

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...

**ORIGINAL APPLICATION No. 060/01034/2014**

**Date of filing: 17.11.2014  
Order reserved on: 17.03.2016**

**Chandigarh, this the 28<sup>th</sup> day of March, 2016**

...

**CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J) &  
HON'BLE SMT. RAJWANT SANDHU, MEMBER (A)**

...

Inder Raj son of Sh. Sukh Ram, aged 61 years, resident of House No. 528, Prabhu Prem Puram, Ambala Cantt-133001.

....APPLICANT

BY ADVOCATE: SHRI ROHIT SHARMA

VERSUS

1. Union of India through the Secretary to the Government of India, Ministry of Communications & Information Technology, Department of Telecommunications, New Delhi.
2. Bharat Sanchar Nigam Limited, Sanchar Bhawan, New Delhi-1100001 through its Chairman & Managing Director.
3. Assistant General Manager (SEA), Bharat Sanchar Nigam Limited (A Govt. of India Enterprises), Corporate Office, SEA Section, 7<sup>th</sup> Floor, Bharat Sanchar Bhawan, New Delhi-110001.
4. Chief General Manager Telecom, Haryana Circle, 107 the Mall, Ambala Cant-133001.
5. Controller of Communication Accounts, CTO Building, Ambala Cantt-133001.

....RESPONDENTS

BY ADVOCATE: SHRI D.R. SHARMA FOR RESPONDETNS NO. 2-4.  
NONE FOR RESPONDENTS NO. 1 & 5.

**ORDER****HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER(J):-**

By filing this Original Application under Section 19 of the Administrative Tribunals Act, 1985, Inder Raj applicant has claimed the following relief:

"(1) Quash the order dated 3.5.2013 (Annexure A-1) to the extent the name of the applicant has not been included in the same for promotion and posting to the grade of DGM (JAG) Finance on ad-hoc basis w.e.f. date of CPC i.e. 30.4.2013 on actual basis and w.e.f. 1.1.2012 on notional basis and against the order dated 25.06.2013 (Annexure A-2), order dated 12.08.2013 (Annexure A-3) and order dated 30.05.2014 (Annexure A-4) vide which his request for promotion to the grade of DGM (JAG) Finance on adhoc basis w.e.f. date of DPC i.e. 30.04.2013 on actual basis and w.e.f. 1.1.2012 on notional basis promotion has been rejected without assigning any reason and by a cryptic routine order ignoring the fact that respondents themselves have been at fault and they cannot be allowed to take benefit of their own wrong.

(2) Issue direction to the respondents to promote him to the grade of DGM (JAG) Finance on ad-hoc basis w.e.f. date of DPC i.e. 30.04.2013 on actual basis and w.e.f. 1.1.2012 on notional basis with all the consequential benefits with all the consequential benefits including arrears of pay and allowances and revised retiral dues on that basis with arrears, with interest thereon @18% per annum from the date the amount became due to the actual date of payment."

2. Facts in the case are not very much in dispute. The applicant on promotion was appointed as Chief Accounts Officer (CAO) w.e.f. 24.09.1997 in STS Grade on adhoc basis. Next promotion was to the post of Deputy General Manager (DGM) in JAG (Junior Administrative Grade). The applicant became eligible for the same on 01.01.2012. The respondents issued letters dated 14.08.2012 (Annexure A-5) and 15.02.2013 (Annexure A-6) for conducting CPC meeting for promotion from STS to JAG on adhoc basis. The CPC was held on 18.04.2013 and 30.04.2013 and approved the case of eligible/fit persons for promotion

vide minutes of CPC meeting dated 30.04.2013 (Annexure A-7). The applicant was included in the select panel. The applicant, however, retired on 30.04.2013. Promotion order dated 03.05.2013 (Annexure A-1) was issued after three days of retirement of the applicant and CPC proceedings. The said promotion order did not include the name of the applicant. The applicant submitted representation dated 28.05.2013 (Annexure A-8) seeking notional promotion w.e.f. 01.01.2012 and actual promotion from 30.04.2013. The said representation was rejected by the respondents vide order dated 25.06.2013 (Annexure A-2). The applicant then submitted detailed representation dated 12.07.2013 (Annexure A-10). The same was rejected vide order dated 12.08.2013 (Annexure A-3). The applicant again submitted representation dated 02.09.2013 (Annexure A-11) followed by representations dated 07.10.2013, (Annexure A-12), 09.10.2013 (Annexure A-13) and other letters. The applicant's claim was, however, again rejected vide order dated 30.05.2014 (Annexure A-4). The applicant has challenged all the aforesaid impugned orders Annexures A-1 to Annexure A-4 in the O.A. and has sought promotion to the Grade of DGM/(JAG) on adhoc basis w.e.f. 30.04.2013 on actual basis and w.e.f. 1.1.2012 on notional basis with all consequential benefits.

3. The respondents no. 1 & 5 (Union of India and Controller of Communication Accounts) in their reply submitted that the applicant is employee of Bharat Sanchar Nigam Limited (BSNL)-respondent no. 2 and there is no relationship of employee and employer between the applicant and the respondents no. 1 & 5.

4. Respondents no. 2 to 4 in their written statement submitted that no junior to the applicant was promoted prior to his superannuation on 30.04.2013. No right accrued to the applicant to claim promotion w.e.f. 01.01.2012 on notional basis and 30.04.2013 on actual basis. Various grounds pleaded by the applicant to support his claim have been controverted.

5. The applicant filed rejoinder to the written statement of respondents 2 to 4 and reiterated his version. He also relied on judgment of this Tribunal dated 06.07.2012 (Annexure A-22) in O.A. NO. 1298-PB-2011 titled 'K.K. Bhola Vs. Govt. of India and Others', upheld by Hon'ble High Court of Punjab and Haryana vide judgment dated 27.05.2013 (Annexure A-23) in CWP No. 11713 of 2013 titled 'Government of India and Others Vs. K.K. Bhola and Another'.

6. We have heard counsel for the parties and perused the case file.

7. Counsel for the applicant reiterated that the applicant became eligible for promotion w.e.f. 01.1.2012 and should be promoted from the said date on notional basis. It was also submitted that the applicant should be promoted on adhoc basis w.e.f. 30.04.2013 on actual basis being the date of CPC recommendations. It was pointed out that the applicant was found fit and eligible for promotion by the CPC vide proceedings (Annexure A-7), his name occurring at Sr. No. 48 in the select panel. It was pointed out that CPC in its meeting on 30.04.2013 considered vacancies for the years 2010, 2011, 2012 and 2013 while the applicant was still in service. Reliance was placed on judgment in the case of K.K. Bhola (supra) (Annexure A-22) as upheld by the Hon'ble High Court vide judgment (Annexure A-23).

8. On the other hand, counsel for the respondents pointed out that promotion is not granted retrospectively and is granted prospectively from the date of promotion order. In the instant case, promotion order dated 03.05.2013 was issued after approval of the competent authority on the same date and the applicant had already retired and, therefore, he could not be promoted. It was pointed out that no junior to the applicant was promoted prior to his superannuation. While issuing promotion order dated 03.05.2013, no retrospective promotion of the applicant could be ordered. Reliance has also been placed on judgment of Hon'ble Punjab and Haryana High Court in CWP No. 17079-CAT-2013 titled 'Union Territory, Chandigarh Administration and others vs. Tarlochan Singh and Others'.

9. We have carefully considered the matter. At the outset, it has to be noticed that the instant O.A. is barred by limitation. Impugned promotion order (Annexure A-1) was issued on 03.05.2013. The applicant preferred representation dated 28.05.2013 (Annexure A-8) staking promotion as claimed in the instant O.A. The said representation was rejected vide order dated 25.06.2013 (Annexure A-2). The O.A. should have been filed within one year thereafter i.e. upto 25.06.2014, but has been filed on 17.11.2014 i.e. after expiry of the limitation period. No application for condonation of delay in filing the O.A. has either been moved. According to Section 3 of the Limitation Act, 1963, relief to a litigant has to be denied if barred by limitation, even if bar of limitation is not set up as defence. In the instant case, therefore, claim of the applicant being barred by limitation has to be refused. Successive representations made by the

applicant and the consequently successive rejection orders would not extend the limitation period.

10. On merits also, the applicant cannot succeed. If DPC for promotion is required to be convened on yearly basis and is not so convened, then direction for promotion in the concerned year can be granted even if the employee retired subsequently. Proposition to this effect has been upheld in judgment Annexure A-22 and Annexure A-23 in the case of K.K. Bhole (Supra). However, in the instant case, promotions in BSNL are not done on yearly basis. It is done as and when competent authority decides to make the promotions. No junior to the applicant was promoted before his superannuation. Had it been so, then the applicant could stake claim for promotion from the date of promotion of his junior. On the other hand, promotions are made prospectively. In the instant case, promotion was made vide order dated 03.05.2013 and by then, the applicant had already retired on 30.04.2013. He cannot stake claim for promotion merely on arising of vacancy or on being eligible for the same. On the other hand, an employee has simply a right to be considered for promotion when the employer decides to effect promotion. An employee has no right to be promoted, but only has right to be considered for promotion as and when promotion is sought to be made. This view finds support from judgment in the case of Tarlochan Singh (Supra). Consequently, in the instant case, the applicant has no right to claim promotion w.e.f. 01.01.2012 merely on becoming eligible for the promotional post or merely on occurrence of any vacancy. He had right to be considered for promotion at the time the promotions were made. He was accordingly considered, but before issuance of the promotion order,

the applicant had already retired and, therefore, he could not be promoted. He also has no right to claim promotion from the date of CPC proceedings. On the other hand, CPC proceedings have to be approved by the competent authority and then promotion orders are issued. In the instant case, CPC proceedings dated 30.04.2013 were approved by the competent authority on 03.05.2013 and on the same date, promotion order dated 3.05.2013 (Annexure A-1) was issued. However, the applicant could not be promoted in the said order having already superannuated.

11. In the aforesaid context, it may be noticed that according to applicant's own version, vacancies for the years 2010, 2011, 2012 and 2013 were considered for promotion in CPC convened on 18/30.04.2013. It would mean that many other eligible persons also must have retired since the year 2010 till the promotion order dated 03.05.2013. However, they cannot stake claim for retrospective promotion merely because vacancies existed while they were still in service.

12. For the reasons aforesaid, we find no infirmity in the impugned orders. Claim of applicant for retrospective promotion is unfounded and untenable. The O.A. is devoid of merits and is accordingly dismissed, with no order as to costs.

  
(JUSTICE L.N. MITTAL)  
MEMBER (J)

  
(RAJWANT SANDHU)  
MEMBER (A)

**Dated: 28.03.2016**

'SK'



26  
80

CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH, SECTOR-17,  
CHANDIGARH.

SUBJECT:- Particlars of orders challenged in the Hon'ble High COURT  
OF PUNJAB AND Haryana Chandigarh.

PUC is a notice received from the Hon'ble High Court of Punjab and Haryana, Chandigarh in C.W.P.No. 11958/2016 title Fisher Roj Versus U.S. J. 4085 filed against the CAT order dated 28.02.16 in O.A.No 060/1034/14 passed by the Hon'ble Bench consisting of Hon'ble Mr. Justice L.N. Mittal Member (J) and Hon'ble Mr. S. Rajwant Sengupta Member (A).

CAT has been impleaded as a party simply because the order under challenge was passed by it. No relief has been claimed against the CAT. No action is, therefore, required to be taken by CAT. We may file it.

Submitted for order please.

SECTION OFFICER(J).

DEPUTY REGISTRAR

REGISTRAR