

10-12-2009


(6)

Mr. C.B. Sharma, Counsel for applicant

Heard learned Counsel for the applicant.

For the reasons dictated separately,
the OA is disposed of.


(B.L. Khatri)
M(A)


(M.L. Chauhan)
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 10th day of December, 2009

ORIGINAL APPLICATION No.423/2009

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

S.N.Gupta
s/o Shri Gajanand Gupta
r/o E-9/569, Chitrakoot Scheme,
Ajmer Road, Jaipur and presently
Working as Accounts Officer,
Telephone Exchange,
Jalore.

.. Applicant

(By Advocate: Mr. C.B.Sharma)

Versus

1. Union of India through its Secretary to the Govt. of India,
Department of Telecommunications, Ministry of
Communications and Information Technology, Sanchar
Bhawan, New Delhi.
2. Member Finance, Telecom Commission, Sanchar Bhawan,
New Delhi.
3. Chief General Manager, Telecommunications (BSNL),
Rajasthan Circle, Sardar Patel Marg, Jaipur

... Respondents

(By Advocate: .)

ORDER (ORAL)

The grievance of the applicant in this OA is against letter dated 2.4.2009 (Ann.A/1) whereby representation of the applicant regarding ad-hoc promotion to the grade of Assistant Accounts Officer w.e.f. 26.12.2000 was rejected by respondent No.1 and it has further been stated that the Telecom Department is not in a position to consider request of the applicant as he has permanently absorbed in Bharat Sanchar Nigam Limited (BSNL) w.e.f. 1.10.2000. It is further mentioned that the matter is required to be considered by the BSNL. According to the applicant, the matter relate to the Department of Telecom and the BSNL has no power to decide the same as it was Telecom Department who has passed order of ad-hoc promotion of junior persons vide OM dated 26th December, 2000 (Ann.A/4). The applicant in this OA has prayed that impugned order Ann.A/1 be quashed and direction may be given to the Telecom Department to consider case of the applicant for ad-hoc promotion w.e.f. 26.12.2000.

2. Briefly stated, facts of the case are that the applicant was promoted as Junior Accounts Officer (JAO) vide order dated 30.11.2009 (Ann.A/2). As can be seen from this order, the applicant was given promotion on the post of JAO notionally w.e.f. 1.1.2000 and he was to draw grade of JAO from the date he actually resumed the charge of JAO. From perusal of this order, it is also evident that although the applicant has qualified the Part-II

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examination of P&T JAO examination held in June, 1996, his promotion was deferred during the currency period of penalty and he was given such promotion on completion of currency of punishment. Since the applicant has not put in requisite years of qualifying service for promotion to the post of Assistant Accounts Officer, the persons junior to the applicant were granted promotion vide order dated 26.12.2000 on the post of Assistant Accounts Officer. The grievance of the applicant is that he has been allowed notional pay fixation w.e.f. 3.3.1997 in the cadre of JAO vide order dated 24.10.2001 (Ann.A/5), as such, he was also eligible for promotion which was granted to the persons junior to the applicant vide order dated 26.12.2000 (Ann.A/4). The applicant also made representation for ad-hoc promotion vide letter dated 4.9.2008 (Ann.A/7) after a lapse of about 7 years followed by another request dated 29.1.2009 (Ann.A/11). However, respondent No.1 vide impugned order Ann.A/1 informed that request of the applicant cannot be considered. The applicant has also stated that he was granted regular promotion vide order dated 27.8.2003 in the cadre of Assistant Accounts Officer instead of 2001 when his junior was allowed such promotion. It is on the basis of these facts the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. We have heard the learned counsel for the applicant at admission stage. We are of the view that the applicant is not entitled to any relief for more than one reason. Admittedly, the applicant was promoted as JAO w.e.f. 1.1.2000 vide order dated 30.11.99. However, the actual benefit was extended to the

applicant from the date of joining. As per the procedure in vogue for promotion to the post of Assistant Accounts Officer, as can be seen from DOT order No. 39-2/2000/SEA-II dated 22.6.2000 (Ann.A/3) on which reliance has been placed by the applicant, JAO who has completed 3 years of regular service in the grade of JAO was eligible for promotion. Admittedly, when junior person to the applicant was granted ad-hoc promotion on 26.12.2000 in the grade of Assistant Accounts Officer, the applicant has not put in 3 years of regular service in the feeder grade of JAO. Thus, the applicant cannot make any grievance regarding granting adhoc promotion to junior persons to the applicant who have put in requisite years of service in the grade of JAO. As can be seen from the order dated 24.10.2001 (Ann.A/5), person junior to the applicant were granted promotion in the cadre of JAO w.e.f. 3.3.1997 whereas the applicant could not be promoted because of currency of penalty and he was granted promotion notionally after expiry of currency of the period of punishment w.e.f. 1.1.2000, as can be seen from the order dated 30.11.99 (Ann.A/2). Thus, according to us, the person junior to the applicant who has put in 3 years of regular service as JAO has rightly been promoted to the post of Assistant Accounts Officer on ad-hoc basis whereas the applicant who has put in only one year of service in the feeder grade could not be promoted even on ad-hoc basis. The contention raised by the learned counsel for the applicant that since person junior to the applicant have been promoted, he was automatically entitled for promotion especially when the applicant

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was granted notional promotion w.e.f. 3.3.1997 vide order dated 24.10.2001 (Ann.A/5), cannot be accepted. As can be seen from para-4 of Ann.A/3, only those JAOs who have completed 3 years of regular service were required to be considered for promotion to the grade of Assistant Accounts Officer. No doubt, the instructions stipulate that where junior person has been considered for promotion, the official senior to them as per All India Gradation list may not be ignored for want of 3 years of regular service but such requirement has further been subjected to the condition that the senior official should have successfully completed his probation in the grade of JAO. At this stage, we wish to reproduce para-4 of the guidelines Ann.A/3 which thus reads:-

"4. It is clarified that while considering promotion of Junior Accounts Officer to the grade of Assistant Accounts Officers, in cases where Junior Officers, who have completed three years regular service, are considered for promotion to the grade of Assistant Accounts Officer, the official senior to them as per All India gradation list may not be ignored for want of three years regular service provided they have successfully completed their probation period in the grade of Junior Accounts Officer. However, in their cases a note may be inserted in the forwarding letter that these officials have not completed 3 years of regular service in JAO grade. Case of such officers who have completed three years regular service in the grade of JAO but have not undergone the basic training should also be considered by the DPC. While sending the DPC minutes it must be mentioned in the DPC minutes that the DPC is as in 1.1.2001."

4. Thus, from reading of the portion, as quoted above, it is evident that the requirement of 3 years regular service cannot be ~~exhausted~~ ^{insisted} in the case of senior official where junior official has become eligible for promotion provided the senior official has completed probation period in the grade of JAO. Thus, completion

of period of probation in the grade of JAO is necessary condition for promotion to the grade of Assistant Accounts Officer, even if the senior official has not completed 3 years of regular service. It may be stated that period of probation starts only when the person is appointed regularly to the post and notional promotion granted from back date cannot be taken into consideration for the purpose of probation period. Thus, even if for arguments sake, it is assumed that the applicant was granted pay scale of JAO in the year 1997 that will not make the applicant eligible for promotion to the post of Assistant Accounts Officer and such period cannot be taken into consideration for the purpose of computing probation period as well as for the purpose of regular service for promotion to the higher post. Thus, the applicant has not made out any case for grant of ad-hoc promotion to the post of Assistant Accounts Officer w.e.f. 26.12.2000. Even otherwise also, the applicant cannot be granted this relief at this belated stage especially when he stood already absorbed in the BSNL w.e.f. 1.10.2000. As per own showing of the applicant, the applicant was granted benefit of notional pay fixation vide order dated 24.10.2001 w.e.f. 3.3.1997 in the cadre of JAO. The applicant is basing his claim on this order. It all happened in the year 2001. The representation for the first time was made on 4.9.2008 (Ann.A/7) followed by reminder dated 29.1.2009. (Ann.A/11) and the applicant has filed this OA after a period of 9 years. Even on account of own conduct and laches the applicant is disentitled to any relief.



5. Thus, viewing the matter from any angle, we are of the view that the OA is bereft of merit, which is accordingly dismissed at admission stage.


(B.L. KHATRI)

Admv. Member

R/


(M.L. CHAUHAN)

Judl. Member