

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 589 of 2009

Friday, this the 6th day of August, 2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

N. Raveendran Nair, Aged 51 years, S/o. Late Narayana Pillai,
 Working as Sub Divisional Engineer Civil (P&D), BSNL Civil
 Division No. 2, Trivandrum, Residing at Swathi, SNRA-13,
 K.K. Gardens, Peroorkada, Trivandrum-5. **Applicant**

(By Advocate – Mr. G.D. Panicker – Not present)

V e r s u s

1. The Chairman and Managing Director,
 BSNL, Corporate Office 102-B,
 Statesman House, New Delhi,
 36 Janpath, New Delhi-1. **Respondents**
2. Chief General Manager Telecom,
 BSNL, Thiruvananthapuram.

(By Advocate – Mr. Vinu for Mr. N. Nagaresh)

This Original Application having been heard on 6.8.2010, the Tribunal
 on the same day delivered the following:

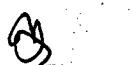
O R D E R

By Hon'ble Mr. Justice K. Thankappan, Judicial Member -

The applicant working as Assistant Engineer under the first and
 second respondents filed this Original Application for a direction to the
 respondents to grant second Assured Career Progression benefit on
 completion of 24 years of service.

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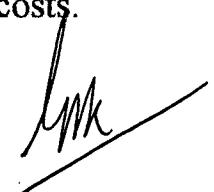
2. The Original Application has been admitted and notices ordered to the respondents. The respondents in pursuance to the receipt of the notice filed a reply statement dated 24.11.2009. The stand taken in the reply statement is that as the applicant has opted for absorption in the BSNL, ACP scheme is applicable to the Government employees and unless it is adopted or decided by the BSNL the applicant is not entitled for such benefit. The BSNL after its formation decided to formulate a scheme of its own regarding promotion. However, during the intervening period of formation of BSNL the Government orders regarding financial upgradation were kept in abeyance and not made applicable to the employees of BSNL. But, as per the promotion policy issued on 18.1.2007 the BSNL allowed time bound financial upgradation to its executives on completion of 4 to 6 years of service which the applicant has also got the benefit. Further it is the case taken in the reply statement that ACP Scheme is one of the financial upgradation schemes of Government of India and hence, the scheme is applicable to the executives of BSNL whenever it becomes due to them on or before 1.10.2000 and later it was revised to 1.10.2004. On the basis of that, the Department issued an order dated 20.5.2010 by which it is decided on detailed examination of the recommendations made by the committee that the earlier restriction given for application of ACP scheme has been withdrawn and consequently the grant of financial upgradation as envisaged as per letter No. 25-5/2005-Pers-II dated 12.9.2005 is made applicable to the executives of BSNL also. Further the counsel appearing for the respondents produced an order dated 29.7.2010 wherein the application of the ACP scheme to the applicant and similarly placed executives has been



accepted and the matter is pending with the Accounts Wing of the Department.

3. Considering the stand taken in the reply statement, we are of the view that the Original Application can be disposed of by directing the respondents 1 & 2 to take necessary steps for implementation of the scheme now accepted by the Department and to pass appropriate orders thereon with regard to the claim of the applicant after assessment of other matters regarding his service including the qualifying period, within a reasonable time at any rate within 60 days from the date of receipt of a copy of this order. Ordered accordingly.

4. With the above this Original Application stands disposed of with no order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 630 of 2011

w i t h

Contempt Petition (C) No. 131 of 2010

in

Original Application No. 589 of 2009

Wednesday this the 20th day of June, 2012

CORAM:

HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. O.A. No. 630 of 2011

1. K. Nazer, Aged 53 years, S/o. M. Kassim,
Working as Sub Divisional Engineer (C),
BSNL, Civil Sub Division, Manjeri,
Residing at Parathodi House,
Manjeri, Pin : 676 122.
2. Alias Chacko, aged 51 years, S/o. Late Chacko,
Working as Sub Divisional Engineer (Civil),
BSNL Sub Division, Aluva,
Residing at Onattuparambil House,
Keezhillam PO., Ernakulam, Pin-683 541.
3. Abdul Nazar M.S., aged 51 years, S/o. Sulaiman,
Working as Sub Divisional Engineer (Bldg.),
O/o. of PGMT, BSNL, Ernakulam,
Residing at Althaf Villa, Mangattu Kavala,
Thodupuzha East PO.
4. Abraham Zacharia, aged 51,
S/o. Late P.M. Abraham,
Working as Sub Divisional Engineer,
BSNL Telecom Sub Division, Thiruvalla,
Residing at Perumpally Parambil House,
Pattithanam PO, Kottayam.
5. K.K. Joni, aged 55, S/o. Late M. Koshi,
Working as sub Division Engineer (Civil),
O/o GM (NP), BSNL Mobile Service, Trivandrum,
Residing at Kutti Vadackethil,
Chandanappall P.O., Pathanamthitta. Applicants

[By Advocate Mr. G.D. Panicker]

Versus

1. The Chairman & Managing Director,
BSNL Corporate Office, 102-B,
Statesman House, 36, Janpath,
New Delhi-1.
2. The Assistant General Manager (Pers.II),
BSNL Corporate Office, Bharat Sanchar Bhavan,
Janpath, New Delhi-1.
3. The Chief General Manager (Telecom),
BSNL, Thiruvananthapuram. ... Respondents

[By Advocate Mr. N. Nagares]

2. C.P.(C) No. 131/10 in O.A.No. 589/09

N. Raveendran Nair, aged 53 years,
S/o. Late Narayana Pillai, working as
Sub Divisional Engineer Civil (P&D),
BSNL Civil Division NO.2, Thiruvananthapuram,
Presently as Sub Divisional Engineer Civil,
BSNL Civil Sub Division, Attingal,
Residing at Swathi, SNRA-30, K.K. Gardens,
Peroorkada, Thiruvananthapuram-5.

... Petitioner

[By Advocate Mr. G.D. Panicker]

Versus

1. Sri Gopal Das, age not known to the applicant,
son of not known to the applicant,
Chairman and Managing Director,
Bharat Sanchar Nigam Ltd.,
Corporate Office, R. NO. 102/B,
Statesman House, 36, Janpath, New Delhi.
2. Sri Premachandra, age not known to the applicant,
son of not known to the applicant,
Chief General Manager, Telecommunications,
Bharat Sanchar Nigam Ltd.,
Thiruvananthapuram. ... Respondents

[By Advocate Mr. N. Nagares]

These O.A and CP having been heard on 14.06.2012, the Tribunal on
20-06-12 delivered the following:

ORDER

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

The above OA and the CP having common factual matrix and common legal issue, were heard together and are disposed of by this common order.

2. All the applicants in O.A. No. 630/2011 have completed 24 years of service after 01.10.2004. They had entered in service as Junior Engineer under the Department of Telecommunication Services. The Bharat Sanchar Nigam Limited (BSNL) was formed on 01.10.2000. The applicants were absorbed in the service of BSNL. The BSNL had notified its own Time bound/past based executive promotional policy on 18.01.2007. As a one time relaxation, the BSNL had decided to grant the financial benefits available to its executives under various existing Government financial upgradation schemes till 01.10.2004. Hence the benefit of ACP Scheme was available to the officers of the BSNL whenever they became eligible before 01.10.2004. The applicants are aggrieved by the order dated 19.05.2009 at Annexure A-4 rejecting their claim for the 2nd financial upgradation.

3. The applicants contended that the 3rd respondent ought to have considered the date on which they were qualified to get the 2nd financial upgradation under the ACP Scheme. It was the delay and laches on the part of the authorities that resulted in denial of the benefits to the applicants in time. The Hon'ble High Court of Kerala had directed in the Annexure A-2 judgement that their eligibility for ACP Scheme should be considered and consequential benefits should be granted, if the old scheme is beneficial to

them. They further submitted that those who are grouped as on 01.10.2004 and those who are left out are similarly placed employees and any discrimination among them is unconstitutional.

4. The respondents in their reply statement submitted that as per the judgement of the Hon'ble High Court dated 13.06.2008, the applicants were directed to approach the BSNL to make a fresh claim, if any, available with reference to the present pay scales if they have any grievance. They have accordingly filed representations and the 3rd respondent in a common order dated 19.05.2009 disposed of the same rejecting the claim made by the applicants as they became eligible for ACP only after 01.10.2004. After the formation of the BSNL, the ACP Scheme which is applicable only to the Government employees, was kept in abeyance till formation of its own Executive Promotional Policy which was notified on 18.01.2007 with retrospective effect from 01.10.2004. As one time relaxation, the BSNL had granted the financial benefits available to its executives under various existing Government financial upgradation schemes till 01.10.2004, which is the cut off date for implementation of the existing Government schemes applicable to all the employees of the BSNL as a whole. In the present case, the applicants have not completed the requisite service on the cut off date mentioned in the Executive Promotional Policy. The provision of option for the Executive Promotional Policy is available only to those who have completed the requisite service before 01.10.2004. The applicants not having completed 24 years of service on 01.10.2004 are not eligible to avail of the option for the benefit of financial upgradation under the ACP Scheme. Annexure A-4 order is a speaking order disposing of the representations of the applicants in pursuance

of the judgement of the Hon'ble High Court dated 13.06.2008. Annexure A-13 is an order issued from the office of the the 3rd respondent correcting the earlier orders dated 29.09.2010 and 30.09.2010 which were inadvertently misinterpreted against the order of this Tribunal dated 06.08.2010 in O.A. No. 589/2009.

5. In the rejoinder, the applicants submitted that as per Annexure A-2 judgement they were to be given the benefit of ACP Scheme if it was more beneficial to them than the scale of pay introduced by the promotional policy of the BSNL. The 3rd respondent should have compared the benefit of the ACP Scheme with the benefit of promotional policy scheme and disposed of Annexure A-3 representations granting the more beneficial scheme to the applicants.

6. O.A. No. 589/2009 was disposed of by order dated 06.08.2010 as under :

"3. Considering the stand taken in the reply statement, we are of the view that the Original Application can be disposed of by directing the respondents 1 & 2 to take necessary steps for implementation of the scheme now accepted by the Department and to pass appropriate orders thereon with regard to the claim of the applicant after assessment of other matters regarding his service including the qualifying period, within a reasonable time at any rate within 60 days from the date of receipt of a copy of this order. Ordered accordingly.

4. With the above this Original Application stands disposed of with no order as to costs."

7. In compliance with the above direction, the respondents issued Annexure A-5 order dated 19.10.2010 (in C.P.(C) No.131/10 in O.A. No. 589/09) rejecting the claim of the applicant therein on the ground that he had

completed 24 years of qualifying service after 01.10.2004. The Contempt Petition (C) No. 131/10 is filed by the applicant in O.A. No. 589/2009 for wilfully disobeying the order passed by this Tribunal dated 06.08.2010.

8. We have heard Mr. G.D. Panicker, learned counsel for the applicants and Mr. N. Nagresh, learned counsel for the respondents and perused the records.

9. The ACP Scheme which came into force on 08.09.1999 is applicable to the Government employees only. The BSNL was formed on 01.10.2000. Since then, the applicants are the executives of the BSNL and are governed by the promotional policy of the BSNL. It was open to the BSNL to have adopted the ACP Scheme. But the ACP Scheme was kept in abeyance till formation of its own Executive Promotional Policy by the BSNL. When the promotional policy was notified on 18.01.2007, a one time relaxation was given to those employees who were eligible to get the financial upgradation till 01.10.2004 which was the cut off date for implementation of the promotional policy. Evidently, all the applicants have completed 24 years of service only after the cut off date, i.e. 01.10.2004, to be eligible for the 2nd financial upgradation under the ACP Scheme. The applicants in O.A. No. 630/2011 had filed Writ Petition No. 25350/2006 before the Hon'ble High Court for getting the 2nd financial upgradation under the ACP Scheme, which was disposed of by a common judgement dated 13.06.2008 as under:

" The case of the petitioners is that they are not granted benefit of ACP (Assured Career Progression) Scheme introduced by the Government, which entitles petitioners to get periodical pay increments at the intervals of every 12 years on account of stagnation.

However, learned standing counsel for the BSNL submitted that the ACP scheme may not have any relevance because after BSNL was formed as a business undertaking, better promotion policy is introduced with separate scales of pay by the company. The BSNL took over the Telecom Service from the Department with effect from 1.10.2000. Therefore, any promotion scheme and scales of pay fixed will always be with reference to the service benefit hitherto enjoyed by the employees, which includes ACP benefits. These writ petitions are, accordingly, disposed of directing the concerned officer of the BSNL, General Manager/Chief General Manager, to consider petitioners' eligibility for ACP scheme benefits in comparison with the later benefits granted by BSNL under its promotion scheme and pay scales. If promotions or scales of pay are fixed with reference to the pay scales prevailing after the introduction of ACP scheme, then petitioners' eligibility for ACP scheme should be considered and consequential benefits should be granted. If the present pay scales of the petitioner are better than the ACP scheme benefit and subsequent accruals, then there is no need for the petitioners to press the same. Since the writ petitions are filed in 2006, and since better schemes are introduced after filing the writ petitions, petitioners are directed to approach the BSNL to make fresh claim, if any available, with reference to the present pay scales, if they have any grievance."

10. The direction of the Hon'ble High Court is to consider the eligibility of the applicants for the ACP Scheme benefits in comparison with the benefits granted by the BSNL under its own promotional policy. As per the above direction, the eligibility of the applicants for getting the 2nd financial upgradation under the ACP Scheme is to be considered by the respondents and if they are eligible for the same then only the question of comparison of the benefits under the ACP Scheme and the benefits under the promotional policy will arise. The undisputed fact is that all the applicants became eligible for the benefit of the 2nd financial upgradation under the ACP Scheme only after 01.10.2004, when a time bound Executive Promotional Policy for

the officers of the BSNL came into force. With effect from 01.10.2004, the applicants are to be governed by the promotional policy of the BSNL. As provided in the Executive Promotional Policy of the BSNL, those who are eligible for the benefit of financial upgradation before 01.10.2004 can exercise their options for any financial upgradation. As the applicants are not eligible for the 2nd financial upgradation before 01.10.2004, they have no case for comparing the benefit of the ACP Scheme with the benefit of the Executive Promotional Policy of the BSNL and, therefore, taking the better of the two does not arise. The judgement of the Hon'ble High Court cannot be the basis for eligibility for the 2nd financial upgradation, if the applicants are not eligible otherwise for the same.

11. In the facts and circumstances of the instant OA and the CP, we do not find any non application of mind on the part of the respondents in passing the impugned orders. We also do not find any disobedience on the part of the respondents in complying with the orders of this Tribunal. In our considered view, the respondents have fully complied with the directions of this Tribunal.

12. In view of the above, the O.A. No. 630/2011 and the Contempt Petition (C) No. 131/2010 in O.A. No. 589/2009 are dismissed. No costs.

(Dated, the 20th June, 2012)

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K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER

sdl-
JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.