

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.583/99

Date of order: 3.12.2001

R.P.Bairwa, S/o Sh.Chunni Lal Bairwa, B-23, Malviya Nagar, Alwar, presently posted as JTO.

...Applicant.

Vs.

1. Union of India through Secretary, Mini. of Telecommunication, Govt of India, New Delhi.
2. Director of Telecom, Sanchar Bhawan, New Delhi.
3. Chief General Manager Telecom, Rajasthan Circle, Jaipur.
4. General Manager Telecom District, Alwar.

...Respondents.

Mr.P.P.Mathur : Counsel for applicant

Mr.T.P. Sharma : for respondents.

CORAM:

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

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

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

In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer to direct the respondents to grant promotion to the applicant on the post of SDE w.e.f. 29.6.94 on the basis of recommendations of DPC with all consequential benefits.

2. Facts of the case as stated by the applicant are that the applicant was initially appointed as Junior Telecom Officer in the year 1979. Thereafter he was promoted on the post of TS Gr.B and he was declared eligible for promotion on the post of SDE. DPC met in December 1993 to consider the name of eligible JTOs for promotion to the post of SDE and the Committee recommended name of the applicant for

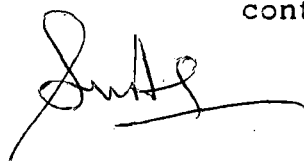


promotion vide promotion list dated 29.6.94. In the promotion list so issued by the Committee, name of the applicant appeared at Sl.No.157 but the applicant was not given promotion on account of the fact that a memorandum of charge-sheet was issued to the applicant on 3.1.94 under Rule 14 of CCS(CCA) Rules, 1965 which ultimately culminated into a minor penalty of Censure vide order dated 26.9.94. It is stated that minor penalty does not come in the way of promotion of an employee and the respondents have illegally and arbitrarily with-held the promotion of the applicant. Therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. In the reply, it is stated that promotion was not given to the applicant due to pendency of disciplinary proceedings against him and the applicant has no case for interference by this Tribunal.

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

5. It is well settled law that record of particular officer for promotion has to be considered only upto the date of consideration. If any enquiry is pending on that date, sealed cover method can be resorted to and promotion can be kept in abeyance till the departmental enquiry is over. Promotion cannot be with-held on the ground of departmental enquiry started after the date of consideration. Hon'ble Supreme Court has taken this view in Des Raj Vs. Food Corporation of India, 1996(2) SLR 781 and in Bank of India & Anr. Vs Degala Suryanarayana, 1999(4) SLR 292. The Apex Court of the country has also observed that the order cannot be with-held/with-drawn under the garb of contemplated enquiry and promotion of an employee could not

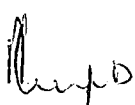


be with-held merely on the ground of pendency of disciplinary proceedings which had not even reached at the stage of framing of charges after prima facie case is established. This view has been held by Hon'ble Supreme Court in State of MP Vs. Bani Singh & Anr, 1990(2) SLR 798. In this context Union of India etc. Vs. K.V. Jankiraman etc, AIR 1991 SC 2010 is also a land mark judgment wherein it was held that sealed cover procedure can be resorted to only after issuance of charge sheet to an employee. Even pendency of a preliminary investigation prior to that stage is not sufficient to enable the authorities to adopt the procedure. In Nirmal Singh Vs. Food Corporation of India & Ors, 2001(3) SLJ 230, Hon'ble Punjab & Haryana High Court held that promotion cannot be denied for cases started after it had fallen due.

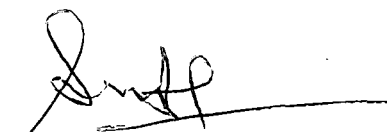
6. In the instant case, the applicant was duly considered by the DPC ^{in Dec 1993} and order to promote the applicant was issued on 29.6.94, therefore, with-holding of promotion vide order dated 30.6.94 on the ground that disciplinary proceedings are pending against the applicant in January 1994 is not a sufficient ground to with-hold the promotion of the applicant. Therefore, in our considered view, the applicant is entitled to promotion on the post of SDE in pursuance of order dated 29.6.94.

7. We, therefore, allow this O.A and direct the respondents to grant promotion to the applicant on the post of SDE w.e.f. 29.6.94. The applicant shall also be entitled to all consequential benefits thereof.

8. No order as to costs.


(A.P.Nagrath)

Member(A).


(S.K.Agarwal)

Member (J).