

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

OA 2778/2014

Order Reserved on: 4.01.2016  
Order Pronounced on: 27.01.2016

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman**  
**Hon'ble Mr. P.K. Basu, Member (A)**

Vinay Kamal  
Aged about 62 years  
S/o Shri Baldev Raj Puri  
R/o AG-500, Shalimar Bagh  
Delhi-110088

.... Applicant

(Through Shri K.P. Gupta, Advocate)

Versus

1. Mahanagar Telephone Nigam Limited,  
Through its Chairman and Managing Director  
Mahanagar Door Sanchar Sadan  
9, CGO Complex, Lodi Road,  
New Delhi-110003
2. General Manager (Finance)  
Mahanagar Telephone Nigam Limited  
Khurshid Lal Bhawan  
Janpath New Delhi  
New Delhi-110050
3. Deputy Manager (P&A-1 HQ)  
Mahanagar Telephone Nigam Limited  
Office of the Executive Director, Telephones  
Khurshid Lal Bhawan  
Janpath New Delhi  
New Delhi-110050

.... Respondents

(Through Ms. Leena Tuteja, Advocate)

ORDER

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

The applicant was granted ad hoc promotion to the post of Chief Accounts Officer (CAO) vide order dated 8.03.2007 retrospectively with effect from 1.02.2007. The promotion was from E-4 Grade (Rs.14500-350-18700) to E-5 Grade (Rs.16000-400-20800). The applicant made a representation dated 25.10.2010 in which he pointed out that he should have been given one additional increment with effect from 1.02.2007 on grant of ad hoc promotion to the post of CAO but the same was rejected by the respondents on the ground that they did not receive the joining report, vigilance clearance and that the original Service Book of the applicant was not available. The respondents issued order dated 8.11.2010 in this regard. The applicant again requested for this correction on 14.02.2011 and the respondents again rejected his claim by a similar order dated 1.03.2011. The applicant, therefore, has filed this OA seeking the following reliefs:

- I. Directions to the respondent to grant the applicant the benefit of one additional increment on 1.02.2007 payable to him on his adhoc promotion to the post of Chief Accounts Officer in accordance with the clarification issued by the Corporate Office on 19.03.2010 as stated by the respondent No.03 in his order dated 8.11.2010 (Annexure A-1) and the order dated 1.03.2011 (Annexure A-2).
- II. Directions to the respondent to refix the pay of applicant at Rs.45210/- on 1.02.2007, Rs.46570/- on 1.04.2007 and fix thereafter on 1.04.2008, 1.04.2009, 1.04.2010, 1.04.2011 and 1.04.2012 accordingly by grant of regular yearly increment.

III. Directions to the respondents to pay the arrears of salary/ subsistence allowance w.e.f. 1.02.2007 to 31.08.2012 and revise the pension payable to the applicant with effect from 1.09.2012 on the basis of re-fixation of pay and also to pay the difference of pension.

IV. Award the cost of present petition."

2. The learned counsel for the applicant claims that according to his joining report (Annexure A-5, page 22 of the paper book), he had joined against the post of CAO (ad hoc) with effect from 1.02.2007 and, therefore, he should have been given the benefit of the office order dated 19.03.2010 of the Mahanagar Telephone Nigam Limited (MTNL), which provides for the following clarification:

S.No.	Situation that arose	Solution
6.	Whether the benefit of one increment provided in clause 1 (ii) (v) of the up gradation policy against regular promotions, be extended also in the case of "Post based Ad hoc promotion" to a particular post from a scale carrying the same scale?	Yes it can be granted.  However, it will be subject to the condition that (i) on subsequent regular promotion to the grade no financial benefit shall accrue to the employee; (ii) in case the employee happens to be reverted to the substantive post without regularization in the higher post, the additional increment shall automatically get withdrawn while switching over to the lower post.

3. According to the applicant, this clarification entitles him to the benefit of getting one increment. It is also argued that he has been promoted as DGM vide order dated 24.10.2007, which would establish that he had joined as CAO and more over that vigilance clearance was available. It is further stated that his

juniors namely Shri S.N. Mittal, Shri R.N. Jain and Shri K. Murli have all been given the benefit of one increment whereas he has been denied this benefit. In this regard, he has filed copy of reply dated 27.08.2014 by the MTNL to information sought by the applicant under Right to Information Act 2005. Thus, by not giving him the benefit claimed, he has been discriminated against.

4. The learned counsel for the respondents, first of all, drew our attention to letter dated 17.09.2008, which is on the subject of IDA Scale Upgradation of Executives under Time Bound Executive Promotion Policy under MTNL through which some executives were granted IDA scale upgradation from the IDA pay scale of Rs.14500-350-18700 to Rs.16000-400-20800 on completion of 4 to 6 years of service. Our attention is specifically drawn to the following provision of this letter:

"In case any disciplinary/ vigilance case is pending against the officers mentioned in the Annexure or where in respect of officers any punishment like stoppage of increment/ punishment etc. is current, the fact should be reported to this office and the officer should not be given IDA up-gradation.

xxxx                xxxx                xxxx                xxxx

No claim what so ever can be made by any Executive by comparison on grounds of seniority, class, community, cadre, stream etc. Further, except as provided in the Time Bound Promotion guidelines, no claim will lie on account of any of the other provisions of FRSR in the context of pay scales, pay fixation, substantive status etc.

xxxx                xxxx                xxxx                xxxx

Necessary charge reports may be sent to all concerned."

5. The name of the applicant appears at serial number 32 of annexure to this letter and tentative date of E-5 scale has been indicated as 1.10.2004. According to the respondents, the applicant failed to submit his joining (charge) report in the prescribed proforma to the Unit Officer immediately after the order was issued. There was sufficient time for submitting the joining report i.e. between 17.09.2008 till 15.06.2009, the latter date being relevant because the applicant was caught red handed in a CBI raid on 15.06.2009. He was put under deemed suspension with effect from 15.06.2009 i.e. the date of his detention. The applicant could submit a photocopy of the charge report without signature of his controlling officer after a lapse of almost two years, which was enclosed with his application dated 28.10.2011 addressed to the General Manager (West). This back dated report dated 17.09.2008 has been annexed at page 40 of the paper book. In view of non-furnishing of the relevant documents, the applicant was not given benefit of pay fixation in E-5 scale. The CBI case is stated to be still pending and, therefore, he could not be given vigilance clearance as on the date of giving his joining report.

6. As regards cases of S/Shri S.N. Mittal, R.N. Jain and K. Murli are concerned, it is stated that the question here is not that the applicant was junior or senior but whether as per instructions, he had submitted the charge report/ vigilance clearance on time.

7. The facts of the case are very simple. The respondents issued a time bound promotion policy. It stated that in order to get benefit of time bound promotion, the individual has to be clear from vigilance angle. Secondly, the charge report would have to be submitted duly countersigned by the competent authority. Those who fulfilled these requirements were given the benefit of upgradation and those who did not, could not be given the benefit of such upgradation as per rules.

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

9. The applicant's attempt to prove that he took over as ad hoc CAO on 1.02.2007 is belied as, on upgradation, as a consequence of letter dated 17.09.2008, the charge report by the applicant was never submitted on time but it appears that the same was submitted only on 28.10.2011 i.e. only after three years. The stand of the respondents on back dated report appears credible because the applicant has failed to show any document which may prove that he had indeed filed this document on time. By the time he filed the document, he was caught taking bribe by the CBI and was put under suspension. Clearly, when CBI case is pending, he cannot be given vigilance clearance and his case can now be considered only after the CBI case is decided, as per rules.

10. The applicant's reference to explanation no.6 of office order dated 19.03.2010 would not help him because this only states that benefit of increment would be applicable for ad hoc

promotions. It does not dilute the requirement of clearance from vigilance angle or production of charge report in any manner. Therefore, reliance on ad hoc charge report would not help the applicant's cause at all. Why the applicant made no move for a period of almost three years has not been explained at all and, therefore, he has to suffer the consequences of not being able to fulfill the conditions of the rules in order to get benefit of time bound promotion policy.

11. We, therefore, find no merit in the OA and it is, therefore, dismissed. No costs.

( P.K. Basu )  
Member (A)

( Syed Rafat Alam )  
Chairman

/dkm/