

**CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA**

**LIBRARY**

O.A/350/418/2020

Date of Order: 22.04.2021

**Coram:** Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

**SHRI SUBARNA NANDY,**  
Son of Late Kumaresh Nandy,  
Aged about 45 years,  
residing at Kshudiram Basu Road,  
Naopara, Barasat,  
District - 24 Parganas (North),  
Kolkata - 700124  
and working to the post of Junior Accountant  
in the office of Chief General Manager,  
Telecom Stores in Bharat Sanchar Nigam Limited,  
Calcutta;

..... Applicant.

-Versus-

1. Union Of India,  
service through the Secretary  
Department of Telecommunication,  
Sanchar Bhawan, Ashok Road,  
New Delhi - 110001;
2. Bharat Sanchar Nigam Limited,  
A Government of India Enterprise  
Through the Chairman-cum-Chief  
Managing Director,  
Bharat Sanchar Nigam Limited,  
Harish Chandra Mathur Lane, Janpath,  
New Delhi - 110001.
3. The Chief General Manager,  
Telecom Stores (CGMTS),  
3A, Chowringhee Place, BSNL,  
Kolkata - 700013.  
Email Id - tamal.123456@gmail.com.
4. The Assistant General Manager (A),  
Office of the Chief General Manager,  
Telecom Stores (CGMTS),  
3A, Chowringhee Place,  
BSNL, Kolkata - 700013.  
Email Id - akg@gmail.com
5. The Administrative Officer,  
Office of the Chief General Manager,  
Telecom Stores (CGMTS),  
3A, Chowringhee Place,  
BSNL, Kolkata - 700013.  
Email Id - [tanweer3211@gmail.com](mailto:tanweer3211@gmail.com)/  
[tanweer3211@yahoo.com](mailto:tanweer3211@yahoo.com)

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6. **Shri Sudharsan Ram,**  
 Senior Accountant in the office of the  
 Chief General Manager,  
 Telecom Stores (CGMTS),  
 3A, Chowringhee Place,  
 BSNL, Kolkata - 700013  
 Service through the CGMTS, Kolkata.

.....Respondents.

For The Applicant(s): Mr. P.C. Das, Counsel  
 Ms. T. Maity, counsel

For The Respondent(s): Mr. A. K. Gupta, counsel

### ORDER (ORAL)



Per: Dr. Ms. Nandita Chatterjee, Member (A):

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief:-

"8.a) To quash and/or set aside the impugned speaking order dated 07.03.2020 issued by the Assistant General Manager (Administration), BSNL, Kolkata being Annexure A-19 of this original application whereby and whereunder the claim of the applicant has been rejected by not considering his promotion to the post of Senior Accountant before 18.05.2004 in view of the Recruitment Rules existing in the field before the Restructuring Order came into force because of not getting such promotion to the post of Senior Accountant in accordance with the Recruitment Rules dated 26.06.2002 your applicant is losing financially although the case of the private respondent was considered who is the similarly circumstanced person vis-a-vis to the present applicant;

b) The respondents be directed to effect the promotion of the present applicant to the post of Senior Accountant before 18.05.2004 and to give all the consequential benefits in terms of the Recruitment Rules dated 26<sup>th</sup> June, 2002 which is existing in the filed by setting aside and/or quashing the impugned speaking order dated 7<sup>th</sup> March, 2020;

c) To pass an appropriate order directing upon the respondent authority to consider the applicant's promotion to the post of Senior Accountant from the post of Junior Accountant before the restructuring of Accounts Staff in Organized Accounts Cadres came into force on the basis of the eligibility as because he was appointed to the post of Junior Accountant with effect from 21.10.1998 and before Restructuring Order came into force, he became eligible for promotion of the said post but the respondent authority without granting promotion in favour of the applicant to the post of Junior Accountant against a particular vacancies, he was given an ad-hoc promotion with effect from 21.10.1998 and subsequently regular promotion to the post of Junior Accountant with effect from 21.10.2001. Because of his eligibility and the vacancies arose, his promotion to the post of Senior Accountant may be considered with effect from the date of occurrence of vacancies arose before Restructuring Order came into effect and to give effect of the promotion from the date along with all consequential benefits in favour of the applicant;

d) To pass an appropriate order directing upon the respondent authority to consider the case of the applicant in the light of the case of the private

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respondent namely Sri Sudharsan Ram whose ad hoc promotion was also considered by UP, BSNL by antedating his promotion to the post of Junior Accountant with effect from 30.12.2001. The same treatment has to be made by the authority concerned in the case of the applicant for considering his promotion to the post of Senior Accountant from the post of Junior Accountant before the restructuring of Accounts Staff in Organized Accounts Cadres came into force on the basis of his eligibility by antedating the regular promotion to the post of Junior Accountant with effect from 21.10.1998;"

2. Heard Ld. Counsel for both sides, examined pleadings, documents on record as well as those furnished during hearing.

3. The submission of the Ld. Counsel for the applicant is that, the applicant was appointed to the post of Lower Division Clerk on 21.10.1994 and subsequently promoted to the post of Junior Accountant on regular basis with effect from 05.10.2001. The applicant is aggrieved, because, subsequent to his promotion to the post of Junior Accountant, he has been deprived of any further promotion till date.

According to Ld. counsel for the applicant, although the applicant was eligible for regular promotion to the post of Junior Accountant with effect from 21.10.1998, he was deprived as no DPCs were held to grant him promotion at the appropriate point of time. The applicant had, therefore, earned his eligibility for promotion to the post of Senior Accountant with effect from 21.10.2001, which is well before the restructuring of the Telecom Accounts Cadre notified on 18.05.2004.

The applicant had represented severally before the respondent authorities, but, there being no favourable response thereto, he had approached this Tribunal in first stage litigation in O.A 350/1676/2019. The said O.A was disposed of on 23.12.2019, and, in compliance thereof, the concerned respondent authorities had issued a speaking order dated 07.03.2020, rejecting the claim of the applicant. Challenging such rejection, the applicant has approached this Tribunal in the instant O.A.

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The applicant would also aver that private respondent No. 6 was, reportedly, similarly circumstanced with the applicant, but he was considered for antedating of his promotion to the post of Senior Accountant before the date of effect of restructuring of the Telecom Account Cadre, denying the applicant of his rightful promotion.

4. The respondents, per contra, would dispute the claim of the applicant as follows;

i) That, the applicant was appointed to the post of Lower Division Clerk on 27.10.1994, and promoted to the post of Jr. Accountant on regular basis with effect from 05.10.2001, upon availability of vacancy.

(ii) That, in terms of recruitment rules notified on 26.06.2002 (Annexure A-20 to the OA), eligibility for promotion to the post of Senior Accountant is 03 (three) years from the last regular promotion, namely, to the post of Junior Accountant, and without considering any date of adhoc promotion. Accordingly, in terms of such recruitment rules, the applicant would be eligible for promotion to the post of Senior Accountant only with effect from 05.10.2004.

(iii) That, an office order was issued on 18.05.2004 (Annexure A-21 to the OA), whereby the cadre of Junior/Senior Accountant in BSNL was declared as "wasting cadre" with immediate effect. Accordingly, although the applicant would have earned his eligibility to the post of Senior Accountant with effect from 05.10.2004, due to the prevailing office order dated 18.05.2004, the promotional post of Senior Accountant was declared to have been abolished with immediate effect (after being vacated by existing incumbents on account of retirement/promotion/resignation), and, therefore, the applicant could no longer be considered for regular promotion to the post of Senior Accountant.

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iv) That, in compliance to the orders of this Tribunal in the earlier O.A 350/1676/2019, the respondent authorities had constituted a Committee to consider the representation of the applicant and to review the justification for regular promotion of the applicant prior to restructuring of the Accounts Cadre with effect from 01.07.2004, and, that, such Committee had observed that, the applicant would have been eligible for further promotion to the post of Senior Accountant only on 05.10.2004 without considering his date of adhoc promotion to the post of Junior Accountant. As the post of Senior Accountant which the applicant was aspiring for, was declared as a "wasting cadre" with effect from 01.07.2004, the applicant's claim could no longer be entertained by the respondent authorities.

v) Respondents would further submit however, that, time bound pay scale upgradation of Junior Accountant was implemented as per admissibility contained in Non-Executive Promotion Policy (NEPP) vide Office order dated 23.03.2010 (Annexure R-2 to the Reply).

5. We have heard the rival contentions and have examined the documents on record. The following transpires therefrom;

(i) That, on 21.10.1994 (annexure A-5 to the O.A), a notification was issued for recruitment to the cadre of Lower Division Clerk on compassionate ground and, the applicant, having applied thereto, was appointed as a LDC from 21.10.1994. That, thereafter, vide an order dated 23.11.2001, the applicant was promoted on regular basis to the post of Junior Accountant w.e.f. 05.10.2001 (Annexure A-8 to the O.A).

That, private respondent no. 6 had entered service on 07.12.1977 and his date of substantive entry in the grade of Senior Accountant was 01.04.1987. Hence, the private respondent no. 6 had entered service in 1977 as compared to the applicant who had entered service as LDC on

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21.10.1994. Hence, it is established that the private respondent no. 6 had entered service nearly 17 years prior to that of the applicant and had moved on promotion to the post of Senior Accountant on 01.04.1987 as per the gradation list at Annexure A-11 to the O.A.

(ii) Vide orders dated 17.05.1998 (Annexure A-1 to the O.A), the eligibility criteria for promotion to the cadre of Sr. Accountant as proposed in the draft recruitment rules was as under:-

“Junior Accountants who have rendered not less than 3 years of regular service as Junior Accountants and who have completed satisfactorily the period of probation and have passed confirmatory examination (in the case of Direct Recruits)/Departmental Examination for promotion of LDCs to J.As, where prescribed.”

And the same recommendation obtained its finality in Annexure A-20 to the O.A wherein the respondent authorities issued the recruitment rules on “Assistant (Accounts)/Junior Accountant/Senior Accountant” vide their order dated 26.06.2002. The eligibility to the post of Senior Accountant on promotion was incorporated therein as follows:

Name of post	No of Posts	Classification	Pay Scale Rs.	Whether selection By merit or selec- tion cum-seniority Or non-selection Post	Age limit for Direct recruits	Whether Benefit of Added years Of service	Educational and other qualifica- tions Required for direct Recruits
1	2	3	4	5	6	7	8
Senior Accountant Subject to verification depending on work load	1693(*) (*)	Non-Executive	IDA pay scale of BSNL Corresponding to the CDA scale of Rs.5000-150-8000.	Selection by Seniority-cum-fitness by a duly constituted DPC	Not applicable	Not applicable	Not applicable

NOTE:- This is a promotional Cadre. 80% of the posts created will be in higher pay scale i.e, Rs.5000-150-8000 (Senior Accountant) and the remaining 20% will be Junior Accountants.

Whether age and educational	Period of probati	Method of recruitment whether by direct recruitment or by	In case of recruitment by promotion/	If a departmental promotion committee exists, what is its
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qualifications prescribed for direct recruits will apply in the case of promotion.	on, if any.	promotion or by deputation absorption and percentage of posts to be filled by various methods.	deputation transfer grades from which promotion/deputation transfer to be made	composition for considering promotion to Senior Accountant Grade.
9	10	11	12	13
No	No	By promotion on selection by Seniority-Cum-fitness basis.	Junior Accountants who are confirmed and having rendered not less than 3 years regular service as Junior Accountant.	<p>(i) Departmental Promotion Committee consisting of the following officers for promotion from Assistants (Accounts):</p> <p>1. One officer of the rank of 3AG of Accounts &amp; Finance Wing.... Chairman</p> <p>2. Two officers of the rank of CAO.</p> <p>... Members</p> <p>DPC will be constituted by the Circle IFA. Where Circle IFA is not of the rank of JAG, the Committee will be constituted by the Head of the Circle. If the number of members for the Committee are not available, they may be co-opted from the other Circles. If none of the members of DPC are from SC/ST category then a SC/ST STS officer (not necessarily from the Circle) may be co-opted.</p>



It transpired from the above Rules that, promotion to the post of Senior Accountant was to be ensured from amongst the Junior Accountants who are confirmed, and, who have rendered not less than 3 (three) years of regular service as Junior Accountant.

(iii) The extracted operational contents of the speaking order (as impugned) at Annexure 19 to the O.A. is reproduced as under:-

“7. Now the department in compliance with the said Judgment and order dated 23.12.2019 of the Learned Tribunal has formed a Committee to review justification for regular promotion as Sr. Accountant in respect of Shri Subarna Nandy before restructuring of Accounts cadre in BSNL i.e. within 01.07.2004. the committee in its meeting held on 04.03.2020 at 02.00 p.m. in the O/o PGM (TS), Kolkata-13 opined that Shri Subarna Nandy would be further eligible for promotion to the post of Sr. Accountant on 05.10.2004 without considering the adhoc promotion date to the post of Jr. Accountant vide BSNL CO order No.16-11/2001-SEA (Pt.II) dated 26.06.2002. In the meantime an order vide No. 16-11/2002-SEA (Pt.II) dated 18.05.2004 had been issued

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by BSNL CO declaring the Sr. Accountant as wasting cadre. Hence, the committee opined that the representation of Shri Subarna Nandy dated 17.01.2019 for promotion to the post of Sr. Accountant before 18.05.2004 could not be considered.

8. Now the department in compliance with the said Judgment and order dated 23.12.2019 of the Learned Tribunal have taken into consideration the pleading of the applicant, relevant rules, circulars and statute and come into consideration based on the explanation as given herein before that the appeal of the applicant is not a valid one in view of Departmental Rules and regulations and not entitled to get promotion as asked for."

In the above noted speaking order, respondents have reiterated their arguments in the reply, to state as follows:-

(a) That, the applicant was promoted to the post of Junior Accountant on regular basis with effect from 05.10.2004 without considering the adhoc promotion date in terms of the recruitment rules dated 26.06.2002. He would have completed 03 (three) years of regular service in the post of Junior Accountant on 05.10.2004 and that, his claim for promotion to Senior Accountant would have arisen only from 05.10.2004. The respondent authorities, however, had notified on 18.05.2004 that, upon restructuring of Assistant Accountant (formally known as LDCTA) and upon declaration of Junior/Senior Accountant in BSNL as "wasting cadre", the following would come into effect:-

*"Sub: conversion/Restructuring of Assistant (Accounts) formerly known as LDC (TA) to TOA/Sr. TOA pattern and declaration of Junior/Senior Accountant in BSNL as wasting cadre-regarding:*

*With the absorption of Group "C" and 'D' employees in Non-Executive category in BSNL, conversion of isolated cadres to that of the main stream cadres, uniformity in career progression etc. have been engaging attention in National Council meetings. In view of the changed working scenario, it has emerged that multiplicity of cadres, continuance of isolated cadres in different streams with limited scope of duties and having separate career progression etc. need to be re-looked in the current context. Accordingly, keeping in view the discussions held in the National Council meetings and related developments with regard to Assistant (Accounts/Junior Accountant/Senior Accountant, approval of the Competent Authority is hereby conveyed for the following;*

*The cadres of Junior /Senior Accountant in BSNL are hereby declared as a wasting cadre with immediate effect. No recruitment will be henceforth be made in the grade of Junior /Senior Accountants either by Direct Recruitment or from existing Assistant (Accounts) on adhoc/local officiating or on regular basis. With this, all the posts of Junior /Senior*

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*Accountants will become personal to the incumbents and shall stand abolished as and when the same are vacated by the incumbents on accounts of retirement/promotions/resignation etc."*

Hence, the applicant's claim to promotion as Senior Accountant with effect from 05.10.2004 was subject to this restructuring order and, therefore, he could not be promoted to the post of Senior Accountant by virtue of such restructuring order of the authority.

6. There is nothing on record to establish that the applicant had claimed his regular promotion to the post of Junior Accountant in 1998 or to the post of Senior Accountant in 2001 either by way of judicial challenge or administrative requests.

No Recruitment Rules prior to that dated 26.6.2002 have been furnished by the applicant to claim that after four years of his entry as LDC, he was eligible to be promoted to the regular post of Junior Accountant.

On the other hand, the Recruitment rules of 2002 had categorically recommended that the Junior Accountants, who are confirmed and had rendered not less than 3 (three) years of regular service as Junior Accountant, would be eligible to be promoted as Senior Accountants. Such provisions rule out any scope of counting the period of adhoc service towards such promotion. Hence, the applicant's claim that his services since 1994 should have been taken into account to ensure his promotions with effect from 1998 and 2001 respectively, which antedate the restructuring order, is not established. We find no successful challenge to the recruitment rules dated 26.06.2002 to establish his claim for counting of the period of adhoc promotion. The applicant has also not questioned the legality of the restructuring order dated 18.05.2004 declaring the post of Senior Accountant as "Wasting Cadre"



either at any stage of litigation. Accordingly, he cannot claim antedating of his promotion prior to the date of effect of the restructuring order.

7. Regarding the applicant's claim, that, he has been discriminated vis-à-vis private respondent no. 6, we find that, private respondent no. 6 had entered service in 1977, 17 years prior to the applicant and, had acquired the status of Senior Accountant in 1987 as per Annexure A-11 to the O.A., which is much before the restructuring order of 2004. Hence, the allegation that private respondent no. 6 benefitted by antedating of his promotion orders, is not corroborated.

8. As held in **Sarabjit Singh v. Ex- Major B. D. Gupta (2000) 7 SCC 67: AIR 2000 SC 2639**, it is well settled that, although an employee has no right to be promoted, he has a right to be considered for promotion but such right will be available only if he falls within the prescribed zone of consideration.

Further, in **State of Rajasthan v. Jagdish Narain Chaturvedi (2009) 12 SCC 49: AIR 2010 SC 157**, the Hon'ble Court ruled that, promotion has to be amongst persons who are borne on a regular cadre in service.

In the instant context, the applicant was undisputedly borne in the cadre of Junior Accountant in regular basis only w.e.f. 05.10.2001. The recruitment rules dated 26.06.2002, while laying down norms for filling up the post of Junior Accountant by promotion declares that, the eligibility criteria is by promotion from regular Assistant (Accounts) working in pay scale in (CDA) of Rs. 3050-75-4550 or equivalent IDA pay scales of BSNL, with not less than 8 years. Hence in the absence of Recruitment Rules prior to 26.6.2002, the applicant cannot rightfully claim that he was entitled to be promoted to the regular post of Junior Accountant in 1998 when he had joined as an LDC only in 1994.

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We also note that the recruitment rules which envisages promotion to those in the feeder post on regular basis or the restructuring cadre order that declares promotional posts as abolished have not been challenged. A DPC would be convened to consider candidates who are eligible as per Recruitment Rules for promotion subject to availability of vacancies. The applicant has not been able to establish conclusively that he was eligible in terms of extant Recruitment Rules or that there were available vacancies which the DPC had failed to consider.

Hence, his claim to antedating of his promotions fail.

The speaking order, based on the factual position, Recruitment Rules and administrative orders, does not call for any intervention.

9. Accordingly, the O.A is dismissed as being devoid of merit. There will be no orders on costs.

(Nandita Chatterjee)  
Member (A)

(Bidisha Banerjee)  
Member (J)

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