

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 28th day of April, 2011

Original Application No.87/2011

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Jagdish Prasad Prajapat
s/o Shri Ghisa Ram,
r/o Gijraj Ka Mauhala,
Ratangarh, Distt. Churu,
Present address- Plot No.60,
Geejgarh Vihar, Hawa Sarak,
Jaipur O/o PGMT (D), Opp. GPO,
M.I. Road, Jaipur

.. Applicant

(By Advocate: Shri R.N.Mathur , Sr. Advocate with Shri Punit Singhvi)

Versus

1. Union of India represented through Secretary,
Ministry of Communications and Information
Technology, Department of Telecommunications,
New Delhi.
2. Bharat Sanchar Nigram Limited
through its Chief Executive Officer,
7th Floor, Bharat Sanchar Bhawan,
Harish Chandra Mathur Lane,
Janpath, New Delhi.
3. Bharat Sanchar Nigam Limited
through its Chief General Manager
Telecommunication, Rajasthan Circle,
Sardar Patel Marg, Jaipur.

4. Bharat Sanchar Nigam Limited
through its Principal General Manager,
Telecom District,
MI Road, Jaipur

.. Respondents

(By Advocate: Shri Mukesh Agarwal and Shri Neeraj Batra)

ORDER (ORAL)

The applicant is an executive of Telecom Finance in Bharat Sanchar Nigam Limited (for short, BSNL) and was promoted to the post Deputy General Manager on ad-hoc basis after the approval of the competent authority which is equivalent to JAG vide order dated 28.10.2010 (Ann.A/4).

2. The controversy arose when the applicant was reverted to his substantive grade of STS (regular). The present OA is directed against the reversion order dated 15.2.2011 (Ann.A/1) and consequential order passed on 25.2.2011 and 26.2.2011 (Ann.A/2) by the Chief Accounts Officer (CA & IA), Office of Chief General Manager, Telecommunication, Rajasthan Circle, Jaipur.

3. It is contended on behalf of the applicant that the order impugned dated 15.2.2011 does not speak about the reason as to why the applicant has been reverted on the post of STS from the post of Deputy General Manager and the only reason reveals after filing of reply wherein in para-9 of the reply it is given out that enquiry is under contemplation and the applicant was holding the post of Deputy General Manager on ad-hoc basis, therefore, he



was rightly reverted to his substantive post of STS (regular) with immediate effect.

4. The learned senior counsel Mr. Mathur placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of Union of India vs. K.V.Jankiraman, reported at JT 1991 (3) SC 527 and, more particularly, referred to para 2 and 4, which are reproduced as under:-

"2. The common questions involved in all these matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are (1) what is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee ? (2) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal ? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date? The "sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Hence the relevance and importance of the question.

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4. The Government of India (Dept. of Personnel & Training) issued an Office Memorandum No.22011/1/79 Estt. (A) dated January 30, 1982 on the subject of promotion of officers in whose cases the sealed cover procedure had been followed but against whom disciplinary/court proceedings were pending for a long time. The Memorandum stated that according to the existing instructions, cases of officers (a) who are under suspension or (b) against whom disciplinary proceedings are pending or a decision has been taken by the competent disciplinary authority to initiate disciplinary proceedings or, (c) against whom prosecution has been launched in a court of law or sanction for prosecution has been issued, are considered for promotion by the Departmental Committee (hereinafter referred to as the 'DPC') at the appropriate time but the findings of the Committee are kept in a sealed cover to be opened after the conclusion of the disciplinary/court proceedings. While the findings are kept in the sealed cover, the vacancy which might have gone to the officer



concerned is filled only on an officiating basis. If on the conclusion of the departmental/court proceedings, the officer concerned is completely exonerated and where he is under suspension it is also held that the suspension was wholly unjustified, the sealed cover is opened and the recommendations of the DPC are acted upon. If the officer could have been promoted earlier, he is promoted to the post which is filled on an officiating basis, the officiating arrangement being terminated. On his promotion, the officer gets the benefit of seniority and fixation of pay on a notional basis with reference to the date on which he would have been promoted in the normal course, but for the pending disciplinary/court proceedings. However, no arrear of salary are paid in respect of the period prior to the date of actual promotion. The Memorandum goes on to state further that it was noticed that sometimes the cases in the courts or the departmental proceedings take unduly long time to come to a conclusion and the officers undergo considerable hardship, even where it is not intended to deprive them of promotion for such a long time. The Government, therefore, in consultation with the Union Public Service Commission examined how the hardship caused to be Government servant in such circumstances can be mitigated and has laid down the following procedure in such cases:

3.(i)(a) It may be ascertained whether there is any departmental disciplinary proceedings or any case in a court of law pending against the individual under consideration, or

(b) there is a prima-facie case on the basis of which a decision has been taken to proceed against the official either departmentally or in a court of law.

(ii) The facts may be brought to the notice of the Departmental Promotion Committee who may then assess the suitability of the official (s) for promotion to the next grade/post and for the purpose of this assessment, the D.P.C. shall not take into consideration the fact of the pending case(s) against the official. In case an official is found "unfit for promotion" on the basis of his record, without taking into consideration, the case(s) pending against him, the findings of the D.P.C. shall be recorded in the proceedings. In respect of any other kind of assessment, the grading awarded by the D.P.C. may be kept in a sealed cover.

(iii) After the findings are kept in a sealed cover by the Departmental Promotion Committee subsequent D.P.Cs., if any, held after the first D.P.C. during the period the disciplinary/court proceedings may be



pending, will also consider the officer's case and record their findings which will again be kept in sealed cover in the above manner.

In the normal course, on the conclusion of the disciplinary/court proceedings, the sealed cover or covers may be opened and in case the officer is completely exonerated i.e. no statutory penalty, including that of censure, is imposed, the earliest possible date of his promotion but for the pendency of the disciplinary/court proceedings against him, may be determined with reference to the position(s) assigned to him in the findings in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The officer concerned may then be promoted, if necessary by reverting the junior-most officiating person, and he may be given a notional promotion from the date he would have been promoted, as determined in the manner indicated above. But no arrear of pay shall be payable to him for the period of notional promotion proceeding the date of actual promotion.

If any penalty is imposed on the officer as a result of the disciplinary proceedings or if he is found guilty in the court proceedings against him, the findings in the sealed cover/covers shall not be acted upon. The officer's case for promotion may be considered in the usual manner by the next D.P.C. which meets in the normal course after the conclusion of the disciplinary/court proceedings. The existing instructions provide that in a case where departmental disciplinary proceedings have been held under the relevant disciplinary rules, "warning" should not be issued as a result of such proceedings. If it is found as a result of the proceedings that some blame attaches to the officer, then the penalty of censure at least should be imposed. This may be kept in view so that no occasion arises for any doubt on the point whether or not an officer has been completely exonerated in disciplinary proceedings held against him.

Clause (iv) of Para 3 of the Memorandum then lays down the procedure for ad hoc appointment of the concerned officer when the disciplinary/court proceedings are not concluded even after the expiry of two years from the date of the DPC which first considered him for promotion and whose findings are kept in the sealed cover, provided however that the officer is not under suspension. It is not necessary to reproduce that clause in extenso here. Suffice it to say



that the Memorandum urges that in making the ad hoc promotion in such cases, his case should be placed before the DPC which is held after the expiry of the said period of two years, and the ad hoc promotion has to be made on the basis of the totality of the record of service etc.

Para 4 of the Memorandum states that if the officer concerned is acquitted in the court proceedings on the merits of the case or exonerated in departmental disciplinary proceedings, the ad hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad hoc promotion with all attendant benefits. In such cases, the sealed cover may be opened and the official may be assigned his place in the seniority list as he would have got in accordance with the recommendation of the DPC."

Also placed reliance on the judgment rendered by the Delhi High Court in the case of Raj Mohan Singh vs. MCD thru Commissioner reported at 2006 (1) SLJ 332 (Delhi) in which the Delhi High Court observed that the challenge is predicated on the contention that the reversion is punitive in nature and is stigmatic in character and hence should mandatorily have been preceded by an inquiry.

5. It is not disputed by the learned counsel appearing for the respondents that till date no chargesheet has been issued. The learned counsel only refers letter dated 28.1.2011 regarding initiation of disciplinary proceedings against the applicant wherein the AGM (VM-II) has expressed in that letter that "I am directed to state that as per advice of DOT vigilance, it is decided to initiate disciplinary proceedings against the Shri J.P. Prajapat, the then CAO & IFA, Churu of Rajasthan Circle who has been promoted to officiate in the grade of JAG (Adhoc)..". Admittedly, till filing of the



OA no enquiry as advised by DOT vigilance is initiated against the applicant. Thus in view of the ratio decided by the Hon'ble Apex Court in the case of K.V.Jankiraman (supra) the order impugned Ann.A/1 dated 15.2.2011 is premature. This order could have been passed by the respondents only when the enquiry is initiated against the applicant and we are of the view that it is the domain of the respondents to initiate enquiry and, in such eventuality, if the enquiry is initiated against the applicant, the respondents may have passed the reversion order as the applicant is given promotion on the post of Deputy General Manager on adhoc basis but this cause is not made available during contemplation of the enquiry. Thus, in our considered view, the order dated 15.2.2011 (Ann.A/1) deserves to be quashed and set-aside with liberty to the respondents that as and when enquiry is initiated against the applicant, they may pass a fresh order in accordance with provisions of law. Ordered accordingly.

6. With these observations, the OA stands disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K.S.Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/