

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00774/2015

Order Reserved on: 24.11.2016

Date of Order: 20/12/2016

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

G.R.Solanki S/o Shri Pushkar Singh, aged around 60 years, resident of 86, Rose Vila Colony, Near Rajendra Nagar, Bharatpur, earlier working in the office of Telecom Office, Bharatpur, District Bharatpur.

.....Applicant

(By Advocate Mr. Amit Mathur)

VERSUS

1.The Union of India through its Secretary, Department of Telecommunication, New Delhi.

2.The Chief General Manager, Bharat Sanchar Nigam Limited, Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur.

3. The General Manager, Telecom District, Bharatpur District Bharatpur:

.....Respondents

(By Advocate Mr.Sanjeev Pandey and Mr.
A.S. Shekhawat)

ORDER

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 aggrieved from non-consideration of representation as well as legal notice submitted by the counsel for giving him the benefit of stepping up/pension and thereby seeking the following reliefs:-

8.(i) The present original application may kindly be allowed and the directions may be issued to the respondents to allow the applicant benefit of lateral advancement and revising his salary from the scale of Rs.6500-10500 to Rs.7500-12500 at the time of his retirement and after giving that benefit his pension may kindly be revised. Further all

consequential benefits may kindly be allowed to the applicant accordingly.

(ii) Any other or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant.

(iii) Cost of this original application also may be awarded in favour of the applicant.

2. When the matter came up for consideration and hearing on 24.11.2016, the Ld. Counsel for applicant submitted that this OA has been filed for seeking the benefit of lateral advancement which is given after completion of 12 years' service and consequential benefit of revision of pay/pension. In this context counsel for applicant submitted that the applicant joined the Department of Telecommunication as Phone Inspector and later on after competing for vacancy of JE for the year 1982 he was promoted as JE and after undergoing training of 14 plus 2 months he joined as JE on 22.04.1985. However, he was reverted from 03.09.1986 to 25.09.1988 as Phone Inspector though he gave the option for posting in Haryana but the same was not allowed and after some time he was again promoted as JE w.e.f. 26.09.1988 and took VRS w.e.f. 07.08.1999 as per his application dated 02.05.1999 Ann.A/8. He further contended that one Shri Bhagwan Singh Sharma who was also appointed for the aforesaid post against the vacancies of the year 1983 and after completion of training joined later than the applicant on 13.05.1985 and underwent only 8 months' training and was junior to the applicant, was allowed the benefit of lateral advancement but the same was not given to the applicant. Therefore, the applicant is entitled to be given the benefit of lateral advancement.

3. Counsel for applicant further submitted that the respondents have refused to grant him lateral advancement as per Ann.A/3 dated 08.12.2000 only on the ground that he has not completed the period of 12 years' service as JE (now designated as JTO) continuously in a single spell, and his period of reversion to the post of Phone Inspector is being

treated as lack of continuity in a single spell as JE. Counsel for the applicant in this context contended that this is not a valid reason because the applicant was not reverted for any fault on his part but only on account of lack of vacancy and though he gave the option for Haryana Circle but he was neither relieved for Haryana nor allowed to work as JE in Rajasthan and therefore, he is entitled to lateral advancement taking into account the total service as JE which is more than 12 years.

4. Counsel for applicant, thereafter with reference to certain objections raised in the reply and during the proceedings by the counsel for respondents submitted, in the first place, with regard to the issue of limitation that he admits that while the Ann.A/3 is dated 08.12.2000 and the applicant even sent the legal notice against the same much later and the appeal/representation was made on 24.08.2015 as at Ann.A/1 but the benefit of lateral advancement is a recurring cause of action and delay can be condoned as he is not getting proper pay and pension. In support of his contention he cited the judgment of the Hon'ble Apex Court in the case of M.R.Gupta Vs. UOI & Ors. in Civil Appeal No.7510 of 1995 decided on 21.08.1995, 1995 Supreme Court Cases (L & S)1273. He further submitted that the judgment of Apex Court in Manubhai Shah 2015(4) SCC482 that employer-employee relationship ceases after retirement as referred to by the counsel for respondents is not applicable in this matter because in that case the applicants had taken the VRS and pay revision was made later, the applicants sought those benefits but were denied, and the Court upheld the view that as the applicants had taken VRS with special benefits under a certain scheme they were not eligible for benefits which have been given under a subsequent order /scheme. This is not the case of the applicant because lateral advancement scheme was in force during the service and at the time of retirement of the present applicant. Counsel for

applicant further submitted that the respondents have averred that Ann.A/8 is not the document which the applicant submitted before the respondents and Ann.A/2 is the only application that the applicant submitted before the respondents on the basis of which his VRS order dated 02.05.1999 (Ann.R/1) was issued and therefore Ann.A/8 is a false document. The applicant has therefore, misrepresented before the Tribunal and concealed facts and OA is liable to be dismissed on that ground alone. Counsel for applicant in this regard clarified that after this point was raised by the counsel for respondents, he has given the affidavit of the applicant submitting that in the first place he submitted application as at Ann.A/8 to the respondents but because he had mentioned certain points regarding his claim for selection grade etc., he was given to understand that this may not be treated as proper application for VRS and may not be accepted/forwarded and therefore, he gave the revised application on the same date without any conditions which is Ann.R/2 filed by the respondents. The applicant has not submitted any forged/false document or concealed any facts/information and one Shri Mangal Singh who was working in the office at that time and is working presently also has clarified these points in his noting. On these grounds counsel for the applicant contended that the issues and objection raised by the counsel for respondent, did not carry any force and the applicant deserves to be granted his lateral advancement and consequential pay fixation and increased pension and prayed for the OA be allowed.

5. Per contra, the Ld. Counsel for respondents in the first place reiterated the preliminary objection that the OA is not maintainable because the applicant only submitted the application dated 02.05.1999 Ann.A/8 while filing the OA and also verified the same but did not submit or make any reference to the application dated 02.05.1999 Ann.R/2. This plain application for VRS without any endorsements (Ann.R/2)

dated 02.05.1999 was filed before the Chief General Manager, Telecom, Rajasthan Circle, Jaipur and in pursuance of which Ann.R/1 i.e. order of acceptance of the VRS w.e.f. 07.08.1999 was issued on 02.08.1999 and the applicant's name was struck off from the strength of Bharatpur SSA. The affidavit submitted by the applicant appears to be an afterthought and is not a proper affidavit because the same has only been given by the applicant and the affidavit of Shri Mangal Singh has not been given and it is not clear that on what basis or record Shri Mangal Singh has made the noting in the year 2016 on documents which pertain to the year 1999 i.e. after the period of more than 16 years and it has perhaps been done with an ulterior motive. He further argued that if it is true the applicant had actually moved two applications one after the other, than this fact should have been brought before the Tribunal while filing the OA but the same was concealed and only Ann.A/8 was filed and Ann.R/2 was not filed and in this way he has misrepresented both before the respondents as well as the Tribunal. Counsel for respondents submitted that he had elaborated this point when the case was taken up on 20.09.2016 and had shown the entire record in which only application as at Ann. R/2 was there and the same was perused by the Tribunal. He contended that on this account of perjury the applicant deserves to be penalized and the OA dismissed on this ground alone.

6. Counsel for respondents also submitted that this OA suffers from gross limitation. The applicant's VRS was accepted in August, 1999 and Ann.A/3 was issued on 08.12.2000 giving the reasons that as he has not completed the period of 12 years' service as JE (now designated as JTO) in a single spell, therefore, he is not entitled for any lateral advancement. The applicant filed a very belated legal notice (Ann.A/2) which was received on 21.08.2012 and an appeal on 25th August, 2015 (Ann.A/1) and counsel for respondents further submitted that

there is no recurring cause of action because the matter has already been settled on merit and the applicant is not entitled to any lateral advancement.

7. Coming to the merits also, after raising the preliminary objections, counsel for respondents contended that it is clear from Ann.A/3 that the applicant was reverted from JE to Phone Inspector from 03.09.1986 to 25.09.1988 and as he did not complete the period of 12 years service as JE in a single spell he is not entitled to any lateral advancement. He further submitted that in the appeal Ann.A/1 filed by the applicant as late on 25.08.2015 he has himself submitted in his prayer clause that there was a break in service and has sought for its condonation. Referring to para 4 and 5 of the appeal/representation (Ann.A/1) he submitted that in view of non-availability of the vacancy as JE in Rajasthan Circle the incumbent was given option to join any other Circle and the applicant opted for Haryana but did not join and wanted to continue in Rajasthan and therefore, he was reverted to the post of Phone Inspector as he did not complete his assignment for the post of JE in a single spell for 12 years therefore, denial of lateral advancement is justified and in accordance with rules and on all these grounds counsel for respondents prayed for dismissal of the OA.

8. In rebuttal, Counsel for the applicant again reiterated that though there is delay in filing the OA but as it is a recurring cause of action, relief can be sought in view of principles laid down in M.R. Gupta's case in Civil Appeal No.7510 of 1995 decided on 21.08.1995, 1995 Supreme Court Cases (L & S)1273. He again reiterated that Manu Bhai Shah case referred to by the counsel for respondents does not apply in this case and further there is no perjury whatsoever and the applicant never sought any conditional VRS and the discrepancy between Ann.A/8 and Ann.R/2 has been explained in the affidavit and further that the respondents have not denied his claim in the reply on the facts. He

referred to the judgment in the case of Civil Appeal No.7061 of 2000 M. Venkataramana Hebbar (D)by LRs. Vs. M. Rajagopal Hebbar and Ors. 2007(5) SCALE 598 wherein it has been upheld that if facts are not denied in the reply they are to be treated as admitted. He further submitted that the period of reversion as Phone Inspector can be counted as functional service of the applicant as JE for the purpose of grant of lateral advancement because he has overall more than 12 years of service as JE.

9. Considered the aforesaid contentions and perused the record. The applicant has filed this OA mainly to seek benefit of lateral advancement which according to him were denied on the ground that he did not complete 12 years' service as JE in a single spell as seen from the Ann.A/3 dated 08.12.2000. In this regard it is noted that the applicant has raised many issues in his representation (undated) Ann.A/7 as to what happened regarding his option (option given in pursuance of Ann.A/5 dated 14.01.1987) to join in Haryana Circle and posting in Rajasthan Circle and has also referred to certain issues in his belated appeal of 25th August, 2015 (Ann.A/1) but the facts remain that he was reverted as Phone Inspector for a period from 03.09.1986 to 25.09.1988 and he was again promoted as JE w.e.f. 26.09.1988. The applicant has not placed any rules/instructions on the basis of which the period of reversion can also be counted as one of continuous working on the post of JE in a single spell. Further, even in his appeal /representation as at Ann.A/1 he has sought only the condonation of the period of break in service as JE indirectly admitting the period as a break. The applicant has not also brought anything on record to show that the case of Shri Bhagwan Singh Sharma to whom lateral advancement was allowed was similar/identical to his case, nor has he made him a party respondent.

10. As far as question of limitation is concerned it is an admitted fact that the OA has been filed in the year 2015 for lateral advancement while the refusal letter Ann.A/3 is dated 08.12.2000. It is further noted that in the true copy of the Ann.A/3 it has been mentioned that this letter was supplied under RTI Act, 2005 on 21st December, 2009 though in typed copy some note has been written by the applicant that "this letter was received on 21.11.2015 after denial by C.G.M.T. then appeal to CMD and Chairman, BSNL, New Delhi for request of lateral advancement dated 18.09.2000." Counsel for applicant argued that this is a case of recurring cause of action but there appears to be inordinate delay of more than 15 years in filing of this OA which has neither been explained during the course of hearing nor any MA for condonation of delay has been filed. However, in any case the lateral advancement was refused vide Ann.A/3 in the year 2000, and after that the applicant woke up and submitted a legal notice in the year 2012 and filed appeal/representation to the reply to his notice on 25th August, 2015 and filed OA thereafter. Therefore, there is force in the arguments made by counsel for the respondents that there is inordinate delay in filing the claim.

11. The counsel for respondents also vociferously raised the preliminary objection that as brought out in the reply that only Ann.R/2 application dated 02.05.1999 for voluntary retirement was received by the respondents and on the basis of which Ann.R/1 order dated 02.08.1999 was issued. There was no such application as at Ann.A/8 filed before the respondents and the applicant has misrepresented and has given false verification in the OA. He further submitted that the clarification given in the affidavit has no meaning because nothing has been made by one Shri Mangal Singh, TDM, Bharatpur who has not given his own affidavit nor explained the circumstances nor record on

the basis of which he has now given the noting in the year 2016. During the proceedings, the application as at Ann.R/2 was seen from the record as shown by the counsel for respondents. From the above it is clear that the applicant did not file with the OA his application for VRS which has now been filed by the respondents with the reply as Ann.R/2 and though he has given an affidavit giving some reasons, but the fact remains that the application (Ann.R/2 dated 02.05.1999) on the basis of which VRS orders were issued as at Ann.R/1 dated 02.08.1999 was not filed with the OA by the applicant and to that extent, the position ~~has~~ not been correctly represented in the OA. Further, the applicant has failed to show any convincing reason as to why the period of his reversion as Phone Inspector should not be treated as break in in his functioning as JE in one spell, especially when he has himself admitted that it is a break and has even prayed for its condonation.

12. Therefore, on the basis of the above analysis it is clear that there is an inordinate delay in filing the OA for which no proper explanation has been given by the applicant and that the applicant did not file his application for VRS with the OA which he filed before the respondents and which has now been filed by the respondents as Ann.R/2. Further as the applicant has failed to make out any convincing case on merit as to why his service as JE, despite being reverted to the post of Phone Inspector, should be treated to be in a continuous single spell for the purpose of lateral advancement, the OA, for all these reasons, lacks merit and is accordingly dismissed with no order as to costs.



(Ms. Meenakshi Hooja)
Administrative Member

Adm/