

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 290 /2011

Thursday, this the 5th day of July, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

H.Ganapathy Iyer, S/o Harihara Iyer,
Retired Telephone Operator,
Residing at: Door No.17, 21st Main,
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Banashankari.P.O., Bangalore-50.

Applicant

(By Advocate Mr M.R.Hariraj)

v.

1. Union of India represented by the
Secretary, Ministry of Communication,
New Delhi-110 001.
2. Bharath Sanchar Nigam Limited,
represented by its Chairman and Managing Director,
Sanchar Bhavan, New Delhi-110 001.
3. Chief General Manager Telecom,
Kerala Circle, BSNL,
Thiruvananthapuram-695 33. -

Respondents

(By Advocate Mr S Jamal, ACGSC for R.1)

By Advocate Mr V Santharam for R.2 & 3)

This application having been finally heard on 19.06.2012, the Tribunal on 05.07.2012
delivered the following:

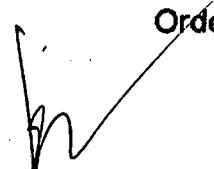
ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

This case has a chequered history. The applicant while working in the
Department of telecommunications was issued with the chargesheet sometimes
in end 1985 and as a result of the completion of the proceedings a penalty of

compulsory retirement was imposed upon him on 31-01-1989. The applicant moved O.A. 529 of 1990 and by order dated 18-01-1991, the order of compulsory retirement was quashed and set aside and further enquiry held. This has resulted again in issue of another penalty order of compulsory retirement in August 1991. After availing of the administrative remedies, the applicant moved the Tribunal through OA No.795 of 1995 in August 1995. By an order dated 25-02-2000, the Tribunal again allowed the OA on merits and directed the respondents to reinstate the applicant. The applicant was also made entitled to the back wages for the periods he was kept out of service. Annexure A-1 order refers. This order was challenged by the Department through Writ Petition No. 8485 of 2000 which was decided on 06-06-2005. The writ petition was partly allowed inasmuch as while the order of reinstatement was kept in tact, insofar as back wages were concerned, the same was reduced to 75%. It is to be noted here that at the time of admission of the writ petition, there is a stay of the order of the Tribunal and the same merged with the final judgement. Nevertheless, the applicant was not allowed to rejoin nor was he paid any back wages. The respondents filed special leave petition before the Apex Court against the judgement of the High Court. During the pendency of the appeal before the Apex Court, the applicant superannuated on reaching the age of retirement. The Apex Court took into account the fact of superannuation and felt that in view of the same and the fact of reinstatement of the applicant as per the orders of the Court below, no lesser punishments need be imposed and that the applicant would not be entitled to any back wages at all. In other words, the original order of the Tribunal, in so far as it directed reinstatement is concerned, remained intact, but only the direction to pay full back wages was set aside.

Order in civil appeal No. 1574 of 2000 dated 26-02-2009 at Annexure A-3 refers.



2. Earlier the applicant had filed OA 629 of 1998 against his non-promotion and TBOP scheme, and the same was rejected by Annexure A5 order dated 25.05.1998. The applicant challenged the same before the High Court in OP No. 14972 of 1998. Though this was rejected, a latitude had been given to the applicant to make a representation along with a copy of the orders of the Tribunal, the High Court and the Apex Court. Direction was also given to the respondents to dispose of the representation within the time calendared in the said judgement. Annexure A-6 refers. The applicant filed a representation dated 26 -09-2009 claiming both promotion under the OTBP and BCR schemes as also claiming fixation under the IDA Scale applicable to the employees of the B.S.N.L. (as by that time the DOT employees, on option, moved to B.S.N.L. constituted in 2000). As the same has been rejected by the respondents vide Annexure A-7, the applicant has moved this O.A. seeking the following reliefs:-

- (i) To quash Annexure A-7;
- (ii) To direct the respondent to consider the applicant for grant of TBOP/BCR grade promotions;
- (iii) To direct the respondents to consider the applicant for absorption to Bharat Sanchar Nigam Limited;
- (iv) To direct the respondents to grant the applicant fixation of pay in the IDA pay scale;
- (v) To direct the respondent to revise the pensions and pensionary benefit of the applicant based on the above conditions and to grant him all benefits including arrears of pension and other pensionary benefits with interest at the rate of 12% per annum from the dates on which the fell due till date of payment;
- (vi) To grant such other reliefs as may be prayed for and the court may deem fit to grant; and
- (vii) To grant the costs of this Original Application.

3. Respondents have contested the OA. According to them, the findings of the High Court in regard to the disciplinary proceedings against the applicant included that the applicant was found guilty but the penalty was disproportionate and accordingly the High Court modified order the Tribunal. They would go to show that the applicant was imposed certain penalty. Again, the Supreme Court has also held that the High Court found the applicant guilty of misconduct but confined its decision only to disproportionate penalty and as such, taking into account the fact that the applicant had already superannuated, held that the applicant be not be paid any back wages. Thus, according to the respondents once a penalty survived, there is no question of promotion being granted to the applicant. Respondents have also raised the question of limitation in moving the Tribunal.

4. In fact the application was accompanied by an application for condonation of delay.

5. Counsel for the applicant submitted that the respondents have misunderstood the spirit of the judgement of the Apex Court. When the Tribunal stated that the applicant was entitled to reinstatement and also full-back wages, the High Court has modified the same granting only 75% of the wages and allowed the rest of the order is intact. The Apex Court modified aforesaid judgement by stating that the applicant is not entitled to any back wages at all. Though the Apex Court has mentioned that no lesser penalty than compulsory retirement could be awarded in view of the fact that the applicant already stood superannuated, all that the apex court did was to modify the judgement of High Court, deleting direction to pay 75% of the back wages. That far and no further. This means that the applicant's reinstatement remained intact and also his

continuance till the date of superannuation though the applicant was out of service till the date of superannuation. In that event, the following questions arise: -

- (a) when there was no penalty at all, is not the applicant entitled to consideration for promotion under the OTBP scheme.
- (b) when the scheme of TBOP came into existence as early as in 1983 and implemented from 1984 onwards, had not the Department faulted in not considering the applicant for promotion for the year 1984 as at the time no proceedings were pending.
- (c) when the High Court had granted stay of the order of the Tribunal and the applicant could not resume duties and when the final judgement of the High Court and interim order merged together, would it not mean that the applicant was deemed to have been reinstated in accordance with the direction of the Tribunal and continued till the date of the superannuation?
- (d) when once the applicant continued in service beyond 2000 should he not be treated as a part and parcel of BSNL staff and be entitled to IDA pay scale

6. Counsel for the applicant argued that the aforesaid questions have to be answered in the affirmative. Thus according to the counsel for the applicant, the applicant is entitled to the relief claimed.

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As regards limitation, the applicant's Counsel contended that he has

already filed an application for condonation of delay and the delay also is only marginal (219 days).

8. Counsel to the respondents at the outset submitted that the applicant has claimed multiple reliefs which is not permissible under the provisions of Administrative Tribunals Act. The counsel has explained the same stating that grant of promotion under OTBP scheme is one aspect and claim for IDA the scale is another and independent of the former. He has also adverted to the legal issue of limitation. As regards the merits of the case, the counsel for the respondents submitted that the applicant was considered for promotion during the periods 1985 – 86 onwards but could not be promoted as he was found unfit due to the pendency of the disciplinary proceedings. Regarding the final judgement of the apex court, counsel for the respondents submitted that when the High Court's finding concluded that there is evidence to show that the applicant was indiscreet in his dealings, the same amounted to the applicant having been found guilty. As such, the applicant was liable to be imposed certain punishments. The punishment awarded by the High Court was that instead of full back wages the same would be reduced to 75%. The fact that the High Court rendered its finding to the effect that the applicant was found guilty has been taken note of by the Apex Court when it has observed that the High Court's approach was only to reduce the penalty as the same was disproportionate. It is for this reason that the Apex Court has observed that at this distance of time especially when the applicant has superannuated there is no question of awarding lesser punishments than compulsory retirement. The Apex Court held that the applicant was not entitled to any back wages. In other words, not granting of back wages happens to be a sort of penalty for the misconduct committed by the applicant. Even though this is not a recognised penalty the fact that the courts had is rendered the finding that the applicant is found indiscreet,

in its own wisdom the penalty of loss of back wages has been imposed by the courts. Once a penalty is suffered by the applicant, the logical corollary is that he would not be considered for promotion during the period of disciplinary proceedings as well as currency of penalty (wherever applicable). As regards claim for IDA pay scale, the applicant had not exercised an option to switch over to BSNL and as such he is not eligible for the same. In any event, there has been no pleadings in the OA in regard to this claim except a prayer column.

9. Counsel for the applicant in his rejoinder submitted that objection regarding plural relief is technical and if at all there is any purpose that would be served in filing a separate application for the relief relating to IDA pay scale, the same would be to the extent of payment of additional fee, which the applicant is ever ready to pay. As a matter of fact there is a close nexus between the two reliefs. First one is promotion which has its own impact on the pay admissible to the applicant and in view of the fact that the applicant is deemed to have been in service during the formation of BSNL, unless specific option is made for being retained in the Department of telecommunication, the applicant's services would be placed at the disposal of the BSNL. In that event as regards pay scale in that undertaking, it is the IDA pay scale that being in vogue, the applicant is entitled to the said pay scale. The counsel, however, submitted that should the relief be restricted to one of the prayers, the applicant would choose the latter and ignores the former.

10. Counsel for the respondents in their reply to the rejoinder submitted that as adequate pleadings are not available regarding claim for IDA pay scale, the relief sought for cannot be granted.



11. Arguments were heard and documents perused. First as to technical objection:

(a) Limitation: This has already been decided by order dated 22-07-2011 after hearing the parties and delay stands condoned.

(b) Plural Reliefs: Respondents are not wrong when they have contended that the reliefs prayed are not consequential but are in one way independent. As the applicant's counsel has waived the first relief (promotion under OTBP scheme and BCR Scheme, with liberty to move a separate application in this regard) and as the claim is restricted to IDA pay scale, the same is considered. At this juncture, it is to be noted that not much of pleadings could be seen in regard to this claim, though in one of the Annexures and in some part of the OA there has been reference to IDA pay scale. Nevertheless, the entitlement or otherwise for the applicant to the IDA pay scale is purely a legal issue and as such the same could be dealt with.

12. As regards the exact situation of the applicant's entitlement after the apex court has passed the judgement vide Annexure A3, the following discussion would explain the same: -

(a) the applicant had challenged the order of compulsory retirement by filing OA No. 1467 of 1997. The operator portion of the order this Tribunal is at paragraph 12 and the same reads as under: -

"In the conspectus of facts and circumstances, we find that the impugned order is unsustainable in law and therefore, we allow this application and set aside the impugned order imposing on the applicant the penalty of compulsory

retirement from service and direct the respondents to reinstate the applicant in service immediately with all consequential benefits and to pay him the full-back wages for the period he was kept out of service within three months."

13. The above order thus gives a clean chit to the applicant. This order was challenged in a writ petition before the High Court. True, the High Court has observed "there is evidence to show that he was indiscreet in his dealings." At the same time the High Court has also endorsed "in the result we approve the principal direction of the tribunal". This means reinstatement has been kept in tact which is the main direction. As regards back wages, the same was reduced from hundred percent to 75%. The result of the above judgement would mean that the applicant was entitled to reinstatement. Attempt was made by the counsel for the respondents that the applicant was not reinstated because of the stay order. It is trite law that any interim order gets merged with the main order and it acquires the same colour as the main order. Thus, notwithstanding the fact that there was a stay, since direction for reinstatement has not been disturbed, it should be deemed that the applicant was reinstated in service. Thus he was back in the Department in the year 2000. Lock stock and barrel, employees of the Department of telecommunication were sent on deputation to BSNL and option was sought for either continuing there on permanent absorption, or, to be back to the Department. This option was to be asked by the Department to each of the employee at the material point of time. In case no option is given, it has been told that the individual continues in the BSNL. In the instant case there was no scope for asking for the option at the material point of time as the applicant was kept out of service. Nevertheless the respondents could have acted in pursuance of the judgement of the Apex Court when the court had retained the order reinstatement and in fact had observed that the applicant had been reinstated. When the applicant continued in service till his superannuation in 2003, he has to be treated as a part and parcel of the employee of BSNL. In that event, he is entitled to the IDA pay scale. Since no

back wages had been ordered, his entitlement to IDA pay scale should be restricted to the notional pay only and the same shall form part of his pay for the purpose of working out pension.

14. In view of the above, answer to the four questions raised at the time of arguments as narrated in one of the previous paragraphs would be as under:-

(a) when there was no penalty at all, is not the applicant is entitled to consideration for promotion and the OTBP scheme. - In view of the fact that this relief is not insisted in this OA, the same does not call for any answer.

(b) when the above scheme came at the existence as early as in 1983 and implemented from 1984 onwards, had not the Department faulted in not considering the applicant for promotion for the year 1984 as at the time no proceedings were pending. - Answer to (a) would equally apply to this question as well.

© when the High Court had granted stay of the order of the Tribunal and the applicant could not resume duties and when the final judgement of the High Court and interim order merged together would it not mean that the applicants was deemed to have been reinstated in accordance with the direction of the tribunal and continued till the date of the superannuation? - Answer is in affirmative. The applicant is deemed to have continued in service till he reached the date of his normal superannuation.

(d) When once the applicant continued in service beyond 2000 should he not be treated as a part and parcel of BSNL staff and that he is entitled to IDA pay scale. As a logical corollary of his reinstatement, and his continuance in service beyond 2000 (when BSNL came into existence) the applicant is deemed to have been placed at the disposal of the BSNL, initially on deputation and by virtue of the fact that option was called for only for being back to DOT and not for continuing in service at BSNL, he is deemed to have been in service of the BSNL on regular basis till his superannuation.



16. In view of the above, the OA is partly allowed. It is declared that the applicant is deemed to have been in service in the BSNL till the normal age of superannuation. Respondent shall work out the salary at the IDA pay scale from the date of deemed reinstatement (three months from the date of receipt of the order dated 25-02-2000 in OA No. 1467 of 2000) and his pay would be fixed notionally in the scale admissible to him (under IDA pay scale) adding normal annual increment for the succeeding years till the date of retirement and the last pay worked out. This would constitute the basis for working out the extent of pension and terminal benefits. As the matter has been in the court for a substantial period, the applicant would be entitled to the difference in the Terminal Benefits as also arrears of pension arising out of such calculation. Such difference in Terminal Benefits and pension and the revised pension shall be paid within six months from the date of issue of this order. The applicant is given liberty to agitate against this non promotion, if he is so advised in accordance with law. This order would not be a bar to pursue the same.

17. No cost.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S.RAJAN
JUDICIAL MEMBER

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