

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.5 of 1994. 4b

Date of Order : This the 24th Day of November, 1995.

Shri G.L. Sanglyine, Member (Administrative)

Sri Rajendra Ch. Bhattacharjee,
Assistant Engineer, Computer,
Office of the T.D.M., Dimapur,
Nagaland.

. . . Applicant

By Advocate Shri M. RAHMAN. J.L. Sarkar & M. Chanda.

- Versus -

1. Union of India through the
Secretary, Department of Telecommunication,
Govt. of India, Ministry of Telecommunication,
New Delhi.
2. Director General Telecom (STG-II)
Department of Telecommunication,
Sanchar Bhawan, 20, Ashoka Road,
New Delhi-110001.
3. Chief General Manager,
Eastern Telecom Region,
7, Kshetra Das Lane,
Calcutta.
4. Chief General Manager,
N.E. Telecom Circle,
Shillong.

. . . Respondents.

By Advocate Shri S. Ali, Sr. C.G.S.C.

O R D E R

G.L. SANGLYINE, MEMBER (A)

The applicant was promoted from the post of Junior Telecom Officer (JTO) to the cadre of TS Group B in the scale of pay of Rs.2000-60-2300-EB-75-3200-100-3500/- . According to him he joined this higher post on 1.5.1987. The scale of pay in the Junior post was Rs.1640-2900/- . It has been stated that on fixation of pay on promotion his pay was fixed at Rs.2,300/- in the scale of Rs.2000-3500/- aforesaid. He was due for annual increment on 1.5.1988 and had to cross the EB to bring his pay to Rs.2375/- . But he had not been allowed any increment and

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9 no reason was given by the respondents why he was not allowed the increments since 1988. The applicant therefore submitted a representation dated 15.11.1989 and in response thereto he was informed by letter dated 16.12.89 of the Telecom District Manager, Agartala that the case of crossing of EB of the applicant could not be decided by the competent authority as vigilance case was pending against him. Thereafter, the applicant submitted several representations but no increment was allowed to him or any reply given till date of filing of this application. It has also been stated by him that there was no disciplinary proceeding initiated till the date of filing this application. In these facts and circumstances the applicant prays that six annual increments from 1.5.1988 to 1.5.1993 including the EB should be allowed to him.

2. The respondents have contested the application by submitting written statement. According to them, during the period when the applicant was working as S.D.O. Telegraphs, Agartala complaints had been received regarding gross financial irregularities concerning the applicant and on enquiry a prima facie case was established against him. They state that the DPC had considered the case of crossing EB of the applicant but did not find him fit to cross the EB. Further, they state that enquiry was still in progress. The learned Sr.C.G.S.C supported the written statement.

3. The learned counsel of the applicant submitted that the action of the respondents in not allowing the applicant to cross the EB and the annual increments due to him since 1.5.1988 on the grounds mentioned by them

in the written statement is not sustainable in law. According to him there was no disciplinary proceeding initiated against the applicant till a charge memorandum was issued on 9.9.1994. He therefore submitted that the increments which were due to the applicant before that date cannot be legally withheld. He stated that this contention is based on the law laid down by the Hon'ble Supreme Court in the case of U.O.I vs. K.V.Jankiraman and others reported in (1991) 4 SCC 109 in which it was held that consideration of case of an employee for promotion or crossing of Efficiency Bar cannot be withheld merely because preliminary enquiry against the employee was pending. He also submitted that no adverse entry recorded in the Annual Confidential Reports of the applicant was ever communicated to the applicant. According to him it was for the first time through the written statement that the applicant came to know that he was not found fit by the DPC to cross the EB. But he pointed out that this statement is not reliable because the statement itself is vague as it gives no particulars of the DPC. According to him it was for the first time through a letter No.Vig-23/AGT/RCB dated 15.7.94 that any adverse action was taken against the applicant when an explanation was called from him regarding some financial irregularities allegedly committed by the applicant. He submitted that if any DPC for crossing EB was held in 1994 before these dates or in any earlier years since 1987 that DPC could not have taken into consideration the alleged financial irregularities, which were not communicated to him before the due dates

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of increments, for the purpose of crossing the EB and subsequent annual increments. In support of this contention he placed reliance on -

(i) (1992) 20 ATC p. 171 -

Sarat Ch. Tripathy Vs. U.O.I & Ors.

(ii) (1991) 15 ATC p. 379 -

N.P.Kunhikrishnan Vs. U.O.I & Ors.

(iii) ASLJ 1986(2) (CAT) p. 122 -

Dr.(Smt) Susila Misra Vs. U.O.I.

In the first mentioned case, it was held that disallowance of EB due before the dates of communication of adverse entries in the Annual Confidential Reports was unjustified. In the second case, disallowance of EB due to adverse ACR relevant to the period which the DPC could not have considered had it met in time was held to be unjustified. In the last case, it was held that disallowing to cross EB because of disciplinary proceedings concerning events after the due date to cross EB was not justified. The learned counsel submitted that in view of the facts and law as mentioned above, the application deserves to be allowed with cost.

4. The respondents have endeavoured to defeat the prayer of the applicant by not furnishing details. They have not even mentioned in their written statement the date of meeting of the DPC, which had allegedly considered the applicant unfit to cross the EB as stated in para 4 of the written statement. The date of the DPC was not furnished even when they were specifically directed on 11.10.1995 to furnish the date on which the DPC was held. However, the case of the applicant is to be considered

on the details that are available. The applicant has submitted that he joined the promotional post in TS Group B on promotion on 1.5.1987 and that on fixation of his pay in the higher scale of pay as a result of his promotion, his pay was fixed at Rs.2300/-. To get the next increment of Rs.75/- he had to cross the EB in the scale of pay. That next increment was due on 1.5.1988 and his annual increments till 1993 were due on the 1st of May in every year. He further submitted that there was no disciplinary proceeding against him till 9.9.1994 when the charge Memorandum against him was issued. This fact seems to have been corroborated by the respondent as in their written statement submitted on 1.6.1994 it was stated therein that enquiry was still in progress. The respondents have stated in the written statement that enquiry was conducted for the irregularities during the period when the applicant was holding the post of S.D.O.T., Agartala but have not mentioned or clarified that period. It is however seen from the copy of Charge Memorandum dated 9.9.1994 englosed with the rejoinder submitted by the applicant that the alleged financial irregularities took place during the period from July, 1987 to January, 1988 when the applicant was working as S.D.O., Telegraphs, Agartala. The letter No.X-I/Genl/89-90/113 dated 16.12.1989 aforesaid mentions that the case of EB crossing of the applicant could not be decided by the Circle Office as there was a vigilance case pending against him. This indicates that no DPC for considering the case of his crossing the EB in the scale of pay of Rs.2000-3500/- had met till 18.12.1989. The DPC stated cryptically in the

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written-statement dated-25.3.1994 could have therefore met only during the period from 18.12.1989 to 25.3.1994. The respondents have failed to reveal whether the DPC for considering the case of the applicant to cross the E.B was actually held at all as the date of meeting of the alleged DPC has not been furnished by them. In view of this a view can be justifiably taken that no DPC for consideration of the case of crossing of EB by the applicant had ever met. However, the statement made in the written statement that the DPC had considered the applicant unfit to cross the EB however cryptic it may be cannot be overlooked for if there was actually such decision of the DPC that fact cannot be obliterated without judicial scrutiny. The applicant had submitted a number of representations but the respondents have not informed him about the final decision of his claim for allowing him to cross the EB and subsequent annual increments. The applicant was therefore prevented by the respondents from taking effective legal measures. On the facts available, the application cannot be disposed of with an effective order. However, this does not detain the disposal of this original application and it is hereby disposed of with the following directions :

- 1) The respondents are directed to consider the claim of the applicant for crossing the Efficiency Bar as on 1.5.1988 and subsequent annual increments in a fair and just manner keeping in view the law and the rules and the relevant facts in this regard. Thereafter, they shall communicate a speaking order to the applicant within 3(three) months from the date of receipt of this order by the

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Respondent No.4, the Chief General Manager, N.E.Telecom. Circle, Shillong.

2) If the above mentioned claim of the applicant was actually once considered by them as stated in their written statement, the respondents are directed to furnish information in this regard to the applicant in details with copy of the order, if any, disallowing crossing of the EB by the applicant within 20 (twenty) days from the date of receipt of this order by the Respondent No.4, the Chief General Manager, N.E.Telecom. Circle, Shillong.

3) The applicant is at liberty to approach this Tribunal again on the matter on receipt of such order or communication mentioned above from the respondents, if he is so advised, and to agitate afresh all the grounds and contentions raised in the present application.

5. The application is disposed of. No order as to costs.

Sd/- MEMBER (ADMN)