

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 517 of 2010

Ernakulam, this the 26th day of August, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

N. Chandu, aged 58 years, S/o. Kunhiraman,
Divisional Engineer/Bharat Sanchar Nigam Limited/
Mobile Services/Calicut, Residing at : No. 33/6444,
Souparnika, Chevayoor, Calicut-17.

Applicant

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. The Chairman-cum-Managing Director, Bharat Sanchar Nigam Ltd, Bharat Sanchar Bhavan, Janpath, New Delhi-110 001.
2. The Assistant General Manager (DPC), Office of the Chairman-cum-Managing Director, Bharat Sanchar Nigam Ltd, Bharat Sanchar Bhavan, Janpath, New Delhi-110 001.
3. The Chief General Manager, Bharat Sanchar Nigam Limited, Kerala Telecommunications, Thiruvananthapuram-695 033.

Respondents

(By Advocate – Mr. T.C. Krishna)

This application having been heard on 10.08.2011, the Tribunal on 26/08/2011 delivered the following:

O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member-

The applicant who is promoted as Divisional Engineer/Mobile Services/BSNL on adhoc basis in the IDA scale of pay of Rs. 29,100-54,500 on 19th December, 2007 is aggrieved by the denial of consideration for promotion on par with and in preference to his juniors who were so



promoted on and with effect from 19th May, 2006. The applicant was appointed as Engineering Supervisor/Junior Telecom Officer on 23.5.1975 with year of recruitment as 1973. He was promoted to the TES Group-B/Sub Divisional Engineer on 19.12.1990. With effect from 5.12.1997 he officiated as Divisional Engineer in the senior scale of ITS Group-A. With the formation of BSNL on 1.10.2000 IDA pattern of scales of pay came into force. The applicant is at serial No. 20 whereas one Shri P. Subbaiah is at serial No. 21 in the seniority list of TES Group-B officers belonging to the SC & ST community dated 23rd November, 2005 (Annexure A-3). Going by the rules and instructions on the subject he is entitled to be considered for adhoc/regular promotion to the senior time scale of ITS Group-A in preference to his juniors. A large number of his juniors including Shri P. Subbaiah were promoted and he stood denied of the right to be considered for promotion in preference to his juniors. The applicant's representations were rejected vide letter dated 8th January, 2010 (Annexure A-1) stating that the promotions are made prospectively and hence his request for promotion to STS grade on adhoc basis notionally at par with his juniors cannot be acceded to. Meanwhile he was promoted as STS grade ITS Group-A vide order dated 19.12.2007. With effect from 1.1.2007 the pay revision of all the executives came into force. On account of the failure on the part of the respondents to grant the applicant the benefit of promotion in preference to and on par with his junior Shri P. Subbaiah he is subjected to suffer substantial reduction in his pay with recurring monthly losses. He is due to retire on 30.9.2011. He also stand to lose a fitment in the next higher grade which he is otherwise eligible to get on completion of 5 years from the date



of promotion to the STS-ITS Group-A. Hence, he has filed this OA for the following reliefs:

"(i) Call for the records leading to the issue of Annexure A1 and quash the same;

(ii) Call for the records leading to the issue of A2 and quash the same to the extent it excludes the applicant and includes his juniors;

(iii) Declare that the applicant is entitled to be considered for promotion in preference to his junior Shri P. Subbiah and others promoted in terms of A2 and direct the respondents to consider and promote the applicant on ad-hoc basis to the Sr. time scale of ITS Group 'A', in preference to and at par with his junior P. Subbiah and others and direct further to grant all further consequential benefits including arrears of pay and allowances arising there from;

(iv) Award costs of and incidental to this Application;

(v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. The applicant submits that the right to be considered for promotion guaranteed under Articles 14 & 16 is applicable even in the case of promotion on adhoc basis. He is senior to Shri P. Subbiah who was promoted on 29th May, 2006. The name of the applicant was not placed before the DPC during May, 2006 as his CRs were not sent by the Kerala BSNL authorities. No reason is stated in Annexure A-1 order as to why he has not been considered in preference to his junior. The denial of consideration for promotion on par with his junior without assigning any reason is totally unjust and illegal.

3. In the reply statement filed by the respondents it was submitted that the name of the applicant was considered for promotion to DE/AGM level on purely temporary and adhoc basis in the year 2006 but his case remained



un-assessed. His name was again considered in the DPC meeting held on 18.5.2007 and he was promoted to DE/AGM level on adhoc basis vide order dated 19.12.2007. Consequent to adhoc promotions to STS grades the original seniority of the officers will not be affected at the time of regular promotions to the STS grade. Promotions are made prospectively hence the claim of the applicant for promotion to STS grade on adhoc basis notionally is without merit. Vide order dated 16.8.2010 the applicant and Shri P. Subbaiah along others have been promoted to DE/AGM on regular basis as per their original seniority. Hence adhoc promotion had no effect on their original seniority at the time of their regular promotions to DE/AGM levels.

4. We have heard the learned counsel for the applicant Mr. T.C. Govindaswamy and Mr. T.C. Krishna learned counsel for the respondents and perused the records.

5. The main grievance of the applicant is that he is subjected to substantial reduction in pay compared to his junior as he was not promoted on adhoc basis along with him. He also stands to lose a fitment in the next higher grade which he is eligible to get on completion of 5 years from the date of promotion as he is retiring on 30.9.2011. His position in the seniority list is not affected by the delay in granting him promotion on adhoc basis. But he is denied of the financial benefits at par with his juniors who got promotion on adhoc basis earlier than him. The contention of the respondents is that promotions are made prospectively. Therefore, his request for promotion to STS grade on adhoc basis notionally i.e. at par

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with his junior cannot be acceded to. Moreover his seniority is not affected at the time of regular promotion. In the reply statement they have stated that he was considered for promotion for the years 2006 but his case ~~was~~ remained un-assessed. It is not explained how he was considered for promotion if his case remained un-assessed for want of ACRs. They are also silent on the crucial issue of reduction in the salary of the applicant compared to his junior on account of the delayed promotion on adhoc basis. His possible loss of fitment in the next higher grade also is not adverted to. The substantial loss which is the main grievance of the applicant on account of delay of adhoc promotion, is not at all touched by the respondents.

6. The issue to be decided in the present OA, is whether adhoc promotion can be given with retrospective effect or not. In OA No. 1387 of 2010 with OA No. 900 of 2009 the Full Bench of the Principal Bench of this Tribunal considered the issue and held as under:-

“5. In the light of the above, we are of the view that a Government servant would be eligible for ad hoc promotion retrospectively from the date of promotion of the person junior to him, if the circumstances which caused impediment in his ad hoc promotion have been resolved in his favour and the DPC has found him fit for ad hoc promotion. The decision whether such promotion should be notional without any payment of back wages and counted only for the purposes of increments or it should be regular the payment of back wages also has to be decided by the competent authority according to the rules.”

7. In the instant case there was no impediment in the adhoc promotion of the applicant save the non-availability of his ACRs for which the respondents are solely responsible. The applicant herein cannot be penalized for the fault of the respondents in not making available his ACRs



to the DPC for considering him for promotion on adhoc basis in the May, 2006 along with his juniors. Applying the ratio of the Principal bench in the aforesaid OA the applicant is eligible for adhoc promotion retrospectively from the date of promotion of the persons junior to him.

8. With regard to payment of back wages also in the very same decision the Principal bench has held as under:-

“7. In the light of the above discussion we are of the considered opinion that in such cases where the Government servant has been deprived of the benefit of ad hoc promotion because of the pendency of criminal/disciplinary proceedings, in which the Government servant has subsequently been exonerated, he will be eligible for ad hoc promotion retrospectively from the date the person junior to him has been promoted. However, it would be left to the Competent Authority to decide, on consideration of the facts and circumstances of the case, whether the promotion should be notional without back wages or regular with back wages. The benefit of increments, however, shall be available in both cases.”

In the instant case there was no criminal or disciplinary proceedings against the applicant which delayed his consideration for promotion on adhoc basis. The applicant was a victim of non-availability of ACRs. In the facts and circumstances of the present case we are of the considered view that the applicant should be given back wages and the benefit of increments.

9. Accordingly, we quash the Annexure A-1 order dated 8th January, 2010 and Annexure A-2 order dated 29th May, 2006 to the extent it excludes the applicant. We further declare that the applicant is entitled to be considered for promotion in preference to his junior Shri P. Subbaiah and others promoted in terms of Annexure A-2 and direct the respondents to consider and promote him on adhoc basis to the senior time scale of ITS

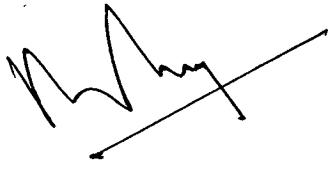


Group-A in preference to and at par with his junior Shri P. Subbaiah and direct further to grant all consequential benefits including arrears of pay and allowances arising there from within a period of one month from the date of receipt of a copy of this order.

10. The Original Application is allowed to the above extent. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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