

Reserved
(On 29.08.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **06th** day of **September** 2018

Original Application No. 330/00449 of 2015

Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Smt. Shobha Rani Rajvanshi, W/o Shri A.P. Rajvanshi, R/o 174/8 New Mehdauri, Teliarganj, Allahabad.

...Applicant
By Adv: Shri I.C. Mishra & Shri Sudama Ram

V E R S U S

1. Union of India through Secretary, Ministry of Communication, Department of Communication, Sanchar Bhawan, 20 Ashoka Road, New Delhi – 110001.
2. B.S.N.L. through Chief Managing Director (BSNL), B-148 Statesman House, New Delhi – 110001.
3. Chief General Manager, Tele Com (BSNL), C G M T Office, U.P. East Telecom Circle, Hazratganj, Lucknow – 226601.
4. General Manager, Telecom District (BSNL), C M D T Office, Allahabad.

... Respondents
By Adv: Shri Rishi Kant Singh

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

This Original Application (in short OA) has been filed with the following reliefs:-

- A. To, Issue, a Writ order or direction in the nature of certiorari to quash the order dated 03.03.2015 (Annexure A-1 to compilation No. 1) passed by Respondent No. 3.***
- B. To, issue a writ, order or direction in the nature of mandamus directing the respondents to grant similar benefit of promotion to Grade IV Telephone Operator from 1.1.1994 with consequential benefits as has been given to similarly situated persons of the department.***
- C. To issue further directions to the respondents to refund the recovered amount of Rs. 74324.00 along with interest @ Rs. 18% p.a. from the date of recovery to the date of actual***

refund and also retirement benefits and Pension may be directed to be revised as on 31.1.2006 and revised PPO be issued and arrears of pay and allowances, difference of retirement benefits and pension be directed to be paid to the applicant along with 18% interest from the date of due amount to the date of actual payment.

D. *To Issue another writ, order or direction in favour of the applicant as deem fit and proper in the circumstances of the case.*

E. *Award the cost of application in favour of the applicant."*

2. The facts as stated in the OA are that the applicant was working in Bharat Sanchar Nigam Limited (in short BSNL) as Telephone Operator and promoted to Telephone Operator Grade IV w.e.f. 01.01.1994 vide order dated 17.11.1998 passed by respondent No. 3. Subsequently, vide another order dated 16.09.1999 the promotion given to the applicant to the post of Telephone Operator Grade IV was cancelled by respondent No. 3 and also ordered for recovery of Rs. 74,324/- from the applicant.

3. Some of the employees along with Employees Association of BSNL agitated the matter before this Tribunal on 17.08.2000. This Tribunal in OA No. 1005/99 (Daya Shankar Tripathi and others vs. Union of India and others), vide order dated 17.08.2000 (Annexure A-5) quashed the order of cancellation by permitting the respondents to pass fresh order after providing opportunity to the employees. Being aggrieved with this order of the Tribunal, some of the employees went to Hon'ble Allahabad High Court in the Writ Petition No. 48717 of 2002 (Magghu Prasad Tiwari and others vs. Union of India and orders) and in the Writ Petition No. 18265 of 2003 (Sheo Ram Updhayay and others vs. Union of India and others). The Hon'ble Allahabad High Court vide common order dated 22.08.2005 (Annexure A-6) quashed the order passed by the respondents and the respondents were restrained to recover the amount from the petitioners.

4. The applicant retired on 31.01.2006, the excess amount was recovered from her retirement benefits. The applicant had submitted a representation dated 04.02.2006, requesting to promote her w.e.f. 01.01.1994 before finalizing retirement dues. However, it is stated that the respondents recovered the amount of Rs. 74324/- from the gratuity of the applicant.

5. The respondents challenged the judgment of Hon'ble Allahabad High Court dated 22.08.2005 before Hon'ble Apex Court. Hon'ble Apex Court vide order dated 10.09.2013 (Annexure A-10) dismissed the appeals filed by the respondents. Thereafter, applicant submitted an application dated 18.02.2014 to calculate their pension and retirement benefits as per the order of Hon'ble Apex Court and followed up with reminders and this representation was rejected by the respondents vide order dated 03.03.2015, which is challenged in this OA.

6. In the Counter Affidavit (in short CA) filed by the respondents, it is stated that the OA is highly barred by limitation, in view of the fact that the cancellation order of promotion issued in 1999 has been challenged in this OA in the year 2015. It was further stated that the applicant was erroneously promoted to BCR Grade IV vide order dated 17.11.1998 due to misinterpretation of the rules and Court judgments on the subject. It was further stated that order of Hon'ble Allahabad High Court and order dated 10.09.2013 of Hon'ble Apex Court have been implemented by the respondents in respect of the petitioners of those cases. The present application was not petitioner or party to those disputes and, hence, she is

not entitled to the same benefit. Hence, the applicant is not covered by the said judgment.

7. The applicant has filed his Rejoinder Affidavit (in short RA) denying the contentions made in the CA. It was stated that the respondents were duty bound to give similar reliefs, which were granted to the employees who were parties to the litigation before Hon'ble Apex Court and finally decided in favour of the employees. The applicant, being similarly situated employee is also entitled to the same benefit. It was also stated that by recovering the amount of Rs. 74,324/- from retirement dues of the employees was illegal since in case of similarly situated persons recovery was found to be illegal.

8. We have heard learned counsel for the applicant. He filed the following judgments in his support:-

- i. (2014) 8 SCC 883 – State of Punjab and others vs. Rafiq Masih (White Washer) etc. (Civil Appeal No. 11527 of 2014).*
- ii. 1997 SCC (L&S) 267 – Ashwani Kumar and others vs. State of Bihar and others.*
- iii. 2015 (2) (CAT) AISLJ 200 – Prabhat Chandra vs. Union of India & Ors.*
- iv. O.A. No. 1297 of 2014 (CAT, Allahabad Bench) – Vachas Pati Dwivedi vs. Union of India and others.*

9. Learned counsel for the applicant argued that the case of similarly situated employees has already attained finality with the orders of Hon'ble Supreme Court and the case of the applicant is squarely covered in the light of the pleadings in the OA and in the light of the judgments being relied upon by him.

10. Learned counsel for the respondents stressed the grounds that the applicant was not a party to the litigation before Hon'ble Apex Court and hence, she is entitled to the benefit, being not a party to the litigation. It was further argued that the OA is barred by limitation.

11. In this case the judgment dated 22.08.2005 (Annexure A-6) of Hon'ble Allahabad High Court has held as under:-

"The promotional scheme known as Biennial cadre Review Scheme was introduced to avoid stagnation by providing promotional avenues. The scheme further provided that 10% officials of Grade III would be promoted to Grade IV in the pay scale of Rs. 2000-3200 revised to Rs. 6500-10500. The department accordingly promoted officers on Grade III in 10% of BCR scheme on the basis of inter-se seniority of Grade III. By Circular Letter dated 10.10.1990 the department restructured the cadres and introduced the cadre of Senior Telecom Assistants (Functions/General/ Telegraphy) and by Circular Letter dated 22.10.1993 restricted those officials for their promotion to Grade IV under BCR Scheme, who had opted in the re-structured cadre. The ban imposed by Circular Letter dated 22.10.1993 was lifted by the Circular Letter dated 16.6.1997. Consequently even those officials, who had opted for re-structured cadre, became eligible for promotion in Grade IV under BCR scheme. The benefit of promotion was also provided to be given from the date from which it was given to the juniors in the old cadre as per their seniority in the basic grade of the old cadre subject to overall limit of 10% in grade IV.

After the judgement of the Principal Bench of the Central Administrative Tribunal, New Delhi dated 7.7.1992 was affirmed by Supreme Court on 9.9.1993, the department by its Circular Letter dated 2.9.1998 directed for creation of supernumerary posts to accommodate the officials, who were promoted in pursuance of Circular Letter dated 16.6.1997. The Central Administrative Tribunal as well as Supreme Court did not extend the limit of 10% promotions in BCR scheme. The department instead of reverting those juniors, who were promoted, exercised its discretion in terms of the liberty granted by the Central Administrative Tribunal by creating supernumerary posts. It is at this stage that the department committed a mistake by Circular Letter dated 13.12.1995 to grant promotions to the officials in Grade IV under the BCR scheme on the basis of their seniority and to review the cases of all the officials. By the impugned order dated 5.9.2002 passed after issuing show cause notice in pursuance of directions issued by Central Administrative Tribunal, Allahabad the department has considered the cases individually and found that the petitioners were not promoted to Grade IV at circle level on the basis of their inter-se seniority in Grade III. The petitioners could not be promoted in Grade IV (10%) of BCR scheme prior to 13.12.1995 and even after 13.12.1995 they were not eligible to be promoted to Grade IV on the basis of their seniority in the basic grade.

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There are no statutory rules regulating the promotions. All these promotions were provided by executive orders. The department may have made a mistake by promoting ineligible persons namely those who were not senior to the petitioners in gradation list on account of their opting in restructured cadres. However, once the department decided to protect their promotion by creating supernumerary posts and consequently provided for promotions of all those who were senior to senior promoted persons, the Rule of 10% of the BRC scheme for promotions stood relaxed. It is well known principle of law that where there are no statutory rules governing the service conditions, executive orders can be issued and that such executives orders can be amended or modified by subsequent executive orders. The department at the time of protecting the promotions of those who were not found eligible by the Principal Bench of Central Administrative Tribunal, New Delhi in its order dated 7.7.1992 confirmed by Supreme Court on 9.9.1993 decided to protect their promotions by creating supernumerary posts and further decided to remove the discrimination by providing promotions to all those who were senior to such persons, exempted 10% limit of BCR Scheme in promotion. The respondents have not brought to the notice of the court any violation of the service rules in giving promotions to the petitioners except that the petitioners were promoted by way of mistake as they were above the 10% limit of BCR Scheme. The department, however, has not been able to justify the discrimination which was sought to be remedied by promoting the petitioners. It is admitted that some of the juniors were promoted and that the department has protected their reversion by creating supernumerary posts. The department should have realized that such a decision will necessarily cause discrimination to the seniors in the basic cadres and will call for a further remedial action.

The petitioners were promoted subject to their selection through the Departmental Promotion Committee, which was thereafter held approved promotions of all the petitioners. The merit as such has not been compromised in making such promotions.

The Court further find that the equity also supports the petitioners. Almost all the petitioners except a few have retired. It would be unjust and inequitable to withdraw the benefits drawn by the petitioners much before their retirement from their death-cum-retiral gratuity. The fact that they have been given benefit of promotion retrospectively and have actually worked about one year also does not take away the equity which has come into play after the petitioners have retired.

It has been held by the Hon'ble Supreme Court in State of Orissa v. Adwait Charan Mohanty, 1995 Supp (1) SCC 470: 1995 SCC (L&S) 522; Union of India v. Sita Ram Dheer, 1994 SCC (L&S) 1445; Nand Kishore Sharma v. State of Bihar, 1995 Supp (3) SCC 722: 1996 SCC (L&S) 124; Stqte of Karnataka v. Mangalore University Non-Teaching Employees' Assn., (2002) 3 SCC 302 : AIR 2002 SC 1223 that if any additional payment, has been made to the employees for no fault of theirs they should not be penalized for that.

Both the writ petitions are consequently allowed. I find that the orders dated 6/12.9.2002 and the orders dated 5/16.9.2002 in Writ Petition No. 48717 of 2002 and the orders dated 20.11.2002 and 10.9.2002 in writ petition No. 18265 of 2003 reverting the petitioners to Grade III posts can not be sustained, and are accordingly quashed. The respondents are restrained from giving effect to these orders and to recover any benefits drawn by the petitioners."

12. The Hon'ble Supreme Court in its order dated 10.09.2013 (Annexure A-10) has held as under:-

"The orders passed by the appellant-Corporation canceling the promotion of the respondents were on the above rational quashed. An appeal preferred by the appellant-Corporation before the Division Bench having failed, the present appeals have been filed assailing the correctness of the orders passed by the Tribunal and the High Court.

We have heard learned counsel for the parties at considerable length who have taken us through the orders passed by the Tribunal in the earlier round of litigation as appellant.

So also the fact that most of the respondents, if not all, have already retired and some of them have even passed away is another reason why the order passed by the High Court does not call for any interference from this Court in exercise of our powers under Article 136 of the Constitution of India.

In the result these appeals fail and are, hereby, dismissed but in the circumstances without any order as to costs."

13. The main objections raised by the respondents are on account of delay and that the applicant was not a party to the litigation before Hon'ble High Court and Hon'ble Apex Court and hence, she was not be entitled for the same benefit extended to the parties to above cases.

14. Regarding both these issues, learned counsel for the applicant has filed the judgment of Allahabad Bench of this Tribunal passed in OA No. 1297 of 2014 – Vachas Pati Dwivedi vs. Union of India and others in which a similar case as the case of the present applicant, was decided. In OA No. 1297/2014 also, the ground of delay and latches in filing the OA was taken by the respondents in addition to the plea that the petitioner in that OA was not a party to earlier litigation before Hon'ble Allahabad High Court and Hon'ble Apex Court. With regard to these averments of the respondents, the Tribunal in OA No. 1297/2014 vide order dated 27.12.2016 in para 13 and 14 it was held as under:-

"13. After careful perusal of judgments relied upon by the respondents, we are of the view that non is applicable in the instant case. There is no delay or latches in filing the

petition by the applicant as the final verdict of Hon'ble Supreme Court came on 10.09.2013. The applicant firstly approached the department by filing representation on 17.02.2014 and when no action was taken by the department he filed this OA on 29.09.2014. As no undertaking was obtained at the time of revising the pay scale in 10% B.C.R. Grade-IV the judgment of Jagdev Singh (supra) is inapplicable in the instant case. There is no substance in the argument raised on behalf of respondents that the judgment dated 10.09.2013 pronounced by Hon'ble Supreme Court was judgment in personam and its benefit cannot be extended to the applicant as he was not the party to such litigation. Similar objection was raised by the BSNL in Civil Appeal No. 7946 of 2013 and it was contended that the benefit of protection against outsider was available to only such of the employees who were parties to the first round of litigation but Hon'ble Supreme Court while relying upon its earlier judgment has held that "the respondents having worked in the higher grade could not be reverted from the same without a lawful justification or any allegation that they had secured an underserved benefit by fraud or misrepresentation". While upholding the decision of High Court, Supreme Court has held that "the appellant corporation having granted promotion to the respondents with effect from the date their juniors in the basic Grade I were promoted to the Grade IV, there was no reason to undo the promotions. The grant of promotion and the creation of supernumerary posts were rightly held to be a step taken with a view of preventing miscarriage of Justice which was evident if a junior was picked up for promotion ignoring the claims of the senior." Thus, we are of the view that the judgment dated 10.09.2013 pronounced by the Hon'ble Supreme Court in Civil Appeal No. 7946 of 2013 is judgment in rem with intention to benefit all similarly situated persons irrespective of whether they had approached court or not and in such situation, obligation is cast upon authorities themselves to extend benefit to all similarly situated persons. Accordingly, the applicant is entitled to get same benefit which has been given to similarly situated persons.

14. *Accordingly, the OA is allowed and the impugned order dated 12.09.2002 is quashed and set aside. The respondents are directed to extend same benefit to the applicant as has been extended to similarly situated employees and pay him the consequential benefits within a period of two months from the date of receipt of this order."*

15. The case of the applicant is squarely covered by the order dated 27.12.2016 passed by this Tribunal in OA No. 330/01297 of 2014. In this case also after the representation dated 19.01.2015 was filed after the judgment dated 10.09.2013 and this representation dated 19.01.2015 (which was in addition to earlier representation dated 18.02.2014) was rejected by the respondents vide impugned order dated 03.03.2015. The averments about the submission of the representation dated 18.02.2014 in para 4.11 and 4.12 of the OA has not been denied by the respondents in

their para 16 and 17 of the CA. In fact the submission of representation dated 18.02.2014 has been mentioned in para 16 of the CA. Hence, like the case of the applicant in OA No. 1297 of 2014, in this case also the applicant has moved the respondents immediately after issue was settled by the Hon'ble Supreme Court on 10.09.2012 and filed representation. Hence, there was no delay. Secondly, the finding of this Tribunal in said para of the OA, para 13 of the judgment of Hon'ble Supreme Court was considered to be judgment in rem with intention that case of similarly placed employees, irrespective of the fact that they have approached the Court or not, was decided.

16. Following the above decision of this Tribunal vide order dated 27.12.2016, we allow this OA and set aside and quash the impugned order dated 03.03.2015 and direct the respondents to extend the same benefit to the applicant as has been given to other similarly situated persons, within a period of two months from the date of receipt of a certified copy of this order. There is no order as to costs.

(Rakesh Sagar Jain)
Member – J
/pc/

(Gokul Chandra Pati)
Member – A