

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Jaipur BENCH, Jaipur.

O.A. No. 117/2003. 198
T.A. No.

DATE OF DECISION 12-12-2003

V.K. Verma Petitioner

Mr. V.S. Gurjar Advocate for the Petitioner(s)

Versus

UOI and others. Respondent

Mr. T.P. Sharma Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes

XMBV
(A.K. Bhandari)

Administrative Member.

JKK
(J.K. Kaushik)

Judicial Member.

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR.

24th December, two thousand three.

O.A. No. 117/2003

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

V.K. Verma,
S/o Shri Badan Singh Verma,
C-58, Chatrashal Nagar,
Via Malviya Nagar,
JAIPUR.

: Applicant.

rep. by Mr. V.S. Gurjar: Counsel for the applicant.

1. The Union of India, versus
rep. by the Secretary,
Department of Telecommunications,
Ministry of Communication & Information
Technology,
Room No. 419, Sanchar Bhawan,
20 Ashoka Road, New Delhi.

2. The Chief General Manager,
Rajasthan Telecom Circle,
Sardar Patel Marg,
C Scheme,
Jaipur- Rajasthan.

: Respondents.

rep. by Mr. T.P. Sharma: Counsel for the respondents.

ORDER

Per Mr. J.K. Kaushik, Judicial Member.

Shri V.K. Verma has filed this O.A. inter alia for the reliefs seeking a direction to the respondents to issue an order of posting in favour of him, at par with others who have been given posting orders in pursuance with the appointment order dated 17.12.2002 and also for quashing the charge sheet subsequently issued vide memorandum dated 07.01.2003. The learned counsel for the applicant prayed for abandoning the prayer regarding the quashing of the charge sheet with permission to pursue the matter regarding the



quashing of the charge sheet with permission to pursue the said matter separately in accordance with law and he was accordingly permitted.

2. Succintly putting it, the material facts necessary for adjudication of the controversy involved in the instant case are that the applicant was initially appointed to the post of JTO in the year 1973 and he enjoyed his promotion to the post of sub-Divisional Engineer vide order dated 19.11.90 on the basis of his satisfactory records of the service. He has never been communicated with any adverse remarks and never served with any charge sheet except the one issued on 07.01.2003 as indicated in the succeeding paras. The applicant was promoted to the post of Divisional Engineer (Telecommunications) dated 27.05.99 for a period of 180 days as per the policy in vogue and he held the same post till 19.12.2002.

3. Subsequently, the applicant was ordered to be promoted to the post of Divisional Engineer (Telecommunications) vide order dated 17.12.2002, which contained certain conditions for the grant of the applicant i.e. on the date of passing the order no departmental enquiry should be pending against the official concerned. The applicant's promotion was not released and on 07.01.2003, he has been served with a charge sheet. The letter of posting has been issued on 21.03.2003 in respect of the persons promoted by the order dated 17.12.2002. It does not contain the name of the applicant. The applicant made representation to the competent authority complaining his non-promotion. The provision relating to the grant of adhoc promotion have been enunciated in the pleadings, by making averments that the applicant's juniors have been allowed promotion neglecting the case of the applicant. The pleadings contained certain particulars relating to the alleged illegalities, regarding the issuance of the very charge-sheet, which we do not think it necessary

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to narrate since the very relief regarding the quashment of the charge sheet has been abandoned.

4. The salient grounds on which the applicant staked his claim are that the denial of posting of the applicant on the basis of subsequent charge sheet is illegal, the applicant cannot be denied promotion only on the ground of subsequent charge sheet, there was no disciplinary/vigilance enquiry was pending against him on the date of passing of the promotion order.

5. The respondents have resisted the claim of the applicant and have filed a detailed/exhaustive reply to the O.A. and have averred that the adhoc promotion is given on local officiating basis and the other promotion orders issued by the Department of Telecommunications contained some conditions which have to be checked by the Circle before issuing the promotion order. After the promotion orders were issued vide letter dated 17.12.2002, vigilance clearance was taken, and the vigilance section vide its letter dated 10.01.2003 indicated that a vigilance case was pending against him and therefore he was not promoted and his case was referred to BSNL Headquarters/ New Delhi. The applicant submitted a representation on 25.02.2003. A reply was given to him vide letter dated 19.03.2003,

6. The further defence of the respondents as set out in the reply is that condition precedent for the issuance of the promotion order was the Circle was required to check whether any vigilance case is pending against the promotee officer. In the applicant's case it was found that there was a vigilance case pending against him and therefore he was not promoted. The applicant was allotted to Rajasthan Circle vide order dated 03.01.2003. Both the promotion orders contained conditions for grant of promotion and one of the

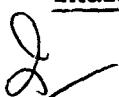
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conditions was that no disciplinary/vigilance case should be pending against the officer. The Circle office has acted in accordance with the directions given by BSNL Headquarters, New Delhi and therefore the O.A. may be dismissed with costs.

7. A rejoinder has been filed reiterating factual aspect of the matter as well as countering the averments made in the reply. A copy of letter dated 03.03.99 wherein the time limit for finalisation of disciplinary proceedings have been prescribed.

8. With the consent of the parties, we have heard, Mr. V.S. Gurjar, learned counsel for the applicant and Mr. T.P. Sharma, learned counsel for the respondents at a considerable length for final disposal at the admission stage and have bestowed our earnest consideration to the pleadings and records of this case.

9. The learned counsel for the applicant has submitted that the order of promotion in respect of the applicant came to be issued by the competent authority vide order dated 17.12.2002 and his name finds a place at Sl. No. 238 and he was allotted to BSNL. He has submitted that the applicant had no obstruction on the date of issuance of the promotion order and as per the rules in force subsequent events cannot obstruct promotion of an employee which has become due earlier. Further subsequent events like issuance of charge sheet cannot withhold the promotion and promotion cannot be withheld in anticipation of institution of disciplinary proceedings in as much as in the instant case, the charge sheet has been issued on 7.1.2003. Therefore the applicant has got an indefeasible right to get the promotion at par with his juniors. He has placed reliance on the following judgements: D.C. Jain and another vs. Union of India and others [O.A.Nos 103 & 104/2001 decided on 7.9.2001 -



Jodhpur Bench); Jai Ram Khartik vs. Union of India and others. [O.A. No.74/2002 decided on 16.5.2002- Jodhpur] and D.K. Shrivastava vs. Union of India and others [2002 -(3) SLJ (CAT) 57]. He has also made us to travel through various judgements and has submitted that the case of the applicant does not fall within para 7 of the OM dated 14.09.92. He contended that the applicant is therefore entitled to get his due promotion and the respondents ought to have issued the posting order in respect of him.

10. Per contra, the learned counsel for the respondents strenuously opposed the submission made on behalf of the applicant and placed reliance heavily on para 7 of the OM dated 14.09.92, and has submitted that as per the rules in force the applicant's case is required to be kept in a sealed cover and therefore there is no illegality or arbitrariness in the action of the respondents in his non-promotion.

11. Before advertting to the legal position we would like to ascertain the factual aspect of the matter. As far as the main promotion order is concerned the applicant was admittedly ordered to be promoted vide communication dated 17.12.2002 and his name finds a place at Sl. No. 238. This order contains posting of number of individuals. A perusal of this order reveals that the officials have been posted on promotion to various organisation, such as BSNL, MTNL, DOT Headquarters TEC etc. and the further posting orders would be issued in respect of persons on joining the different wings mentioned above. We also observed that persons who are placed below the applicant i.e. at Sl. Nos. 401, 417, 453, 483, 500, 537, 539 and 550 etc were directly posted to DOT Headquarters TEC etc without any direction regarding issuance of any posting order. In any case, it can safely be inferred that persons posted to DOT Headquarters would not need any further posting orders and persons indicated above



must have joined on their respective positions in pursuance to this order without waiting for any further orders and in this way of the matter it can be held persons junior to the applicant have factually joined and enjoyed the promotion immediately after the issuance of this order. However, in respect of persons who ~~were allotted to MTNL~~ for BSNL orders like Annex. A.1 dated 21.01.2003 is required to be passed, as indicated in the main promotion order.

12. Now we would deal with the legal provisions applicable to the instant case to resolve the controversy involved in this case, in the succeeding paras. We have perused the OM dated 14.09.92 which has been relied upon by both the learned counsel. First we would see whether the case of the applicant is covered by any of the circumstances mentioned in para 2. It is not the case of the respondents that after the DPC recommended the case of the applicant for promotion and before the promotion order was issued, any charge sheet had been issued against him and was pending. It is also not the case of the respondents that ^{any} prosecution in a criminal case was pending against the applicant when DPC's recommendations were received. For the directions contained in para 7 to apply, we do not find any of the conditions contained in para 2 as having been satisfied, in the case before us. The promotion order was issued on 17.12.2002, while the charge sheet was issued only on 7.1.2003. There is no provision under the Rules that for a contemplated action, the promotion could have been withheld legally. In the case of Bank of India vs. Degala Surnarayana it was observed by the Hon'ble Supreme Court that when the respondent was due for promotion in 1986-87, there was no departmental proceeding pending against him and sealed cover procedure could not have been resorted to nor the promotion due in the year 1986-87 be withheld for the departmental proceedings which were initiated at the fag end of the year 1991. In

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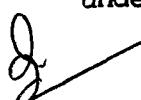
the facts and circumstances of the case, it was held by the Apex Court that the order of punishment made in the year 1995 could not deprive the respondent of the benefit of promotion due on 01.01.86.

13. As regards the contention of the learned counsel for the respondents that the applicant cannot be given promotion in view of the directions contained in para 7 of the aforesaid OM the words 'he is actually promoted' need to be interpreted and examined. The contention of the learned counsel applicant is that the charge sheet was issued to the applicant on 07.01.2003 and the promotion order was issued at the Headquarters level on 17.12.2002, at the time when the promotion order in respect of the officials including the applicant was issued, there was no disciplinary case was pending against the applicant and in this way of the matter the case of the applicant has to be considered on the basis of judgement rendered by the Ahmedabad Bench in D.K. Shrivastava (supra) wherein the words 'before he is actually promoted' came up for adjudication and has been elaborately discussed in the judgement. That was a case of withholding promotion by applying dogma of para 7 of the OM dated 14.09.92. To appreciate the controversy we extract the contents of para 20 and 21 of the said judgement which reads as under:

"20. Two aspects are relevant for consideration:
Whether para 6 of the Railway Board circular will apply to the present case.

- (a) The manner in which the expression "before he is actually promoted" is to be understood.
- (b) Para 6 refers to the circumstances mentioned in para 2, it has to be seen whether in the present case such a contingency has arisen at the time when the applicant can be said to be due for being "actually promoted."

21. As regards the first point we are of the view that the expression "before he is actually promoted" has to be understood as the date on which the applicant acquired a right



for getting promotion. It will not be reasonable to understand this expression as the date in which the Railway administration chooses to issue the orders of the promotion.. Otherwise, it may happen that even when preliminary investigation is pending the Railways may not issue the order of promotion to a particular Railway servant and delay the issue of promotion order beyond reasonable limit and then taken the plea that subsequently a charge sheet has been framed which may happen much later.

The question is as to when the applicant acquired a right for promotion, it is well settled that merely because a person's name appears in the panel he does not get an automatic right for promotion. However, a Railway servant who is found suitable for promotion has a right to be promoted from a date not later than the date on which his junior in service has received promotion. In the present case, the applicant has been assigned seniority of 1986 batch in IRSS. It is an admitted position that promotion of the juniors belonging to 1987 batch to Junior Administrative Grade has taken place in February 1999 i.e about 9 months prior to the meeting of the Review DPC. Among the officers of ISS inducted into IRSS the applicant seems to be the junior most. We find that an order was issued dated 6.12.99 conveying the decision of the Ministry of Railways that the other officers of ISS brought over to IRSS, shall be promoted to Junior Administrative Grade in different Railways.

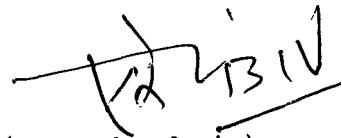
14. Now applying the aforesaid ratio to the instant case, as we have given a specific finding that a number of juniors to the applicant came to be promoted in pursuance of the order dated 17.12.2002 itself, without any condition of passing any subsequent orders. The ratio laid down in the above judgement fully covers on all fours the case of the applicant and since a number of juniors to the applicant had been promoted vide order dated 17.12.2002, the applicant would also be deemed to be actually promoted from the same date, In this view of the matter, the issuance of subsequent charge sheet would not come in his way and para 7 of the OM dated 14.09.92 would have absolutely no application. The inescapable conclusion would be that the applicant has been wrongly denied his due promotion without any cogent reason and the action of the respondents is contrary to the rules in force. We fully subscribe to the submissions made by the learned counsel for the applicant and are not impressed by the contrary submissions made on behalf of the respondents. Thus the contentions of the applicant are well founded

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and the OA has faorce.

15. In view of what has been said and discussed above, the O.A has ample merit and substance and the same stands allowed. The respondents are directed to treat the applicant as promoted as Divisional Engineer in pursuance to the promotion order dated 17.12.2002 and he shall be entitled to all consequential benefits at par with his next junior. This order shall be complied within a period of two months from the date of receipt of a copy of this order. In the facts and circumstances of this case, the parties are directed to bear their own costs.



(A.K. Bhandari)

Administrative Member



(J.K. Kaushik)

Judicial Member.

jsv.