

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2841/2015 & CM APPL. No.5104/2015 (Stay)

THE CMD, MTNL CORPORATE OFFICE
AND ANR.

..... Petitioners

Through Ms. Rachana Joshi Issar, Ms.
Ambreem Rasool & Mr. Akhil
Bansal, Advocates

versus

S. K. MALHOTRA

.... Respondent

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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16.04.2015

KAILASH GAMBHIR, J. (ORAL)

This Writ Petition has been preferred by the petitioners invoking writ jurisdiction of this Court to challenge the tenability of the order dated 19.09.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as the 'learned Tribunal'*) in Original Application (*in short 'OA'*) No.2326/2013.

Assailing the legality and correctness of the said order dated 19.09.2014, Ms. Rachana Joshi Issar, the learned counsel for the petitioners submits that the learned Tribunal has not appreciated the fact that conjoint reading of the eligibility condition and upgradation criteria under the policy would clearly infer that the employee should not be

facing any disciplinary proceeding at the time of consideration of his case for financial upgradation by the Screening Committee. The contention raised by the learned counsel is that the petitioner organisation had issued a “Promotion Policy For Executives” vide Office Memorandum being MTNL/CO/Pers-II/Prom Pol- Exec./07/797 dated 11.09.2007 and in terms of the said policy, the Screening Committee had considered the case of the respondent for financial upgradation on 28.01.2008 and since the disciplinary proceedings against the respondent were pending pursuant to the chargesheet dated 15.06.2007 issued against him, therefore, as per the recommendations of the Screening Committee the case of the respondent was kept in a sealed cover. The learned counsel submits that the charges against the respondent were proved and agreeing with the finding of the enquiry officer, the Disciplinary Authority vide order dated 30.12.2009 imposed a penalty of “reduction by one stage in time scale of pay for a period of one year with cumulative effect” with further direction that during the period of such reduction, the respondent will not earn any increment of pay and on expiry of such period, the reduction will have the effect of postponing his future increment of pay. The learned counsel further submits that the Screening Committee had again considered the case of the respondent in its meeting held on

30.08.2011 and recommended the case for financial upgradation in terms of the said policy w.e.f. 02.01.2011 i.e. after the expiry of the said period of penalty. The learned counsel further argued that the learned Tribunal also misread the ratio of the judgment in the case of *Satyendra Kumar Singh v. Union of India & Ors.*, decided by the learned Tribunal in OA No. 4237/2012 and of the Supreme Court in the case of *Union of India & Ors. v. Anil Kumar Sarkar, (2013) 4 SCC 161*, as in the facts of both the cases, the employee was not facing any disciplinary proceedings on the date when his case was considered by the Screening Committee. Based on the above submissions, the learned counsel for the petitioners strenuously pleads for issuing a notice in the present case.

We have heard the learned counsel for the petitioners at considerable length.

The respondent had preferred an OA No. 2326/2013 before the learned Tribunal claiming first financial upgradation w.e.f. 01.10.2004 and second financial upgradation w.e.f. 01.10.2009.

The grievance raised by the respondent was that he was wrongly granted financial upgradation w.e.f. 02.01.2011 although in terms of the policy he was entitled for the grant of E-4 Scale w.e.f. 01.10.2004 when no disciplinary proceedings were pending against him. The respondent

also claimed his second financial upgradation in terms of the policy w.e.f. 01.10.2009 on completion of qualifying service of 5 years from the date of his eligibility for the grant of first financial upgradation, i.e. 01.10.2004.

The learned Tribunal finding merit in the case of the respondent took a view that as per the policy of the MTNL, the respondent fulfils the eligibility criteria of getting first financial upgradation w.e.f. 01.10.2004 when no disciplinary proceedings were pending against him and likewise the second financial upgradation w.e.f. 02.01.2011 after the expiry of the effect of the penalty order. Relevant paras of the order passed by the learned Tribunal are referred to as under:

“3. The respondents have not denied that first financial upgradation as per policy of MTNL was due to the applicant from 1.10.2004. Their contention is that the same could not be granted to him because of the pendency of departmental proceedings. However, we noticed that the chargesheet was served on the applicant on 15.6.2007. Thus, it is clear that on the relevant date i.e. 1.10.2004, the applicant was not facing any disciplinary proceedings. Therefore, there is no reason for not granting him first financial upgradation w.e.f. 1.10.2004.....

4. Thereafter the second financial upgradation would have been due to the applicant after four years of service i.e. w.e.f. 1.10.2008 but as per policy w.e.f. 1.10.2009. Admittedly, on that date, disciplinary proceedings were pending against the applicant which culminated into in an order of punishment passed on 30.12.2009. Therefore, the second financial upgradation could not have been granted w.e.f. 1.10.2009. However, the applicant's penalty was that of reduction by one stage in the time scale of pay for a period of one year with cumulative effect. The applicant

was certainly entitled to be considered for grant of second financial upgradation after the effect of this penalty had expired much before his retirement on 31.8.2013. The respondents have themselves granted him first financial upgradation w.e.f. 2.1.2011. In our opinion this should have been second one, the first one being from 1.10.2004.”

The petitioners have not disputed the fact that in terms of the Office Memorandum dated 11.09.2007, the respondent had completed qualifying service of 4 years in the IDA Scale in the year 2004 and therefore, he became entitled for the first financial upgradation on 01.10.2004. Subsequent upgradation of IDA Scale to the next higher IDA Scale in terms of the policy was admissible to an employee of the MTNL on completion of 5 years of service in the current IDA Scale. It is also not in dispute that no disciplinary proceedings were pending against the respondent as on 01.10.2004 and therefore, the respondent was entitled for his first upgradation on 01.10.2004 on completion of 4 years of service in the IDA Scale irrespective of the date of meeting of the Screening Committee. If the contention as raised by the petitioners that the eligibility of the employee will be judged as to whether any disciplinary proceedings are pending against the employee on the date of meeting of the Screening Committee is accepted then it will defeat the very rationale and basis of the said policy which makes an employee

eligible for the first financial upgradation on the completion of 4 years qualifying service in IDA Scale and second financial upgradation on the completion of 5 years of service from the current IDA Scale.

The decision of the Apex Court in the case of **Anil Kumar Sarkar** (*supra*) is also squarely applicable to the facts of the present case, the relevant paras of which are reproduced as under:

“13. It is not in dispute that an identical issue was considered by this Court in Union of India and Others vs. K.V.Jankiraman and Others, (1991) 4 SCC 109. The common questions involved in all those matters were:

(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? and

(3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date?. Among the three questions, we are concerned about question No.1. As per the rules applicable, 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. Inasmuch as we are concerned about the first question, the dictum laid down by this Court relating to the said issue is as follows:-

“16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee

that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant- authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge- sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. In para 17, this Court further held:

17. ... The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee....” After finding so, in the light of the fact that no charge sheet was served on the

respondent employee when the DPC met to consider his promotion, yet the sealed cover procedure was adopted. In such circumstances, this Court held that “the Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date of his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated April 30, 1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits.....We see no reason to interfere with this order. The appeal, therefore, stands dismissed.” The principles laid down with reference to similar office memorandum are applicable to the case on hand and the contrary argument raised by the appellant-Union of India is liable to be rejected.

14. In Coal India Limited & Ors. vs. Saroj Kumar Mishra, AIR 2007 SC 1706, this Court, in para 22, has held that a departmental proceeding is ordinarily said to be initiated only when a charge-sheet is issued.

15. In Chairman-cum-Managing Director, Coal India Limited and Others vs. Ananta Saha and Others, (2011) 5 SCC 142, this Court held as under:

“27. There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. (Vide Union of India v. K.V. Jankiraman, (1991) 4 SCC 109 and UCO Bank v. Rajinder Lal Capoor, (2007) 6 SCC 694)”

We also reiterate that the disciplinary proceedings commence only when a charge sheet is issued. Departmental proceeding is normally said to be initiated only when a charge sheet is issued.”

We find no tangible ground to interfere with the said order passed by the learned Tribunal as in our view the order is based on sound

reasoning and on proper appreciation of the facts of the case and legal principal involved.

Accordingly, we find no merit in the present petition and thus, the petition and all pending applications are hereby dismissed. No orders as to costs.

KAILASH GAMBHIR, J.

I.S.MEHTA, J.

APRIL 16, 2015

v