

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.595 OF 2010
Cuttack, this the 8th Day of October, 2013

Kashinath Sahoo Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? ✓
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? ✓



(R.C. MISRA)
MEMBER(JUDL)



(A.K. PATNAIK)
MEMBER (JUDL.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO. 595 OF 2010

Cuttack the 8th day of October, 2013

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HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R. C. MISRA, MEMBER (A)

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Kasinath Sahoo, son of Late Khalli Sahoo, aged about 56 years, at present working as Accounts Officer, in the office of the Chief General Manager, Bharat Sanchar Nigam Ltd. Orissa Circle, Bhubaneswar-751001.

...Applicant

(Advocates: M/s-A.K. Mohanty, S. Rath.)

VERSUS

Union of India Represented through -

1. The Secretary, Department of Telecommunications, Govt. of India, Sanchar Bhavan, 20. Ashokaroad, New Delhi-110001.
2. Chairman cum Managing Director, Bharat Sanchar Nigam Ltd. Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi-110001.
3. The Chief General Manager, Bharat Sanchar Nigam Ltd. Orissa Circle, Bhubaneswar-751001

... Respondents

(Advocate: Mr. J.K. Panda & Mr. U.B. Mohapatra)



O R D E R

A.K. PATNAIK, MEMBER (JUDL.) In this Original Application filed U/s.19 of the Administrative Tribunals Act, 1985, the prayer of the Applicant is to direct the Respondents to promote him to the cadre of Assistant Accounts Officer and consequently grant him the financial up gradation in the IDA scale of pay of Rs.13000350-18250/- retrospectively i.e. with effective from 26.12.2000 and 26.12.2004 respectively when his juniors were promoted and got the IDA scale by way of first financial up gradation after completion of four years in the grade/cadre of AAO.

2. Respondents-BSNL have filed their counter objecting to the prayer of the Applicant and the applicant has also filed rejoinder trying to justify the grant of the relief as claimed in this OA.

3. According to the Applicant, the case in nutshell is that after qualifying in the Departmental Examination, he got promotion to the post of Junior Accounts Officer, in short 'JAO', with effect from 06.03.1997. By efflux of time, the Department of Telecom Services (DOTS) and the Department of Telecom Operations (DOTO) were corporatized as Bharat Sanchar Nigam Ltd., in short 'BSNL' with effect from 01.10.2000. Some of the Group 'B', 'C' & 'D' employees of DOTS, were treated to be continuing on deemed deputation in the BSNL but were regularized in the BSNL retrospectively w.e.f 01.10.2000. The



applicant was absorbed in BSNL w.e.f 01.10.2000. DOT issued one notification on 26.12.2000 for giving ad-hoc promotion to the JAOs of the DOTs to the post of Asst. Accounts Officer (AAO). Applicant has alleged that the juniors of the applicant who had qualified in the departmental examination for promotion to JAO in the year 1996 were promoted to the post of AAO w.e.f. 26.12.2000 whereas the applicant though qualified in the departmental examination in the year 1995 was deprived of getting such promotion to the post of AAO which amounts to sheer discrimination. On 18.10.2008 the applicant got his regular promotion as Accounts Officer (AO). The BSNL introduced a policy on 18.1.2007 for granting financial up gradation to its employees after completion of particular years of service. Hence by making representation dated 25.1.2007 the applicant has prayed for antedating his date of his promotion to that of his juniors. The BSNL Corporate Office vide letter dated 31.07.2007 sought to know the reasons for not giving the applicant adhoc promotion with effect from the date his juniors were promoted i.e. with effect from 26.12.2000. In reply to the query, the DOT vide letter dated 07.02.2008 informed the BSNL Corporate Office that due to non-receipt of the Vigilance Clearance in respect of the Applicant, his name could not be included in the list of

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officers for promotion to AAO on adhoc basis w.e.f. 26.12.2000. However, it is the positive case of the applicant that the matter relating to his promotion w.e.f the date his juniors were promoted is under consideration of the Corporate Office of the BSNL. According to the policy of financial up gradation introduced by the BSNL, an executive is entitled to financial up gradation to IDA scale after four years and subsequently after completion of five years in a particular IDA scale. Further, as per the said policy decision of the BSNL, adhoc period of service shall be counted for financial up gradation. Accordingly, vide order dated 16.9.2009 the CGM,BSNL,Odisha Circle, Bhubaneswar while granting financial up gradation in the IDA scale of Rs.13000-350-18250/- to S/Shri Dharendra K. Rath, Harihara Sahu, Prasanna Kumar Ray and Simanta Sahu , with effect from 26.12.04 i.e. the date when they have completed four years of service in the grade of AAO granted the said pay scale to the applicant only with effect from 1.4.2005, on the footing that the applicant was promoted to AAO only w.e.f. 1.4.2001 whereas the promotion of the others to AAO was w.e.f. 26.12.2000. The Applicant submitted representation dated 02.03.09 to the CMD, BSNL, New Delhi against the said decision with a request for removal of

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discrepancy but having not received any reply he has approached this Tribunal in the instant OA with the aforesaid reliefs.

4. According to the Respondents, the applicant was included in the list of officers eligible by the crucial date i.e. 1.1.2000 for promotion on regular basis to the AAO grade/cadre by the DPC but his case was not recommended as he had not completed the mandatory period of three years of regular service in the grade/cadre of JAO. However, his name was under the zone of consideration for promotion to the cadre/grade of AAO on adhoc basis in the year, 2000. But due to non-receipt of the Vigilance Clearance, his name could not be included in the list for promotion to AAO when others were promoted to the said grade/cadre. However, the applicant was promoted to the said grade/cadre on the recommendation of the DPC w.e.f. 1.1.2001 vide order dated 23.4.2001. It is the case of the Respondents that the seniority of the applicant has been maintained by BSNL and he has been rightly given his regular promotion to the grade of Accounts Officer with reference to his seniority in the grade of JAO and therefore non-grant of adhoc promotion in the grade of AAO has no bearing whatsoever on the regular promotion to the grade of AO. It is the case of the Respondents that since the applicant was not given the adhoc promotion to the grade

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of AAO by DOT w.e.f. 26.12.2000 due to non-receipt of vigilance report, his service of IDA pay scale of Rs.11875-300-17275/- was counted from 01.04.2001 i.e. from the date of regular promotion to AAO and not from 26.12.2000, i.e the date of adhoc promotion to the grade of AAO. As per note dated 30.01.08 and C.M. No.28036/1/2001/Estt.(D) dated 23.07.01 issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pension, DoPT, New Delhi the promotion/ adhoc promotion is to be given only prospectively and not retrospectively. Hence, the request of the applicant being not maintainable could not be accepted. Further the Respondents contended that in terms of the promotion policy especially the points at No.5 of letter dated 19.02.10, promotion to the grade of AAO between 01.10.2000 to 30.09.04 are to be treated as 1st Time Bound Promotion only and subsequent financial up gradation will be due after 05 years from the date of first financial up gradation. Therefore, the applicant was due to get the financial up gradation only w.e.f. 01.04.2006 and 01.04.11. If the applicant would have got ad-hoc promotion to the grade of AAO w.e.f. 26.12.2000, he would have got next financial up-gradation on 26.12.2005 and 26.12.2010. It is, therefore, evident that in both the eventuality the applicant would have got only three financial up-gradations and was not



losing any up-gradation due to non grant of ad-hoc promotion to the grade of AAO by DOT as prayed in the OA and hence, the contention of the applicant that he was illegally deprived of the benefit is totally misconceived. Since the applicant was not given adhoc promotion to the grade of AAO by DOT from 26.12.2000 due to non receipt of Vigilance report, his service in IDA pay scale of Rs.11875-300-17275/- was counted only from 01.04.2001 i.e. the date of regular promotion as AAO and not from 26.12.2000 i.e. the date of adhoc promotion to the grade of AAO and, therefore, this OA is liable to be dismissed.

5. We have heard Mr.A.K.Mohanty, Learned Counsel for the Applicant and Mr.U.B.Mohapatra, Learned Senior CGSC appearing for Respondent No.1 and Shri J.K.Panda, Learned panel counsel appearing for the Respondent Nos.2&3/BSNL and perused the records.

6. Besides reiterating the factual aspects of the matter noted above, Mr.Mohanty, Learned Counsel for the Applicant submitted that the Respondents have candidly admitted that the applicant was under the zone of consideration for promotion as AAO on adhoc basis but due to non receipt of the vigilance report, his name could not be included in the list of officers promoted to the cadre of AAOs on adhoc basis. There was neither any adverse vigilance report against him nor



any adverse entry in his ACRs as had there been any adverse report the applicant could not have been promoted on regular basis w.e.f. 01.04.2001 to the post of AAO. The Respondent- Department misinterpreted the DOP&T instructions issued vide O.M. dated 23.07.2001 which deals with prohibition for appointment on adhoc basis by direct recruitment from the open market. It is the specific stand of the applicant's counsel that the applicant was/is no way responsible for non-availability of the Vigilance Clearance Report for his promotion when his juniors were promoted to the AAO and he was deprived of his legitimate expectation for promotion even on adhoc basis to the post of AAO w.e.f. 26.12.2000 without his fault. Because of delay in promotion, he was deprived of getting IDA scale when his juniors were allowed the said pay scale. Mr. Mohanty contended that with reference to the DOT Head Quarters letter dated 04.02.2000, the vigilance clearance in respect of the applicant was issued only on 03.03.2000 as admitted by the Respondent No.1 in the counter and therefore when the adhoc promotion of 697 numbers of AAOs of the DOT were approved by the competent authority on 18.12.2000 as admitted in the counter reply, it was incorrect to say that the applicant's name could not be included in the list of adhoc promotion of AAOs during the year 2000 due to non-



availability of the vigilance report of the applicant when the same was actually received way back on 03.03.2000. Thus it was submitted by Mr.Mohanty that gross injustice was caused to the applicant in the decision making process of the matter of giving adhoc promotion to his juniors and in denying the same to the applicant. Accordingly, Mr.Mohanty reiterated his prayer made in the OA.

Similarly by reiterating the factual aspects stated in the counter, Sri U.B.Mohapatra, Ld. Senior CGSC for the Union of India appearing in this OA for the Respondent No.1 and Mr.Panda, Learned Panel Counsel of the BSNL appearing for the Respondent Nos.2&3 have vehemently opposed the submissions made by Mr.Mohanty by stating that the applicant cannot claim his adhoc promotion as a matter of right. The applicant having not completed three years of service in the feeder cadre of JAO he could not be recommended for promotion to AAO as per Recruitment Rules. The case of the applicant was also duly considered for adhoc promotion but as no vigilance clearance was received by that time when consideration was made, he was rightly not included in the list. Since there is no provision for allowing adhoc promotion retrospectively the applicant is not entitled to the relief claimed in this OA.



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7. Having considered the rival contentions of the respective parties, we have perused the materials placed on record including the decision of the Bombay Bench of this Tribunal in the case of **Suresh Kumar and another Vrs Secretary, Ministry of Shipping and others** rendered in OA No. 637 of 2007 dated 29.11.2010 holding that the service rendered by employees before the date of their regularization on adhoc/temporary basis cannot be ignored for grant of ACP.

8. Before proceeding to deal with the matter and express our views, we would like to reiterate the law laid down by the Hon'ble Apex Court that a society is well governed when the people who are in the helm of affairs obey the command of the law and that there is intellectual objectivity in the decision making process of any of the selection. A constructive intellect brings in good rationale and reflects conscious exercise of conferred power. A selection process has to reflect a combined effect of intellect and industry. It is because when there is a combination of the two, the recommendations as used in the provision not only serve the purpose of a "lamp in the study" but also as a "light house" which is shining, clear and transparent. Certainly it is well settled law that judicial review in the matter of promotion is not an appeal from a decision but a review of the manner in which the decision was made.

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The ambit and scope of Articles 14 and 16 of the Constitution of India are not limited to case where the public servant affected has a right to a post. Even for promotion on adhoc basis an employee can complain of violation of Articles 14 and 16 if he has been arbitrarily or unfairly treated.

The principle of legitimate expectation is still at a stage of evolution. The principle is at the root of the rule of law and requires regularity, predictability and certainty in the government's dealings with the public. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made-**Punjab Communications Ltd Vrs Union of India and others**, (1999) 4 SCC 727.

It is impermissible for the Government to take technical pleas to avoid the legitimate and rightful dues which are obligated upon them to perform (**Madras Port Trust vs. Himanshu International**, 1979 (4) SCC 176 / **Apangshu Mohan Lodh v. State of Tripura** 2004 (1) SCC 119.

9. In the case in hand it is not the case of the Respondent-Department that the applicant could not be promoted even on adhoc basis when his juniors were promoted due to any reason attributable to

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him/due to pendency of any vigilance/Departmental proceedings against him nor is it the case of the Respondent-Department that the service record of the Applicant is as such on evaluation of which the applicant was found unfit for promotion when his juniors were promoted to the cadre/grade of AAO. Rather it is the specific case of the Respondent-Department that the case of the applicant was considered along with others but due to non-receipt of vigilance clearance he could not be promoted. The vigilance clearance was to be issued by one of the wings of the Respondent-Department and if it was not issued then the Respondent-Department could have insisted for issuing the vigilance clearance prior to considering the case or soon after the issuance of order of promotion to others. However, the applicant was promoted on regular basis just after few months of the promotion of his juniors on adhoc basis. Even after getting the vigilance clearance the Respondent-Department ought to have considered the case of the applicant for his promotion to AAO on adhoc basis when his juniors were promoted. In the above circumstances, we hold that there was miscarriage of justice caused to the applicant in the decision making process of the matter warranting judicial interference in the matter and, therefore, we direct the Respondents to promote the applicant to the post of AAO from the



date when his juniors were promoted i.e. w.e.f. 26.12.2000 and resultantly, he would be entitled to IDA scale of Rs.13000-350-18250/- w.e.f. 26.12.2004 and so on. The Respondent-Department are hereby directed to pass orders to the above extent within a period of 60 (sixty-five) days from the date of receipt of copy of this order. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.



(R.C. MISRA)
Member (Admn.)



(A.K. PATNAIK)
Member (Judl.)