

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 105 of 2011

Tuesday, this the 21st day of February, 2012

CORAM:

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

P. Raghava Poduval, aged 63 years,
S/o. Ambu Poduval,
Retired Chief Accounts Officer, BSNL,
Residing at Packath House,
Prasdam, Kanathil Road, Bala P.O.,
Anandashrama (Via), Kasargod-671 531. ... Applicant

[By Advocate Mr. P.C. Sebastian]

versus

1. The Union of India, represented by its
Secretary, Ministry of Communications & I.T.,
Department of Telecom, New Delhi-110 001.
2. The Chairman & Managing Director,
BSNL Corporate Office,
Barkharupa Road, New Delhi.
3. The Chief General Manager,
Kerala Telecom Circle,
BSNL, Tiruvanthapuram-695 033.
4. The General Manager (BSNL),
Telecom District, Kannur-2.
5. The Controller of Communication Accounts,
Kerala Circle, Trivandrum. ... Respondents

[By Advocates Mr. George Joseph, ACGSC for (R1&5) &
Mr. Johnson Gomez (R2-4)]

This application having been heard on 07.02.2012, the Tribunal on
21-02-12 delivered the following:

ORDER

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

The applicant in this O.A retired as Chief Accounts Officer (CAO) from the Bharat Sanchar Nigam Limited (BSNL) On 30.06.2007. He started officiating as CAO from 28.06.1996, but he was reverted to his substantive post of Senior Accounts Officer with effect from 10.01.1997. He was given to understand that he was denied officiating promotion for the reason that there were some adverse remarks in his ACRs for the period from 01.04.1996 to 07.07.1996 and from 01.04.1997 to 31.03.1998 which were communicated to him on 12.01.1998 and 30.06.1998 respectively. As per the direction of this Tribunal in O.A. No. 1386/1999 dated 27.03.2002, which was upheld by the Hon'ble High Court of Kerala, the adverse remarks in his ACRs were expunged. Aggrieved by not getting all the benefits granted to his juniors, who were promoted in the meanwhile, he filed Writ Petition (C) No. 26594/2008 in the Hon'ble High Court of Kerala which was transferred to this Tribunal as Transfer Application No. 129/2008. The T.A was disposed of with a direction to the respondents to consider various representations made by the applicant. In compliance, the respondents issued the impugned Annexure A-12 order dated 04.02.2010. Still dissatisfied, he has filed the instant O.A. for the following reliefs:

- (i) To call for the files leading to Annexure A-12 and quash the same;
- (ii) To declare that the applicant is entitled to be extended all the service benefits on par with his immediate junior, such as officiating promotion as CAO continuously from 11.01.1997 to 10.04.2000, adhoc promotion to the cadre of Senior Time Scale with effect from 11.04.2000 onwards, time bound upgradation of pay with effect from 01.10.2004, promotion to the post of DGM(F)/IFA from 13.06.2006 and revision of pensionary benefits due to merger of 50% DA to



the basic pay and direct the respondents to issue appropriate orders in this regard and effect payment of arrears of entitlements due to him, within a time frame as deemed fit and proper to this Hon'ble Tribunal.

(iii) To direct the respondents to grant short paid pension and commuted value of pension as claimed in para Q with interest for the delay;

(iv) To grant such other relief which may be prayed for any which this Hon'ble Tribunal may deem fit and proper to grant in the facts and circumstances of the case;

(v) To award costs.

2. The applicant contended that his claim for ad hoc promotion to the cadre of Senior Time Scale from 11.04.2000 onwards on par with his juniors and consequential time bound pay scale upgradation with effect from 01.10.2004 have been rejected as per Annexure A-12 order without any justifiable reason. Once the adverse remarks were expunged, these benefits should have been given to him. But for the adverse remarks, he would have got ad hoc promotion as CAO before his juniors were promoted. Had he been given ad hoc promotion to the cadre of Senior Time Scale on par with his juniors in time, he would have completed the prescribed residency period of 4 years on par with his juniors. There was no reason for delaying his ad hoc promotion as CAO upto 17.07.2001 when his juniors were given the same on 01.10.2000 because he was given ad hoc promotion when the adverse remarks were in existence and within the same financial year of promotion of his juniors.

3. The respondents in their reply statement submitted that the promotion including ad hoc promotion is to be given only on prospective effect as per O.M. No. 280261/1/2001-Estt(D) dated 23.07.2001 of the Government of India. Therefore, the claim of the applicant for promotion to the grade of Senior Time Scale with retrospective effect from 11.04.2000 was rejected.



Consequently, the first time bound upgradation had been ordered from 17.07.2005 on completion of 4 years of residency period in the cadre of CAO. The revised terminal benefits have been paid to the applicant correctly with reference to the pay drawn pay drawn by him in June, 2007 and also after revising his pay with grant of time bound promotion from 01.01.2007

4. In the rejoinder statement, the applicant submitted that his pensionary benefits are to be based on his revised basic pay of Rs. 20000/- which he was drawing on the date of his retirement.
5. We have heard Mr. P.C. Sebastian, learned counsel for the applicant, Mr. George Joseph, learned ACGSC for the respondents 1 & 5 and Mr. Johnson Gomez, learned counsel for the respondents 2 to 4 and perused the records.
6. During hearing, only the reliefs of adhoc promotion, financial upgradation and consequential increase in pensionary benefits were urged by the applicant.
7. No reason is given by the respondents for not granting adhoc promotion as CAO to the applicant alongwith his juniors on 11.04.2000. If he could be promoted on 27.02.2001 notwithstanding the adverse remarks in his ACRs, it is arbitrary and illegal not to have promoted him on 11.04.2000 itself. Further, the adverse remarks have been expunged.
8. The reason cited by the respondents for not giving adhoc promotion to the applicant with effect from 11.04.2000 is that ad hoc promotion can be



given on prospective effect only as per O.M. dated 23.07.2001. The said O.M. is on the subject of restriction on regularisation of adhoc appointment, in particular, adhoc appointment by direct recruitment from the open market. There is nothing in it on retrospective effect of promotion, including adhoc promotion. The attached note at Annexure R-10 dated 30.01.2003 with specific reference to the applicant is reproduced as under:

"Government of India
Ministry of Personnel, Public Grievances and Pension,
Department of Personnel & Training,

The case on this file relates to retrospectively adhoc promotion of Shri Raghva Poduval to the grade of STS with effect from 11.4.2000 at par with his juniors. Detail note of Department of Telecommunications may kindly be perused at page 8/N.

2. Para 18.4.3 of OM No. 22011/5/86-Estt.D dated 10.4.1988 prescribed that if the officers placed junior to the officer concerned have been promoted he should be promoted immediately and if there is no vacancy the junior most senior person officiating in the higher grade should be reverted to accommodate him. On promotion his pay should be fixed under FR27 at the stage it would have reached, had he been promoted from the date the officer immediately below him was promoted but no arrears would be admissible.

3. The above mentioned clarification specifically meant for in the cases of regular promotion and not for adhoc appointment/promotion. It is a well-settled principle that promotion, including adhoc promotion, is to be given only on prospective effect. Hence no adhoc promotion is to be given retrospective date. Besides, no weightage for the purpose of seniority/ promotion/ACP is to be given for the service rendered by the employee on adhoc basis (OM No. 28036/1/20001-Estt.(D) dated 23.7.2001 refers).

4. In view of the above facts we may advise the referring Department to give a suitable reply to the applicant on the above lines in consultation with DOLA.

Sd/-
(Raj Kumar)
S.O. Estt (D)
30.01.2008

Director (EJ)"

A mention is made in the note above that as per well settled principle promotion, including adhoc promotion, is to be given with prospective effect



only. But delayed regular promotion to a senior officer would entitle him notional fixation of pay as if he was promoted from the date his immediate junior was promoted, as per Para 18.4.3 of O.M. dated 10.04.1988.

9. In O.A. No. 1519/2008, the Principal Bench of this Tribunal held as under :

"16. It is noteworthy that the procedure prescribed vide DoP&T O.M. dated 12.10.1998, while making it clear that retired officers would have no right for actual promotion, does not prohibit grant of notional promotion to them. While promotion may not be claimed as a matter of right from the date of attaining eligibility for promotion, we are of the considered view that once an employee has been illegally and arbitrarily denied consideration for promotion while in service, he cannot continue to be denied the benefit of the same only because he has since retired on superannuation....."

10. In Gopichand Vishnoi vs. State of U.P., 2006 (9) SCC 694, the Apex Court held as under:

"4. In view of the fact that the adverse entries in the service records of the appellant have been expunged, we are of the view that in the year 1985 promotion was wrongly refused to the appellant. As such the State should have granted him promotion with effect from the day his juniors were granted promotion i.e. promotion to the post of Deputy Collector with effect from 11.07.1985.

5. Accordingly, the appeal is allowed, impugned orders are set aside and the State is directed to grant promotion to the appellant to the post of Deputy Collector with effect from 11.07.1985 and consequential benefits. As the appellant has superannuated, it is directed that post-retiral benefits of the appellant shall be recalculated and the arrears of amount of pension shall also be paid to him. This order must be complied within three months from today."

11. Following the principle enunciated in the above orders, we are of the considered view that the applicant should be given notional ad hoc promotion as CAO with effect from 11.04.2000 at par with his juniors.



12. Had he been given adhoc promotion on par with his juniors in time, he would have got 4 years' residency period in the cadre of CAO, making him eligible for pay scale upgradation alongwith his juniors. As his promotion was denied illegally, he should be given also, the benefit of notional pay scale upgradation with effect from 01.10.2004. Accordingly, it is ordered as under.

13. The Annexure A-12 order dated 04.02.2010 is set aside to the extent it denies adhoc promotion to the applicant to the grade of STS with effect from 11.04.2000 at par with his juniors and time bound upgradation from 01.10.2004. The respondents are directed to grant ad hoc promotion to the applicant to the grade of Senior Time Scale with effect from 11.04.2000 and time bound upgradation of pay with effect from 01.10.2004 on notional basis without arrears of pay. His pensionary benefits should be refixed accordingly and arrears of pension and pensionary benefits should be paid to him. Appropriate orders in this regard should be issued and the payments be made within a period of 2 months from the date of receipt of a copy of this order.

14. The O.A. is allowed as above with no order as to costs.

(Dated, the 21st February, 2012)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE PR RAMAN
JUDICIAL MEMBER

cvr.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

CP(C) 79/2013
in OA 105/2011

Tuesday, this the 17th day of December, 2013

CORAM

Hon'ble Mr.Justice A.K.Basheer, Member (J)
Hon'ble Mr.George Joseph, Member (A)

P.Raghava Poduval, age 65 years
S/o Ambu Poduval
Retired Chief Accounts Officer, BSNL.
Residing at Packath House, Prasdam,
Kanathil Road, Bala P.O.
Anandashrama (Via)
Kasaragod-671 531.

Petitioner

(By Advocate: Party in person)

Versus

1. Sri Chandrasekhara
Secretary to Government
Ministry of communications and I.T.,
Department of Telecom, New Delhi-110 001.
2. Sri R.K.Upadhyaya
Chairman and Managing Director
BSNL Corporate office, Barakambha Road
New Delhi-110 001.
3. Sri M.S.S.Rao
Chief General Manager, Kerala Telecom Circle
BSNL, Thiruvananthapuram-695 33.
4. Sri K.Vijayakumar
General Manager, BSNL
Telecom District, Kannur-2.
5. Sri Njanasekharan
Controller of Communication Accounts
Kerala Circle, Thiruvananthapuram-695 033

Respondents

(By Advocate: [Mr.George Joseph, ACGSC for R1 & 5]
[Mr.Johnson Gomez for R2-4])

The Contempt Petition (Civil) having been heard on December 17, 2013, this Tribunal on the same day delivered the following order:-

ORDER

Hon'ble Mr.Justice A.K.Basheer, Member (J)

We have perused the affidavit filed by the respondents in purported compliance of the directions issued by the Tribunal in the Original Application. We have also perused the additional affidavit filed by the petitioner.

2. In the peculiar facts and circumstances of the case, we are of the view that a roving inquiry as to the correctness or otherwise of the order passed by the respondents cannot be had in this proceeding.
3. Therefore, the Contempt Petition is closed with liberty to the petitioner to pursue the matter further in accordance with law if he is aggrieved by the orders passed by the respondents.


(K. George Joseph)
Administrative Member


(Justice A.K. Basheer)
Judicial Member

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

R.A.No.21/12
in
O.A.No.105/11

Tuesday this the 29th day May, 2012

CORAM:

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

P.Raghava Poduval, aged 64 years,
S/o Ambu Poduval,
Retired Chief Accounts Officer,
BSNL, Residing at Packath House,
Prasadam, Kanathil Road, Balla P.O
Anandasharma(Via), Kasaragod-671 531. ... Applicant

(Applicant in person)

vs.

1. The Union of India,Represented by its Secretary,
Ministry of Communications & I.T.
Department of Telecom,
New Delhi-110 001.
2. The Chairman & Managing Director,
BSNL Corporate Office,
Barakhampa Road, New Delhi.
3. The Chief General Manager,
Kerala, Telecom Circle,
BSNL, Thiruvananthapuram -695 033.
4. The General Manager(BSNL),
Telecom District, Kannur-2.
5. The Controller of Communication Accounts,
Kerala Circle, Thiruvananthapuram. .. Respondents

ORDER

HON'BLE MR.JUSTICE P.R.RAMAN,JUDICIAL MEMBER:

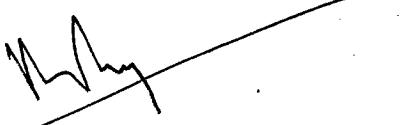
This Review Applicant seeks to review the order passed in O.A.No.105/2011.

WJ

We have carefully gone through the Review Application as also the judgment in O.A.105/11. We find that there is no error apparent on the face of record nor is there any sufficient ground warranting a review. Review does not amount to rehearing. In the circumstances, the Review Application is dismissed.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R.RAMAN
JUDICIAL MEMBER

/njj/