

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1254/2014
MA 1105/2014
MA 1962/2014

Reserved on: 28.04.2016
Pronounced on: 17.05.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

1. K.K. Yadav
S/o Late Shri Juglal Yadav
R/o Opposite Girls Primary School
Rajokri, New Delhi
2. Suraj Bhan Chauhan
S/o Shri Prem Raj
R/o Kh. No.136/9/2, Cross Road
Batra Gali, Sant Nagar (Burari)
Delhi-110084
3. Ravinder Singh
S/o Late Shri Netra Pal Singh
R/o H.No.5/239, Chiranjiv Vihar,
Ghaziabad, U.P.
4. Shesh Mani Mishra
S/o Late Shri Ram Surat Mishra
R/o H.No.C-8/100, Dayalpur,
Delhi-110094
5. Mangal Singh
S/o Late Shri Bhim Singh
R/o B-118, West Nathu Colony,
Gali No.2/7, Shahdara,
Delhi-110093
6. Lalit Mohan Pandey
S/o Late Shri Bholla Dutt Pandey
R/o 176-D, Pocket – F, MIG Flats
GTB Enclave, Delhi-93
7. Kewal Krishan
S/o Late Shri Bulaki Ram
R/o A-69, HIL Apartment, Sector – 13,
Rohini, Delhi-110085

8. Gajender Kumar,
S/o Late Shri Chandan Singh Negi,
R/o C-63, Sector-122, Noida

9. Guru Sewak Singh
S/o Late Shri Maha Singh
R/o F-150/1, Suman Colony,
Chhatarpur Extension,
New Delhi-110074

10. Lalit Kumar Tyagi
S/o Shri Giri Raj Singh Tyagi
R/o B-380, Patel Nagar-II
Ghaziabad, U.P.

11. M. Das S/o Late Shri S.N. Das
R/o G-1444, Chittaranjan Park,
New Delhi-110019

12. Satinder Singh Negi
S/o Late Shri R.S. Negi
R/o D-701, Plot No.9
Upkari Apptt., Sector-12
Dwarka, Delhi-110075

... Applicants

(Through Shri A.K. Mishra with Shri Ajay Tiware, Advocates)

Versus

1. Bharat Sanchar Nigam Limited
Through its Chairman/ Managing Director
Bharat Sanchar Bhawan, New Delhi

2. Chief General Manager (BSNL),
NTR, 2nd Floor, Kidwai Bhawan,
New Delhi

3. General Manager (Estt.),
Bharat Sanchar Nigam Limited
Harish Chandra Mathur Lane, Janpath,
New Delhi

4. Union of India
Through Secretary,
Department of Post, Dak Bhawan,
New Delhi

... Respondents

(Through Shri M.M. Sudan, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicants are working as Senior Telecom Assistant (STA) with the respondents. Their appointment was initially on the post of Telegraphist with the Department of Telecom (DOT) and later on they were sent on deputation to work in the Ministry of External Affairs (MEA) on the post of Upper Division Clerk (UDC) in the year 1992. After completion of deputation work in the MEA, the applicants joined back in the Central Telegraph Office, New Delhi in the year 1999.

2. On joining back in their parent cadre/unit, the applicants learnt that in the meantime all their juniors had got promotion and as a result, they had become senior to them. Being aggrieved, the applicants requested the department to give equal treatment by promoting them to the next higher post on the basis of their eligibility in the parent cadre and treating their services as continuous in the parent cadre. However, the applicants were appointed as STA (T) on 18.01.2001 after completion of their required training. The department also clarified that the applicants cannot get promotion as STA (T) during the period 2.08.1992 to 21.06.1999 during which period they were on deputation in the MEA.

3. The DOT vide circular dated 16.10.1990 informed all officers about introduction of New Operating Cadre for the post of STA and various other posts which was a new cadre structure

for landline computerized job and new technology. On 27.04.1994, the DOT introduced a new policy for preparation of new eligibility list and selection of panel for the restructure cadre in Group 'C' in which it is mandatory that an option is called for from the prospective officials who are willing to seek absorption in the restructured cadre.

4. Vide letter dated 20.08.2010, the respondents issued Non-Executive Promotion Policy (NEPP) for employees in the IDA pay scales of NE-1 to NE-10 of Bharat Sanchar Nigam Limited (BSNL) and further issued a clarification with direction to implement the policy immediately in accordance with the clarification relating to fresh option form as mentioned in that letter (Annexure A-4). This letter dated 20.08.2010 (incorrectly shown as 20.08.2011 in Annexure A-4) issued by BSNL has been filed by the applicants. This is relating to retrospective promotion in the cadre of STA. It was primarily regarding those officials who have been sent on deputation to MEA and as the information did not reach MEA, they had been deprived of financial benefits and promotional aspects. It was clarified through this letter that suitable orders may be issued for promotion of such officials to the restructured cadre retrospectively so that they may become eligible for upgradation under NEPP and are placed at par with all their batchmates in the matter of pay and promotions.

5. The applicants grievance is that since they were in the MEA, they never received this information of the restructured cadre and the necessity to fill up the option form. As such, they

never came to know of the new policy and hence could not opt for the new cadre. In support of their contention that MEA was never informed of this new policy, the applicants have filed Annexure A-5 dated 28.05.2011 issued by Bharat Sanchar Nigam Limited (BSNL) in which the following has been recorded:

"As per record, no information was provided to the officials deputed in MEA to submit options forms for Sr. TOA cadre under re-structured cadre scheme. Reasons for not sending the information to MEA are not available in the office record."

6. The applicants state that thereafter they have been regularly pursuing the matter with the department claiming that since the DOT never informed them of the new policy about restructured cadre and they did not get a chance to opt for it, they cannot be denied the benefit as it was not their fault and as a result they have now become juniors to those who were junior to them initially. It is stated that the department has still not taken a view to redress their grievances and hence this OA has been filed seeking the following reliefs:

- (a) The Respondents may kindly be directed to grant the promotion to the Applicants with effect from 2000 on the post of Sr. TOA along with their batch mates with all consequential and monetary benefit.
- (b) The applicants may kindly be granted a sum of Rs. 5 lakhs each as compensation for mental torture and harassment.

7. The first objection raised by the learned counsel for the respondents is that this OA is hopelessly barred by limitation and there is no justification for condonation of delay as the applicants themselves admit that they came back on completion of deputation from MEA in 1999 and got promotion as STA (T) in 2001. It was stated by the department that they cannot get promotion for the period during which they were on deputation in MEA. It has been argued that they should have approached in 2001 itself since they were fully aware that their juniors were promoted. They made complaint only after introduction of Non-Executive Promotion Policy (NEPP) in 2010 i.e. after about 10 years. They were placed as STA (T) in 2001 and the NEPP was introduced in the year 2010. Their placement as STA (T) was treated as first promotion under NEPP which affected them vis-à-vis their colleagues. The respondents also clarified that when the applicants went on deputation, they were working as Telegraphists in DOT and were deputed as UDCs to MEA. In the list supplied in reply to para 4 of the OA, the respondents have given details of the dates the 12 applicants joined MEA and came back to DOT. It would be seen that the date of return to DOT is between March, 1999 to 5.01.2004. Moreover, the respondents point out that the applicants Shri Mangal Singh, Shri Kewal Krishan and Shri Lalit Kumar Tyagi were all sent on deputation on 1.03.1996. Since restructure cadre scheme was announced in the year 1994, at least these three cannot claim that they were not aware of the said scheme. In fact, it is reiterated that even

after returning to DOT from MEA, there was no complaint about their not being informed of restructure cadre scheme of STA.

8. It is further explained that as per the restructure cadre scheme the applicants in the cadre of STA could be posted only after a mandatory training which is of four weeks. Since the applicants were all working in Indian High Commission/ Embassies abroad, they could not opt for STA and did not undergo mandatory training of four weeks. When they returned from MEA and opted for restructure cadre scheme, they were sent for four week mandatory training as per their turn and placed in STA cadre.

9. Learned counsel for the respondents states that the applicants had not made any protest between 2001 and 2011 and they complained only after introduction of NEPP, for reasons cited above. It is, therefore, prayed that the applicants do not now deserve to be placed in the STA cadre with retrospective effect along with their batchmates.

10. On the question of delay, the learned counsel for the applicants stated that they have been filing representations from the year 2011 onwards before the respondents and it is only when the respondents took no action that they were forced to approach the Tribunal. Therefore, there is no delay as such in their approaching the Tribunal and even if there has been a delay, that may be condoned because the action of the respondents has led to a continuous cause of loss of pay, seniority and promotion of the applicants.

11. We have heard the learned counsel for the parties and gone through the pleadings available on record.

12. It is not denied by the respondents that the DOT failed to intimate the applicants about 1994 Scheme and seek their option. This is clear even from the documents produced. Therefore, the respondents now cannot argue that since the applicants were holding higher pay scale of UDC and enjoying other perks and benefits in the Indian embassies abroad, there was no cause for them to come back to DOT and opt for the new cadre. This is purely speculative and the respondents cannot decide what the applicants would have done had they been given option at the right time. Thus by not communicating the scheme of 1994 to the applicants and hence denying them their right to opt for new scheme, the respondents indeed denied an option to the applicants, which was rightfully theirs.

13. The second question which arises is that since the applicants were aware of this denial to them in the year 2001 itself and, in fact, in case of the three applicants mentioned above, appointed in the year 1996, when they were going on deputation to MEA, the respondents argued that there is definitely delay of almost ten years. In fact, it is stated that the applicants even did not complain between the period 2001 and 2011. It is only after the respondents announced NEPP in 2010 that they protested.

14. However, as we have noted earlier, by denying them option in 1994, the respondents had actually deprived the applicants their higher pay, seniority and promotion which affects them continuously till date. In fact, it must have been quite humiliating for the applicants when they came back in 2001, to be placed below those persons who were junior to them in the initial cadre of Telegraphist and that has been gross injustice to them, which needs to be corrected, even if it is late in the day. Therefore, in the interest of justice, we do not consider it right to treat this OA as not maintainable on the ground of delay and we condone the delay, if any. In any case, depriving someone of higher pay, promotion and seniority is a continuous cause of action.

15. In our opinion, gross injustice has been caused to the applicants, which needs to be rectified. We, therefore, allow this OA and direct the respondents to grant promotion to the applicants to the post of STA from the date such promotion has been granted to their batchmates and refix their pay accordingly. However, all arrears in this regard would be payable to the applicants only from the date of filing of this OA i.e. 26.03.2014. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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