

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 1226/2010

New Delhi, this the 23rd day of July, 2016.

**HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE DR. BRAHM AVTAR AGRAWAL, MEMBER (J)**

1. A.K. Gupta,
S/o Shri K.C. Gupta,
R/o N-120, 1st Floor,
Greater Kailash-I,
New Delhi-110048.
2. Gurbax Singh,
S/o Late Shri Puran Das,
464, Dr. Mukharjee Nagar,
Delhi-110009.
3. A.K. Nagar,
S/o Late Shri S.N. Nagar,
R/o E-1/8, Malviya Nagar,
New Delhi-110017. Applicants

(By Advocate : Shri S.K. Tyagi)

Versus

1. Union of India, through
Secretary,
Department of Telecom,
Sanchar Bhawan,
20, Ashok Road,
New Delhi - 110001.
2. Bharat Sanchar Nigam Ltd.,
Through its Chairman-cum-Managing Director,
Bharat Sanchar Bhawan,
Janpath, New Delhi-110001. Respondents

(By Advocate : Shri Hilal Haider for R-1 and
Shri Alakh Kumar for R-2)

ORDER (Oral)**By Hon'ble Mr. P.K. Basu**

The only issue to be decided in this matter is whether when the applicant No.3, Shri A.K. Nagar, was asked to hold the charge of PCE (Arbitration) vide order dated 11.04.2007 and Sr. DDG, BW vide order dated 30.06.2008, both of which posts are in HAG scale, he is entitled to draw his salary in the HAG scale or not.

2. This matter had come up before this Tribunal earlier and dismissed on the ground of limitation. However, subsequently, when Writ Petition No.3027/2012 was filed, the Hon'ble High Court upheld the decision of the Tribunal vis-a-vis petitioner Nos.1 and 2, namely, Shri A.K. Gupta and Shri Gurbax Singh, but remitted the matter back to the Tribunal regarding petitioner No.3 – Shri A.K. Nagar, the present applicant, for consideration on the aspect of limitation, and in case the Tribunal feels that there is no bar of limitation, then examine the matter on merits.

3. The learned counsel for the applicant states that on an earlier occasion, the applicant was asked to look after the charge of Chief Engineer(C), while he was still Superintending Engineer(C) vide order dated 24.02.2003. He was also granted to draw the scale of pay of the post of Chief Engineer (C). However, later on, according

to the orders referred to above, when he was asked to hold the post of HAG, he was not allowed the HAG scale.

4. The learned counsel for the applicant also relied on the order of this Tribunal in T.A. No. 1212/2009 dated 05.04.2011 pertaining to the same department, but different post and also relying on judgment of the Hon'ble Supreme Court in **Selvaraj Vs. Lt. Governor of Island, Port Blair & Others**, (1998) 4 SCC 291 and Judhistir Mohanty Vs. State of Orissa and Others, (1996) VIII AD (SC) 733. The Tribunal held that the period for which the applicant in that O.A. was asked to hold the charge of Chief Engineer, the emoluments attached to the post of Chief Engineer should be paid to the applicant. The O.A. was challenged before the Hon'ble High Court in WP(C) No.8122/2011 and vide order dated 17.09.2013, the Hon'ble High Court upheld the order of the Tribunal.

5. The learned counsel for the applicant states that the ratio decided by the Tribunal, as upheld by the Hon'ble High Court in view of the law settled by the Hon'ble Supreme Court, is squarely applied in this case as well.

6. The learned counsel for the respondents argued that both in the order dated 11.04.2007 and 30.06.2008, it had been made clear that the look after charge would be without any extra remuneration and, therefore, the applicant cannot claim higher pay scale now

having aggrieved to hold the charge/higher responsibility without extra remuneration.

7. In reply, learned counsel for the applicant pointed out that in T.A. No.1212/2009, this issue had been raised and in that case the applicant was given the look after the charge without extra remuneration, but this argument was rejected by the Tribunal and later on by the Hon'ble High Court also. He also relies on the judgment of the Hon'ble Supreme Court in **Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others**, (1998) 5 SCC 87, in which the Hon'ble Supreme Court has held as follows:

“8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer-I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma holders available for promotion to the post of Junior Engineer-I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872.”

8. In view of the law clearly settled by the Hon'ble Supreme Court in the case of **Selvaraj** (supra), the O.A. is allowed and the respondents are directed to grant pay to the applicant in the Higher

Administrative Grade (pre-revised 22400-525-24500) with effect from the date of his entitlement, i.e. the date from which he actually held the additional duty o the higher post.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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