



Central Administrative Tribunal Principal Bench, New Delhi

O.A. No. 1098/2020

M.A. No.1346/2020

M.A. No.1347/2020

M.A. No.1425/2020

M.A. No.1426/2020

M.A. No.1427/2020

With

O.A. No.1099/2020

M.A. No.1348/2020

M.A. No.1422/2020

M.A. No.1423/2020

M.A. No.1424/2020

Tuesday, this the 15th day of September, 2020

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

O.A. No.1098/2020

Shri Rajesh Kumar Singh

s/o late Shri Bhuvaneshwar Singh

aged about 57 years

Director (Planning)

Bharat Broadband Network Limited (BBNL)

3rd Floor, Office Block -1, East Kidwai Nagar

New Delhi – 110 023

...Applicant

(By Advocate: Mr. Ratan Kumar Singh)

Versus

1. Union of India through its Chairman
Public Enterprises Selection Board
502, Block No.14
Public Enterprises Bhawan
CGO Complex, Lodhi Road
New Delhi – 110 003

2. Secretary
Department of Personnel & Training
(Public Enterprises Selection Board)
North Block, New Delhi – 110 001



3. Secretary,
Ministry of Communications
Department of Telecommunications
Sanchar Bhawan, Ashoka Road
New Delhi – 110 001
4. Shri Sanjeev Kumar
Director (Technical)
MTNL Corporate Office
Mahanagar Door Sanchar Sadan
CGO Complex, Lodhi Road
New Delhi – 110 003

...Respondents

(By Advocate: Mr. B L Wanchoo for respondent Nos. 1 to 3 &
Mr. S K Gupta for respondent No.4)

O.A. No.1099/2020

Shri Vijay Pratap Singh
s/o Shri Radha Krishna Singh
aged about 44 years
Director (Operations)
With additional charge as Chief General Manager (UP East)
Bharat Broadband Network Limited
3rd Floor, Office Block -1, East Kidwai Nagar
New Delhi – 110 023

...Applicant

(By Advocate: Mr. Ratan Kumar Singh)

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4. Shri Sanjeev Kumar
Director (Technical)
MTNL Corporate Office
Mahanagar Door Sanchar Sadan
CGO Complex, Lodhi Road
New Delhi – 110 003

...Respondents

(By Advocate: Mr. Piyush Gaur for respondent Nos. 1 to 3 &
Mr. S K Gupta for respondent No.4)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The Department of Telecommunications (DoT) issued Office Memorandum (OM) dated 12.05.2020 proposing to appoint the Chairman & Managing Director (CMD), Telecommunications Consultants India Limited (TCIL) on deputation/immediate absorption basis. A Search-cum-Selection Committee (SCSC) was constituted by the Ministry for this purpose. The qualifications for that post are stipulated. In case of Central Government / All India Services, the stipulation is that one should be holding the post at the level of Additional Secretary in Government of India or carrying equivalent scale of pay on the date of application. The eligibility criteria in respect of officials holding the post in Central Public Sector Enterprise (CPSE) are stipulated in terms of pay scales. It is also stipulated the residual service for internal candidates must be two years reckoned from the date of vacancy; and for others, it shall be three years.



2. The applicants in both these O.As. are officers of DoT and at present are on deputation to Bharat Broadband Network Limited (BBNL), which is a Public Sector Undertaking. They too applied for the post. However, they were not invited for interview.

2. The applicants contend that the scale of pay for the post of Additional Secretary is Rs.182200-224100 (Level 15 CDA), and though they are drawing the same scale of pay, they are not treated as eligible. They submit that for the same post, an Advertisement was issued two years ago and persons drawing the same salary, *albeit* on non-functional upgradation (NFU) basis, were invited for interview whereas they were not accorded the similar treatment. With this background, the O.As. are filed with a prayer to call for the entire records in relation to the appointment/selection process for the post of CMD, TCIL pursuant to OM dated 12.05.2020; and to quash the same as being illegal, arbitrary and unconstitutional.

3. On behalf of the official respondent Nos. 1 to 3, short replies in both the O.As. are filed. It is stated that the applicants are drawing the scale of pay of Rs.182200-224100 on NFU basis, under the Scheme contained in Department of Personnel & Training (DoPT) OM dated 24.04.2009. According to them, it is only when the Central Government employee holds the post of Additional Secretary or a post, which carries the same scale



of pay, that he can be treated as eligible and not the one, who holds a lower category of post, but is drawing the higher scale of pay on NFU basis.

4. As regards inviting of similarly situated persons as the applicants, on earlier occasion, it is stated by the official respondents that it was done on the basis of information furnished by the applicants, and that the same was not proper.

5. In the process of selection, the SCSC is said to have recommended the name of 4th respondent, Mr. Sanjeev Kumar. He too filed a counter affidavit on the same lines as the other respondents.

5. We heard Mr. Ratan Kumar Singh, learned counsel for applicants, Mr. B L Wanchoo, learned counsel for respondent Nos. 1 to 3 in O.A. No.1098/2020, Mr. Piyush Gaur, learned counsel for respondent Nos. 1 to 3 in O.A. No.1099/2020 and Mr. S K Gupta, learned counsel for private respondent No.4 in both the O.As., at length, through video conferencing.

6. The O.As. are filed at the preliminary stage of selection for the post of CMD, TCIL. The notification in this behalf was issued on 12.05.2020 by the DOT. The qualifications and other particulars are furnished vide separate orders on the same date. The qualifications for the post are stipulated as under:-

“3. Qualification:

The applicant should be a graduate with good academic record from a recognized University/ Institution.

4. Experience:

The applicant should have adequate experience at a senior level of management in a large organization of repute.

Applicants with experience in Finance/Marketing/ Production will have added advantage.

5. Pay scale:

(a) Central Public Sector Enterprises

Eligible Scale of Pay

- (i) Rs.8250-9250 (IDA) Pre 01/01/1992
- (ii) Rs.11500-13500 (IDA) Post 01/01/1992
- (iii) Rs.23750-28550 (IDA) Post 01/01/1997
- (iv) Rs.62000-80000 (IDA) Post 01/01/2007
- (v) Rs.150000-300000 (IDA) Post 01/01/2017
- (vi) Rs.22400-24500 (CDA) Pre-revised
- (vii) Rs.67000-79000 (CDA) Post 01/01/2006
- (viii) Rs.182200-224100 (Level 15-CDA)

The minimum length of service required in the eligible scale will be one year for internal candidates, and two years for others as on date of vacancy.

(b)

(i) Applicants from Central Govt. / All India Services should be holding a post of the level of Additional Secretary in Govt. of India or carrying equivalent scale of pay on the date of application.

(ii) Applicants from the Armed Forces of the Union should be holding a post of the level of Lt. General in the Army or equivalent rank in Navy/Air Force on the date of application.

(c)





Applicants from State Public Sector Enterprises/ Private Sector should be working at Board level position on the date of application.”

7. From a perusal of this, it is evident that the qualifications are stipulated in terms of (a) educational quaifications (b) experience (c) and the nature of post held or scale of pay drawn by the applicants. A distinction needs to be maintained here. As regards Central Government officers, the stipulation under clause 5 (b)(i) is to the effect that the applicants should be holding a post of the level of Additional Secretary in Government of India or the one “carrying equivalent scale of pay on the date of application”. For the officers working in CPSE, the stipulation is under clause 5 (a) in terms of the pay scale.

8. What is prescribed for the applicants from Central Government / All India Services is in terms of the level of the post, i.e., Additional Secretary. The expression “equivalent scale of pay on the date of application” refers to the other equivalent posts, and it is not in terms of the salary drawn by the applicants. For example, there may be a post in the Central Government with a description other than that of Additional Secretary carrying equivalent scale of pay. Such candidates are eligible to apply. However, if an officer, not being an Additional Secretary is drawing an amount or salary equal to that of the Additional Secretary, a serious doubt, in fact, arises. The rule



making authority has employed the word “carrying” and not “drawing”. While the former is referable to the post, the latter is referable to the individual, holding the post.

9. It is no doubt true that the applicants are drawing the scale, which is almost equivalent to the one, attached to the post of Additional Secretary. However, it is not in dispute that the posts held by them do not “carry” a scale of pay of Additional Secretary. The applicants are allowed the scale of pay on NFU basis, and incidentally that is equivalent to that of Additional Secretary. The pay attached to the post, substantially held by the applicant is for less.

10. The Scheme of NFU was introduced in the year 2009. According to this, if an IAS officer of a particular year is promoted to a higher level, other Group ‘A’ officers of organised services, who are seniors to him by two years shall also be allowed the same scale of pay, on NFU basis. Similar facility is provided at other levels also. This is almost an ‘anti stagnation measure’. Two important conditions are imposed while allowing NFU. They read as under:-

“(i) The upgradation granted under these orders are purely non-functional upgradation personal to the officer and it does not bestow any right to the officer to claim promotion or deputation benefits based on non-functional upgradation in such a manner.

(ii) Pay fixation on grant of non-functional upgradation under these orders has to be done as per the provisions of CCS (RP) Rules 2008. At the time of regular promotion to this grade, the pay need not be fixed again for the officers



who have been granted upgradation under these orders. The officers may exercise their option from fixation of pay under relevant provision of FR 22 (i) (a) (1) within one month from the date of issue of this order.”

11. The effort is to ensure that the NFU is not treated as equivalent to that of promotion to the higher post. The instances of an employee drawing the scale of pay attached to a higher post, even while he occupies a lower post, are not uncommon. For instance, an Assistant Engineer in CPWD would be extended the pay scale of next higher post in case he could not get promotion for want of vacancy, even while otherwise being eligible. In such cases, he would continue to draw the same pay scale, even after he gets regular promotion. However, as long as he draws higher scale of pay even while continuing in the lower post, it cannot be said that the post carries the same scale of pay as that of higher post.

12. It may be true that on the previous occasions, the candidates, who were drawing pay scale attached to the post of Additional Secretary, *albeit* on NFU basis were called for interview. The respondents, however, stated that it was a mistake and that there are no instances of such persons being selected or appointed.

13. Learned counsel for applicants has relied upon the judgments of Hon'ble Supreme Court in support of the proposition that the Selection Committee cannot alter the Rules



in the process of selection. We do not find any instance of the respondents altering or modifying the criteria for selection.

14. We do not find any merit in these O.As. They are accordingly dismissed.

15. All the M.As. in respective O.As. shall stand disposed of. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

September 15, 2020

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