have been promoted in 1992 or atleast in December, 1994.

3. In the written reply, the respondents have stated that there was a mistake, inasmuch as, the penalty of stoppage of increment for 3 years was not entered in the service record and ACRs which were sent to the DPC. It has been admitted that the applicant was considered fit for promotion and order dated 31.12.1992 was issued in favour of all the officials found fit under the BCR scheme including the applicant. In the same order, it had been expressly stated that any disciplinary/vigilance case was pending/contemplated against any official or there is currency of any punishment, such official shall not be promoted under the BCR scheme. The respondents have referred to the decided case law where the Apex Court has held that any employee undergoing a punishment and the punishment is current, is not entitled to promotion. The respondents have referred to the cases of Government of Andhra Pradesh v. B.Banstarao and Anr. VIII (1999) SLT 353; Oriental Insurance and Anr. v. Gokul Prasad VII (1999) SLT 210 and the cases reported at (1994) 28 ATC 810, AIR 1997 SC page 2100. It

appears that another DPC was held in 1996 wherein the candidature of the applicant was considered and his case was not recommended for promotion due to unsatisfactory record of service. He was again considered and given promotion w.e.f. 1.1.1997. The respondents' plea is that the applicant has no case and he is not entitled to any relief having also resisted the claim on the ground of limitation stating that the applicant cannot make a grievance after expiry of 7 years. They have also stated that with reference to the impugned order dated 22.7.1997, this application is hit by limitation.

4. We have heard the learned counsel for the parties and perused the written statement on either sides alongwith all the attached documents.

5. We do not find any force in the ground taken by the respondents regarding limitation as this application has been filed on 21.7.98 against the impugned order dated 22.7.1997.

6. The learned counsel for the applicant placed reliance on the order of the CAT, Chandigarh Bench in OA No.367-JK of 1994, O.P.Gupta v. Council for Scientific and Industrial Research to support his plea that the applicant is entitled to promotion w.e.f. 31.12.1992 when the orders of promotion were actually issued. We have seen the order of the Chandigarh Bench of the Tribunal and find that the facts are quite distinguishable, inasmuch as, in that case the Tribunal had noted that the assessment committee has taken a concious decision after considering all the relevant facts and circumstances including the one relating to imposition of penalties upon the applicant by the disciplinary authority prior to the order of promotion. In the instant case, the DPC had not taken the fact of the applicant undergoing punishment into account while recommending his promotion. In the order

of promotion it was clearly stated that the same was to be given effect to only after verifying the officials in the list were not undergoing punishment and certain other conditions. In the case before the Chandigarh Bench, a detailed reference has been made to the case of Union of India v. K.V.Jankiraman and ors., Civil Appeal Nos. 3019/87, 3020/87 and 3016/87, decided on 27.8.1991 wherein the Hon'ble Supreme Court had held that an official is not entitled to promotion during the currency of the punishment, but in the case before the Tribunal, the facts were distinguished.

7. The learned counsel for the respondents, apart from placing reliance on the case of K.V.Jankiraman (supra) also referred to the cases of Union of India and ors v. K.Krishnan, AIR 1992 SC 1898 and State of T.N. v. Thiru K.S.Murugesan and ors., 1995 SCC (I&S) 668 to state that action of the respondents in denying promotion to the applicant during the currency of the punishment was illegal and was very much within the confines of law as laid down by the Supreme Court.

8. In view of the law as laid down by Hon'ble the Supreme Court, we do not find any infirmity in the action of the respondents in not promoting the applicant during the currency of the punishment.

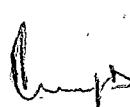
9. The learned counsel for the applicant submitted that applicant was entitled to the alternative relief for being promoted w.e.f. 30.12.1994 when his punishment had already come to an end and promoting the applicant w.e.f. 1.1.97 had no legal basis and on that ground the learned counsel for the applicant argued that the action of the respondents was arbitrary and has no support of law and rules. On the other hand, the learned counsel for the respondents justified the action of the Department on the ground that after the punishment period was over, the candidature of the applicant was considered by



the DPC in the year 1996 and he was not found suitable for promotion. Later only he was considered suitable and was promoted w.e.f. 1.1.1997.

10. The only point which needs to be adjudicated is as to whether the applicant is entitled to his promotion w.e.f. 31.12.1994. The learned counsel for the respondents was not able to place before us any rule of the Department regarding consideration of the name of the applicant again after the period of punishment was over. We do not find any justification in the action of the respondents of once again placing the name of the applicant for consideration of the DPC in the year 1996 or 1997. This is the BCR scheme and after the requisite length of service, the applicant had already been considered fit for promotion by the DPC in the year 1992 and the order of promotion had also been passed on 31.12.1992. The only impediment in the way of the applicant was the punishment which he was undergoing. Once the period of that punishment was over, it was incumbent on the respondents to promote him on the basis of the fitness already established in the year 1992. In our opinion, the action of the respondents in once again placing the name of the applicant before the DPC in the year 1996 and 1997 was irregular and this action is liable to be rejected. The applicant is rightfully entitled to his promotion w.e.f. 31.12.1994.

11. We, therefore, allow this OA to the extent that the applicant is entitled to his promotion under BCR scheme from Group-II to Group-III w.e.f. 31.12.1994 and all consequential benefits arising thereon. No order as to costs.

  
(A.P. NAGRATH)  
Adm. Member

  
(S.K. AGARWAL)  
Judl. Member