

Central Administrative Tribunal
Principal Bench
New Delhi

C.P.No.608/2016
in
T.A.No.220/2009

Order Reserved on: 02.05.2017
Order pronounced on 15.05.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri K. N. Shrivastava, Member (A)

1. Shri S P Pandey (G.O. No.7796)
S/o Shri R Y Pandey,
R/o WZ-9/1, Gali No.5, Krishna Nagar,
M.B.S. Nagar, New Delhi-110018. ... Applicant No.2 in TA
2. Shri R.B. Gupta (G.O. No.7794)
S/o Shri Harbhuj Rai,
R/o 46/3, Krishna Colony, Samalkha
Panipat - 132101. .. Applicant No.5 in TA

(By Advocate: Shri B.K.Barera)

Versus

1. P.K.Kurwar, Chairman and Managing Director
Mahanagar Telephone Nigam Ltd.,
5th Floor, Mahanagar Door Sanchar Sadan
9, CGO Complex, Lodhi Road
New Delhi-110003.
2. Sunil Kumar, Director (HR)
Mahanagar Telephone Nigam Ltd.,
Mahanagar Door Sanchar Sadan
9, CGO Complex, Lodhi Road
New Delhi-110003. Respondents

(By Advocate: Shri Rajnish Prasad)

ORDER

By V. Ajay Kumar, Member (J):

The petitioners in the instant Contempt Petition, who were absorbed in the service of the respondent - Mahanagar Telephone Nigam Limited (in short, MTNL), in the cadre of Telecom Engineering Service (in short, TES Group `B') w.e.f. 01.10.2000 by Order dated 24.01.2004, and have been working in the Senior Time Scale (STS) of the Indian Telecommunication Service (ITS) as Group `A' officers since 1996, albeit on ad hoc basis, had filed TA No.220/2009, seeking a direction to treat them as regular Divisional Engineers w.e.f. the date of their ad hoc promotion with all consequential benefits. The said TA was allowed on 20.01.2010 as under:

"8. The Applicants have also been working in the STS of ITS Group `A' for over a decade. On their absorption in the Respondent MTNL also, they were appointed as Divisional Engineers although on ad hoc basis. Clearly, in these circumstances, the ratio laid down by the Honourable Supreme Court in N.S.K. Nayar (supra) would apply.

9. The brochure of the Respondent-MTNL to which advertence has been made also support this contention. In the circular dated 8.05.2000, included in the brochure it has been mentioned without any ambiguity that in the services where DPC could not be conducted for quite long time, officers promoted to TCHQ cadre will be treated in promoted cadre provided they have assumed the charge of higher cadre. The Applicants have been promoted on TCHQ orders. They had assumed the charge of the higher cadre, on which they had been working for a very long time. Although the Respondents have mentioned the possibility of conflict with officers of ITS Group `A', yet this has not at all been clearly brought out as to how, in the facts and circumstances of this case, there could be a conflict.

10. Considering the above facts and the judgement of the Honourable Supreme Court in N.S.K. Nayar's case (supra), the TA is allowed. The Applicants would be considered to have been promoted to ITS Group `A' service in Senior Time Scale at the time of their absorption in Respondent - MTNL. They would be eligible for all consequential benefits. No costs."

2. The WP(C) No.4936/2010, filed against the aforesaid Order of this Tribunal, was dismissed by the Hon'ble High Court of Delhi, vide its Order dated 25.02.2011.

3. The CP Nos.493/2011 and 508/2011, filed by the petitioners, were closed by this Tribunal by Order dated 16.08.2011 with liberty to revive or to file fresh CP, as the order of the Tribunal dated 20.01.2010 was stayed by the Hon'ble Apex Court vide its Order dated 29.07.2011, in Civil Appeal No.8982/2012.

4. The Civil Appeal No.8982/2012 filed by the respondents against the aforesaid Order, was finally disposed of by the Hon'ble Apex Court, vide its Order dated 29.09.2016, as under:

"On hearing the parties, including respondent no. 5 who appears in person, we are in agreement with the submissions advanced on behalf of the appellant that the Tribunal as well as the High Court erred in law in placing reliance upon the judgment in the case of N.S.K. Nayar (supra). The fact situation in the matter at hand was quite different. The relief which the respondents claimed was not by pleading that they had put in huge number of years on officiating basis and had been dealt with arbitrarily by DoT or MTNL in denying them regular promotions. To that extent, we have no hesitation in holding that the legal basis of the impugned orders is not correct. Still, the other contentions of the respondents is worthy of consideration on its own merit. Prima facie it appears that they exercise their option in favour of service under MTNL on a understanding that as per paragraph 3 of the Circular dated 8th May, 2000, MTNL shall give them the due advantage and their officiating promotion as per TCHQ Orders will be treated as regular promotions to the concerned cadre as they had assumed charge of the higher cadre. This aspect of respondents' case has totally escaped the required focus and attention of the Tribunal as well as the High court. Ordinarily, we would have set aside the order so as to remit the matter back to the Tribunal for fresh consideration in accordance with law, however, since all the respondents have now superannuated from service after serving not only on the concerned post of DE but in some cases even on higher posts, in our view, the matter requires to be given a quietus on account of aforesaid peculiar facts and circumstances. The law may be laid down correctly in any other appropriate case. The appeal is disposed of accordingly with a direction that the benefits already extended to the respondents as well as their pension already determined as per salary received and work done by them shall not be altered to their disadvantage. There shall be no order as to costs."

5. The MA Nos.3481/2016 and 3482/2016 filed by the petitioners seeking revival of CP No.508/2011 and CP No.493/2011 respectively in TA No.220/2009 were dismissed as withdrawn with liberty to file a fresh Contempt Petition, vide Order dated 23.11.2016 of the Tribunal. Accordingly, the instant CP has been filed.

6. Heard both the learned counsel appearing on behalf of their respective parties and perused the pleadings on record.

7. The learned counsel appearing for the respondents submitted that the Hon'ble Apex Court while holding that the orders of this Tribunal and of the Hon'ble High Court were erroneous, however, disposed of the Civil Appeal No.8982/2012 by Order dated 29.09.2016 with a direction that the benefits already extended to the respondents, who are the petitioners in the instant CP, as well as their pension already determined as per salary received and work done by them, shall not be altered to their disadvantage, and that they have fully complied with the said order.

8. The learned counsel for the respondents further submitted that the contention of the petitioners that the respondents have not complied with the orders of this Tribunal with regard to their promotion and consequential benefits, no longer survives in view of the *ibid* order of the Hon'ble Apex Court.

9. As rightly pointed out by the learned counsel for the respondents that the Hon'ble Apex Court while disposing of the aforesaid Civil Appeal, considering that the applicants in the TA have superannuated,

only directed the respondents that the benefits already extended shall not be altered to the disadvantage of the applicants in the TA. It is not the case of the petitioners in the CP that the benefits which were already extended to them are in any way altered to their disadvantage by the respondents.

10. In the circumstances, and for the aforesaid reasons, we do not find any merit in the CP and accordingly, the same is dismissed. No costs.

(K. N. Shrivastava)
Member (A)

(V. Ajay Kumar)
Member (J)

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