

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Date of Decision: 10th Nov. 2010

ORIGINAL APPLICATION No.254/2009

WITH

MISC. APPLICATION No.175/2009

CORAM :

HON'BLE MR.JUSTICE V.K.BALI, CHAIRMAN (J)
HON'BLE MR.ANIL KUMAR, MEMBER (A)

Om Prakash Gaur,
Chief Section Supervisor,
O/o CGMT (BSNL),
Rajasthan Telecom Circle,
Jaipur.

... Applicant

(By Advocate : Shri Anupam Agarwal)

Versus

1. Union of India through
Chairman & Managing Director,
Bharat Sanchar Nigam Limited,
BSNL Corporate Office,
Bharat Sanchar Bhawan,
H.C.Mathur Lane, Janpath,
New Delhi.
2. Chief General Manager,
Telecommunications,
Rajasthan Telecom Circle,
Bharat Sanchar Nigam Limited,
Jaipur.
3. Asstt. Director General (TE-II),
Bharat Sanchar Nigam Limited,
H.C.Mathur Lane, Janpath,
New Delhi.
4. Asstt. Director (Staff-II),
O/o CGMT, BSNL,
Rajasthan Telecom Circle,
Jaipur.

... Respondents

(By Advocate : Shri Neeraj Batra)

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ORDER

PER HON'BLE SHRI ANIL KUMAR

This is second round of litigation. Earlier, the applicant had filed OA 182/95 thereby praying that a direction may be given to the respondents to consider his candidature for promotion to Grade-III in the pay scale of Rs.1600-2660 at par with his junior without insisting on the applicant for completing minimum prescribed years of service in the base grade under BCR Scheme, with all consequential benefits. At this stage, it will be useful to quote the operative portion of the judgement rendered by this Tribunal in the said OA [No.182/95], on 20.9.2001, which thus reads as under :

"16. We, therefore, allow this OA and direct the respondents to consider the candidature of the applicant for promotion to Grade-III, Rs.1600-2660, under BCR Scheme without insisting the applicant for completing the minimum prescribed service in the basis grade. All other conditions of BCR Scheme except the length of service will however be applicable while considering his promotion to Gr.III, Rs.1600-2660. In case the applicant is found suitable for promotion, he shall be promoted to Grade-III, Rs.1600-2660 with effect from the date his erstwhile junior was promoted. The applicant shall also be entitled to all consequential benefits. The above directions shall be complied within a period of 3 months from the date of receipt of a copy of this order."

2. The respondents filed a DB Civil Writ Petition [No.1543/2002] before the Hon'ble High Court. From the material placed on record, it is evident that subsequently the BSNL issued instructions dated 24.2.2004 based upon the judgement dated 9.10.2002 rendered by the Apex Court in Civil Appeal No.10692/95 (Union of India & Ors. v. Smt. Leelamma Jacob & Ors.), whereby the competent authority had agreed to implement the aforesaid judgment. As can be seen from the order dated 24.2.2004 (Ann.A/6), one of the conditions stipulated was in the following terms :

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"(i) While implementing the BCR Scheme, all the officials who were promoted earlier to Gr.II by virtue of passing the Limited Departmental Examination etc. and thus became senior to the officials who were promoted later to Gr.II through 2/3rd seniority quota or on the basis of length of service i.e. OTBP, even though they have not completed total 26 years of service, may be considered for promotion to BCR Gr.III, whenever their juniors in Gr.II were promoted to Gr.III on completion of 26 years of service."

Consequent upon the instructions so issued by the BSNL, the respondents vide order dated 9.8.2004 (Ann.A/5) withdrew the writ petition filed before the Hon'ble High Court and decided to implement the judgement rendered by this Tribunal in the earlier OA. At this stage, it will be useful to quote the relevant portion of the order dated 9.8.2004 (Ann.A/5), which thus reads as under :

"... the competent authority on the advice of othe review DPC is pleased to promote the following officials from Grade-II to Grade-III in the scale of Rs.1600-50-2300-60-2660 (CDA) on the following terms and conditions w.e.f. the dates given in front of them by comparing with Sh.Nanag Ram Sharma who got BCR w.e.f. 18.12.92 and is junior to below given officials, without insisting on their completion of 26 years of service."

Thus, from the order dated 9.8.2004 (Ann.A/5) it is clear that the applicant was granted the benefit of Gr.III under BCR Scheme w.e.f. 1.7.1993 though in terms of the judgement rendered by this Tribunal in the earlier OA, the relevant portion of which has been reproduced above, the said benefit was required to be extended to the applicant w.e.f. 18.12.1992, the date from which such benefit was given to his junior Shri Nanag Ram Sharma. Be that as it may, the applicant is not aggrieved by granting the benefit of Gr.III in the scale Rs.1600-2660 w.e.f. 1.7.1993 [revised scale of Rs.5500-9000 w.e.f. 1.12.1998]. Grievance of the applicant in this case is regarding impugned order dated 26.2.2005 (Ann.A/2), whereby the AO (Cash) was directed to take corrective measures for recovery of the undue amount paid to the

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applicant on account of wrong fixation. Said Ann.A/2 is based upon the clarification issued by the BSNL HQ vide order dated 30.11.2004 (Ann.A/1), whereby it was clarified that the benefit of the judgement of the Apex Court, as referred to above, in terms of the letter dated 24.2.2004 and subsequent letters, is admissible only for promotion of the concerned officials from Gr.II to BCR Gr.III of pre-restructured cadre by comparing with their juniors in Gr.II and not for grant of upgraded pay scale of restructured cadres given on completion of 26 years of service. The applicant has prayed that these two orders (Ann.A/1 & Ann.A/2) be quashed and set aside and the respondents should be directed to continue the applicant in the upgraded scale w.e.f. 1.12.1998, as before, with all consequential benefits.

3. Notice of this application was given to the respondents, who have filed their reply. The facts, as stated above, have not been disputed by the respondents. The stand taken by the respondents in the reply is that on completion of 16 years of service the applicant was given OTBP w.e.f. 1.6.1993 and thereafter he was given BCR w.e.f. 1.7.1993, only after getting the benefit of OTBP. It was stated that such benefit was extended to the applicant on account of judgement rendered by this Bench of the Tribunal otherwise the applicant deserved for this promotion only on completion of 26 years of service i.e. w.e.f. 1.6.2003. It is further stated that in terms of the orders dated 20.4.1999 (Ann.A/7) and 26.7.2004 (Ann.A/8) the officials could have been placed in the upgraded scale of restructured cadre w.e.f. 1.12.1998 but subject to completion of 26 years of service/training of St.TOA (G). It is further stated that though the applicant was trained but he was not having 26 years of service on 1.12.1998 as such he could not have been placed in the upgraded pay scale or restructured cadre w.e.f. 1.12.1998. This mistake has now been rectified vide letter dated 26.2.2005 (Ann.A/2).

4. The stand taken by the respondents in the reply is the same which was taken by them in the earlier OA and noticed by this Tribunal in para-3 of the judgement (Ann.A/4).

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However, this Tribunal, after noticing the stand taken by the respondents in the reply in the earlier OA, had given specific direction that the applicant be promoted to Gr.III under BCR Scheme without insisting him for completing the minimum prescribed service in the base grade. Thus, in view of this categorical finding given by this Tribunal in the earlier OA, relevant portion of which has been reproduced above, the question which requires our consideration is whether it was permissible for the respondents to ignore the categorical finding given by this Tribunal which has attained finality by issuing the impugned order (Ann.A/2) especially when the respondents have themselves implemented the judgement of this Tribunal vide order dated 9.8.2004 (Ann.A/5) by granting the benefit of the pay scale of Rs.1600-2660 to the applicant w.e.f. 1.7.1993 and restructured scale of Rs.5500-9000 w.e.f. 1.12.1998. According to us, such a course was not permissible for the respondents especially when the judgement of this Tribunal had attained finality and even the writ petition filed by the respondents against the earlier judgement passed by this Tribunal had also been withdrawn. Not only that, the judgement given by this Tribunal has also been implemented. Thus, in such a situation, we fail to see how the respondents can reopen the entire issue which was given quietus in the year 2004 not only by withdrawing the writ petition but also by implementing the judgement of this Tribunal.

5. At this stage, we wish to notice the judgement of the Apex Court in the case of **Shiv Pujan Prasad (Dead) by Lrs. v. State of U.P. & Anr.** [JT 2009 (14) SC 526]. That was a case where the appellant, Shiv Pujan Prasad, was initially appointed as an Overseer in the Public Works Department of the State of UP. Subsequently, he was promoted to the post of Assistant Engineer against the post reserved for Scheduled Caste category. However, he was reverted from the said post as it was found that he did not belong to Scheduled Caste category. Aggrieved by the order of reversion, writ petition was filed before the Lucknow Bench of the Allahabad High Court, which was dismissed. Subsequently, the matter was

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brought up to the Apex Court. The Apex Court set aside the judgement as the impugned order was passed without giving any effective opportunity to submit his defence. The Apex Court directed the District Collector, Varanasi, to hold a fresh inquiry after giving reasonable opportunity to Shiv Pujan Prasad to defend his case. He was also permitted to hold the post of Assistant Engineer and it was ordered that his further posting would be governed by the outcome of the inquiry which was directed to be completed within two months. Pursuant to the direction given by the Apex Court, fresh inquiry was held and it was found that Shiv Pujan Prasad belonged to "Manjhi" (Majhwar) by caste, which is a scheduled caste. A copy of the inquiry report was also sent to the Registrar of the Supreme Court. Subsequently, at the instance of a third person, fresh inquiry was conducted. Under these circumstances, the Apex Court held that the department was not justified in reopening the issue at the instance of third party and it was not permissible for the government to conduct fresh inquiry especially when the department had accepted the earlier inquiry report. It was further held that there was a clear finding of the High Court that the appellant had not forged the caste certificate and that finding has become final. Under these circumstances, a direction was issued to release all his dues. The ratio as laid down by the Apex Court in the case of Shiv Pujan Prasad is clearly attracted in the facts and circumstances of this case. In the instant case also the direction given by this Tribunal in the earlier OA has not only attained finality but the same was also implemented by the respondents themselves, as already stated above. Thus, it was not permissible for the respondents to ignore the earlier order dated 9.8.2004 (Ann.A/5) by issuing the impugned order (Ann.A/2), contrary to the direction given by this Tribunal in the earlier OA.

6. In view of what has been stated above, the OA is allowed and the impugned order dated 26.2.2005 (Ann.A/2) is quashed and set aside. No order as to costs.

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7. As regards MA 175/2009 for condonation of delay, it may be stated that earlier the impugned order dated 26.2.2005 was challenged by the applicant by filing SB Civil Writ Petition No.2421/2005 before the Hon'ble High Court, whereby interim stay was granted. The said writ petition was disposed of on 24.4.2009 with liberty to avail alternative remedy by way of filing of an OA before this Tribunal. The applicant has immediately thereafter filed the present OA before this Tribunal on 17.6.2009. As such, no order is required to be passed in the MA for condonation of delay as the present OA was filed by the applicant within the prescribed period of limitation. Accordingly, MA 175/2009 shall also stand disposed of alongwith the OA.

Anil Kumar
(ANIL KUMAR)

MEMBER (A)

V.K.BALI
(V.K.BALI)
CHAIRMAN (J)

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