

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 6th day of May, 2011

**Transferred Application No.52/2009
(CWP 1712/2008)**

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

C.L.Meena
s/o Shri Kajod Mal Meena,
r/o 26, Mahesh Colony I
Jagatpura, Jaipur, at present
Posted as Cable Construction,
PGMTD, BSNL, Jaipur

.. Applicant

(By Advocate: Shri Surendra Singh, proxy counsel for Shri
C.P.Sharma)

Versus

1. Union of India
through its Chairman Cum Managing Director,
Statesman House,
148, Barakhamba Road,
New Delhi.
2. Chief General Manager,
Bharat Sanchar Nigam Limited,
Telecommunication,
Telecom Circle, Jaipur

.. Respondents

(By Advocate: Shri Tej Prakash: Sharma)

ORDER (ORAL)

The applicant preferred a Writ Petition before the Hon'ble High Court which was registered as CWP No.1712/2008 and the Hon'ble High Court vide its order dated 30.10.2009 transferred the Writ Petition to this Tribunal for its adjudication in view of notification 21.10.2008. In the Writ Petition, the applicant claimed the following reliefs:-

"(a) That by appropriate writ, order, direction, instructions the respondents be commanded to allow/give the upgradation benefit to the petitioner on having completion of 4 years service as on 01.10.2004 with all consequential benefits without any break or loss and he be kept at par with other colleagues who have been given the benefit of upgradation benefit under office order dated 25.07.2007.

(b) That petitioner be allowed the interest on arrears of upgradation benefit @ 12% per annum w.e.f. the date 1.10.2004 till the benefit paid to him."

2. On 15.4.2011, when the matter was listed for hearing, the learned counsel for the applicant submitted that the controversy involved in this TA is squarely covered by the judgment of Rajasthan High Court (Jaipur Bench) in the case of Ram Khilari Meena vs. State of Rajasthan & Ors., reported in Western Law Cases (Raj.) 2911 (1) 220. A copy of the judgment was also supplied to the learned counsel for the respondents to study whether the controversy involved in this TA is covered by the judgment or not. The learned counsel for the respondents submits that the controversy involved in this TA is not squarely covered by the aforesaid judgment.



3. Be that as it may, we have heard the matter on merit. Brief facts of the case are that the applicant was serving as JTO in the erstwhile Department of Telecommunication and promoted as Sub Divisional Engineer on 21.8.2000. The applicant gave option for permanent absorption in Bharat Sanchar Nigam Limited (BSNL) and became permanent employee of the BSNL being Group-B officer.

4. The BSNL issued office memorandum dated 18.1.2007 (Ann.1) whereby time bound IDA scale upgradation policy was promulgated. The first upgradation of IDA scale of individual executive will be due for consideration on completion of 4 years of service in the current IDA scale subject to the condition that the Executive's basic pay in the current IDA scales has crossed/touched the lowest of the higher IDA scale for which his/her upgradation is to be considered.

5. The controversy arose when the applicant was denied upgradation benefit from SDE to Sr. SDE pay scale in terms of and under the scope of office memorandum dated 18.1.2007. It is alleged that the applicant has not been fairly, properly and genuinely screened for upgradation from the post of SDE to Sr. SDE pay scale. In the year 2001-02 the applicant was rated as 'Good', in the year 2002-03 as 'Fair', in the year 2003-04 as 'Very Good', in the year 2004-05 as 'Good' and in the year 2005-06 as 'Good'.

6. Vide office order dated 29.9.2006, the applicant was censured by the Chief General Manager Telecom. He was charge sheeted under Rule 14 of CCS (CCA) Rules, 1965 in August 2004. The matter was kept pending and finally it culminated into imposition of

punishment of 'censure' vide office order dated 29.9.2006 (Ann.A/3).

7. This is the only ground in the TA that the penalty of 'censure' cannot be taken into consideration while granting upgradation in the Sr. SDE pay scale and placed reliance on the judgment in the case of Shri Ram Khilari Meena (supra) and in the case of Union of India vs. K.Krishnan, reported in AIR 1992 S.C. 1898 wherein the Supreme Court observed that in case of minor punishment promotion is not given during the currency of the punishment and when the currency is over promotion is given. After placing reliance, the learned counsel for the applicant submits that the effect of imposing penalty of 'censure' on 29.9.2006 was not more beyond 29.9.2006 and that could not be taken into consideration for disallowing the applicant the benefit of upgradation from SDE to Sr. SDE as such the applicant is entitled for pay scale Rs. 13000-18250 on completion of four years service as on 1.10.2004. If the penalty of 'censure' is not made basis for dis-allowing the upgradation benefit to the applicant, then certainly, the applicant is entitled to get the same as being eligible in view of the office memorandum dated 18.1.2007.

8. Per contra, the learned counsel appearing for the respondents submits that as per policy dated 18.1.2007 the candidates who fulfill the condition of qualifying service of four years are only eligible for consideration by the screening committee to adjudge the suitability of candidates for upgradation on the basis of overall assessment of ACR, vigilance/disciplinary case



pending etc. In the present case, the applicant was served a chargesheet under Rule 14 of CCS (CCA) Rules, 1965 on 28.8.2004. As such on 1.10.2004, a disciplinary case was pending against the applicant. The pendency of disciplinary case or currency of punishment, if any, is also to be considered in addition to ACR criteria as per para 1(l)(c) (2) of policy dated 18.1.2007. The applicant's case was considered by the screening committee and the applicant was not found fit since disciplinary case was pending on 1.10.2004.

9. The learned counsel appearing for the respondents submit that the ratio decided by the Hon'ble High Court in the case of Ram Khilari Meena (supra) is not applicable to the facts and circumstances of the present case. It is further submitted on behalf of the respondents that a review DPC has also considered the case of the applicant and the review DPC held on 27.7.2009 has also recommended his case for IDA upgradation w.e.f. 30.9.2006 and since the applicant was found fit for promotion from SDE to Sr. SDE w.e.f. 30.9.2009 i.e. immediately after punishment of 'censure' awarded on 29.9.2006 and in view that, the benefit of upgradation is allowed to the applicant w.e.f. 30.9.2006. It is further stated that there was nothing bias against the applicant and the OA deserves to be dismissed.

10. We have heard the rival submissions of the respective parties and also carefully perused the material available on record as well as the office memorandum dated 18.1.2007 and the judgments rendered by the Hon'ble High Court in the case of Ram Khilari

(12)

Meena. Under Rule 33 of BSNL, Conduct, Discipline and Appeal Rules, 2006 in sub-clause (A) minor penalties have been mentioned and in (a) under sub-clause (A) the first penalty is 'Censure'. In the office memorandum dated 18.1.2007, the provisions relating to qualifying service conditions have been laid down, which are reproduced as under:-

"b.

1....

2....

3. Qualifying Service Conditions:

3.1 **FIRST upgradation:** The FIRST UPGRDATION of IDA scale of individual Executive will be due for consideration on completion of 4 (four) years of Service in the current IDA scale subject to the condition that the Executive's basic pay in the current IDA scale has crossed/touched the lowest of the higher IDA scale for which his/her upgradation is to be considered OR he//she has completed 6 years of service in the current IDA scale, whichever is earlier.

3.2 **SUBSEQUENT upgradation:** The subsequent upgradation of IDA scale to the next higher IDA scale will be due on completion of 5(five) years of service in the current IDA scale.

4. The qualifying service conditions indicated in sub para 3 above will only enable the Executive for "consideration" for upgradation to next higher IDA scale. Completion of such period alone shall not entitle any Executive for automatic upgradation to the next higher IDA scale.

5. The service rendered by any Executive in existing IDA pay scale in BSNL will only be counted for upgradation to next higher IDA scale.

c. Upgradation criteria:

1. **Review:** The review for all Executives meeting the qualifying service conditions of sub para b-3 above will be done every year with reference to Review date i.e. on 1st October. On being found fit, the IDA scale upgradation will be effective from the due date.



2. The fitness for IDA pay scale upgradation to the next higher IDA scale of the eligible executives will be judged by prescribed Screening Committee on the basis of performance rating of ACRs, as per details given in sub para 3 below, subject to necessary disciplinary/vigilance clearance and no punishment is current."

11. It is not disputed that the applicant was eligible for first upgradation but on account of penalty of 'censure' awarded to him, he was not considered on 1.10.2004 after completion of four years' service, but the same benefit was awarded to the applicant when he was found fit on 30.9.2006 by the screening committee as per rules.

12. Upon careful perusal of the aforesaid rules, we have to examine whether in the light of the judgment in Ram Khilari Meena (supra) relied upon by the applicant, when penalty of 'censure' is there, the applicant is eligible for upgradation or not. In the case before the Hon'ble High Court the controversy was with regard to promotion on the basis of seniority-cum-merit and as held by the Hon'ble Supreme Court in the case of B.V.Sivaiah and Ors. Vs. Kaddanki Basu and Ors., (1998) 6 SCC 729, for the purpose of promotion on the basis of seniority-cum-merit, seniority means the length of service and that among officers who were appointed on the same date and have the same length of service, seniority can have no bearing and promotion has to be made on a comparative assessment of merit of such officers. Further, the High Court observed that in view of settled position of law even if there existed any minor penalty or some minor adverse remark here and there,



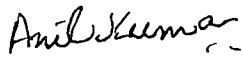
promotion could not be denied to the appellant because the criteria for promotion in this case was not entirely merit based but was on seniority cum merit where seniority has to be given more weightage as compared to merit. In that criteria, even penalty of censure could not be a ground to deny promotion to the appellant because what is to be seen is minimum necessary merit requisite for efficiency of administration and in that view of the matter, a senior person, even though less meritorious, shall have primacy in the matter of promotion and comparative assessment of merit is not required to be made.

13. The ratio decided by the Division Bench of the High Court in the case of Ram Khilari Meena (supra) is applicable to the present case also. It is not disputed that the applicant is eligible as per office memorandum dated 18.1.2007 but he was not considered due to penalty of 'censure' and it is also not disputed that penalty of 'censure' is minor penalty and just on the basis of penalty of 'censure' the applicant cannot be denied benefit of upgradation as the applicant is otherwise suitable and subsequently given the said benefit w.e.f. 30.9.2006.

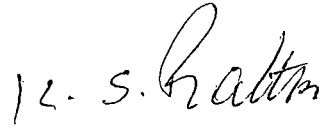
14. Thus, in our considered view, we deem it proper to direct the respondents to reconsider the case of the applicant as the applicant has completed requisite four years service on 1.10.2004 and as such his case for upgradation is required to be considered w.e.f. 1.10.2004 and after consideration the respondents shall pass necessary order in this regard.



15. With these observations, we allow the TA with no order as to costs.



(ANIL KUMAR)
Admv. Member



(JUSTICE K.S.RATHORE)
Judl. Member

R/