

Central Administrative Tribunal Lucknow Bench Lucknow

O.A. No. 98/2010

Lucknow this the 10th day of February, 2012.

Hon'ble Justice Shri Alok Kumar Singh, Member (J)

Kamal Mohini Sharma, aged about 40 years, wife of Sri S. C. Sharma resident of 344/111-KH, Jhamarn tola, Bhawaniganj, Lucknow.

Applicant

By Advocate : Sri Praveen Kumar

VERSUS

1. The Chief General Manager, Telecom, UP (East) Circle, Bharat Sanchar Nigam Limited, Lucknow.
2. The General Manager (Administration), Telecom, UP, Bharat Sanchar Nigam Limited, Lucknow.

Respondents

By Advocate: Sri G. S. Sikarwar

ORDER (Oral) (Dictated in Open Court)

By Hon'ble Justice Shri Alok Kumar Singh, M(J)

1. This O.A. has been filed for the following relief(s):-
 - (A) To quash the recovery initiated against the applicant as indicated in the salary slip issued to the applicant in February, 2010 contained as Annexure No. A-1A and A-1B to this O.A.
 - (B) To release salary for the month of July, 2009 to 29.10.2009 with interest @ 12 % PA.
2. The case of the applicant is that she was appointed as LDC (TA) w.e.f. 02.09.1988. Thereafter, she was promoted as Senior Accountant on ad hoc basis w.e.f. 21.10.1999. She continued to work on the said post. Simultaneously, time and again, she gave representations for her regular promotion, but no heed was paid. Nevertheless, she was permitted to continue to work on the said post up to June, 2009 and was also paid salary of Senior Accountant. All of sudden, in July, 2009, pay slip (Annexure A-9) was issued showing her to be Junior Accountant. She then filed O.A. 319/2009 for seeking regular promotion. An interim order was passed in her favour for disposal of pending representation. The respondents considered her representation and promoted her w.e.f. 16.8.2002, the date from which her junior was promoted. But it was a notional promotion as mentioned in (Annexure A-10). It was also mentioned in this order that actual benefit would be available from the date of

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assumption of the charge. On the basis of this order, the respondents appear to have issued recovery for the emoluments which she received till her promotion in the aforesaid manner. Hence, this O.A. was filed impugning the order dated 19.2.2010 as contained in (Annexure-A-1A).

3. The claim has been contested by the respondents No. 2 and 3 by filing a detailed counter affidavit saying that the applicant was promoted as Senior Accountant w.e.f 6.1.2004 to 4.7.2004 on ad hoc basis for a period of 180 days only. Therefore, w.e.f 5.7.2004, she stood reverted after expiry of the aforesaid period. No further promotion order was made in her favour. It has been further said that since the applicant was only Junior Accountant w.e.f. 5.7.2004 to 28.10.2009, hence the salary paid as Senior Accountant was not found to be correct. Consequently, the recovery in question, order was issued.
4. The applicant has filed rejoinder reply refuting the averments made in the counter affidavit and reiterating her own pleadings. Besides that, some documents have also been enclosed, such as an order dated 28.2.2008 (page-9) showing her to be Senior Accountant. Another orders are dated 9.5.2008 and 8.12.2008. In all these papers, she has been shown as Senior Accountant. Lastly, a pay slip of June 2009 showing her to be Senior Accountant has also been filed.
5. Heard the arguments placed by the learned counsel for the parties and perused the material on record.
6. On factual matrix, it is an admitted case that though the applicant was promoted as Senior Accountant on ad-hoc basis for 180 days w.e.f. 21.10.99, but she was permitted to continue to work as such up to June 2009. This fact has been substantiated by the aforesaid documents filed along with the rejoinder affidavit. Not only that, she was also paid the salary of Senior Accountant up to June 2009 on the basis of pay slips issued in her favour from time to time by none other than the respondents themselves. The relevant pay slips

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have been brought on record as already mentioned. It is the contention of the applicant that she made representations from time to time for her regular promotion on the post of Senior Accountant on which post she was permitted to continue for a long period of 9-10 years, but no heed was paid. It appears that when in June 2009, all of sudden, a pay slip (Annexure A-9) was issued showing her to be Junior Accountant in the relevant scale, then the applicant filed the O.A. 319/2009 for her regular promotion. An interim order was passed in respect of disposal of pending representation. Then her case was duly considered and by holding a DPC, she was promoted vide aforesaid order dated 27/28.10.2009(AnnexureA10). The perusal of this order shows that probably the respondents had no alternative but to promote her because they had already promoted her junior w.e.f. 16.8.2002 i.e. 7 years before. This lapse on the part of the respondents could not be explained. However, she was given promotion from 16.8.2002 i.e. date her junior was promoted. But it appears that still the respondents did not take a pragmatic view of the matter and for the reason best known to them they mentioned in the promotion order that it would be only a notional promotion and that she would be entitled for the emoluments only from the date she takes over formal charge. Although as already mentioned above she was permitted to perform the work of Senior Accountant and was also paid the emoluments in the scale of Rs. 7800-225-11175/- regularly and even regular pay slips were also issued till June 2009. As a corollary to this, the recovery in question was also issued for realisation of the emoluments from 1st July 2004 to 30th June 2009. From July 2009, they had issued the above pay slip (Annexure-9) showing her to be Junior Accountant. But in para 14 of RA, it has been specifically averred that the reversion of such employees was simply an eyewash and in fact, it was never effected. The applicant continued to work even after June 2009 as Senior Accountant. She was discontinued for the first time on 20.10.2009. Although it was a new fact averred

in the rejoinder affidavit for the first time, but no supplementary counter affidavit has been filed against this. Therefore, this Tribunal has no other alternative but to take this averment as admitted and proved.

7. In view of the above, this Tribunal has no hesitation in observing that since the applicant was permitted to continue to work as Senior Accountant till June 2009 and thereafter 20.10.2009, there is no justification for making above recovery. Concededly, her junior was given promotion about 7 years before, i.e. in the year 2002 and there does not appear to be any justifiable reason for depriving the applicant from that promotion. Therefore, it was definitely an act of discrimination on the part of the respondents and it also appears that despite several representations, the respondents did not consider the case of the applicant for promotion as Senior Accountant. Instead of taking a pragmatic approach and correcting their mistake, the respondents took a pedantic approach and unnecessarily put an embargo of notional promotion, even though they themselves had permitted the applicant not only to work as Senior Accountant but also to draw regular emoluments in the relevant pay scale. Therefore, the recovery order said to be based on the aforesaid notional promotion order is without any justification and hence liable to be quashed.
8. In view of the this, O.A. is allowed. The recovery in question as contained in Annexure A-1A and A-1B to the O.A. is hereby quashed. The respondents are further directed to release the salary for the month of July 2009 to 29.10.2009 if the applicant has performed as Senior Accountant during that period as claimed by her. The prayer in respect of interest is however declined. No order as to costs.

Alok Kumar Singh
 (Justice Alok Kumar Singh) 10.2.12
 Member (J)