

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

OA-4045/2015

Reserved on : 02.08.2018.

Pronounced on : 25.09.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Vinod Kumar Khurana, 63 years
PA Retd.,
S/o Late Sh. Lakhi Ram Khurana,
R/o A-354, Vikas Puri,
New Delhi-110018.

.... Applicant

(through Sh. M.K. Bhardwaj, Advocate)

Versus

BSNL & Ors. Through:

1. The Chief Managing Director,
Bharat Sanchar Bhawan(BSNL),
Janpath, New Delhi.
2. The Chief General Manager (Maintenance),
Bharat Sanchar Nigam Ltd., Kidwai Bhawan,
Janpath, New Delhi.
3. The Chief Engineer (Civil),
External Project, CTS Netaji Nagar,
Near Sarojini Nagar DTC Depot.
4. The Principal Controller of Communication
Accounts,
DTO Building, Prasad Nagar,
New Delhi.

.... Respondents

(through Sh. R.V. Sinha, Sh. Amit Sinha and Sh. Vaibhav Pratap Singh,
Advocate for respondent Nos. 1, 2 & 3. Sh. Subhash Gosain,
Advocate for respondent No. 4)

ORDER

The facts of the current O.A. are that the applicant initially joined as Lower Division Clerk (LDC) in 1973, and was appointed as a Stenographer in 1977. The applicant was to be considered for promotion as Personal Assistant but he was not given any promotion and was considered for grant of financial upgradation under Assured Career Progression (ACP) Scheme vide order dated 06.09.2006 in the pay scale of Rs. 11875-17275.

2. The respondents issued an order dated 26.05.2008 (Annexure A-4) regarding restructuring of Stenographers and redesignating them as Pas and withdrawing the financial upgradation granted to them. The said order was challenged before Hon'ble High Court of Delhi in Writ Petition No. 4741/2008 by the applicant and his colleagues, which was transferred to the Tribunal and registered as TA-487/2009. Thereafter, the respondents vide order dated 15.05.2009 restored the financial upgradation of the applicant and other similarly placed persons. On 04.02.2010, the said TA was disposed of as having become infructuous since the impugned order was withdrawn by the respondents and recovery made was restored.

3. Vide order dated 25.10.2010, the applicant was granted the next higher scale of Rs.24900-50500, and the applicant retired from service w.e.f. 31.05.2012. The applicant kept agitating about non

payment of his pensionary dues, through representations dated 05.09.2012, 17.10.2012, 17.12.2012 and 15.02.2013 etc but all in vain. After retirement, the respondents were required to fix the pension of the applicant as per his last pay drawn. Instead, vide an order dated 01.04.2013, the respondents withdrew the restructuring/redesignation of Personal Assistant given by order dated 26.05.2008 in respect of the applicant and six others. Being aggrieved by the said order, the applicant filed an OA-1234/2013, which was allowed on 25.03.2014 with directions to the respondents to allow the financial benefits to the applicants as per order dated 12.09.2006 and 21.04.2009.

4. The applicant avers that the last pay drawn by the applicant was in the pay scale of Rs.24900-50500, but the respondents have fixed his pension in the pay scale of Rs.20600-46500, which is contrary to the rules, which stipulate that pension must be fixed as per the last pay drawn. The respondents failed to release the retiral dues of the applicant as per rules and to grant benefit to the applicant as done in the case of Mrs. Raksha Sharma who also retired as Personal Assistant like the applicant. The respondents, without assigning any reason, withheld his gratuity, leave encashment and group insurance. He has been paid pension and other pensionary benefits in April & May, 2015 but (arbitrarily) reduced pay scale.

5. Placing reliance on the case of (i) **D.V. Kapoor Vs. UOI & Ors.**, AIR 1990 SC 1923, and (ii) **FR Jesuratnam Vs. UOI & Ors.**, (1990) Supp. DCC 640, the applicant has filed the current O.A. seeking the following reliefs:-

- “(i) To direct the respondents to fix the pension of applicant as per the last pay drawn in the pay scale of Rs.24900-50500 and release the arrears with interest.
- (ii) To direct the respondents to pay interest @12% w.e.f. June 2012 till May 2015 on delayed payment of Pension arrears, Gratuity, Commutation etc.
- (iii) To direct the respondents to recalculate all the retiral benefits of the applicant on the basis of last pay drawn and make necessary payments with interest @12%.
- (iv) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.”

6. The respondents in their counter state that the applicant was granted first ACP in 1999 and second ACP in 2001 as per the then promotion policy. He was granted first and second up-gradations on the restructuring of cadre in the pay scale of Rs. 9850-14600 and Rs. 11875-17275, respectively, w.e.f. 01.01.2004. The Competent Authority decided to withdraw restructuring vide order dated 26.05.2008, hence re-designation of Personal Assistant, (Annexure R-2) and the benefits granted under EPP were withdrawn. Subsequently, the applicant was given an option to submit it under Non Executive Promotion Policy (NEPP) which he did not submit on time.

7. The applicant filed an OA-1234/2013 before the Tribunal against the orders dated 01.04.2013 & 04.04.2013 (withdrawal of benefits under NEPP). On receipt of the Tribunal's order dated 25.03.2014, an RA-130/2014 in OA-1234/2013 was filed, which was disposed of on 28.10.2014. Again a MA-3740/2014 in OA-1234/2013 was filed for removing some discrepancy, which was corrected vide Tribunal's order dated 12.03.2015. These factors led to unintended delay. However, pay of the applicant was re-fixed and orders to this effect issued on 19.03.2015. All the payments due to the applicant were paid on 01.04.2015 and the PPO was issued on 17.04.2015. The respondents state that as per Tribunal's order dated 28.10.2014, the applicant was allowed the pay scale of Rs.11875-17275 (pre-revised), which was revised to Rs.20600-46500 and was finalized in the month of April, 2015.

8. In the rejoinder filed by the applicant, it is emphasized that the retiral benefits of the applicant have been withheld for almost three years. The applicant reiterates that his last pay drawn was in the pay scale of Rs.24900-50500 and the Competent Authority never issued any order withdrawing the said pay scale, granted to the applicant, as a part of time bound promotional Scheme. The pension of the applicant was fixed in the lower pay scale of Rs. 20600-24600, which was in fact, never drawn by the applicant. The applicant states that his colleague, Smt. Raksha Sharma was also appointed as Steno and

was a Personal Assistant like the applicant and was granted pay scale under Time Bound Promotion Scheme. While Smt. Sharma was allowed to get pension in the last pay drawn instead of ACP benefit, the applicant has been denied the pay fixation as per his last pay drawn despite a favourable judicial order. He also submits that the respondents have not explained as to how the current O.A. is barred by resjudicata since he has never filed another O.A. showing fixing of his pay in the pay scale of Rs.24900-50500.

9. I have carefully gone over the facts of the case and rival submissions made by both side. I find that the reply filed by the respondents is silent on the allegations levelled by the applicant that a similarly placed employee Smt. Rekha Sharma, who retired as Personal Assistant like the applicant has been allowed to get the benefit of the last pay drawn by her despite withdrawal of ACP benefit whereas the applicant has been denied similar benefit of pay fixation, as per his last pay drawn. The contention of the respondents in their reply is that the applicant was allowed the pay scale of Rs. 11875-17275 (pre-revised), which was revised to Rs. 20600-46500. They seem to have circumvented the issue as to how the pension of the applicant has been fixed in the lower pay scale when no order withdrawing the pay scale of Rs. 24900-50500 granted to the applicant is on record. Rather, the applicant has submitted that he was never placed in the said pay scale. No clarification is

forthcoming from the respondents in this regard. The respondents were also duty bound to examine the claim of the applicant for grant of similar benefits as given to another similarly placed employee, Smt. Rekha Sharma.

10. The respondents have been doing a flip flop of granting and then withdrawing the financial benefits to the applicant leading to avoidable protracted litigation. Specific observations of the Tribunal in OA-1329/2013 with OA-1234/2013, exist wherein it was held that:-

"7. In the facts and circumstances of the case taking into consideration that applicants' is a dying cadre comprising only of five people and the respondents themselves have on two occasions granted them the benefit and the matter has been settled by the Courts once, we feel that the respondents are now estopped from reopening the case. We have no choice but to quash impugned orders dated 1.04.2013 and 4.04.2013. We order so and direct the respondents to allow the financial benefits to the applicants in terms of letters dated 12.09.2006 and 21.04.2009 with further direction that they will not recover any amount granted to the applicants in pursuance of grant of ACP benefit. This exercise should be completed within a period of two months from the receipt of a certified copy of this order. No costs."

11. Unfortunately, finality is still not in sight and the alleged discrimination has not been explained. In view of this backdrop, I have no option but to direct the respondents to examine the case of the applicant and refix his pension as done in the case of similarly placed employee Smt. Rekha Sharma. Consequential arrears wherever due must be released to the applicant as per law. The applicant may take up the issue of interest before the competent

authority after this issue is finalized. This exercise must be completed within a span of three months from the date of receipt of a certified copy of this order. The O.A. is disposed of with these directions. No costs.

(Praveen Mahajan)
Member (A)

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