

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No. 79/2012

Reserved on 4.3.2014

Pronounced on 31-03-2014

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

Prem Chandra Sachan, Chief Accounts Officer (retired), BSNL, Office of GMTD, Kanpur

Applicant

By Advocate: Sri S.P.Singh

Versus

1. Chief General Manager, Telecom U.P. (East), Telecom Circle, Hazrat Ganj, Lucknow-226001.
2. Dy. General manager (Finance) Bharat Sanchar Nigam Limited O/o of General Manager, Telecom, The Mall, Kanpur-208001.

Respondents

By Advocate: Sri G.S. Sikarwar

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

- a) withhold promotion in the grade of Chief Accounts Officer be released from due date for which DPC is already been held and promotion orders released from BSNL HQ.
- b) Orders bay be issued for upgradation in the Grade of Chief Accounts Officer w.e.f. 1.10.2004 for which orders already issued but kept as held in abeyance.
- c) to quash the impugned order dated 4.11.2011 and 2.7.2011 contained as Annexure No. A-1 and A-10 to the O.A.
- d) to direct the respondents to implement the order dated 3.7.2011 and 30.6.2011 with all consequential benefits and the arrears will also be paid along with 18% interest per annum.
- e) Arrears may kindly be ordered to be paid along with interest.
- f) A strict time schedule be ordered regarding implementation of the orders Hon'ble Tribunal Allahabad with respect to release the

withhold promotions , re-fixation of revised pay and payment of arrears thereof.

g) That in view of the fact and circumstances disclosed in present O.A. , the applicant deserves to get all relief's as prayed for in paragraph Nos. 7(a), 7(b), 7(c), 7(d) and 7 (e) with costs and interest.

2. The brief facts of the case are that the applicant was initially joined the respondents organization and superannuated on 30.4.2009 after attaining the age of superannuation. It is also pointed out by the learned counsel for the applicant that he was absorbed in the BSNL w.e.f. 1.10.2000 in the capacity of Assistant Accounts Officer. The applicant was served with a charge sheet under Rule 14 of CCS(CCA) Rules, 1965 and after conclusion of Disciplinary proceedings, the major punishment was imposed upon the applicant. The applicant preferred the appeal which was rejected. Applicant preferred the O.A. challenging the punishment before the Allahabad Bench of this Tribunal. The said impugned order was set aside by the Tribunal. The Department preferred the appeal before the Hon'ble High Court and the Hon'ble High Court also dismissed the writ petition. As such, the order of the disciplinary authority as well as the appellate authority was set aside. The learned counsel for the applicant has pointed out that the promotion of the applicant in the grade of Assistant Accounts Officer, Accounts Officer , Sr. Accounts Officer and Chief Accounts officer were affected on account of imposition of penalty. The promotion of the applicant from the grade of Junior Accounts Officer to the grade of Accounts Officer was due w.e.f. 1.4.1987 but the same was given w.e.f. 24.7.1990. Not only this, it is also indicated by the learned counsel for the applicant that the promotion in the grade of adhoc CAO which was due w.e.f. 24.9.2007 was released by the respondents organization on 3.7.2009 without assigning any reason, it is also pointed out by the learned counsel for the applicant that the charge sheet under Rule 61(4)(1) of BSNL conduct ,Discipline and Appeal Rules, 2006 was

issued to the applicant after a gap of about 30 months from the date of retirement of the applicant and he was also not communicated the reason for withholding the promotion/upgradation of the applicant. As such, the applicant preferred the present O.A. challenging the orders dated 4.11.2011 and order dated 2.7.2011 passed by respondent No.2 by which the promotion order dated 3.7.2009 could not be issued and vide order dated 2.7.2011, the time bound financial upgradation order dated 30.6.2011 was kept in abeyance till the further orders. The said impugned orders are contained in Annexure No. A-1 and A-10 to the O.A.

3. Sri G.S. Sikarwar, learned counsel appearing on behalf of the respondents filed their reply and through reply, it is pointed out by the respondents that the retrospective promotion in the grade of Assistant Accounts Officer lies under the jurisdiction of Department of Telecommunication, New Delhi for which the service book of the applicant was sent under the direction of DOT. Not only this, it is also indicated by the respondents that the order dated 30.6.2011 regarding time bound financial upgradation of Executive from the IDA pay scale for Group B level officer absorbed in the BSNL was released but after getting information of misconduct of applicant and approval of major charge sheet, the order dated 30.6.2011 was held in abeyance, it is also argued by the respondents that a major penalty charge sheet under Rule 61(4)(1) of BSNL Conduct, disciplinary Rule 2006 was approved by the competent authority and there is no illegality in issuing the impugned orders.

4. Learned counsel for the respondents has also filed Supplementary Counter Reply after the amendment application was allowed and through the Supple. CA it was indicated by the respondents that the applicant retired from service in April 2009 and vide order dated 3.7.2009, he was promoted to STS adhoc cadre and vide order dated 30.6.2011, the benefit of time bound financial

upgradation of executive from IDA pay scale was given but the same was kept in abeyance vide order dated 2.7.2011, since the major charge sheet under Rule 61(4)(1) of BSNL Conduct , discipline and Appeal Rule 2006 was served upon the applicant. The learned counsel for the respondents has also taken a ground of limitation and also pointed out that the applicant having the alternative remedy to file the appeal before the competent authority against the order dated 4.11.2011 under rule 45 of BSNL Conduct Discipline and Appeal Rules, 2006 , he has preferred the present O.A. without exhausting alternative remedy. Not only this, the learned counsel for respondents has also pointed out that permanent address of the applicant is shown as New MIG-23, Near Daroga Chauraha, Barra-2, Kanpur-208027, and pointed out that the present O.A. is not maintainable before Lucknow Bench of the Tribunal and the same is liable to be dismissed on the ground of territorial jurisdiction as service dispute arose at Kanpur and Kanpur comes under the territorial jurisdiction of CAT, Allahabad bench.

5. Learned counsel for applicant has filed the Rejoinder reply and through Rejoinder reply, mostly the averments made in the O.A. are reiterated and contents of C.A. and Supple.CA were denied.

6. Heard the learned counsel for the parties and perused the record.

7. The applicant after serving a long period of time in the respondents organization , superannuated on 30.4.2009. After the retirement ,the applicant was served with a charge sheet under rule 61(4)(1) of BSNL Conduct , disciplinary Rules 2006, the substance of the imputations of misconduct or misbehavior in respect of which the inquiry is proposed to be held set out in the enclosed statement of articles of charge statement of the imputations of misconduct or misbehaviour in support of each article of charge along with list of documents, list of witnesses were also enclosed along with the memorandum. The applicant was directed to submit reply within a

period of 10 days. As per the said memorandum, it was pointed out in the charge sheet that the applicant while posted and functioning as CAT (TR), North O/o of GMTD, Kanpur during the period 23.8.2008 to 30.4.2009 mis-utilised has password and made fraudulent entries in Trichur Billing System amounting to Rs. 367443/- through different batches on different dates and the said fact has also been accepted by the officer vide his letter dated 29.3.2010 and 2.4.2010 and deposited Rs. 2,40,000/-. As such the applicant failed to maintain absolute integrity and devotion to duty and acted in a manner befitting of a public servant. The learned counsel for the applicant has also challenged the order dated 4.11.2011 and 2.7.2011 as contained in Annexure No. 1 and Annexure No. 10 to the O.A. which are in regard to withholding of promotion and upgradation in the grade of CAO as well as time bound financial up-gradation of executive from the IDA pay scale to time bound Executive Promotion Policy for Group 'B' level officers were passed. It is also indicated in the said orders that the promotion order to STS adhoc cadre was issued on 3.7.2009 and it is categorically mentioned in para 2 that the promotion was subject to the condition that no disciplinary /vigilance case pending against the officer. Vide order dated 2.7.2011, it is indicated that the benefit of time bound financial upgradation of executive from the IDA pay scale to Group 'B' level officers was also kept in abeyance till further orders. The learned counsel for the applicant pointed out that the actual charge sheet was issued on 30.11.2011 and both these promotion orders were issued on 3.7.2009 and 30.6.2011 and on the date of issuance of these orders, there was no adverse material pending against the applicant.

8. As observed by the Hon'ble Apex Court in the case of **Union of India and others Vs. K.V. Jankiraman and others reported in (1991) 4 SCC 109** that "***It is only when a charge memo in the disciplinary proceedings or a charge sheet in a criminal***

prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge memo/ charge sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure.”

9. As observed by the Hon'ble Apex Court in the case of **Union of India and others Vs. Sangram Keshari Nayak** reported in (2007) 6 Supreme Court Cases, 704 that “**Promotion is not a fundamental right. Right to be considered for promotion however, is a fundamental right. Such, a right brings within its purview an effective , purposeful and meaningful consideration. Suitability or otherwise of the candidate concerned, however, must be left at the hands of the DPC, but the same has to be determined in terms of the rules applicable therefor.**

Terms and conditions of an employee working under the Central Govt. are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or under a statute. The right to be promoted to a next higher post can, thus, be curtailed only by reason of valid rules. Such a rule again, however, cannot be construed in a manner so as to curtail the right of promotion more than what was contemplated by law.”

10. It is explicitly clear that the charge sheet under Rule 61(4)(1) of BSNL Conduct , disciplinary Rule 2006 was approved and served on 13.10.2011 and the promotions were already effected much earlier. As per the charge sheet, the period of misconduct is shown as 23.8.2008 to 30.4.2009 and the applicant superannuated on 30.4.2009 itself then what was the occasion for the respondents to wait till 30th October,2011

for issuing the charge sheet, when the first promotion order to the post of STS adhoc cadre was given effect to vide order dated 3.7.2009 and another order was issued on 30.6.2011.

11. Considering the observations made by the Hon'ble Apex Court as well as the contentions raised by the learned counsel for the parties, we deem it appropriate to interfere in the present O.A. Accordingly, the impugned orders dated 4.11.2011 as well as 2.7.2011 contained at Annexure No. 1 and Annexure No. 10 are accordingly quashed. The respondents are directed to implement their orders dated ~~3.7.2011~~^{03.07.2009} and 30.6.2011 with all consequential benefits.

12. With the above observations, O.A. is allowed. No order as to costs.

J. Chandra

(JAYATI CHANDRA)
MEMBER (A)

HLS/-

Navneet Kumar

(NAVNEET KUMAR)
MEMBER (J)

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