

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 19th day of May, 2011

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. ORIGINAL APPLICATION No.581/2009

With

Misc. Application No.380/2009

1. Ram Avtar s/o Shri Shoe Dan Singh R/o 18, Shiv Colony, Khatipura Road, Jhotwara, Jaipur, since retired as Sr.Section Supervisor O/o Principal General Manager, Telecommunication Department, Jaipur.
2. Hanuman Sahai Sharma S/o Shri Chhittar Mal Sharma, R/o Moriija Road, Chomu, District Jaipur. Since retired as Sr. Section Supervisor Office of Principal General Manager, Telecommunication Department, Jaipur.
3. Sh. Amar Singh S/o Shri Mam Raj Ji R/o Lok Nayak Vyas Colony, Near Barkati Masjid, Nahari Ka Naka, Shastri Nagar, Jaipur, Since retired as Sr. Section Supervisor Office of Principal General Manager, Telecommunication Department, Jaipur.
4. Shri G.M.Chhattani S/o Shri Mangha Ram Chhattani R/o 758, Ashok Chowk, Adarsh Nagar, Jaipur. Since retired as Sr. Section Supervisor Office of Principal General Manager, Telecommunication Department, Jaipur
5. Sh. Kalyan Sahai Shri Pokhar Ram ji R/o 3159, Chowkri Hazoori Topkhana, Naiyan ka Tiba, Near Sheetla Mata Temple, Jaipur. Since retired as Sr. Section Supervisor Office of Principal General Manager, Telecommunication Department, Jaipur
6. Sh. Kailash Chand Jhalani S/o Shri Ram Swaroop Jhalani, R/o Moriija Road, Chomu, District Jaipur. Since retired as Sr. Section Supervisor Office of Principal General Manager, Telecommunication Department, Jaipur.
7. Smt. Laxmi Devi aged about 46 years w/o late Shri Gopal Lal Saini, who was working as Chief Section Supervisor, Office of Principal General Manager, Telecommunication Department, Jaipur. R/o E-52-B, Roop Vihar, New Sanaganer Road, Sodala, Jaipur.

... Applicants

(By Advocate : Shri M.S.Gupta)

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Versus

1. Union of India through
Bharat Sanchar Nigam Limited,
Statesman House,
Barakhamba Road, New Delhi.
Through its Chairman cum Managing Director.
2. Chief General Manager,
Telecommunication Department,
Bharat Sanchar Nigam Limited.
Sardar Patel Marg, Rajasthan, Jaipur.
3. The Principal General Manager,
Telecom. District, Jaipur,
Bharat Sanchar Nigam Ltd.,
Jaipur -10.

... Respondents

(By Advocate : Shri Sandeep, proxy counsel for Shri Indrajeet Singh)

2. **ORIGINAL APPLICATION No.582/2009**

With

Misc. Application No.381/2009

1. Sh.Satya Narain Verma S/o Sh. Bura Mal Verma, R/o 2406, , Kodiwal Bhawan, Ghee Walon ka Rasta, Johari Bazar, Jaipur. Since retired as Chief Section Supervisor Office of Principal General Manager, Telecommunication Department, Jaipur.
2. Smt. Sudarshan Gupta W/o late Sh. M.L. Gupta, who was working as Chief Section Supervisor Office of Principal General Manager, Telecommunication Department, Jaipur, R/o 2/461, Jawahar Nagar, Jaipur.
3. Sh. Heera Lal S/o sh. Daulat Ram Ji R/o 3417, Chowkari Hazoori Topkhana, Kothi Kalayan Nala Mohalla, Jaipur, Since retired as Chief Section Supervisor Office of Principal General Manager, Telecommunication Department, Jaipur.

... Applicants

(By Advocate : Shri M.S.Gupta)

Versus

1. Union of India through
Bharat Sanchar Nigam Limited,
Statesman House,

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Barakhamba Road, New Delhi.
Through its Chairman cum Managing Director.

2. Chief General Manager,
Telecom Department,
Bharat Sanchar Nigam Limited,
Sardar Patel Marg, Rajasthan, Jaipur.
3. The Principal General Manager,
Telecom. District, Jaipur.
Bharat Sanchar Nigam Ltd.,
Jaipur -10.

... Respondents

(By Advocate : Shri N.S.Yadav)

ORDER (ORAL)

Since the question of law and facts in both the OAs is similar, they are being disposed of by this common order.

2. The applicants have filed these OAs praying for the following common relief :

- "a) That by an order it be declared that humble applicants are legally entitled to be promoted on the posts of Chief Section Supervisors in the pay scale of Rs.2000-3200 which was later on revised w.e.f. 1.1.96 as Rs.6500-10500 (BCR Gr.IV) with all consequential benefits w.e.f. the date their juniors were promoted.
- b) That applicants be allowed interest @ 12 % per annum on arrears of pay scale and all consequential benefits from the date it became due till the date be paid.
- c) Any other relief which the Hon'ble Tribunal thinks just and proper in the circumstances of the case in favour of the humble applicants may also be allowed.
- d) Cost of the OA be awarded to humble applicants."

3. In brief, facts of the case are that all the above applicants have been retired from the post of Section Supervisor as they were not allowed the pay scale of Rs.2000-3200 w.e.f. 17.1.1995, which was later on revised to Rs.6500-10500 w.e.f. 1.1.1996. The applicants came to know for the first time about the final gradation list dated 8.2.1999 in the last week of July,

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2006, when the judgement delivered by the Hon'ble High Court and the fact of dismissal of SLP came to their knowledge when applicant No.1 [in OA 581/2009] went to the office of respondent No.3, where it was brought to his notice that their juniors S/Shri S.R.Pathik and M.L.Bhatt vide order dated 7.7.2006 (Ann.A/1) have been given the benefit of pay scale of promotional post in BCR Grade-IV (10%). It was also transpired that the applicants' juniors filed OA 64/2000 [Ram Dayal & Ors. v. Union of India & Ors.] before this Tribunal, which was decided vide judgement dated 25.4.2003.

4. That order of the Tribunal dated 25.4.2003, passed in OA 64/2000, was challenged by the respondents by filing D.B.Civil Writ Petition No.1739/2004, which was dismissed vide order dated 24.3.2005, against which an SLP(C) No.CC 4108/2006 was filed before the Hon'ble Supreme Court, which was also dismissed vide order dated 10.7.2006.

5. That a gradation list was circulated vide memo No.ST-11/13/97-98/141 dated 8.2.1999, in which the applicants have been shown senior to S/Shri S.R.Pathik & M.L.Bhatt. The applicants have better right vis-à-vis their admitted juniors for getting the benefit of pay scale of Chief Section Supervisor w.e.f. the date their juniors were allowed the same vide impugned order dated 7.7.2006 (Ann.A/1).

6. When the applicants came to know about allowing the benefit of pay scale of Rs.2000-3200, revised to Rs.6500-10500 w.e.f. 1.1.1996, vide impugned order dated 7.7.2006 (Annex.A/1), they filed an OA (No.22/2008) before the Tribunal seeking relief that they are entitled to be promoted on the post of Chief Section Supervisor in the pay scale of Rs.2000-3200, which was later on revised to Rs.6500-10500 (BCR Grade-IV) w.e.f. 1.1.1996, with all consequential benefits and interest thereon. The Tribunal vide its order dated 29.8.2008 (Annex.A/7) disposed of the OA, alongwith other OAs, by holding that; " OAs are disposed of as this Tribunal has got no jurisdiction to entertain the matter".

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7. That the cause of action arose on 7.7.2006 when applicants' juniors S/Shri S.R.Pathik and M.L.Bhatt were allowed the benefit of the pay scale of Rs.2000-3200, which was later on revised to Rs.6500-10500 w.e.f. 1.1.1996, under office order dated 7.7.2006, read with the notice for demand of justice, is within the limitation prescribed under Section-21 of the Administrative Tribunal's Act 1985. Further, the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) issued a notification whereby the BSNL has been brought under the four corners of the Administrative Tribunal's Act 1985. Thus, vide notification dated 4.10.2008 the Tribunal has been vested with the jurisdiction to entertain the claims pertain to service matters of the BSNL employees. The delay, if any, may kindly be ordered to be condoned as there is sufficient ground to condone the same and claim of the applicants is legitimate and justified and well merited.

8. The respondents have filed their reply contesting the claim of the applicants. In the reply they have submitted that all the applicants have retired in between 1997 to 2001, whereas they have filed the present OA in the year 2009. As such, the present OA is barred by limitation and the same deserves to be dismissed only on the ground of delay and latches.

9. They have further submitted that the applicants were not in the purview of promotion to Grade-IV while in service. They retired in Grade-III /Sr. Section Supervisor and the junior persons viz. S/Shri S.R.Pathik and Shri M.L.Bhatt were promoted to Grade—IV on their turn on 22.8.2001 and 15.7.2002, whereas all the applicants retired before these dates. However, the promotions of S/Shri S.R.Pathik and M.L.Bhatt were revised to 17.1.1995, as per the order passed by this Bench of the Tribunal in OA 64/2000. However, the order passed by this Bench of the Tribunal in OA 64/2000 was applicable to the applicants in that OA only. The respondents

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have stated that the present OA has no merit and, therefore, it may be dismissed.

10. Heard learned counsel for the parties and perused the documents on record. The arguments were primarily heard on the ground of delay. The Hon'ble Apex Court in the case of ***D.C.S.Negi v. UOI and Ors.*** [*Special Leave to Appeal (Civil) 7956/2011*], decided on 7.3.2011, has held, as under:

*"A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, **it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3).**"*

11. The argument of learned counsel for the applicants that the applicants did not come to know about the gradation list dated 8.2.1999 at that point of time and they came to know about it only in the last week of July, 2006, is not sustainable because the similarly situated employees had filed OA 64/2000 before this Tribunal claiming the relief. The applicants in the present OA could also have agitated before the appropriate forum for similar relief, but they did not do so. Thus, the main cause of action arose with the publication of the gradation list dated 8.2.1999. For the sake of arguments, even if it is presumed that the applicants came to know about the gradation list dated 8.2.1999 in the last week of July, 2006, when the judgment was delivered by the Hon'ble High Court and the fact of dismissal of the SLP came to their knowledge, even then they did not agitate before the appropriate forum till they filed OA 22/2008 and OA 24/2008, which were admittedly filed after a gap of more than one year from the order dated 7.7.2006 (Annex.A/1). Thus, OA 22/2008 and OA 24/2008 were itself

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time barred even if the Tribunal had the jurisdiction at that point of time. The Tribunal vide its order dated 23.8.2008 disposed of these two OAs on the ground that the Tribunal had got no jurisdiction to entertain the matter as some of the applicants were employees of the BSNL. Even after this judgment, the applicants did not agitate the matter before the appropriate forum. The BSNL employees were brought under the purview of this Tribunal vide notification dated 4.10.2008, while the present OA was filed on 23.12.2009 which is also beyond the limitation of one year. Learned counsel for the applicants has not been able to satisfy the Tribunal for the reasons of delay on their part. Therefore, in view of the ratio laid down by the Hon'ble Apex Court in the case of D.C.S.Negi (Supra) both the OAs are barred by limitation and, therefore, the same are dismissed with no order as to costs.

12. In view of the order passed in the OAs, no separate order is required to be passed in MA 380/2009 (filed in OA 581/2009) seeking permission to file a joint application, and in MA 381/2009 (filed in OA 582/2009) seeking condonation of delay in filing the OA. Both the MAs are also disposed of accordingly.

13. As this is a common order, a copy of this order may also be placed in the case file of OA 582/2009.

Anil Kumar

(Anil Kumar)
Member (A)

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K.S. Rathore

(Justice K.S.Rathore)
Member (J)