

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Transfer Application No.7/2012
In
Writ Petition No.1193 (S/B) of 2006**

Reserved on 20.02.2014.

Pronounced on 26th March 2014.

**Hon'ble Mr. Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)**

Chandra Bhal Gupta, Aged about 62 years, Son of late Shri Jagannath Prasad Gupta, Resident of 220 Madhupuri, Sitapur-261001.

-Applicant.

By Advocate: Sri Upendra Singh.

Versus.

1. Union of India through Secretary, Department of Telecom, Govt. of India, New Delhi-110001.
2. Member, Finance (DOT), Ashoka Road, Sanchar Bhawan, New Delhi-110001.
3. Chairman and Managing Director, Bharat Sanchar Nigam Limited, New Delhi.
4. General Manager (Finance), U.P. (East), Telecom Circle, Lucknow.
5. Telecom District Manager, Sitapur, U.P. (East).
6. Controller of Communications Accounts, Bhopal House, Lalbagh, Lucknow.
7. Chief Accounts Officer (C.A.), Bhopal House, Lalbagh, Lucknow.

-Respondents

By Advocate: Sri Rajendra Singh and Sri Pankaj Awasthi for Sri A.K. Chaturvedi.

O R D E R

Pre Ms. Jayati Chandra, Member (A).

The applicant had filed this Writ Petition No.1193 (S/B) of 2006 before the Lucknow Bench of the Hon'ble high Court of Allahabad and the same was transferred to

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this Bench of the Tribunal and registered as T.A.No.7/2012. The applicant seeks for the following relief(s):-

- "(i) to issue a writ, order or direction in the nature of Mandamus commanding the opposite parties to issue the promotion order to the petitioner on the post of Senior Accounts Officer cadre due from 1.5.1990 and legitimate claims like annual increment due as Chief Accounts Officer w.e.f 1.3.2002 till date, Junior Time scale cadre promotion due from 200-2001, arrear of absorption in B.S.N.L. w.e.f. 1.10.2000, Leave encashment as due on the basis of salary, final interest of G.P.F. and commuted value of 40% pension.
- (ii). to issue any other writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case may also be passed.
- (iii). To allow the writ petition with costs."

2. The facts of the case are that the applicant belonged to the Telecom Accounts and Financial Services and was appointed on the post of Accounts Officer. The posts of Accounts Officer and Senior Accounts Officer belong to Group-'B'. The next levels of promotion are Assistant Chief Accounts Officer and Chief Accounts Officer. The applicant was absorbed in BSNL by an order dated 29.11.2005 (Anneuxre-1). He was promoted on the post of Chief Accounts Officer which is a Group 'A' post in the Senior Time Scale on an ad-hoc basis. The applicant retired on 31.7.2004 from the post of Chief Accounts. However, he was not paid the following amounts.

- (i). Annual increment due as Chief Accounts Officer w.e.f. 1.3.2002 till date.
- (ii). Arrears of absorption in BSNL w.e.f. 1.10.2000.
- (iii). Group Insurance money.
- (iv). Leave encashment as due on the basis of salary.

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(v). Final interest of GPF although the nominal interest on it has been paid.

(vi). Commuted value of 40% pension.

3. He was not given promotion order on the post of Senior Accounts Officer due to him on 1.5.1990 and Junior Time Scale cadre promotion due in 2001. He has moved various representations which were dated 6.8.2004, 6.11.2004, 19.12.2004, 10.2.2005, 3.6.2005, 27.8.2005, 8.9.2005, 28.11.2005, 28.12.2005, 5.1.2006 and 6.5.2006 respectively.

4. He has learnt through the mechanism of the R.T.I. Act that the DPC had cleared him for promotion to the post of Senior Accounts Officer from the post of Accounts Officer w.e.f. 1.10.1990 although he is entitled for the said promotion w.e.f. 1.5.1990. Even that order has not yet been issued. Similarly, the DPC for promotion to the Junior Time Scale had also been held on 13.7.2001 and his case was kept in sealed cover and to date it has not been opened even after his retirement. The Hon'ble High Court passed an interim order on 28.10.2008 directing the respondents to give the admitted dues. Thereafter, the case was transferred to this Tribunal by an order dated 01.2.2012.

5. The respondents have contested the claim of the applicant through their Counter Reply in which they have stated that the applicant had filed this W.P./TA and had obtained an interim order from the Hon'ble High Court for release of his admitted dues. However, even before the said impugned order dated 20.10.2008 he was paid 50%

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DCRG amounting to Rs.1,59,415/-, Leave Encashment Rs.1,16,192/-, Central Government Employees Group Insurance Scheme Rs.26,772/-, General Provident Fund Rs.1,52,208/-, Provisional Pension from 01.08.2004 to 30.4.2006 and Full Pension with 20% cut in pursuance to the punishment order dated 08.08.2005 w.e.f. 01.05.2006. Subsequently, after the order dated 20.10.2008, the remaining Death-cum-Retirement Gratuity (final) Rs.1,90,585/-, Difference of Pension w.e.f. 01.08.2004 to 31.12.2008 equal to Rs.96,458/- have been paid and he is being paid scale admissible as per the IDA pay scale admissible to the officers of Bharat Sanchar Nigam Ltd. (BSNL) pursuant to his absorption w.e.f. 01.10.2000. The applicant has also been paid the difference of pay and allowances pursuant to his absorption in the BSNL, as per the IDA scale admissible to the officers of BSNL (Annexure-CR-1). However, his case for Commutation of Pension could not be processed as he has to furnish the Form for Commutation of Pension after the conclusion of the disciplinary proceedings, which resulted in the imposition of the punishment of deduction of 20% cut in pension on permanent basis.

6. Coming to the promotion of the applicant the case was considered for promotion from the post of Accounts Officer to that of Senior Accounts Officer by the DPC in its meeting dated 07.06.1999 but he could not be promoted as recommended as a charge sheet was issued to him vide O.M. dated 11.10.1999, which ultimately resulted with the punishment of reduction of pay by one stage in the time scale of pay from a period upto

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30.09.2002 without cumulative effect (Annexure-CR-5). During the currency of the earlier disciplinary proceedings a second charge-sheet was issued vide order dated 20.11.2001. The disciplinary proceeding was completed on 08.08.2005 with the penalty of 20% cut in pension. He was considered for promotion against vacancy of Assistant Accounts Officer by the DPC in July, 2001 in which his case was kept under sealed-cover as the disciplinary proceedings was pending against him. Thus, his substantive post always remained that of Accounts Officer. He was given ad-hoc promotion to the post of Chief Accounts Officer on 07.03.1997 by the CGMT, on Ad-hoc basis. As per rules the ad-hoc arrangement, unless extended by the competent Authority stands automatically terminated. The relevant rules are quoted at Annexure-CR-6. The applicant was informed by the respondents' letter dated 10.3.2005 (Annexure CR-7) that after the initial order of promotion as Chief Accounts Officer on ad-hoc basis for one year, no further promotion order had been issued either by DOT or the Circle Office. The applicant had joined as ad-hoc Chief accounts Officer on 7.3.1997. Therefore it ceased on 6.3.1998. The applicant was also asked to supply copies of the orders by which the ad-hoc promotion was continued but he failed to do. Hence, all his entitlements have been considered as per the salary drawn by him on the substantive post i.e. Accounts Officer.

7. The Private Respondent Nos.3,4,5 and 7 have also contested the claim of the applicant through their Counter Reply stating their all most the same things as

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stated in the earlier counter affidavit filed by the respondent Nos.1,2 and 6.

8. The applicant has filed his Rejoinder Affidavit stating more or less same things as earlier stated by him in his OA.

9. We have heard the learned counsel for both the parties and perused the entire material available on record.

10. The claim for various post retrial dues and arrears of salary hinges on determination of the various posts and commensurate pay bands that the applicant was entitled to during his service period.

11. The applicant was working as Account Officer. It is admitted by the respondents that he was due for promotion as Senior Accounts Officer in the year 1990. it is disclosed through the mechanism of RTI as well as from the counter affidavit filed by the respondents that the DPC held in the year 1999 has recorded that on the basis of C.Rs. of the applicant for the year 1997-1998, 1998-1999, 1999-2000, 2000-2001 he was found fit for promotion as Senior Accounts Officer. However, the crucial date of such promotion has to be fixed by TCHQ. From the copy of the communication between the Assistant General Manager (Staff) and A.D.G. (STP) dated 30.07.1999 the crucial date of promotion of the applicant was held to be 1.10.1990. However, the respondents failed to act on this recommendations of the DPC on the ground that certain disciplinary authority are

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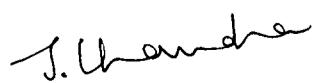
pending against the applicant and he was charge-sheeted on 11.10.1999.

12. The general principle of Govt. Rules is that every employee has right to be considered for promotion according to his eligibility as determine by the recruitment and promotion rules. In this case, no reasons has been given by the respondents why the meeting of DPC for an officer who was admittedly due for promotion in the year (whether in January or in May) was held after a delay of 9 ! years. Had the DPC meeting been convened in time, the charge-sheet dated 11.10.1999 would not have come into existence. In any case, the guidelines of the DOPT with regard to the promotion only five years ACRs prior to the date of eligibility of the candidate are to be promotion are to be scrutinized. The charge sheet in this case, is dated 11.10.1999 and also relates for the period of C.B. Gupta in the year 1993-1994 by which date he was entitled to have been functioning as Senior Accounts Officer had he been given his promotion in due time. Delay in promotion should not affect an employee adversely as held in the case of ***Nirmal Chandra Bhattacharjee & Others Vs. Union of India & Others 1991 Supp.2 SCC-363*** it has held that delay on account of employer should not to be to the detriment of the employee. If there is any delay on the part of the employer then the employee concerned will be entitled to be considered for promotion form the date of junior as held in the case of ***Sri Ram Singh Chauhan Vs. State of Harayana 1992 (2) SLR-336***. Therefore, we held that the respondents failed in their duty in acting

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upon the recommendation of the DPC which are available to them in the year 1999.

13. The applicants' case for next promotion was due in the Junior Time Scale w.e.f. 2001. The DPC, in view of the pending disciplinary action put his recommendations in sealed-cover. As per the procedure laid down by the DOPT the sealed cover cases should have been examined every six months and the same should have been opened after conclusion of the disciplinary proceedings. In this case, the effect of first disciplinary case started by the charge sheet dated 11.10.1999 concluded with the penalty order dated 04.07.2002 by which the penalty of reduction of one stage in pay scale was awarded. The effect of this penalty should have been due on the applicants on the pay scale that he should have been drawn as Senior Accounts Officer. The second charge sheet which was issued to the applicant in the year 2001. This action was concluded in 2005 with the penalty of reduction of 20% cut in his pay- salary but this order was imposed without opening recommendation of DPC which are kept in sealed-cover. As the applicant has retired on 31.7.2004 before the conclusion of the disciplinary proceedings the respondents were within their rights for not opening the recommendations of the sealed-cover. At this stage, opening of the sealed-cover has become infructuous as even if he is found fit for promotion no effect can be given to this order as the applicant has already retired. In all cases of promotions the effective date is the date of taking charge, unless the same has been wrongfully denied as discussed in para-12 above.



14. In view of the above, we are of the opinion that the applicant was wrongfully denied of his promotion as Senior Accounts Officer w.e.f. 1.10.1990 whereas, his promotion as Assistant Chief Accounts Officer in the Junior Time Scale cannot be given to him on the ground that the disciplinary proceedings initiated against him had not been concluded prior to his retirement.

15. The next issued which is needed to be adjudicated upon is the claim of the applicant for promotion on the post of Chief Accounts Officer. It is very surprising that a person by his own admission has been working as Accounts Officer was given the charge of Chief Accounts Officer which is at least 3 steps above his substantive post. Be it as it may, he has not been able to produce any copies of any order giving him the benefit of due pay scale as admissible to Chief Accounts Officer. No person can claim pay fixation against a post, which he may have held temporarily and on an ad-hoc basis or in addition to his substantive post especially if such posts are promotion posts and involves selection through DPC. The respondents have further quoted the DOPT guidelines dated 12.01.1988 which make it clear that local ad-hoc arrangement does not gain permanency. Therefore we are of the opinion that the applicant has not been able to establish his case for pay fixation on the post of Chief Accounts Officer.

16. On the basis of the examination of the various grades in our opinion the applicant should not suffer adversely due to the inordinate delay on the part of the respondents in holding the DPC for promotion as Senior

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Accounts Officer he should be given notional promotion from the date of his immediate junior and the consequential benefits of pay fixation upto the date of his retirement. No benefit can be accorded to him on the basis of result of promotion from Junior Time Scale post of ACAO nor can any benefit be given on account of ad-hoc functioning as Chief Accounts Officer in the year 1997. However, on the principal of "no work no pay" the applicant is not entitled to the arrears of pay but his pension may be re-fixed on recalculation of his entitlement as Senior Accounts Officer from the date of his next immediate junior. His post retrial dues will be calculated on the basis of his revised pension based on notional pay fixation and he shall be given arrears of DCRG, Leave salary etc. In so far as Commutation of Pension is concerned the matter shall be dealt-with the respondents as per rules governing the subject. No increment is due to him on the post of Chief Accounts Officer w.e.f. 1.1.2002 as he has not been able to prove that he was promoted as Chief Accounts Officer on substantive basis. The above exercise shall be completed within a period of 4 months from the date of receipt of a copy of this order.

17. With the above observations, the T.A. is disposed of.
No order as to costs.

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(Ms. Jayati Chandra)
Member (A)

W.R. Agarwal
(Navneet Kumar)
Member (J)