

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

20.12.2011

TA 44/2009 (CWP 1764/2008)

Mr. C.B. Sharma, Counsel for applicant.
Mr. B.K. Pareek, Proxy counsel for
Mr. T.P. Sharma, Counsel for respondents.

On the request of the proxy counsel appearing on behalf of the respondents, list it on 05.01.2012.

Anil Kumar
(Anil Kumar)
Member (A)

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

aliq

05-01-2012

TA 44/2009 (CWP No. 1764/2008)

Mr. C. B. Sharma, Counsel for applicants.
Mr. T. P. Sharma, Counsel for respondents.

Heard.

The T.A. is disposed of by a
separate order on the separate-
sheets for the reasons recorded
therein.

Anil Kumar
[Anil Kumar]
Member (A)

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

Suman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 5th day of January, 2012

TRANSFER APPLICATION No. 44/2009
IN
S.B. CIVIL WRIT PETITION No. 1764/2008

CORAM :

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

1. Bhola Ram Yadav son of Shri Balu Ram Yadav, aged about 52 years, resident of Plot No. 69, Krishna Colony, Naya Kheda, Amba Bari. Presently holding the post of Senior Accountant and officiating on the post of Junior Accounts Office, Office of Principal General Manager, Telecommunication Department (Bharat Sanchar Nigam Limited) Jaipur (Rajasthan).

2. Kameshwar Tripathi son of Shri Sthi Nath Tripathi, aged about 55 years, resident of C-250, Gayatri Marg, Singh Bhoomi, Khatipura. Presently holding the post of Senior Accountant and officiating on the post of Junior Accounts Office, Office of Chief General Manager, Telecommunication Department (Bharat Sanchar Nigam Limited) Jaipur (Rajasthan).

3. Ramji Lal Khathi son of Shri Suwa Lal Khathi aged about 50 years, resident of Plot No. 27, Prem Colony, - Airport Circle, Tonk Road, Sanganer, Jaipur. Presently working as Junior Accounts Officer, Office of Chief General Manager, Telecommunication (Bharat Sanchar Nigam Limited) Jaipur (Rajasthan).

4. Sadhu Ram son of Shri Duli Chand aged about 52 years, resident of 25, Jyoti Nagar, 200 Feet Bye Pass Road, Alwar. Presently holding the post of Senior Accountant and officiating on the post of Junior Accounts Officer, Office of General Manager, Telecommunication Department, (Bharat Sanchar Nigam Limited) Alwar (Rajathan).

5. Phool Chand Khatkar son of Shri Veena Ram Khatkār, aged about 56 years, resident of Type-III-27, Telecom Colony, Bajaj Nagar, Jaipur. Presently holding the post of Senior Accountant and officiating on the post of Junior Accounts Officer, Office of Principal General Manager, Telecommunication Department (Bharat Sanchar Nigam Limited) Jaipur (Rajasthan).

6. Madan Lal Gupta son of Shri Kalyan Sahai, aged about 54 years, resident of H-9, Ram Nagar Extension, Sodala, Jaipur. Presently holding the post of Senior Accountant and officiating on the post of Junior Accounts Officer, Office of

Anil Kumar

Chief General Manager, Telecommunication Department
(Bharat Sanchar Nigam Limited) Jaipur (Rajasthan).

7. Ratan Lal Jatav son of Shri Nikku Mal, aged about 50 years, resident of 27, Telecom Colony, Kala Kuwa, South West Block, Alwar. Presently holding the post of Senior Accountant and officiating on the post of Junior Accounts Officer, Office of General Manager, Telecommunication Department (Bharat Sanchar Nigam Limited) Alwar (Rajasthan).

8. Bhagwan Singh Dhaka son of Shri Puran Ram aged about 52 years, resident of Village Medhwas, Post Mandawa, District Jhunjhunu. Presently holding the post of Senior Accountant and officiating on the post of Junior Accounts Officer, Office of General Manager, Telecommunication Department (Bharat Sanchar Nigam Limited) Jhunjhunu (Rajasthan).

9. Surendra Pal Singh son of Shri Bhanwar Singh aged about 53 years, resident of 76/53 A, Near Tagore NRI School, Shipra Path, Mansarovar, Jaipur. Presently holding the post of Senior Accountant and officiating on the post of Junior Accounts Officer, Office of General Manager, Telecommunication Department (Bharat Sanchar Nigam Limited) Jaipur (Rajasthan).

10. Ganga Vishan Meena son of Shri Mool Chand Meena aged about 50 years, resident of Plot No. 41/42, Narayan Vihar, Nagaljaia Bhora, Jhotwara, Jaipur. Presently holding the post of Senior Accountant and officiating on the post of Junior Accounts Officer, Office of Chief General Manager, Telecommunication Department (Bharat Sanchar Nigam Limited) Jaipur (Rajasthan).

... Applicant

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

Versus

1. Chairman & Managing Director, (CMD) Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi.
2. Assistant Director General (SEA), Bharat Sanchar Nigam Limited, Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi.
3. Chief General Manager, Telecommunications, (BSNL), Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur.
4. Chief Accounts Officer (CA), Bharat Sanchar Nigam Limited, Office of Chief General Manager, Telecommunications, Rajasthan Telecom Circle, Jhalana Doongri, Jaipur.



... Respondents

(By Advocate: Mr. T.P. Sharma)

ORDER (ORAL)

The applicant has filed this TA before the Hon'ble High Court thereby praying for the following reliefs:-

"It is, therefore, prayed that the Hon'ble Court may kindly call for entire record relating to the case of the petitioners from the respondents and after perusing the same:-

- (i) By an appropriate writ, order or direction the impugned action in connection with withdrawal of benefits of second financial upgradation and recovery be quashed and set aside with the memo dated 17.07.2007 (Annexure-18) with all consequential benefits.
- (ii) By an appropriate writ, order or direction, the respondents be further directed not to lower down the petitioners in Pay and allowances by revising the same and not to effect any recovery by quashing order dated 16.1.2006 (Annexure 11), letter dated 10.2.2006 (Annexure -12), show cause notice dated 21.12.2006 (Annexure -15), letter dated 25.6.2007 (Annexure -17) and letter dated 11.1.2008 (Annexure -21) with all consequential benefits and in case during pendency of writ petition any recovery has been made by the respondents in pursuance to aforesaid orders, the same may kindly be ordered to be refunded to the petitioners.
- (iii) Any other order which the Hon'ble High Court deems fit and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner.
- (iv) Cost of the writ petition may kindly be awarded in favour of the petitioner.

2. Hon'ble High Court vide its order dated 21.08.2009 had transferred this petition to this Tribunal.

3. The main controversy involved in this TA is that the applicants were allowed the benefit of second financial upgradation under the ACP Scheme on completion of 24 years of service on provisional basis (Annexure A/8). But

Anil Kumar

subsequently the benefit of financial upgradation were withdrawn vide order dated 16.01.2006 (Annexure A/11) on the ground that applicants have already got two promotions first one on the appointment of UDC/Jr. Accountant and second on the appointment to the post of Sr. Accountant and, therefore, the provisions of ACP Scheme would not be applicable on the applicants.

4. Heard learned counsel for the parties and perused the relevant documents on record. Learned counsel for the applicant argued that applicants were initially appointed as Telecom Accounts Clerks from 1976 to 1979. Subsequently, the respondents issued order for creation of post of UDC by conversion of the post of Telecom Accounts Clerks. The applicants were placed in the UDC scale Rs.330-560 at the minimum stage of Rs.330/-. The applicants were given 'in situ' upgradation without change of any duties and responsibilities. These orders were issued on 13.07.1982 (Annexure A/4). Vide order dated 02.02.1988 (Annexure A/6), the post of UDC was changed to Junior Accountant. In 1988, the applicants were promoted as Senior Accountants. Thus the applicants have been given only one promotion and the contention of the respondents that the applicants have given two promotions is not based on facts. The applicants were given the benefit of second financial upgradation under the ACP Scheme on completion of 24 years of service on provisional basis on 25.10.2002 (Annexure A/8) but subsequently wrong interpretation of

Anil Kumar

the upgradation of the post to UDC was treated as promotion and the respondents withdrew the benefit of subsequent financial upgradation vide order dated 16.01.2006 (Annexure A/11). The applicants aggrieved by the action of the respondents approached Hon'ble High Court of Rajasthan and the Hon'ble High Court vide order dated 06.11.2006 (Annexure A/14) decided the writ petition and quashed the orders dated 23.06.2005 (Annexure A/10) and order dated 16.01.2006 (Annexure A/11) and directed the respondents to comply with the principles of natural justice because no show cause notice was given to the applicants before passing the impugned order dated 16.01.2006. In compliance of the orders of the Hon'ble High Court, the respondents served show cause notice for withdrawal of the benefits of the second financial upgradation and for recovery without mentioning any reasons and also on the basis of the orders those already set aside by the Hon'ble High Court in the said writ petition. The applicants represented against the show cause notice with the request that the status in situ in the cadre of UDC cannot be treated as promotion. However, the respondents rejected the request of the applicants taking into consideration of the orders already set aside by the Hon'ble High Court and the respondents did not consider that UDC cadre was not promotional cadre to the cadre of Telecom Accounts Clerk. The cadre of UDC was created by the respondents in the interest of administration and the applicants were placed in Situ without change of any duties

Anil Kumar

and responsibilities by placing them at the minimum of Rs.330/- of the scale of Rs.330-560/-. Learned counsel for the applicant also drew our attention to the clarification issued by the Government of India vide OM dated 18.07.2001 which clarified that

Doubt: Whether placement/appointment in higher scales of pay based on the recommendations of the Pay Commissions or Committees set up to rationalize the cadre is to be reckoned as promotion/financial upgradation and offset against the two financial up-gradation applicable under the ACP Scheme?

Clarification: where all the posts are placed in higher scale of pay, with or without a change in the designation; without requirement of any new qualification for holding the post in the higher grade, not specified in the Recruitment Rules for the existing post, and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded posts is not be treated as promotion/upgradation. Where, however, rationalization/restructuring involves creation of a number of new hierarchical grades in the rationalized set up and some of the incumbents in the pre-rationalized set up are placed in the hierarchy of the restructured set up in a grade higher than the normal corresponding level taking into consideration their length of service in existing pre/structured/pre-rationalized grade, then this will be taken as promotion/upgradation.

Where only a part of the posts are placed in the higher scale and rest are retained in the existing grade thereby involving redistribution of posts, then it involves creation of another grade in the hierarchy requiring framing of separate Recruitment Rules for the upgraded posts, Placement of existing incumbents to the extent of up-gradations involved, in the upgraded posts will also be treated as promotion/upgradation and offset against entitlements under the ACPs.

For any doubts in this regard, matter should be referred to the Department of Personnel and Training (Establishment 'D' Section) giving all relevant details.

Point of Doubt 2

Some employees have been allowed selection grade/ in situ promotions though these grades are not a part of the defined hierarchy. Whether this is to be considered as promotion for the purpose of ACPS? Also, what will be the situation if selection grade has been allowed in lieu of higher pay scale?

Clarification:

Mobility under ACPS is to be allowed in the 'existing hierarchy'. As such, if any selection grade/in situ promotion has been allowed to employees which is not a part of the hierarchy, it shall not be counted as promotion for the purpose of the ACPS. For illustration sake, junior engineers of CPWD appointed in the grade Rs.5000-

Anil Kumar

8000 are allowed the scale of Rs.5500-9000 on completion of five years of regular service and the scale of Rs.6500-10500 on completion of fifteen years of regular service. The scale of Rs.5500-9000 is not a part of the defined hierarchy for them. In such cases, the pay scale which is not a part of the hierarchy may be treated to have been withdrawn. However, fall in pay resulting out of this shall be protected by granting personal pay in the aforesaid direct entry grade to the adjusted against future increments. Moreover, as per Condition No. 13 of ACPS, such existing (previous) schemes would be discontinued with the adoption of ACPS. However in the case of common category of posts, the existing hierarchy in relation to a cadre would mean the prescribed grade recommended by the fifth Central Pay Commission."

Therefore, learned counsel for the applicant argued that the action of the respondents in connection with withdrawal of the benefits and further recovery are liable to be quashed and set aside. Learned counsel for the applicants also referred the following judgments:-

- (i) N.G. Prabhu & Another vs. Chief Justice and Another 1973 (2) SLR 251 [Kerala High Court]
- (ii) Patna University etc. etc. vs. Awadh Kishore Pd. Yadav and others etc. etc. 1994 (2) SLR 662 [Supreme Court of India]

He argued that the ratio laid down in these judgments is applicable in the present OA.

5. On the contrary, learned counsel for the respondents argued that the contention of the applicants that upgradation/conversion of the post of UDC did not invoke any change in day today duties and responsibilities is not correct. He further argued that appointments of Telecom Clerk to the post of UDC involve resumption of higher duties and responsibilities and pay was fixed under FR-22 (c). Further ad hoc UDC have been regularized as Junior Accountants through Departmental Promotion Committee and all the TA clerks were appointed in the scale of Rs.260-

Anil Kumar

480 and the post of UDC/Junior Accountant was in the scale of Rs.330-560/-. Therefore, the applicants were working in the lower scale as TA clerks were upgraded/promoted as UDC in the scale of Rs.330-560/-. Therefore, this will be treated as first promotion of the applicants. Then subsequently, they were given second promotion as Senior Accountant. Thus all the applicants have got two promotions and, therefore, the benefit of the second financial upgradation is not applicable to them with regard to promotion from TA Clerk to UDC in situ. It was argued by the learned counsel for the respondents that it was done only to avoid any transfer liability of the officials and to avoid any extra expenses and inconvenience of the officials. Therefore, the action of the respondents is as per the provisions of the ACP Scheme and is in accordance with the provisions on the subject. Therefore, this TA has no merit and it should be dismissed with costs.

6. Having heard the rival submissions of the parties and after perusal of the documents on record, we are of the opinion that the applicants have not been able to make out any case for our interference. It is not disputed that the applicant were initially working as Telecom Accounts Clerk in the grade of Rs.260-480. Subsequently, respondent department upgraded some posts to the post of UDC which was later re-designated as Junior Accountant. A bare perusal of Annexure A/4, which is the order dated 13.07.1982, by which the applicants have been given the

Anil Kumar

scale of UDC clearly shows that applicants were promoted on the post of UDC. Para nos. 3 & 5 of that order dated 13.07.1982 is quoted below:-


- "3. As the promotion of the officials as para 1 above to the cadre of UDC is purely adhoc and temporary, it does not confer on them any right for permanent absorption in the UDC cadre. The promotion of these officials to the cadre of UDCs on regular basis will be determined ordered after the finalization of recruitment rule for the said posts by P&T Board.
5. The adhoc and temporary promotion of the above officials to the cadre of UDCs will not in any way or in any case supersede or deprive the right for retrospective appointment/absorption in the cadre of UDCs to those officials who have been appointed regularly or on ad hoc basis to officiate against the 20% LSG posts earlier.

7. Moreover the post of UDC is in the scale of Rs.330-560 while the post of Telecom Clerk was in the scale of Rs.260-480. Thus, it is clear that the post of UDC was in the higher scale than the Junior TA Clerk. Therefore, the contention of the respondents that the applicants' first promotion was on the post of UDC is correct. The applicants have themselves admitted that they have been promoted as Sr. Accountant. Thus the applicants' promotion to Sr. Accountant has been correctly treated as second promotion by the respondents. Therefore, we find no infirmity in the action of the respondents in withdrawing the second financial upgradation given to the applicant and also making recovery from the applicants as a result of withdrawal of second financial upgradation under the ACP Scheme. That the clarifications, as referred to by the learned counsel for the applicants during the arguments, are not applicable in

Anil Kumar

the facts & circumstances of the present case. The applicants were promoted from the post of TA Clerk to the post of UDC. The ratio laid down by the Hon'ble High Court and the Hon'ble Supreme Court in the cases referred to by the learned counsel for the applicants are also not applicable in the facts and circumstances of the present case. Therefore, we are of the opinion that this TA has not merit.

8. Thus the TA being devoid of merit is dismissed with no order as to costs.


(Anil Kumar)
Member (A)


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

AHQ