

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Transferred Application No.03/2012***(Arising out of Writ Petition No. 7249/2006 (S))*Jabalpur, this Wednesday, the 04th day of March, 2020**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER****HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**

D.K. Dubey (deceased applicant) through Smt. Janki Devi Dubey, W/o Late D.K. Dubey, aged about 53 years, R/o 1153, Prem Nagar, Madan Mahan, Jabalpur (M.P.)

-Applicant through LRs**(By Advocate – Shri Manu V. John)****V e r s u s**

1. Union of India through Secretary, Ministry of Telecom, North Block, New Delhi.

2. Chief General Manager, B.S.N.L. Ltd., Telecom Factory, Richhai, Jabalpur – 482010.

3. General Manager, Telecom Factory, Jabalpur (M.P.)

-Respondents**(By Advocate – Ms. Neha Bhatia)***(Date of reserving order : 01.03.2019)***ORDER****By Navin Tandon, AM.**

The applicant is aggrieved that he has not been granted financial upgradation under Assured Career Progression (ACP) Scheme.

2. This Transferred Application was originally filed in the year 2006 before the Hon'ble High Court of Madhya Pradesh at Jabalpur as Writ

Petition No.7492/2006(S). Subsequently, it was transferred to this Tribunal in the year 2012 and has been registered as TA 03/2012.

3. The undisputed facts of the case are that the applicant was appointed as Chowkidar (erstwhile Group D) on 11.09.1991. Thereafter, due to the long absence from duty, the respondents have terminated the services of the applicant on 02.07.1992. Against the said termination, he filed Original Application No.549 of 1992 before this Tribunal, which was allowed on 29.03.1996 (Annexure-P/5) by setting aside the order of termination dated 02.07.1992. Accordingly, he was reinstated back in service vide order dated 09.05.1996 (Annexure R/1).

4. The case of the applicant is that the period from his absence, i.e. 02.07.1992 to 09.05.1996 ought to have been treated on duty as per the provisions of FR 54. Further, the applicant had completed more than 14 years of service and as per the ACP scheme, he is entitled for financial upgradation on completion of 12 years of regular service. However, the respondents have not granted the same, whereas juniors to the applicant have been upgraded in the next grade vide order dated 17.03.2005.

5. He has prayed for the following relief:

“7. **Relief sought :**

The petitioner prays for the following reliefs:-



(A) *That the respondents be directed to produce the entire relevant documents of ACP Scheme connected with this case for perusal of this Hon'ble High Court.*

(B) *And also be directed to the Respondents to grant financial upgradation under ACP Scheme to petitioner as 1st ACP to Chowkidar category with effective date with all consequential benefits.*

(C) *Issue any other writ, directions, orders as may be deemed fit in the circumstances of the case together with the cost of these proceedings."*



6. The respondents, in their reply, have submitted that the applicant was reinstated back in service as per the directions of this Tribunal in Original Application No.542/1992. However, no backwages were allowed to the applicant. Accordingly, the period from 02.07.1992 (date of termination) till 09.05.1996 (date of order in OA 542/1992) has not been counted for the first financial upgradation as the applicant had not completed 12 years of regular service. The juniors of the applicant having completed 12 years of regular service were given the benefit as per the ACP scheme.

7. Heard learned counsel for the parties and perused the pleadings and the documents available on record.

8. It is undisputed that the applicant was reinstated back in service after the orders passed by this Tribunal in Original Application No.549 of 2012 dated 29.03.1996. The relevant para 4 of the order reads as under:

“4. In the circumstances, we allow this application and set aside the order of termination dated 2.7.1992 (Annexure A-1). The applicant shall be reinstated back in service forthwith. He will not be entitled to any back wages. It will however be open to the respondents to proceed against him departmentally in accordance with law.”

8.1 From the above, it is clear that this Tribunal had not allowed any back wages to the applicant.

9. The respondents, in compliance of the orders of this Tribunal, have passed the order dated 09.05.1996, reinstating the applicant back in service. In the said order, it has been specifically stated that, “for the period of absence between 2-7-92 to the date of joining the duty he will not get any pay and allowances as per order of the Hon’ble Court. The absence period will not count for pension and he will get the pay which he was drawing on the date of termination. The Increments will be regularised as per rules on the subject.” It is relevant to mention that the applicant has not challenged the said reinstatement order and is seeking regularisation of the period from 02.07.1992 to 09.05.1996 as per FR 54 for the purposes of ACP, without there being any challenge to it.

10. As per the ACP scheme, a person is entitled for financial upgradation after completion of 12 years of regular. However, in the instant case, since the applicant has not completed 12 years of regular service as he was not



allowed to get any pay and allowances as per the order dated 09.05.1996 (Annexure R-1), therefore, he is not entitled for financial upgradation under the ACP scheme.

11. Accordingly, we do not find any merit in this Transferred Application and the same is dismissed. No costs.



(Ramesh Singh Thakur)
Judicial Member

am/-

(Navin Tandon)
Administrative Member