

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.150 of 2018
O.A.No.151 of 2018
O.A.No.152 of 2018
O.A.No.153 of 2018
O.A.No.154 of 2018

Present: **Hon'ble Mr.Gokul Chandra Pati, Member (A)**
Hon'ble Mr.Swarup Kumar Mishra, Member(J)

O.A.No.150 of 2018

Kunja Bihari Panda, aged about 54 years, S/o. late Harihara Panda, At/PO-Kamagada, PS-Aska, District-Ganjam, at present serving as Assistant Office Superintendent, Office of GMTD, BSNL, Koraput-751 002.

...Applicant

VERSUS

1. Union of India represented through the Secretary, Ministry of Telecommunications, Sanchar Bhawan, 20, Ashoka Road, New Delhi-110 001.
2. The Chairman-cum-Managing Diector, Bharat Sanchar Nigam Ltd, Bharat Sanchar Bhawan, Janpath, New Delhi-110 001.
3. The Chief General Manager, BSNL, Odisha Circle, Ashok nagar, Bhubaneswar, Dist-Khurda-751 009.
4. The General Manager Telecom District, BSNL, Koraput, Dist-Koraput-751 002.

...Respondents

For the Applicant: Mr.S.C.Puspalok, Counsel
For the Respondents: Mr.D.K.Behera (Res. 2 to 4)& D.K.Mallick(Res.no.1)
Counsels

O.A.No.151 of 2018

Uday Nath Panigrahi, aged about 55 years, S/o. late Rankanidhi Panigrahi, At/PO-Dengadi, PS-Pattapur, District-Ganjam – at present serving as Assistant Office Superintendnet Office of SDE, Network Operation, BSNL, Nabarangapur, Dist-Nabarangpur-751 002.

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For the Applicant: Mr.S.C.Puspalok, Counsel
 For the Respondents: Mr.D.K.Behera (Res. 2 to 4)& D.K.Mallick(Res.no.1)
 Counsels

O.A.No.152 of 2018

Rabindranath Mahapatro, aged about 57 years, s/o. late Brajasundar Mahapatro, At/PO-Kotharsingi, Via-Golanthara, District-Ganjam – at present serving as Junior Account Officer, Office of the GMTD, BSNL, Berhampur, Dist-Ganjam-760 001.

...Applicant

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4. The General Manager Telecom District, BSNL, Berhampur, Dist-Ganjam-760 001.

...Respondents

For the Applicant: Mr.S.C.Puspalok, Counsel
 For the Respondents: Mr.D.K.Behera (Res. 2 to 4)& D.K.Mallick(Res.no.1)
 Counsels

O.A.No.153 of 2018

Kailash Chandra Panda, aged about 55 years, S/o. late Niranjan Panda, At/PO-Aska, District-Ganjam – at present serving as Assistant Office Superintendnet, Office of SDE, Network Operation, BSNL, Digapahandi, Dist-Ganjam-760 001.

...Applicant

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4. The General Manager Telecom District, BSNL, Berhampur, Dist-Ganjam-760 001.

...Respondents

For the Applicant: Mr.S.C.Puspalok, Counsel
 For the Respondents: Mr.D.K.Behera (Res. 2 to 4)& D.K.Mallick(Res.no.1)
 Counsels

O.A.No.154 of 2018

Chandra Sekhara Sahu, aged about 54 years, s/o. late Satyabadi Sahu, of village-Brundabanchandrapur, po-Kotlingi, District-Ganjam – at present serving as Assistant Office ;superintendent, office of Sub-Divisional Engineer Network Operation City-1, Aska Road, Berhampur, Dist-Ganjam-760 001.

...Applicant

VERSUS

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4. The General Manager Telecom District, BSNL, Berhampur, Dist-Ganjam-760 001.

...Respondents

For the Applicant: Mr.S.C.Puspalok, Counsel
 For the Respondents: Mr.D.K.Behera (Res. 2 to 4)& D.K.Mallick(Res.no.1)
 Counsels
 Heard & Reserved on: 05.02.2020 Order on:26.05.2020

ORDER

Per Mr.Gokul Chandra Pati, Member(A):

All four OAs in this batch are factually similar involving same question of law and the reliefs sought for and grounds in these OAs are same or similar. Hence, the OAs were heard together and are being disposed of by this common order.

O.A.No.150/2018

2. The applicant in OA No. 150/2018 has prayed for the following reliefs:

- “i) The Original Application may kindly be allowed.
- ii) The order dated 06.02.2018 passed by the CGM, BSNL, Odisha Circle, Bhubaneswar may kindly be quashed.
- iii) The Respondents may kindly be directed to reconsider the case of the applicant for regularization from the date of initial engagement or from the date 11.11.1983 while the respondents have regularized the similarly situated persons.
- iv) The Respondents may kindly be directed to regularize the service of the applicant & to give all the consequential benefits as due and admissible”.

3. The applicant was selected as a Reserved Training Pool (in short RTP) Telephone Operator along with the regular candidates vide order dated 18.11.1982 (Annexure-A/1 of the OA) and was asked to join for training at Berhampur on 25.11.1982. After completion of training, the regular candidates were given the posting on 22.2.1983. The applicant was asked to join duty as short duty operators on hourly wage basis till his absorption against regular

vacancies vide order dated 11.4.1983 (Annexure-A/3 of the OA). Thereafter, vide order dated 11.11.1983 (Annexure-A/4 of the OA). five RTP Operators who were appointed with the applicant were absorbed against regular post. The applicant is aggrieved by the fact that his case was not considered for regularization at that time although one general category candidate and 4 reserved category candidates were regularized. The applicant avers in para 4.5 of the OA that the reservation of 90% is against the decision of Hon'ble Supreme Court and although vacancies were available, the applicant was not regularized on 11.11.1983.

4. The applicant was absorbed against a regular vacancy vide order dated 27.4.1987 (Annexure-A/7), but he claims the benefit of regularization of service w.e.f. 11.11.1983. It is averred in the OA that some similarly placed RTP Operators took this matter to the Tribunal (Ernakulam Bench) by filing OA No. 133/2009 claiming the benefit of regularization from the date of initial appointment. The OA was disposed of vide order dated 9.7.2010 (Annexure-A/8) with direction to the authorities to consider the case of the applicants in OA No. 133/2009 for regularization from the date of initial appointment. The BSNL challenged the order before Hon'ble High Court by filing a writ petition which was dismissed. Thereafter, the order of the Tribunal was complied. The applicant filed a representation dated 1.1.2018 (Annexure-A/8) for similar benefit as in OA No. 133/2009 and regularization of his service from 11.11.1983 to 30.4.1987. But the respondent no. 3 has rejected the said representation vide order dated 6.2.2018 (Annexure-A/9), which has been impugned in this OA.

5. The grounds advanced in the OA are that during 1983, though vacancies of Telephone Operators were available with the respondents, the applicant's case for regularization w.e.f. 11.11.1983 was not considered, while similarly situated persons were regularized from that date. It is also claimed that the applicant's case is squarely covered by the order of the Tribunal (Ernakulam Bench) dated 9.7.2010 passed in OA No. 133/2009. It is also averred that some of the juniors of the applicant were regularized vide order dated 17.4.1985 and the similarly situated employees are to be allowed same benefits as per the recommendation of 5th Pay Commission.

6. Counter filed by the respondents stated that the OA is barred by limitation and the order dated 6.2.2018 (A/9) rejecting his representation dated 1.1.2018 cannot be treated as the cause of action for filing the OA. It is stated that the RTP Operators were absorbed against regular vacancies in a phased manner taking into account the reservation for different categories and the applicant was absorbed vide order dated 27.4.1987 from the date of joining as per the

said order and that the applicant accepted the order dated 27.4.1987 without any protest and hence, he cannot raise the issue after 30 years. It is also stated that for the period from 11.11.1983 to 30.4.1987, the applicant's service as RTP cannot be treated as regular service since there was no vacancy available for outside candidates and that the applicant could not have been absorbed against reserved posts for SC/ST/Ex-Army categories. He was absorbed when his turn came as a general category candidate. It is stated that during 1983-86 a number of manual exchanges were replaced by automated exchange resulting in surplus in the cadre of Telephone Operators and that on 4.2.1984 and 9.2.1984 two departmental candidates were posted as regular Operator and the applicant has no claim against the posts for departmental candidates. The facts of the OA No. 133/2009 before Ernakulam Bench were distinguished in para 18 of the Counter by stating that in that case, the vacancies were available to accommodate the applicants of OA No. 133/2009, which is not the case with the present applicant.

7. The applicant has filed Rejoinder stating that the law decided by Ernakulam Bench in OA No. 133/2009 which was upheld by Hon'ble High Court, will be applicable to the present case and there were 15 vacancies available in 1984 since new multiple local boards were installed in Jaypore, Aska and Phulbani and 4 regular operators had resigned. It is further stated in the Rejoinder that the question of delay was not raised in the impugned order dated 6.2.2018 (Annexure-A/9). It is also stated that the RTPs of the year 1983 and onwards were regularized without considering the case of the applicant who was selected in the year 1982 and that the regular vacancies were filled up by departmental candidates in 1984 and 1985 ignoring the applicant's case, although 5 posts due to resignation and death were vacant.

8. The respondents have filed Additional Counter mainly reiterating the grounds advanced in the Counter. The applicant has filed an Additional Rejoinder stating that the respondents have not stated anything about availability of vacancies in 1983-84 and reiterating about applicability of the decision of the Tribunal (Ernakulam Bench) in OA No. 133/2009. No new ground was raised by the applicant in Additional Rejoinder.

9. Heard learned counsel for the applicant who submitted that vacancies were available in 1983-84 to consider regularization of the applicant's service during that period as explained in para 4.14 of the OA. He also emphasized that the applicant's case is covered by the order dated 9.7.2010 of the Tribunal in OA No. 133/2009 (Annexure-A/8);

10. Learned counsel for the respondents was heard. He submitted that as explained in the Counter there was no vacancy to consider regularization of applicant's service as RTP from 11.11.1983 to 30.4.1987. He also resisted the OA on the ground of delay and limitation.

11. From the materials placed before us by both the parties through the pleadings and oral submissions, the following questions/issues are required to be answered before reaching a conclusion in this OA:-

(i) Are the objections raised by the respondents about maintainability of the OA on the ground of limitation sufficient to conclude that the OA is barred by limitation?

(ii) If the answer of the question at (i) is in negative, then are the grounds advanced by the applicant that there were vacancies available in 1983-84 to regularize his services from 11.11.1983 to 30.4.1987 and that his case is squarely covered by the order dated 9.7.2010 of the Tribunal (Ernakulam Bench) in OA No. 133/2009 sufficient to allow the OA?

12. Regarding the question at (i) about limitation, the plea of the respondents is that the applicant did not object to his absorption by order dated 27.4.1987 (Annexure-A/7 of the OA) prospectively and raised the present dispute belatedly after lapse of 35 years and have cited the judgments of Hon'ble Apex Court in the case of D.C.S. Negi vs. Union of India & others in SLP (Civil) No. 7956/2011, State of Tripura vs. Arabinda Chakraborty & others, 2014 SCC (L&S) 2 (300) para-15, The Govt. of India & Anr. vs. P. Venkatesh in Civil Appeal No. 2425/2019 and judgment of Hon'ble Orissa High Court in the case of A.K. Behera vs. State of Odisha & Others in W.P. (C) No. 15392/2011. The judgment of the Principal Bench in OA No. 1042/2013 (Giriraj Saran vs. CMD, BSNL & others) was also cited by the respondents.

13. It is noticed that the applicant in his representation dated 1.1.2018 (Annexure-A/8) raised his grievance for regularizing his service from 11.11.1983 till 30.4.1987 after a lapse of about 31 years from the date of issue of the order dated 27.4.1987 (Annexure-A/7) regularizing his services from the date of joining as per the said order and the applicant did not raise any dispute within the time stipulated under section 21 of the Administrative Tribunals Act, 1985 to antedate the date of his regularization to 11.11.1983. The applicant claims that his case is covered by the order dated 9.7.2010 (A/8) of the Tribunal's order in OA No. 133/2009. Even then he failed to raise his grievances within the time stipulated under law if it is considered that after order dated 9.7.2010, he has a fresh cause of action to claim similar benefit as allowed in order dated 9.7.2010. No reason for such delay on the part of the applicant has been furnished by the applicant in his pleadings or in his representation dated 1.1.2018.

14. In the case of Arabinda Chakraborty (supra), the service of the respondent-employee was terminated on 14.11.1966 since he failed to join duty in spite of notices issued. He was, however, issued a fresh appointment on 22.11.1967 which was accepted by the respondent. His representation to restore his earlier seniority was rejected in 1973 and he continued to submit further representations, which were also rejected. Thereafter, he filed a Title Suit before civil court in 1979 citing the last representation filed in 1979. The suit was decreed in his favour. The State of Tripura challenged the judgment in appellate forum without success before filing the Civil Appeal No. 1322/2007 in which Hon'ble Apex Court held as under:-

“11. The respondent did not make any representation or grievance when he was given a fresh appointment. He knew it well that his service had been terminated and he was obliged by the appellant authorities by giving him a fresh appointment. Had he been aggrieved by a fresh appointment after termination of his service, he should have taken legal action at that time but he accepted the fresh appointment and raised the grievance about his seniority and other things after more than a decade.

12. Even after the draft seniority list was published on 11.11.1972, which had been finalized in September, 1975, he did not file any suit but continued to make representations which had been rejected throughout.

13. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations had been rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted.....”

15. In the case of Giriraj Saran (supra) in OA No. 1042/2013 before Principal Bench, it was held that the applicant's claim for the benefit of the circular dated 11.10.1999 claiming parity in pay with the erstwhile juniors of the applicant was found to be delayed and that the OA being barred by limitation, was dismissed both on the ground of limitation as well as merit.

16. In the instant OA, the respondents have rejected the representation dated 1.1.208 by the impugned order dated 6.2.2018 (Annexure-A/9) by stating as under:-

“.....Since there was no regular vacancy available in the cadre of Telephone Operator in the Berhampur Division as on 11.4.83 your services cannot be regularized from that date and on availability of regular vacancies on 27.4.87 you have regularized by the DET, Berhampur rightly. The order of Hon'ble CAT, Ernakulam Bench in OA No. 133 of 2009 has no application in your case since you are not a party to the original OA. Hence your representation stands disposed of.”

17. It is seen that the representation was dealt on merit by the respondents without mentioning anything about the delay on the part of the applicant to

raise his grievance. As per the provisions of the section 21 of the Administrative Tribunals Act, 1985, it was necessary on the part of the applicant to take recourse to the Tribunal within the time as stipulated under law or the reason for delay should have been explained by a separate application under section 21(3). No such explanation for delay is available on record for consideration of the Tribunal under section 21 of the Administrative Tribunals Act, 1985. Further, the order dated 6.2.2018 cannot be treated to have given rise to a fresh cause of action as the claim of the applicant related to a decision taken by the authorities in 1987 i.e. 31 years back. The ratio of the judgment of Hon'ble Apex Court in the case of Arabinda Chakraborty (supra) is applicable to this OA as the facts and circumstances are similar. Hence, we are inclined to agree with the averments of the respondents that the present OA is barred by limitation and the representation dated 1.1.2018 (Annexure-A/8) and the order dated 6.2.2018 (Annexure-A/9) of the respondents will not give rise to a fresh cause of action to the applicant for the purpose of limitation.

18. On merit also, we notice that the applicant has not furnished any document on record to substantiate his contentions that there were vacancies available to accommodate the applicant's absorption as per the rules, which has been refuted by the respondents. Applicant has contended in his pleadings that vacancies were available in 1983-84 due to opening of new exchanges and due to resignation of some Operators from the cadre. But the respondents' contend that due to replacement of manual exchanges by automatic exchanges in a number of places, there was surplus strength in the cadre and there was no vacancy available to regularize the applicant's service as RTP from 11.11.1983 to 30.4.1987. The plea of the respondents that there was no vacancy to consider regularization of the applicant prior to 1987 is corroborated by the fact that the applicant did not raise any dispute on the issue of his regularization after issue of the order dated 11.11.1983 by which some other RTP Operators were absorbed against a regular vacancy ignoring the applicant's case. In view of the stand of the respondents in the impugned order dated 6.2.2018 (A/9) that there was no vacancy as on 11.4.83 to consider his absorption in 1983, the applicant was required to furnish documents or proof in support of his contentions about availability of vacancy to absorb him on 11.11.1983. From the materials on record, we are unable to accept the applicant's averment that there were vacancies available to consider regularization of his service for the period from 11.11.1983 to 30.4.1987 as claimed in the O.A..

19. About applicability of the order dated 9.7.2010 (Annexure-A/8) of Ernakulam Bench of the Tribunal passed in OA No. 133/2009, it was observed

in paragraph 9 of the order dated 9.7.2010 that 10 posts of Telephone Operators were created with the rider that those posts will not be filled up without clearance of higher authorities. In other words, vacant posts were available to consider the case of the applicants in OA No. 133/2009 and in such background, the Tribunal passed the order dated 9.7.2010. No such document has been furnished in the instant OA to prove that vacant posts of Telephone Operator were available with the respondents to consider the case of the applicant for regularization prior to issue of order dated 27.4.1987. It is clear that the facts and circumstances in OA No. 133/2009 were different from those in the present OA, for which the order dated 9.7.2010 of the Tribunal will be inapplicable to the instant OA and we are unable to accept the contentions of the applicant that his case is covered by the aforesaid order of the Tribunal in OA No. 133/2009.

20. In the circumstances, the grounds advanced by the applicant in his pleadings do not have any merit to call for any interference in the matter. As a result, the OA is liable to be dismissed both on the ground of limitation as well as merit. Hence, it is dismissed.

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21. In other OAs in this batch, same or similar grounds have been advanced which cannot be accepted in view of the discussions in the preceding paragraphs of this order in respect of the OA No. 150/18, which are also applicable to these four OAs. The reliefs sought for in these OAs are similar to the reliefs sought for in OA No. 150/2018. Hence, these four OAs are also dismissed for the reasons as discussed in this order for OA No. 150/2018.

22. All five OAs in this batch are accordingly dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)