

**Central Administrative Tribunal
Principal Bench**

OA No.4170/2014

New Delhi, this the 30th day of August, 2018

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

Shri Sunil Sharma, Senior DDG (Retd.)
Aged about 62 years, S/o Late Sh. R.M. Sharma
R/o 8/179, Satya Sadan
Sector-3, Rajindra Nagar
Sahibabad, Ghaziabad-201005, UP. ..Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

UOI & Anr.

1. The Secretary, M/o Telecommunication
and IT, Department of Telecommunications
Sanchar Bhawan, Ashoka Road
New Delhi-110001.
2. The Member(Services)
DOT, Sanchar Bhawan, Ashoka Road
New Delhi-110001. ..Respondents

(By Advocate: Shri Subhash Gosain)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant joined the service of Department of Telecommunication, Govt. of India. In the year 1997, himself and several other officers of the same status

were promoted on ad hoc basis to Senior Administrative Grade (SAG). However, he was not permitted to join on the ground that disciplinary proceedings were initiated against him. Thereafter, the applicant was exonerated from the charges on 02.11.1999.

2. The regular promotions to the post of SAG took place vide order dated 16.05.2001. The seniority of the applicant was maintained. However, the pay scale of his junior, namely, Shri Anil Kaushik was higher on account of his ad hoc service in the post. In the subsequent promotion to the post of Chief General Manager, through order dated 07.01.2009, the seniority of the applicant was maintained. The applicant ultimately retired from service on 30.12.2012.

3. The applicant made representation dated 20.11.2012 with a prayer to bring parity of his pension with that of his immediate junior. That was rejected through order dated 30.08.2013. Another representation was made by the applicant on 08.07.2014, which too was rejected through order dated 07.11.2014 by referring to the earlier order

dated 30.08.2013. The applicant challenges the order dated 07.11.2014 in the present OA.

4. He contends that the disparity in the pay between him and his juniors arose on account of denial of permission to him to join the promotion ordered on ad hoc basis, on the ground that disciplinary proceedings are pending; and once he was exonerated of the charges and was promoted on regular basis duly maintaining his seniority, he is entitled to be kept on par with his junior, in the context of emoluments and pension.

5. The respondents file counter affidavit opposing the OA. They raised an objection as to limitation. On merits also it is stated that the applicant was denied ad hoc promotion on account of pendency of disciplinary proceedings and since the sealed cover procedure for such promotions was not in vogue, at that time, the benefit cannot be extended to the applicant. It is further contended that if an officer who is senior has joined the higher post later than his junior, he cannot claim parity of pay scale of his junior.

6. We heard Shri M.K. Bhardwaj, learned counsel for the applicant and Shri Subhash Gosain, learned counsel for the respondents.

7. At the outset, the objection raised as to limitation needs to be dealt with. The dispute is about the parity of pay between an officer and his junior. The settled law on this aspect is that as long as an employee is in service, the grievance in this regard is treated as continuous and the law of limitation hardly comes into play. The applicant retired only in the year 2012 and immediately thereafter he made a representation for bringing parity with his juniors. Besides, the latest of the order was passed in the year 2014 and immediately thereafter the OA was filed. Therefore, that objection cannot be sustained.

8. Coming to the merits of the case, the disparity between the salary and other benefits of the applicant on the one hand and his immediate juniors on the other hand, arose on account of his being disabled from joining the post in SAG on ad hoc basis, which was ordered in March, 1997. The applicant was infact promoted on ad hoc basis to that category along with

his juniors. However, he was prevented from joining on account of pendency of disciplinary proceedings. The sealed cover procedure for this category of promotions was not in vogue at that time.

9. Whatever be the justification for not permitting the applicant to join the SAG post on ad hoc basis, the fact remains that he was exonerated of the charges and ultimately on 16.05.2001, he was promoted to SAG on regular basis along with his juniors. By that time, the disparity has crept in since his juniors have drawn certain benefits on account of the ad hoc promotion.

10. Assuming that the applicant was denied promotion either on ad hoc basis or on regular basis in the year 1997 on account of pendency of the disciplinary proceedings, he is entitled to be restored to his original status, in terms of the seniority as well as emoluments, once he was exonerated in the disciplinary proceedings. The respondents cannot relegate the applicant to a position inferior to that of his junior, despite the disciplinary proceedings ending in his favour.

11. Though the applicant has claimed benefits on several aspects, such as the deemed promotion from

March 1997, arrears of pay, we are not inclined to grant them to him for the reason that he did not pursue his remedy, in that direction, at the relevant point of time. By applying the principle that a senior cannot be made to draw lesser pension than his junior, we direct that the respondents shall re-determine the pension of the applicant to be at par with his immediate junior in the post of Chief General Manager, within a period of three months from the date of receipt of a copy of this order. We direct that the difference of pension, as a result of such re-determination, shall be paid to the applicant prospectively and the applicant shall not be entitled for any arrears, on that count.

12. The OA is partly allowed to the extent indicated above. There shall be no order as to costs.

(Aradhana Johri)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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