

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.1362/2013

Order reserved on 26th November 2015

Order pronounced on 9th December 2015

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

Mr. R C Sen
Working as Joint GM
MTNL, Delhi Unit
Tax Building, New Delhi

..Applicant

(Applicant in person)

Versus

Mahanagar Telephone Nigam Ltd.
Through its

1. The Chairman & Managing Director
5th Floor, Mahanagar Doorsanchar Sadan
Mahanagar Telephone Nigam Ltd.
9 CGO Complex
Lodhi Road, New Delhi-3

..Respondent

(Mr. Saket Sikri and Ms. Neha Bhatnagar, Advocates)

O R D E R

Mr. A.K. Bhardwaj:

The applicant herein was appointed in Mahanagar Telephone Nigam Limited (MTNL) as Assistant Manager in terms of the offer issued vide letter No.MTNL/Pers/1(43)/89/1045 dated 29.9.1989 (Annexure A-2). He joined the service w.e.f. 01.11.1989, and got promotion as Deputy General Manager (Accounts) on officiating basis w.e.f. 08.03.2000 in the IDA pay scale of `17500-2230. He was promoted as Joint General Manager (Accounts) w.e.f. 23.05.2006. The prayer made by him in the present

Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 reads thus:-

“(i) to quash and set aside the impugned Order No.MTNL/CO/Pers-II/ MTNLMS-Promotion/11-12/230 dt. 24.04.2012 (Annexure-A1).

(ii) direct the respondents to implement the decision taken by MTNL Board of Directors on 09/02/2001 in its 144th meeting.

(iii) direct the respondents to grant the IDA pay scale in E-7 grade w.e.f. 1/10/2000 and further revisions in E-8 & E-9 w.e.f. 23/05/2002 and 23/05/06 respectively.

(iv) to grant the cost of the instant application;

(v) to grant any such further and other reliefs as may be deemed fit and proper in the matter.”

2. According to the applicant, who advanced his arguments in person, the respondent-MNTL should have treated his promotion as Deputy General Manager (Accounts) w.e.f. 22.08.2000 as regular and should have given him further promotions to E-7, E-8 and E-9 w.e.f. 08.03.2000, 08.03.2006 and 08.03.2007 respectively. He relied upon the Minutes recorded on 08.03.2002 to espouse that once the Departmental Promotion Committee (DPC), met in April 1999, had cleared his name for promotion to the post of Manager (E-6), the fault lies with the respondent if he was not given regular promotion to E-6 and further due promotions accordingly.

3. Mr. Saket Sikri, learned counsel for respondent commenced his arguments by submitting that the Original Application No.1361/2013 filed by the applicant seeking the same relief, as prayed in the present Original Application, could be dismissed as withdrawn in terms of Order dated 01.11.2013, thus the instant Original Application is barred by *res judicata*. He further explained that apparently the applicant has been granted IDA

pay scales at par with the absorbees from DoT at his own level and his actual grievance in the present Original Application is that for the purpose of giving him IDA pay scale at below board level, i.e., E-7, the officiating service rendered by him at E-6 should be taken into account. He further explained that in terms of O.M. dated 11.9.2007 issued by the MTNL, IDA scale granted to any Executive by virtue of any local officiating arrangement will not count for the purpose of IDA pay scale upgradation. With reference to MTNL Senior Management Services' Promotion Policy dated 30.06.2011, he submitted that the Group 'A' officers absorbed from Indian Telecommunications Service (ITS) Group 'A' and Indian P&T Accounts and Finance Service (IP&TAFS) Group 'A' forms part of their respective streams of MTNLMS and are ranked enblock senior in their respective grades to any Executive or Senior Management Trainee and higher level of respective streams, recruited or promoted by the MTNL in any grade.

4. We heard the applicant, who was present in person as well as his counsel and learned counsel for respondents and perused the record.

5. *Ex facie*, in terms of office order dated 08.03.2000 the applicant was given promotion as Deputy General Manager (Accounts) in the IDA pay scale of `17500-22300 (E-6) only on officiating basis. In terms of paragraph 3 of O.M. dated 11.09.2007 (ibid), relied upon by Mr. Saket Sikri, learned counsel for respondent, such service rendered by the applicant could not have been taken into account for the purpose of IDA pay scale upgradation. Paragraph I (d) (3) of the O.M. reads thus:-

“3. For the purpose of counting service in the current IDA Pay Scale for any Time Bound Upgradation, technical break periods in Adhoc 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, IDA Scale granted to any Executive by virtue of any local officiating arrangement will not count for the purpose of IDA Pay Scale Upgradation.”

By taking into account the date of his regular promotion as E-6, the respondent has given all consequential benefits due to the applicant.

6. In brief, the grievance espoused by the applicant in the Original Application is the date of his regular promotion as E-6. When the applicant was given regular promotion as E-6 only in the year 2002, without even seeking such relief specifically, he has sought issuance of direction to the respondent to treat him regular E-6 w.e.f. 08.03.2000. It is *stare decisis* that officiating / *ad hoc* promotion not made in accordance with the Rules cannot be reckoned for the purpose of seniority.

7. As far as counting of such service as qualifying service for the purpose of upgradation / promotion is concerned, the MTNL had made it clear that the officiating service cannot be taken into account for the purpose of upgradation. As has been explained by the learned counsel for respondent, the claim of the applicant for IDA pay scale at par with the absorbees from DoT is again based on the premise that he should be treated regular E-6 w.e.f. 08.03.2000. There is no such law, which provides for deemed regular promotion with effect from the date of promotion on officiating basis.

8. To the contrary, in **Baij Nath Sharma v. Hon’ble Rajasthan High Court at Jodhpur & another**, 1998 SCC (L&S) 1754, the Hon’ble Supreme Court categorically viewed that the promotion is effective either

from the date of assuming the charge of the post or the recommendations of the DPC, whichever is later. Relevant excerpt of the judgment reads thus:-

“8. The appellant could certainly have a grievance if any of his juniors had been given promotion from a date prior to his superannuation. It is not the case here. From the promotional quota, four promotions were made only on 30.12.1996 i.e., after the appellant had retired. Those promoted were given promotions from the dates the orders of their promotions were issued and not from the dates the posts had fallen vacant. It is also the contention of the High Court that these four officers, who were promoted to RHJS, were senior to the appellant as per the seniority list. The question which falls for consideration is very narrow and that is if under the Rules applicable to the appellant promotion was to be given to him from the date the post fell vacant or from the date when order for promotion is made. We have not been shown any rule which could help the appellant. No officer in RJS has been promoted to RHJS prior to 31.05.1996 who is junior to the appellant. Further decision by Rajasthan High Court has been taken to restore the imbalance between the direct recruits and the promotees which, of course, as noted above, is beyond challenge.

9. In *Union of India and Ors. v. K K Vadera and Ors.*, AIR 1990 SC 442 this Court with reference to Defence Research and Development Service Rules, 1970, held that promotion would be effective from the date of the order and not from the date when promotional posts were created. Rule 8 of those Rules did not specify any date from which the promotion would be effective. This Court said as under:-

"There is no statutory provision that the promotion to the post of Scientist 'B' should take effect from 1st July of the year in which the promotion is granted. It may be that rightly, or wrongly, for some reason or the other, the promotions were granted from 1st July, but we do not find any justifying reason for the direction given by the Tribunal that the promotions of the respondents to the posts of Scientists 'B' should be with effect from the date of the creation of these promotional posts. We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving

promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal."

9. Since the applicant cannot be presumed to be regular promote of E-6 w.e.f. 08.03.2000, the relief sought in the present Original Application cannot be granted. Even the plea raised by the respondent that the Original Application is barred by *res judicata* is also not without merit. The prayer made in the earlier Original Application, i.e. Original Application No.1361/2013 and the Order dated 01.11.2013 passed therein by the Tribunal read thus:-

"Prayer in O.A. No.1361/2013

- "(i) To quash and set aside the impugned Order No.MTNL/CO/ Pers-II/ MTNLMS-Promotion/11-12/230 dt. 24.04.2012 (Annexure-A1).
- (ii) To direct the respondents to grant the pay scale (E-6) of Rs.17500-22300 w.e.f. 8.3.2000 and grant pay scale (E-7) Rs.18500-23900/- w.e.f. 23.5.2002 and grant higher pay sale (E-8) i.e. Rs.20500-26500/- w.e.f. 23.5.2006 with all consequential benefits.

Order dated 01.11.2013

Learned counsel for applicant has filed this Original Application seeking the following reliefs:

- "(i) To quash and set aside the impugned Order No.MTNL/CO/ Pers-II/ MTNLMS-Promotion/11-12/230 dt. 24.04.2012 (Annexure-A1).
- (ii) To direct the respondents to grant the pay scale (E-6) of Rs.17500-22300 w.e.f. 8.3.2000 and grant pay scale (E-7) Rs.18500-23900/- w.e.f. 23.5.2002 and grant higher pay sale (E-8) i.e. Rs.20500-26500/- w.e.f. 23.5.2006 with all consequential benefits."

2. On notice the respondent has filed its reply.

3. However, today when the matter was taken up for further consideration, the learned counsel for applicant has submitted that

the applicant is not interested to pursue this case and wanted to withdraw it.

4. Accordingly, this Original Application is dismissed as withdrawn. There shall be no order as to costs.”

10. Apparently neither the pendency of the present Original Application was the ground or basis for withdrawal of the aforementioned Original Application nor was the applicant in the said Original Application given any liberty to press the present proceedings. The original cause of action espoused by the applicant could accrue to him on 01.10.2000 or at best at point of time when he was promoted regular E-6, i.e., in the year 2002.

11. In the wake, the present Original Application is also barred by limitation. In **Union of India & others v. A. Durairaj (dead) by LRs**, JT 2011 (3) SC 254, the Hon'ble Supreme Court ruled as under:-

“13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

14. This is a typical case where an employee gives a representation in a matter which is stale and old, after two decades and gets a direction of the Tribunal to consider and dispose of the same; and thereafter again approaches the Tribunal alleging that there is delay in disposal of the representation (or if there is an order rejecting the representation, then file an application to challenge the rejection, treating the date of rejection of the representation as the date of cause of action). This Court had occasion to examine such situations in **Union of India v. M.K.Sarkar 2010 (2) SCC 58** and held as follows:

The order of the Tribunal allowing the first application of Respondent without examining the merits, and directing Appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date for such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. It is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be the legal position and effect".

12. In view of the aforementioned, the relief sought in the present Original Application is nixed and the same is accordingly dismissed. No costs.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

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