

12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK
ORIGINAL APPLICATION NO. 637 OF 2004
Cuttack this the 06th day of November, 2008

Shri Jugal Kishore Samal

Applicant

Vrs.


Union of India and others

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not ?
- 2) Whether it be sent to the P.B. of CAT or not?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

13

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK
ORIGINAL APPLICATION NO.637 OF 2005
Cuttack this the 06th day of November, 2008

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...
Shri Jugal Kishore Samal, aged about 60 years, Son of Hrusikesh Samal,
permanent resident of village-Talajanga, PO-Kapila, PS-Binjharpur,
Munsif/District-Jajpur ...Applicant

By the Advocates:/s.B.S.Tripathy,M.K.Rath,J.Pati

-VERSUS-

- 1) Union of India represented through the Chief General Manager
(Telecom), Bharat Sanchar Nigam Limited (B.S.N.L.), Orissa
Telecom Circle, At/PO-Bhubaneswar, Dist-Khurda
- 2) The General Manager, Telecom District (GMTD), Bharat
Sanchar Nigam Ltd., B.S.N.L. Balasore, At/PO-District-
Balasore ...Respondents

By the Advocates: Mr.S.B.Jena

ORDER

SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

The applicant has filed this Original Application claiming that he is entitled for financial upgradation as per the OTBP Scheme with effect from 30.11.1983 and BCR Scheme with effect from 1.7.1991. The applicant has also prayed that the orders dated 19.2.2005 and 1.7.2005 are irregular and illegal and therefore, the same are not sustainable in the eye of law.

2. The relevant facts which are necessary for considering the relief claimed by the applicant are as follows.

The applicant joined on 20.3.1965 as a Telephone Operator on regular basis at Rourkela which is under the Orissa Telecom Circle.

While he was so working, One Time Bound Promotion (in short



14 2

O.T.B.P.) Scheme was introduced by the Department of Telecommunications stipulating that the employees who have completed 16 years of regular service in the grade, are entitled to the benefit of the scheme with effect from 30.11.1983. However, the applicant having not been extended the benefit of OTBP scheme despite several approaches, preferred a representation dated 24.5.1987 to the then Director General & Secretary, Telecommunications, which having been rejected vide order dated 3.7.1990, the applicant moved this Tribunal in O.A.No.382/90. However, this Tribunal as per order dated 4.5.1995 disposed of the said O.A. in favour of the applicant. The Review Application filed by the Department having been dismissed, the matter was carried to Hon'ble Supreme Court and the Hon'ble Supreme Court, after considering the matter, as per order dated 1.4.2003 disposed of the Civil Appeal by quashing the impugned orders of the Tribunal. After the judgment of the Apex Court, since the Department did not comply with the direction of the Hon'ble Supreme Court, the applicant approached this Tribunal in C.P.No.56 of 2003. During pendency of the C.P., though the DPC was convened, but C.G.M.T.(Res.No.1) sought clarification and the T.D.M., Balasore, submitted bio data and clarification for consideration of the case of promotion of the applicant. Although the DPC considered the case of the applicant for promotion on getting the complete C.R. dossiers under the OTBP and BCR Schemes, in the meanwhile the disciplinary proceedings having been culminated the applicant was imposed with a

AB

15

3

major penalty of stoppage of promotion for a period of one year with immediate effect as per order dated 31.12.2003. Challenging the said punishment order, the applicant moved this Tribunal in O.A.No.259/2004. As per order dated 9.6.2004, the Tribunal disposed of the said O.A. by directing the applicant to prefer an appeal by the end of June, 2004. The applicant, in view of the observations made by this Tribunal in C.P.No.56/2003, moved this tribunal in O.A.No.283/04 seeking direction to the Respondents to communicate the findings of the DPC. During pendency of the said O.A., the Department opened the sealed cover and vide letter dated 20.5.2004 communicated the findings of the DPC indicating therein that the applicant was entitled to get the benefit under the OTBP scheme with effect from 30.11.1983 and BCR Scheme with effect from 1.7.1991. The O.A.No.283/2004 was disposed of by this tribunal as per order dated 16.6.2004 with direction to the Departmental authorities to release the consequential financial benefits arising out of the DPC recommendations in favour of the applicant. Hence, the applicant, based on the orders passed by this Tribunal and the findings of the DPC, has claimed that he is entitled for the benefit of promotion under the OTBP and BCR Schemes and accordingly, he has prayed for quashing the orders dated 19.2.2005 and 1.7.2005 (Annexures-A/6 and A/9 respectively). The main grounds urged by the applicant are that as the DPC had considered the disciplinary action taken against the applicant and the punishment awarded on him and as the applicant has



16 4
been allowed to get the benefit of promotions, he is entitled for such benefits with effect from 30.11.1983 and 1.7.1991.

3. In their counter filed for and on behalf of the Respondents, it has been answered as under:

“4. That as regards the averments made in para-4.2 of the Original Application, it is submitted that the OTBP promotion scheme for Group C and Group D employees came into being w.e.f. 30.11.1983 vide DGP & T No.1-71/83-NCG dated 16.12.1983 by which time the official had completed 18 years 8 months and 9 days of regular service in the cadre of T.O. But due to currency of the punishment awarded by the DDOT, Keonjhar vide Memo No.QJ-4/37 dated 21.1.80, of withholding increment for 18 months w.e.f. 1.3.80 without cumulative effect, under Rule 16 case as well as withholding of one increment for two years without cumulative effect, awarded by the sdot, bls memo No.QJ-16/Part-II/78 dated 9.2.84 in another Rule-16 case. For the OTBPM Promotion, the DPC on 25.2.84 did not recommend the name of the applicant as the punishment of withholding one increment for two years was in currency. Rule-16 was issued on 27.12.83. His case was considered several times till 92 in the DPCs held but not recommended due to adverse remark in CR and currency of punishment. On 18.5.92 he was charge sheeted under Rule-14 of CCS(CCA) rules, 1965 which continued till 2003 and it ended in award of punishment of stoppage of promotion for one year w.e.f. 31.12.03 and for this reason he was not recommendation for promotion by DPC. However, the promotion under OTBP from 31.12.2004 and BCR fom 1.1.2005 were granted to the applicant vide GMTD, BLS Memo No.E-5(30)/Part-II/54 dated 19.2.2005.”



17 5

It has been further stated in the counter that in the light of the judgment of the Hon'ble Apex Court, the case of the applicant had been considered by the specially constituted DPC but the findings of the DPC were kept in the sealed cover due to pendency of disciplinary proceedings under Rule 14 against the applicant. The Respondents have emphasized the provisions of the relevant rule to the extent that if any penalty is imposed on an incumbent as a result of the disciplinary proceedings or if he is found guilty in the Court proceedings against him, the findings in the sealed cover will not be acted upon. His case for promotion has to be considered in the usual course by the next DPC after the conclusion of the disciplinary/court proceedings, having regard to the penalty imposed on him.

4. From the rival contentions, the question to be decided in the O.A. is whether the applicant is entitled to promotional benefit under the OTBP and BCR Schemes with effect from 1983 and 1991 respectively?

5. Admittedly, the applicant was facing disciplinary proceedings when the scheme was introduced. Even though the applicant has challenged the disciplinary proceedings before the Hon'ble Supreme Court as well as this Tribunal, the fact remains that while the DPC considered him for promotion, he was facing disciplinary proceedings and his case was, therefore, kept in the sealed cover. The decision of the DPC was dated 20.5.2004 as evidenced from Annexure-A/5. If so, the case of the applicant for promotion under the OTBP Scheme and BCR

AS

18
6
Scheme can only be considered from the date of Annexure-A/5.

Admittedly, as per Annexure-A/5, the DPC has considered the special report with the CR dossiers and evaluated the service records of the applicant under the OTBP scheme and the findings were communicated to the applicant . If so, the question now raised in this O.A. can be answered to the effect that it is only proper for the Respondents, viz., Res. No.2 to consider the claim of the applicant with effect from the date of Annexure-A/5 and pass appropriate orders in the above matter. In the circumstances, we are also of the view that Annexures-A/6 and A/9 are not sustainable in law and they are liable to be quashed. Accordingly, we order so.

6. It is further directed that the 2nd Respondent shall take a decision in the matter as aforesaid as early as possible, at any rate within 60 days of the date of receipt of this order.

7. The O.A. is allowed to the extent indicated above. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER