

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 527 OF 2013

Thursday.....this the 11th day of February, 2016
CORAM:

**HON'BLE Mr. JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER**

K. Ajith Kumar,
Staff No. 30348, HR No. 198211980,
Working as Deputy General Manager (Marketing),
Office of the Chief General Manager,
BSNL Kerala Circle,
Thiruvananthapuram – 695 033.

- Applicant

(By Advocate Mr. K.P. Rajeevan)

Versus

1. Bharath Sanchar Nigam Limited represented by its
Chairman and Managing Director,
Corporate Office, New Delhi – 110 001.

2. Chief General Manager,
BSNL Kerala Circle,
Doorsanchar Bhavan,
PMG Junction, Thiruvananthapuram – 695 033.

3. Senior General Manager (HR),
BSNL Kerala Circle,
Thiruvananthapuram – 695 033.

- Respondents

(By Advocate Mr. George Kuruvilla)

The application having been heard on 20.01.2016, the Tribunal on
11.2.2016 delivered the following:

ORDER

Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER

The applicant is working as Deputy General Manager (Marketing) in the office of the Chief General Manager, Bharath Sanchar Nigam Limited (in short BSNL) Kerala Circle, Thiruvananthapuram. He entered service as a Junior Engineer on 07.09.1982. Later he got promotion as Sub-Divisional Engineer on 27.06.1994. Consequent to Annexure A-2 notification the applicant applied for the post of Assistant Manager (Marketing) in the scale



of 8000-13500 and got selected. Accordingly the applicant joined as Assistant Manager (Marketing) in Kerala Circle on 17.01.2003. In the light of Annexure A-4 office memorandum he is entitled to get 1st upgradation on 17.01.2007 and 2nd upgradation on 17.01.2012 and eligible for all consequential benefits. But his pay is fixed in a lower scale when he was worked as Assistant Manager (Marketing) and further fixations are made in a lower scale as evidenced in Annexure A-8 and it is ordered to recover Rs. 5000/- from the salary of the applicant for the month of April 2013. It is submitted that on the same subject the Hon'ble Central Administrative Tribunal, Jabalpur Bench in T.A No. 124/2009 declared that Assistant Manager (Marketing) in the case of the present applicant is entitled to the salary in the scale of pay of 8000-13500 from the date of joining duty and for all consequential benefits. As per Annexure A-2(a) clarification it was made clear that the promotion prospects for officers who volunteer to work in Marketing area would remain the same as at present, meaning thereby that when an officer is promoted in normal way in other areas, the officer of the same seniority in the Marketing area would also be promoted.

2. Respondents in their reply statement submit that BSNL set up Marketing Interface Organisation in 2001 and decided to create temporary post of Assistant Manager (Marketing) in the pay scale of 8000-13500 till 28.02.2002 as per Annexure A-1 order. Subsequently, it was decided to identify the existing posts in various scales of Group B and Group A in the territorial Circles and BSNL Corporate Office and fill the post of Assistant Manager (Marketing) from among the internal employees possessing the required qualifications and experience, by diverting these posts to the Marketing Stream, without any creation of posts. As per Annexure A-2, candidates with the pay scales 8000-13500 (JTS) and 7500-12500 (Gr. B)



were made eligible for the post of Assistant Manager (Marketing). The applicant belonged to Group B when he was appointed as Assistant Manager in the year 2003 and hence he was eligible for the pay scale of Rs. 7500-12500 attached to Group B. Subsequently, Annexure A-2 (a) notification dated 25.02.2002 was issued by the respondents, clarifying therein the doubts raised regarding the eligibility of Assistant Managers for promotion. It is clarified therein that they will get promotion in the same way, in which an officer promoted in the normal way in other areas, will get promotion. Thus the Assistant Manager (Marketing) will work in the Marketing area but his status will remain the same in which they were, before becoming Assistant Managers. This means a JTS who has become an Assistant Manager will get his further promotion and a Gr. B who has also become Assistant Manager will also get his promotion in the normal manner had they not become Assistant Manager as if holding posts in the respective grades. The only difference is that they will work in the Marketing Area. The selected officers were posted to the identified posts of the same cadre by the Circle giving them marketing assignment as per their suitability in terms of their experience and the pay grade held. The common designation of Assistant Manager (Marketing) was given to SDE and JTS (equivalent to Sr. SDE(T) for easy identification / recognition of their job content. It is also relevant to mention herein that in BSNL, SDE is given Gr.B scale of Rs. 11875-17500 and the Sr. SDE is given the JTS equivalent scale of Rs. 13500-18500 as per their duty and responsibility. Accordingly, the Officers so selected were to hold their existing respective pay scales on posting for marketing works and were not to be placed on deputation to a higher scale as has been presumed by the applicant. Thus as intended in Annexure – A2 and further clarified in Annexure-A2(a), SDE (T) posted on transfer basis from one area of posting to another i.e, marketing was to




simply draw the pay scale of SDE (T) held by him while discharging their earlier responsibility in the same grade/cadre. Neither in Annexure-A2 and A2(a), it was mentioned that the post of Assistant Manager (Marketing) etc., shall be carrying higher scales of pay of Rs. 8000-13500. Both Annexure A-2 and Annexure A-2(a) did not make any reference to the posts created by the Telecom Engineering Branch of BSNL vide Annexure-A1 order dated 04.09.2001 referred to by the applicant. The said posts created vide the said Annexure A-1 4/9/2001 order lapsed on 28.02.2002 being temporary posts. It is submitted that as SDE in Group B and Senior SDE equivalent to JTS in BSNL carry the same responsibility, it was decided to give a common designation of Assistant Manager to the incumbents of both pay scales, purely as an administrative arrangement. The currency of Annexure A1 has never been extended nor does it find any reference in Annexures A-2 and A2 (a). The provisions in Annexure A-1 came to an end and had a natural death by 28.02.2002.

3. Heard the learned counsel for the applicant and respondents and the written submissions made. Annexure A-1 indicates the pay of DGM (Marketing & PR) as 12000-16500 and AGM Marketing / PR as 8000-13500 in the JTS pay scale. Annexure A-2 notification inviting application in para 3 (5) states:

"3(5) on absorption equivalent IDA scale as decided by BSNL shall be applicable. However, till that time he/she shall continue to draw the present scale as per existing terms and conditions."

The last date of receipt of application as per Annexure A-2 was 28.02.2002. Annexure A-1 notification setting up Marketing Interface Organization created temporary posts of Assistant Manager (Marketing), whose validity was from date of notification i.e. 04.09.2001 to 28.02.2002. Thus the said post created by Annexure A-1 expired on 28.02.2002 which was also the last



date for receipt of applications for the post. Hence, Annexure A-1 notification was ineffective as on 01.03.2002 and only the terms and conditions indicated in Annexure A-2 job notification were applicable to the applicant i.e. till such time an IDA Scale is decided by BSNL for the post, applicant shall continue to draw the present scale drawn in the post held at the time of application.

4. Applicant in ground 'A' admits that he was holding the post of SDE, a TES Group B post with scale of pay of Rs. 7500-12000, when he applied for the post of Assistant Manager (Marketing). Further, vide Annexure A2(a) clarificatory order dated 25.02.2002, issued prior to closing date for receipt of applications for the post, it was clearly mentioned that promotional prospects of the officers who volunteered for posting in the marketing interface organization would remain the same as at present. The same order goes on to clarify that this means that when an officer is promoted in the normal way in respective career areas, the officer of the same seniority in the marketing area would also be promoted. Thus the terms and conditions of the applicant's engagement had been clearly stipulated by respondent, well before the closing date for applying for the post i.e. when other similarly placed were promoted, applicant would also be promoted. The respondent admits that no posts of Assistant Manager (Marketing) was created in Kerala Circle as per Annexure A-1 notification. Annexure A-11 minutes of the BSNL Board of Directors does not indicate the pay scale of the post of Assistant Manager (Marketing) and hence does not help the cause of the applicant.

5. Applicant is guided by Annexure A-1 notification whose validity expired on 28.02.2002 i.e. prior to his selection to the post and hence he



cannot claim the benefits of the said notification which the applicant does not admit was either extended/revalidated. Thus those who applied for the post would be taken in their respective present pay scales as clarified in the vacancy notification Annexure A-2 and promotions would be as per promotion in the normal line. Applicant was drawing the scale of Rs. 7500-12000 and as per Clause 3(5) of the vacancy notification he will continue to draw the present scale. The applicant should be guided by the vacancy notification and not by an O.M the validity of which expired on 28.02.2002 i.e. before he was selected for the post. The vacancy notification nowhere mentions that appointments would be made as per Annexure A-1 order.

6. The applicant had already approached the High Court of Kerala in WP(C) No. 25232/2005. The Writ Petition was disposed of directing the respondents to consider and dispose of his representation on 06.01.2006. The O.A is also barred by limitation as he approached the Tribunal after 6 ½ years.

7. The applicant has been given time bound promotion in 2004, 2009 and adhoc promotion as AGM on 30.06.2010 when others with same length of service as applicant were promoted.

8. The O.A is barred by limitation and is also devoid of merit. Hence, the Original Application is **dismissed**. No order as to costs.

(Dated, the 11th February, 2016.)


(P.GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER