

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **30th** day of **August, 2018**.

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J).

Original Application Number. 330/00803/2018.

Vivek Saxena, s/o Late Vijay Bahadur Saxena, age 36 years, R/o 12/13,
Civil Lines Near Biyaliani Kothi, District Bareilly.

.....Applicant.

VE R S U S

1. Union of India through Secretary, Ministry of Telecommunication,
New Delhi.
2. Principal General Manager (BSNL), Telecom District, Bareilly.
3. Assistant General Manager (Administration) BSNL, District
Bareilly.
4. Deputy General Manager (CFA), PGM TD, BSNL, District Bareilly.

.....Respondents

Advocate for the applicant : Shri R.P. Yadav
Advocate for the Respondent : Shri R.C. Shukla

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, A.M)

The applicant has filed this Original Application with the prayer for the following main reliefs:-

- (i)to issue an order or direction in the nature of certiorari for quashing the impugned order dated 07.06.2018 passed by Respondent Assistant General Manager (Administration), Bareilly, contained in the Annexure No. 1 to the Original Application.
- (ii)to issue an order or direction commanding the Respondents to permit the joining of the applicant on the promoted post (S.D.E.) (T) forthwith without any further delay permitting the applicant to function on

the said post and to pay the salary admissible to the Post.

- (iii). Issue an order or direction commanding the Respondents not to proceed further against the applicant in pursuance to the Chargesheet dated 16.05.2018 and to drop the entire proceeding by exonerating the applicant, in the better interest of justice.”

As an interim relief, the applicant has prayed to stay the effect and operation of the order dated 07.06.2018 (Annexure No. 1) by which the joining report of the applicant in a promotion post has not been accepted by the respondents.

2. Learned counsel for the applicant submitted that the applicant has been selected for promotion to the post of SDE (T) under 33% LDCE quota, vide the result declared by the respondents at page 59 to 61 of OA, in which the applicant's name is at Sl. No. 18. After declaration of the result, the office order dated 25.05.2018 (Annexure No. -8) has been issued by the respondents pursuant to which the applicant submitted his joining report on 26.05.2018. The grievance of the applicant is that when he submitted his joining report on 26.05.2018, his joining has not been accepted vide the impugned order dated 07.06.2018 and before rejecting his joining report, no opportunity of hearing was given to the applicant.

3. Learned counsel for respondents submitted that although the applicant had been selected for promotion vide the result and the order dated 25.05.2018 by which the Circle are to issue specific promotion order. For the applicant, the concerned circle has issued an order dated 26.05.2018, in which the applicant's name has been shown as withheld at Annexure No. 'A' because of the fact that there is a chargesheet which is pending vide memorandum of chargesheet dated 16.05.2018 (copy at Annexure No. 2 of the OA). He further submitted that since the applicant's promotion has been withheld because of the chargesheet, his joining report has not been accepted.

4. We have perused the documents on record as well the letter dated 26.05.2018, copy of which was filed by the respondents' counsel. In the order dated 26.05.2018 at Annexure No. 'A', against the applicant's name, it is mentioned as "withheld" implying the promotion has been withheld. It would have been more helpful if the respondent would have inform the reason to the applicant in the impugned order dated 07.06.2018, by which the joining report of the applicant has not been accepted. It is also seen that no order for promotion was issued to the applicant by the time he submitted his joining report and the order dated 26.05.2018 was not a promotion order for the applicant. No promotion order has been attached by the applicant with the OA. Hence, the submission of joining report on the part of the applicant was premature.

5. Learned counsel for the applicant submitted a copy of judgment of Hon'ble Supreme Court in State of Haryana Vs. Ramesh Kumar – 2008 (11) SCC 435 in which it is held that reasons should be indicated in the order. In this case, as stated earlier, it would have been appropriate, if the order dated 07.06.2018 would have indicated the reasons for which joining report of the applicant was not accepted. But the facts remain that the applicant had submitted joining report prematurely without receiving any order of promotion . Hence, it was liable to be rejected.

6. Under these circumstances, the OA is disposed of at this stage with a direction to the respondents to take appropriate action on the memorandum of charges as per rules so as to complete the disciplinary proceedings against the applicant within a period of four months from the date of receipt of copy of this order as per the provisions of law. No costs.

MEMBER- J.

MEMBER- A.

Anand...