

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA 1324/2013

Reserved on : 23.02.2017
Pronounced on : 2.03.2017

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

Shri M.P. Sharma
S/o Shri Om Prakash
R/o 54, Godavari Apartments,
Alaknanda, New Delhi-110019Applicant

(Through Shri D.S. Chaudhary, Advocate)

Versus

Chairman & Managing Director
Mahanagar Telephone Nigam Limited
5th Floor, Doorsanchar Sadan,
9, C.G.O. Complex, Lodhi Road,
New Delhi-110003 ... Respondent

(Through Shri Vaibhav Kalra, Advocate)

ORDER

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

The applicant joined as Junior Engineer (JE) in the Department of Telecommunications on 11.01.1974. He was promoted to the post of Sub-Divisional Engineer (SDE) (Group 'B') in August 1993. He was further promoted to the post of Divisional Engineer (DE) (Group 'A') on local officiating basis with effect from 31.01.2002. He was appointed against the said post of DE on officiating basis with effect from 30.08.2008 and on regular basis with effect from 30.06.2009. He was

permanently absorbed in Mahanagar Telephone Nigam Limited (MTNL) with effect from 1.10.2000.

2. The respondents issued a Time Bound Promotion Policy (TBPP) vide notification dated 11.09.2007, according to which the eligibility for first financial upgradation is four years and for subsequent upgradation to the next higher scale on completion of five years of service in the current scale. The applicant's claim is that since he was in the E5 scale (DE) with effect from 31.01.2002, he was eligible for first upgradation after four years from E5 to E6 scale on 30.01.2006 and from E6 to E7 scale on 31.01.2011. When the respondents circulated order dated 6.01.2012 calling for ACRs of eligible officers for upgradation from E5 to E6 scale and the applicant found that his name was not there in the said list, he made a representation on 20.01.2012. Respondents replied vide letter dated 28.02.2012 indicating that the applicant was allowed E5 scale with effect from 13.08.2008 and hence he was eligible for E6 scale on 13.08.2013. The applicant alleges that ignoring his claim, the respondent granted E6 scale to 34 persons whereby five persons junior to him were allowed E6 scale with effect from 7.02.2012.

3. The applicant submitted representations dated 21.08.2012 and 26.10.2012 but did not receive any response. He has since retired on superannuation on 31.12.2012.

4. The applicant was informed vide letter dated 31.08.2012 that upgradation in E6 scale is due from 13.08.2013 since the applicant had been given E5 scale on 13.08.2008. Being

aggrieved by this action of the respondents, the applicant has filed the instant OA seeking the following reliefs:

- “8.1 The impugned order dated 31.08.2012 (Annexure A1) and the impugned clause “Further, IDA Scale granted to any Executive by virtue of any local officiating arrangement will not count for the purpose of IDA Pay Scale upgradation” mentioned in para 3 of General Conditions of Policy be quashed.
- 8.2 The respondent be directed to upgrade the applicant’s pay from E5 scale to E6 w.e.f. 31.01.2006 and E7 w.e.f. 31.01.2011.
- 8.3 The respondent be directed to release the arrears on account of upgradation with 18% interest.
- 8.4 Cost of the proceedings may be allowed.”

5. The grounds for seeking the reliefs are as follows:

- (i) The applicant has been drawing his pay in E5 scale continuously with effect from 31.01.2002 with annual increments from time to time and, therefore, he is entitled to E6 scale on completion of 4 years service with effect from 31.01.2006;
- (ii) “General Principle” of the TBPP circulated vide OM dated 11.09.2007 is as follows:

“I(d)3. For the purpose of counting service in the current IDA pay scale for any time bound upgradation, technical break periods in ad hoc arrangements ordered by DoT/DTS/DTO/MTNL will be treated as continuous for the limited purpose of counting of current IDA scale service period only without any other benefit, monetary or otherwise. Further, IDS scale granted to any executive by virtue of any local officiating arrangement will not count for the purpose of IDA pay scale upgradation”.

- (iii) According to the applicant, this is illegal, arbitrary, unconstitutional and violative of Articles 14 and 16 of the Constitution of India. It is argued that there is no reason as to why it should not be counted for the purpose of upgradation of pay scale while it is counted as continuous service for all purposes; and
- (iv) The respondents committed further illegality by not granting E6 scale to the applicant even from the date on which his juniors were allowed.

6. In their reply, the respondents stated that the applicant was given local officiating charge of DE for a period not exceeding 180 days and the said period cannot be counted for the purpose of pay scale upgradation in terms of Clause I(d)(3) of promotion policy cited above. It is further stated that the applicant was reverted to his substantive post of SDE at the end of 180th day. After a day's break, he was again promoted on local officiating basis by issuing fresh order after seeking vigilance clearance. He was finally granted the grade of DE on purely temporary and ad hoc basis with effect from 13.08.2008 i.e. in E5 scale and promoted on regular basis vide MTNL letter dated 4.08.2009. Counting from 13.08.2008, he is due for E6 scale with effect from 13.08.2013 by which date he had already retired from service.

7. The respondents have further pointed out that the applicant has also suppressed the fact that he submitted his self appraisal report *inter alia* for the period 24.09.2003 to

31.03.2004 to the Reporting Officer on 25.06.2007 subsequent to the date i.e. 7.02.2007 when the DPC was convened to consider eligible candidates for financial upgradation in E5 scale. Since his ACRs were not received, the DPC could not consider his case for financial upgradation on 7.02.2007. The delay in submission of self appraisal report is solely attributable to the applicant himself. Moreover, at that point of time, he did not agitate this issue. Once the ACRs for the relevant period were available, DPC was convened on 24.07.2008 and he was granted E5 scale on ad hoc basis.

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

9. The dispute is whether the period of 4 years has to be counted from 13.08.2008 or 31.01.2002. The language of the policy is that for first upgradation the executive will be due for consideration on completion of 4 years of service. Clause I (d)(3) of the promotion policy makes it clear that IDA scale granted to any executive by virtue of any local officiating arrangement will not count for the purpose of IDA pay scale upgradation. Though the applicant has stated that this is unconstitutional and violative of Articles 14 and 16 of the Constitution, he has failed to substantiate on what basis he states that it is violative of the above Articles. Moreover, it was not a continuous service as transpires from the facts placed before us. In fact, after 180 days, the applicant was reverted as SDE. Lastly, though he was

considered earlier, because of not submitting his self appraisal report, the DPC could not consider his case.

10. Therefore, viewed from all angles, the applicant's claim for granting him benefit of E5 scale with effect from 31.01.2002 is not made out. The OA is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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