

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 60 of 2012

Wednesday this the 19th day of August, 2015
CORAM

*Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member*

S.Rajendran Nair, aged 51, S/o N.Sankara Pillai
Sub Divisional Engineer (Electrical)
BSNL, Electrical Sub Division No.I,
Telephone Exchange Compound,
Manacaud, Thiruvananthapuram.695009
Residing at Puliyarakal Veedu,
Arayoor PO, Via. Amaravila,
Thiruvananthapuram.695122.

...Applicant

(By Advocate Mr. Vishunu S.Chempazhanthiyil)

Versus

1. The Superintending Engineer,
BSNL Electrical Circle, 2nd floor,
Telephone Exchange Compound, Manacaud
Thiruvananthapuram.9.
2. The Chief Engineer,
Kerala Electrical Zone,
BSNL, 1st floor, Telephone Exchange Compound,
Manavaud, Thiruvananthapuram.9.
3. The Chairman & Managing Director,
Corporate Office, BSNL, New Delhi-110001.
4. The Executive Engineer,
Postal Electrical Division,
Bangalore-560 001.
5. The Superintending Engineer (Electrical)
Postal Electrical Circle, corporation Bank
Building, 4th floor, SC Road, Bangalore.9,

.....Respondents

(By Advocate Mr. Johnson Gomez for R. 1 to 3)

None for respondents 4&5)

This application having been finally heard on 17.8.2015, Tribunal on 19.8.2015 delivered the following

O R D E R

Per: Justice N.K.Balakrishnan, Judicial Member

Complaining of denial of up-gradation under Time Bound One Promotion Scheme and seeking entitlement as Senior SDE Scale w.e.f. 1.3.2006 the applicant has filed this Original Application. It is stated that he was granted Time Bound Up-gradation to SDE scale w.e.f. 1.4.2008 and not from 1.3.2006. Annexure.A3 representation was given to the 2nd respondent. The DPC had recommended the applicant for pay scale up-gradation only w.e.f. 1.4.2008 vide Annexure.A4. As against the same the applicant submitted a representation to grant the benefit w.e.f 1.3.2006 as per Annexure.A5. Annexure.A6 is another representation dated 27.7.2009. The applicant was intimated that there were adverse remarks against him during the relevant period while the applicant was working in Postal Electrical Circle, Bangalore. Annexure. A7 is the communication so received by the applicant against which Annexure A8 representation was given. Annexure.A9 is the order issued by the 2nd respondent modifying Annexure. A.4. Again aggrieved by Annexure.A9 the applicant submitted Annexure. A10 representation dated 27.8.2009 which was followed by Annexure. A.11 dated 1.1.2010. As per Annexure.A.12. the applicant was then informed that the relief claimed by him is not admissible. Against this A.13 representation was given. Annexure .A.14 is the copy of ACR for the relevant period. The applicant contended that no notice was given to him

pertaining to the recording of adverse entry in the ACR.

2. The respondents resisted the contention raised by the applicant and it was stated that the applicant was denied the Time Bound Upgradation w.e.f. 1.3.2006 but given only with effect from 1.4.2008 in view of the fact that there were adverse entries against the applicant. Annexure. A.1 representation was processed and transferred to the 2nd respondent. The DPC which met on 17.4.2009 considered the case of the applicant for the first Time Bound Promotion w.e.f. 1.3.2006 but they found that the applicant was fit for up-gradation only w.e.f. 1.4.2008 since the ACRs for the period 2001-2002 and 2002-2003 contained adverse remarks. The fitness criteria for consideration for up-gradation from E-2 to E-3 for General (OC) category executives is -"no adverse not more than two averages". Since the ACRs for the period 2001-2002 and 2002-03 contained adverse remarks the committee took into consideration of the ACRs of the next five years 2003 -04 to 2007-08 and recommended that the applicant may be given up-gradation w.e.f. 1.4.2008. Accordingly Annexure. A2 order was issued by respondent No.2. Though the applicant sent representation to correct the date of his first up-gradation from 1.4.2008 to 1.3.2006 a reply was sent explaining the position that he was not entitled to get the up-gradation w.e.f. 1.3.2006. Adverse entries in the ACRs for the relevant period had been communicated to the applicant vide Annexure. R2(b) to R2(3) – letters and postal acknowledgments. The applicant did not send representation nor has he appealed against those adverse entries within the time prescribed. The records would show that adverse entries were duly communicated to the applicant. Though the

applicant was eligible for consideration for first up-gradation wef 1.3.2006 he could not be granted up-gradation from that date as there were adverse entries in his ACRs for the period from 9.8.2001 to 31.3.2002.

3. In view of the statement so filed by the respondents the only question that falls for consideration is whether the applicant is entitled to get the date of up-gradation reckoned as 1.3.2006 as claimed by him.

4. Heard. We have also gone through the pleadings and the Annexures/Documents produced by the parties.

5. It is not in dispute that the applicant was given the first up-gradation we.f. 1.4.2008 but the applicant contends that it should have been granted w.e.f. 1.3.2006. The crucial point that survives for consideration is whether the the ACRs for the years 2001-02 and 2002-03 which contained adverse remarks were communicated to the applicant. The respondents produced documents to show that the adverse entries made in the ACRs of the applicant for the relevant period were actually communicated to the applicant. The documents produced by the respondents along with the reply statement would show that communications were given to the applicant in respect of the adverse entries made in the ACRs of the applicant at the relevant time. Though the applicant contends that the averments so raised by the respondents are not true, in the light of the documents produced by the respondents, we have no hesitation to hold that the communication regarding the adverse entries made against the applicant were duly given to the applicant and so the applicant was bound to file appeal/representation against the adverse entries if he was aggrieved by the same. But applicant did not choose to

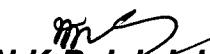
do so. As such it is clear that the adverse entries made in the ACRs of the applicant for the years 2001-02 and 2002-03 mentioned above remained unexpunged. In other words those adverse entries still stare at the applicant disentitling him to claim the up gradation w.e.f. 1.3.2006. Since there were two such adverse entries for the period as aforesaid the DPC took into account the period subsequent to the adverse entries for computation of the next up-gradation. That was admittedly taken note of and the applicant was granted the time bound promotion w.e.f. 1.4.2008. The claim to the contrary is found to be bereft of any merit. Therefore, applicant has to fail in this OA.

6. In the result this O.A is dismissed but without any order as to costs.



(P. Gopinath)
Administrative Member

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(N.K.Balakrishnan)
Judicial Member