

**Central Administrative Tribunal
Principal Bench**

OA No.3517/2012

New Delhi, this the 11th day of September, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Shobhit Kumar, Aged 43 years, SE(Civil)
S/o K.B.L. Srivastav
Bharat Sanchar Nigam Limited
Vijayawada. ..Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

1. Bharat Sanchar Nigam Limited rep. by its
Chairman and Managing Director, BSNL
Corporate Office, New Delhi.
2. The Director (Human Resources)
Bharat Sanchar Nigam Limited
BSNL Corporate Office,
New Delhi.
3. The Executive Director (NB)
BSNL Corporate Office
New Delhi
Bharat Sanchar Nigam Limited ..Respondents

(By Advocate: Shri Alakh Kumar)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant joined the service of the Department of Telecommunications as Assistant Executive Engineer(A.E.E.). On 06.09.2005, he and several others were promoted to the post of Superintending

Engineer (Civil) on ad hoc basis. Thereafter, the BSNL was incorporated and substantial activities of the Department of Telecommunications were made over to it. The applicant opted to become an employee of the BSNL and he was absorbed therein, w.e.f. 01.10.2000 through order dated 13.10.2005.

2. While the applicant was in service of BSNL, the DoT issued a charge memo for minor penalty proceedings to him on 01.12.2005. On that basis, the applicant was reverted to the post of Executive Engineer on 18.03.2006. Challenging the order of reversion, the applicant approached the Madras High Court. Even while the Writ Petition was pending, the charge memo was withdrawn on 07.04.2006. The Writ Petition was closed, taking note of that fact.

3. A fresh charge memo was issued by BSNL on 31.10.2006 and on that basis, the punishment of censure was imposed on the applicant on 12.07.2007.

4. The applicant was issued an order dated 06.11.2008 through which he was promoted to the post of Superintending Engineer, on ad hoc basis, on the recommendations made by the DPC. This OA is filed challenging the action of the respondents in re-

promoting him w.e.f. 06.11.2008 instead of treating his promotion effective from 06.09.2005.

5. The respondents filed a counter affidavit opposing the OA. It is stated that the reversion of the applicant to the post of Executive Engineer was on account of issuance of charge memo dated 01.12.2005 issued by DoT and after that was withdrawn, another charge memo was issued by BSNL on 31.10.2006. It is stated that once the applicant has been imposed the punishment of censure, he cannot claim continuance of ad hoc promotion as Superintending Engineer. Other grounds are also urged.

6. Heard Shri M.K. Bhardwaj, learned counsel for the applicant and Shri Alakh Kumar, learned counsel for the respondents.

7. The only controversy in this case is as to whether the ad hoc promotion that was ordered in favour of the applicant through order dated 06.09.2005, deserves to be continued or whether the break that has been brought about by the respondents can be treated as valid. The ad-hoc promotion of the applicant as Superintending Engineer was ordered by the Department of Telecommunications along with several

others. He faced reversion on the basis of a charge memo issued by the DoT. Even while, the order of reversion was under challenge, the DoT realized its mistake and the charge memo was withdrawn. Naturally, that should have resulted in restoration of his ad-hoc promotion.

8. The BSNL is the actual employer of the applicant at the relevant point of time. It has a right to issue a fresh charge memo and in fact, it was issued on 31.10.2006. The reversion which was ordered on 10.03.2006, however, remained. The punishment was imposed on 12.07.2007. If the punishment of censure were to have any effect upon the service of the applicant, a separate order, in that behalf, should have been passed, in accordance with relevant provisions of law. However, no such action was taken. Almost in a reverse direction, the DPC considered the case of the applicant and recommended his case for promotion on ad hoc basis.

9. If the DPC did not treat the censure as a factor for denying promotion to the applicant, and on the other hand recommended his case for ad hoc promotion, there is absolutely no way, that the break that occurred

between the date of reversion i.e. 10.03.2006 and the date of subsequent promotion i.e. 06.11.2008, can be explained. There is no denial of the fact that the order dated 06.09.2005, through which the applicant and others were promoted on ad hoc basis initially, remained unchanged.

10. Therefore, we allow the OA and direct that the order dated 06.11.2008 shall be treated as one that had restored the ad hoc promotion of the applicant from the date of his reversion i.e. 10.03.2006. However, this order, cannot be construed as treating the promotion, either on regular basis or conferring any additional benefit upon the applicant vis-à-vis the other similarly situated persons. The applicant shall be treated at par with others who have been promoted on ad hoc basis on 06.09.2005. The pay of the applicant shall be fixed notionally but he shall not be entitled to any arrears of pay. There shall be no order as to costs.

(Aradhana Johri)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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