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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No.95 of 2010
Cuttack, this the 02nd day of May, 2012

Narendra Kumar Mishra Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(A.K.PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

CENTRAL ADMINISTRATIVE TRIBUNAL
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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER, (ADMN.)
And
THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

.....
Narendra Kuamr Mishra, aged about 50 years, Son of Baidyanath Mishra residing at S-3/662, Niladri Vihar, Bhubaneswar-751 021 now working as TOA (G), Grade-II in the Office of C.G.M.T, B.S.N.L, Orissa Circle, Unit-III, Bhubaneswar-751 001.

....Applicant

By legal Practitioner -Mr.Dinabandhu Mishra, Counsel.

-Versus-

1. Chairman-Cum-Managing Director, Bharat Sanchar Nigam Limited (BSNL), Bharat Sanchar Bhawan, H.C. Mathur Lane, Janapath, New Delhi-110 001.
2. Chief General Manager, Telecommunication, BSNL, Orissa Telecom Circle, Bhubaneswar-751 001.
3. Maheswar Khadia now working as TOA (G), Grade-III in the Office of CGM, BSNL, Orissa Circle, Bhubaneswar-751 001.

....Respondents

By Legal Practitioner - Mr.S.B.Jena, ASC

O R D E R

C.R.MOHAPATRA, MEMBMER (ADMN.):

The order of rejection [under Annexure-6 dated 16.6.2009] of the prayer to up grade the scale at par with his junior (RespondentNo.3) has been impugned by the Applicant in this OA with prayer to quash the same and to direct the Respondents to fix his pay at par with his junior RespondentNo.3 and pay him the differential arrears w.e.f. 11.12.2006.

2. The Applicant (who is working as TOA (G), Grade II in the Office of the CGMT, BSNL, Orissa Circle, Unit-III, Bhubaneswar) by making representation dated 13.12.2008 sought up-gradation of his pay as was granted to his junior (Respondent No.3) vide order under Annexure-3 dated 21-11-2006.

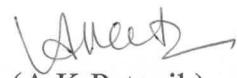
Thereafter, as it appears from record, alleging no action on the said representation, the applicant approached before the Hon'ble High Court of Orissa in WPC No. 19688/2008 which was disposed of by the Hon'ble High Court of Orissa, on 28-01-2009, with direction to the Respondent No.1 to take a decision on the representation within a period of two months and communicate the decision, in a speaking order, to the Applicant.

3. In compliance of the said order, the Respondent No.1 considered the representation but rejected the prayer of the Applicant; for the reasons communicated in letter under Annexure-6 dated 16-06-2009.

4. In the counter the Respondents while admitting that Respondent No.3 is junior to the Applicant have disputed the stand that Respondent No.3 was placed in higher pay scale under BCR scheme w.e.f. 11.12.2006 ignoring his case and thereby violating the law laid down by the Hon'ble Apex Court in the case of **Union of India Vrs Smt. Leelamma Jacob & Ors, CA No. 10692/1995 &**

CA Nos. 5031-5041/96 disposed of on 09.10.2002. It has been stated that Respondent No.3 was placed in the scale of pay of Rs.7800-225-11175/-(IDA) corresponding to CDA pay scale of Rs.5500-175-9000/- w.e.f. 11.12.2006 on restructuring of cadre after completion of 26 years of service on the basis of the order communicated by DOT in letter No.1-38/MPP-98 dated 20-04-1999. He was not promoted to BCR Gr.III in the pre restructured cadre. The decision relied on was for promotion of the concerned official from Gr.II to BCR Gr.III of pre restructured cadre by comparing with their juniors in Gr.II and not for grant of upgraded pay scale of restructured cadres given on completion of 26 years of service. The placements in the upgraded pay scales of the restructured cadre as provided under DOT letter dated 20.04.1999 are only to be granted on completion of 16/26 years of service. It has further been stated that the instruction pertaining to upgraded pay scale on restructuring of cadre is entirely different and are in no way linked with BSNL Corporate Office, New Delhi letters dated 24.2.2004 and 28.4.2004. It was contended by the Respondents that the case of the applicant was not ignored while placing the Respondent No.3 in the upgraded pay scale on restructuring of cadre on completion of 26 year of service and thus the principle decided by the Hon'ble Apex Court was not violated. Accordingly, Respondents have prayed for dismissal of this OA.

5. Learned Counsel appearing for the parties have reiterated the stand taken in their respective pleadings and having heard them at length, we have perused the materials placed on record. The Applicant has tried to make out a case for up gradation in the pay scale merely on the ground that though he joined in the grade of LDC in Orissa Telecom Circle on 13.04.1987 and Respondent No.3 on 11.12.1980 he became senior to Respondent No.3 in the grade of UDC by virtue of his promotion through departmental competitive examination. Hence his contention is that he should not get less pay than his junior i.e. Respondent No.3. Whereas the fact of the matter is that Respondent No.3 having completed 26 years of service was given higher scale in the BCR scheme. Obviously, the applicant had not completed 26 years from the date of his joining as LDC and was not senior in the LDC cadre. In view of the above, since both of them did not stand on the same footing, the claim of up gradation/stepping up of pay of the Applicant vis-à-vis Respondent No.3 does not arise being not covered by any rule or instruction. Therefore, the prayer of the applicant in this OA is held to be misconceived/without any merit. Accordingly, this OA stands dismissed by leaving the parties to bear their own costs.


(A.K. Patnaik)
Member(J)


(C.R. Mohapatra)
Member(A)