

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 521 of 2010

Ernakulam..., this the 23rd day of June..., 2011

CORAM:

Hon'ble Ms.K.Noorjehan, Administrative Member

S Viswanathan, S/o K.Sukumaran
 Aged 65 years, "Bhaskara"
 37-A. Belhaven Gardens
 Kawadiar, Trivandrum

Applicant

(By Advocate – M/s.K.Ramakumar & Associates)

V e r s u s

Union of India, Rep. by the Secretary to the
 Department of Telecommunications,
 Sanchar Bhavan, 20 Ashoka Road,
 New Delhi – 110 001

Respondent

(By Advocate – Mr.Sunil Jacob Jose, SCGSC)

This application having been heard on 13.6.2011, the Tribunal
 on 23rd day delivered the following:

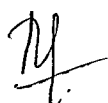
ORDER

By Hon'ble Ms. K.Noorjehan, Administrative Member -

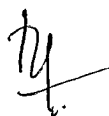
1. The applicant is aggrieved by the Annexure A-4 impugned order rejecting his request to grant him pay in Higher Administrative Grade (HAG for short) with effect from 01.01.2004 and consequent re-fixation of pension.

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2. The applicant originally recruited as an ITS officer in the department of Telecommunication, was on deputation to BSNL and retired from therein as Principal General Manager (PGM for short). The applicant averred that he joined as PGM on 01.01.2004 and retired from the said post after 5 months on 31.05.2004. He was recommended for promotion to HAG by the Departmental Promotion Committee which met on 17.12.2003. He pointed out that as he was working against a regular vacant post of PGM in the HAG, he should have been granted the benefits of HAG. He therefore submitted his Annexure A-1 representation to R1 seeking regularization of his services in HAG with effect from 01.01.2004. However, his later representations to R1 also did not elicit any reply. In the meanwhile he came across Annexure A-2 O.M dated 21.07.2009, replacing the pre-revised HAG scale of Rs.22400-24500 by a new scale of Rs.67000-79000. He affirms that he was denied the benefit of HAG for no fault of his. The minimum basic pension of a retired HAG officer as on 01.01.2006 is Rs.33,500/- per month, while the pension fixed for him is Rs.25,312/-. He has served the Department of Telecommunications for 34 years and 9 months. The denial of HAG is putting him to a loss of Rs.8188/- p.m in the basic pension as on 01.06.2009. He reiterates that he can not be made to suffer for the administrative delay in getting the approval of the Appointment Committee of the Cabinet (ACC for short). The denial of pay and pensionary benefits is in violation of the Fundamental rights guaranteed under Articles 14, 16 and 21 of the Constitution.



3. The respondents in their reply statement submitted that the proposal for posting the applicant as PGM was mooted by BSNL on 25.11.2003 earlier to DPC being held by the UPSC on 17.12.2003 for promotion to HAG. Further, as per the transfer policy issued by the DOT vide O.M No.315-1/2003 dated 25.02.2003, it was clearly mentioned that for filling HAG posts, seniority criterion will be followed. In case, any officer is unwilling to be posted till ACC approval is obtained, the offer will be given to his junior. As such the applicant was at liberty to refuse to take the assignment of the higher post, prior to the regular promotion, since working against the higher grade post in "in charge" capacity does not bestow any benefit on him. Moreover, in the transfer order No.315-01/2003-Pers.I(P.) dated 11.12.2003, it was noted that the officer will continue to draw his pay in SAG till his promotion on regular basis in HAG. The applicant retired before the approval of Appointment Committee of Cabinet was received. As such, he could not be promoted to HAG. They further submitted that the promotion in HAG is made effective from the date of assumption of higher post by the officer concerned on the basis of an order issued after obtaining the approval of ACC. They also pointed out that the Original Application is highly barred by limitation. The applicant should have taken up his grievance before the Judicial Forum immediately after his retirement for re-fixation of his pension. Therefore according to the respondents the applicant is not entitled to any relief as requested by him.



4. The applicant filed rejoinder reiterating his stand that he was posted to a duly sanctioned post in HAG by the competent authority. He produced Annexure A-5 showing the details of upgradation of 86 SAG level posts to PGM level posts. He also produced Annexure A-6 and Annexure A-7 posting orders in support of his contention that he was posted against a HAG post.

5. Heard the counsel for the parties and perused the records. The short point for consideration is whether the applicant is entitled for the promotion on the basis of holding the current charge in HAG when he is not substantively appointed to HAG. Vide Annexure A-5 dated 08.09.2003 it is seen that BSNL Board has sanctioned the creation of 86 posts of PGM level in HAG in the pay scale of Rs.22400-24500 (CDA) by upgrading equal number of SAG level posts from the date the incumbent assumes the charge in up-graded post. Soon after the issuance of Annexure A-5 respondents initiated action to get the DPC held by calling for Annual Confidential Reports of the officers in the zone of consideration etc to get 86 posts in HAG created. The DPC was held on 17.12.2003 for promotion of the applicant and others to HAG. So between the creation of the posts as part of cadre review in September 2003 and holding of DPC in December 2003 there was no delay. The instructions of DOPT on promotion are contained in para 16.1 Part V of Chapter 54 compiled by Swamy in the Establishment and Administration Manual, Paras 16.1, 16.3 and 16.5.2 are extracted below:-



" 16.1. The recommendations of the DPC are advisory in nature and should be duly approved by the appointing authority. Before the recommendations are so approved, the appointing authority shall consult all concerned as indicated below, without undue delay. "

" 16.3. Where the posts fall within the purview of the Appointments Committee of the Cabinet, the approval of ACC should also be obtained. "

" 16.5.2. In cases where the panel prepared by the DPC requires the approval of the ACC, proposals therefor along with the recommendations of the Minister-in-Charge should be sent to the Establishment Officer before expiry of the same time-limit of three months. "

From the above it is seen that the Ministry concerned has a time limit of 3 months to submit the panel prepared by the DPC to DOPT for getting the approval of ACC. Hence a time limit of 3-6 months can easily be taken for processing the case in the Ministry and getting the approval of the ACC. Therefore after the DPC was held in December 2003 the Respondents could not get the ACC approval before his superannuation on 31.05.2004. In accordance with the DOPT O.M No.22011/8/87-Estt(D) dated 09.04.1996 extended panel for promotion may be prepared including officers who are retiring within the same year. However, it is clarified that retired officials will have no right for actual promotion. So in the instant case, the applicant could not be promoted to HAG as ACC approval was not received and therefore respondents could not complete other formalities for issuing the necessary order, appointing him substantively to the PGM post in HAG. It is true that he was posted against a HAG level post, while his pay was regulated

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in the SAG (Senior Administrative Grade) pay scale, where he held his lien. A perusal of Annexure A-5 Order shows that up-gradation of SAG level posts PGM level in HAG would be effective when incumbents assume charge in the upgraded posts. Incumbent means only a PGM level officer in HAG. It is quite possible that in their anxiety to transfer PGM level officer in HAG viz Shri A.K Saxena from Kerala Circle to New Delhi, the applicant was transferred to the post of PGM in HAG (Annexure A-6) clearly specifying that he will continue to draw his pay in SAG till he is promoted on regular basis to HAG. Therefore it is clear that the respondent wanted to create 86 new posts in HAG by abolishing an equal number of SAG posts within the financial year of 2003-04, but the time of 3 months available at his disposal, was inadequate to get 86 SAG officers promoted for that purpose. Therefore the HAG posts were created in advance without abolishing the SAG level posts to achieve the matching savings. Such an action was contrary to the principle laid down in Annexure A-5 sanction memo. Therefore the respondents cannot operate 86 posts in HAG level if they keep the same 86 posts in SAG level. Therefore the applicant cannot lay claim to a HAG level post which can be created only by abolishing his SAG level post and upgrading the SAG post in which he is holding the lien to HAG. The applicant therefore fails to make out a case in his favour.



6. The respondents have pointed out the inordinate delay in filing this Original Application when the cause of action has arisen in 2004. The special Leave to Appeal (Civil) 7956/2011 filed by D.C.S Negi, a defence accounts officer, seeking promotion to SAG against vacancies of 2003, was dismissed. While disposing of the case by its judgment dated 07.03.2011, on the issue of limitation, the Apex Court held " It is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3). "

7. The applicant has moved M.A 679/2010 praying for condonation of delay of 4 years and 189 days. He averred that the difference in pension after implementation of 6 CPC was negligible as on 01.01.2006. But later on HAG was delinked from PB-4 and a new scale of Rs.37400-67000 with grade pay of Rs.12000/- was introduced whereby basic pension became Rs.33500 as against Rs.25316 as on 01.01.2006. This prompted him to file the O.A. Eventhough monetary consideration figures prominently in service matters, I cannot accept the reasons for condoning the delay as justified, especially when the O.A fails on merits.



8. In this view of the matter, I hold that the Original Application is unsustainable on the twin factors of merit and limitation. Accordingly O.A is dismissed. No costs.

(Dated this the...23rd... day of ..June....., 2011)


(K. NOORJEHAN)

ADMINISTRATIVE MEMBER

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