

(19)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

13.07.2011

OA 332/2010

Mr.C.B.Sharma, counsel for applicant.
Mr.Neeraj Batra, counsel for respondents.

Learned counsel for the applicant seeks and is granted further two weeks' time to file rejoinder.

Put up on 10.8.2011.

Anil Kumar

(Anil Kumar)
Member (A)

K.S. Rathore

(Justice K.S.Rathore)
Member (J)

*rejoinder
not filed*

mk

bom/eg

10.8.2011

Mr. C.B.Sharma, Counsel for applicant

Mr. Neeraj Batra, Counsel for respondents

Heard. The OA is disposed of by a
separate order.

Anil Kumar

(Anil Kumar)
M (A)

K.S. Rathore

(Justice K.S.Rathore)
M (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 10th day of August, 2011

ORIGINAL APPLICATION NO. 332/2010

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Abdul Rehman son of Shri Mohd. Shariff aged about 58 years, resident of C/o Dr. A.G. Ansari, Near Mama Bhanja Chauraha Dak Bungalow Road, Jhalawar and presently working as Sub Divisional Engineer (Telecom), Office of TDM Bharat Sanchar Nigam Limited, Jhalawar.

.....Applicant

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Bharat Sanchar Nigam Limited through its Chairman and Managing Director, Corporate Office, Harish Chandra Mathur Lane, Jan Path, New Delhi.
2. Assistant General Manager (Pers-I), Corporate Office, Bharat Sanchar Nigam Limited, Personnel-I Section, 4th Floor Bharat Sanchar Bhawan, Jan Path, New Delhi.
3. Chief General Manager, Telecom, Rajasthan Circle, Sardar Patel Marg, Jaipur.
4. Telecom District Manager, Bharat Sanchar Nigam Limited, Jhalawar.

.....Respondents

(By Advocates: Mr. Neeraj Batra)

ORDER (ORAL)

The case of the applicant is that he was appointed as RSQ on 29.07.1977 and further became Junior Telecom officer on 29.10.1980 and was further promoted to the cadre of Sub Divisional Engineer on 25.01.1994 on regular basis.

2. In the year 2007 while working at Kota, applicant was allowed to officiate to the cadre of Divisional Engineer (STS Cadre) for 180 days taking into consideration the service rendered by him and thereafter



he was transferred to Jhalawar. The applicant continued on the said post upto April, 2010. The respondents have allowed upgraded scale w.e.f. 01.10.2009 vide order dated 26.04.2010 (Annexure A/3).

3. Vide Memo dated 05.05.2010 (Annexure A/4), the respondents allowed upgraded IDA scale of Rs.24900-50500 to the scale of Rs.29100-54500 with effect from 01.10.2009.

4. The applicant was due for promotion from the post of Executive SDE (Telecom) to the post of Executive AGM/DE. The applicant was promoted vide order dated 30.06.2010 (Annexure A/5) on ad hoc basis. In the panel, the name of the applicant find place at sr. no. 822.

5. In pursuance to order dated 30.06.2010, respondent no. 3 further passed order dated 07.07.2010 in which the name of the applicant does not find place. Against the order dated 07.07.2010, the applicant represented and prayed for his promotion but the same is pending for consideration with the respondents.

6. The respondents have stated that approval of the competent authority for initiation of disciplinary action against the applicant has been given by the Vigilance Cell of BSNL vide letter dated 25.06.2010 (Annexure R/3). Since the disciplinary action was initiated and pending against the applicant, therefore, as per the instructions of the competent authority in Para 3 of promotion order dated 30.06.2010 (Annexure R/2), he was not promoted on ad hoc basis and accordingly, his case was forwarded to BSNL Company, New Delhi vide letter dated 07.07.2010. It is not disputed that charge memo was



served to the applicant on 13.07.2010 and the same was received on 26.07.2010 by the applicant.

7. We have perused the order dated 26.04.2010 (Annexure A/3) wherein in Para No. 8, it is mentioned that the controlling officer before implementing the order should ensure that no vigilance/disciplinary case is pending against him and also that there is no currency of any punishment. If it is so the placement orders should not be implemented in that particular case and this office may be informed accordingly. In order dated 30.06.2010 (Annexure A/5), it is clearly stipulated that officers shall not be promoted to the higher grade by the concerned circle/unit in case disciplinary/vigilance case is pending. It is pointed out by the learned counsel for the respondents that in the order dated 25.06.2010 (Annexure R/3), the name of the applicant, Abdul Rehman, was also included for disciplinary action for minor penalty.

8. Vide order dated 16.06.2010 (Annexure R/4), it was decided by the Ministry of Communication & IT, Department of Telecommunication, New Delhi, to take immediate action to issue charge sheet to the applicant for minor penalty and on completion of disciplinary proceedings, copy of final order passed in the case may be endorsed to this office for record. In case disciplinary authority decides not to impose penalty as advised by CVC, the case may referred to this office for seeking second stage advice from the CVC. In the meantime, the copy of the charge sheet issued to the officer may be forwarded to this office for record.

A handwritten signature in black ink, appearing to read 'B4'.

9. We have considered the judgment relied upon by the applicant in the case of V.K. Verma vs. Union of India & Another [OA No. 117/2003] decided on 12.12.2003. In the OA preferred by V.K. Verma, relief sought by him is to issue an order of posting in favour of him at par with others who have been giving 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 facts of the case of V.K. Verma are 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 sr. no. 238 he was allotted to BSNL. According to learned counsel, the applicant had no obstruction on the date of issuance of the promotion order and as per rules in force, subsequent event cannot obstruct promotion of an employee which has become due earlier and placed reliance on the judgment of **D.C. Jain & Another vs. Union of India & Others** (OA No. 103 & 104/2001 decided on 07.09.2001 by Jodhpur Bench), **Jai Ram Khartik vs. Union of India & Others** (OA No. 74/2002 decided on 16.05.2002 by Jodhpur Bench) and **D.K. Shrivastava vs. Union of India & Another** [2002 (3) SLJ (CAT) 57].

10. Applying the ratio decided by the CAT in OA No. 117/2003, here in the instant case, ad hoc promotion order was issued on 30.06.2010 (Annexure R/2) wherein the name of the applicant was included and the act to initiate disciplinary proceedings for minor penalty order was issued on 25.06.2010. Admittedly order of ad hoc promotion order dated 30.06.2010 was passed in favour of the applicant and as per Para 3 of order dated 30.06.2010 clearly states that officer shall not be



promoted to higher grade by the concerned circle/unit in case disciplinary/vigilance case is pending and all cases covered may be forwarded within 15 days from the date of issue of the order dated 30.06.2010 to BSNL, New Delhi for taking appropriate action. Thus taking into consideration the facts & circumstances of the present case and the facts of V.K. Verma's case (Supra), ratio decided by this Tribunal in case of V.K.Verma decided on 12.12.2003 are not applicable to the present case, as discussed hereinabove. Consequently, we find no illegality in the action of the respondent by not promoting the applicant due to pendency of vigilance case and accordingly, the applicant is not entitled to any relief sought in this OA.

11. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

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