

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO. 060/00750/2017

Chandigarh, this the 17th day of February, 2018

...
CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. P. GOPINATH, MEMBER (A)

...

1. **POOPATHI**, aged about 56 years, daughter of Sh. T. Munian Manjay, working as Asstt. Telecom Technician O/O AGM(EBI), Sector 34, Chandigarh. Group 'C'.
2. **SUMATI DEVI**, W/D/o Sh. Buchi Chaudhary, working as Asstt. Telecom Technician, O/o SDE (Operation)Sector 34, Chandigarh.
3. **RAM AVTAR**, Son of Sh. Shiv Charan, working as Asstt. Telecom Technician, O/o SDE, Legal Cell Sector 34, Chandigarh.
4. **LALITA PARSAD**, Son of Sh. Inder Pal, working as Asstt. Telecom Technician, O/o SDE (OD) MM (Manimajra), U.T. Chandigarh.
5. **SUBHASH CHAND**, Son of Late Sh. Jai Ram, working as Asstt. Telecom Technician, O/o SDE, Vigilance, Telephone Exchange, Sector 17, Chandigarh.
6. **KAMAL KUMAR**, Son of Sh. Hari Parsad, working as Asstt. Telecom Technician, O/o SDE, Cable Maintenance, Sector 17, Chandigarh.
7. **ANGREZ SINGH**, Son of Sh. Daulat Ram, working as Asstt. Telecom Technician, O/o SDOP-IV, Ram Darbar posted as (TT).
8. **OM PARKASH**, Son of Sh. Ram Raj, working as Asstt. Telecom Technician, O/o SDOP-3, Sector 34, Chandigarh.
9. **SURINDER KUMAR**, Son of Sh. Gurbachan Singh, working as Asstt. Telecom Technician, O/o SDE, OCB-Local, Sector 17, Chandigarh.
10. **RAM JATAN**, Son of Late Sh. Ram Bali, working as Asstt. Telecom Technician, O/o CAO(CA), Telephone Exchange, Sector 34, Chandigarh.
11. **BABU LAL**, Son of Sh. Hanuman, working Asstt. Telecom Technician, O/o SDE (OFC-II) Sector 34, Chandigarh.
12. **RAJESH KUMAR**, Son of Sh. Prem Chand, working as Asstt. Telecom Technician, O/o AO, Persuit Cell BSNL, Sector 34, Chandigarh.

13. **KARAMJIT SINGH WALIA**, Son of Sh. Mohan Singh, working as Asstt. Telecom Technician, O/o SDO-III, Sector 34, Chandigarh.
14. **PARKASH CHAND**, Son of Sh. Bishamber Lal, working as Asstt. Telecom Technician, O/o SDE (CTSD) Mohali, Phase 8, Mohali.
15. **KRISHAN KUMAR**, Son of Sh. Parma Nand, working as Asstt. Telecom Technician, O/o AO, Claims, BSNL, Sector 34, Chandigarh.
16. **RAM KISHAN**, Son of Sh. Ganpat Ram, working as Asstt. Telecom Technician, O/o AO (SBP), BSNL, Sector 34, Chandigarh.
17. **PREM PARKASH**, Son of Sh. Shanti Ram, working as Asstt. Telecom Technician, O/o CRO, Mohali, Phase 4, Mohali.
18. **SANJEEV KUMAR**, Son of Sh. Sukhbir Singh, working as Asstt. Telecom Technician, O/o AO, Sales BSNL, Sector 34, Chandigarh.

....APPLICANTS

(Argued by: Shri R.K. Sharma, Advocate)

VERSUS

1. UNION OF INDIA, through the
Secretary to Govt. of India,
Ministry of Communications & Information Technology,
Department of Telecommunications,
New Delhi.
2. BHARAT SANCHAR NIGAM LIMITED through its Chairman-cum-
Managing Director,
Harish Chander Mathur Lane, Janpath,
New Delhi.
3. CHIEF GENERAL MANAGER TELECOM, Punjab Circle,
Bharat Sanchar Nigam Limited,
Sector 34-A, Chandigarh.
4. SENIOR GENERAL MANAGER TELECOM,
BSNL, District Chandigarh,
Sector-18, CHANDIGARH.

....RESPONDENTS

(By Advocate: Shri K.K. Thakur)

ORDER (Oral)**SANJEEV KAUSHIK, MEMBER (J)**

Applicants have filed the instant Original Application (O.A.), claiming the following reliefs:-

“ 1.Clarification No. 24 issued by BSNL vide letter No. 13-2/2010-TE dated 06.01.2011 (Annexure A-1), wherein it has been mentioned that such temporary status Mazdoors/Casual Labourers, who were Temporary Status/Casual Mazdoors as on 30.09.2000 and regularized on or after 01.10.2000, will be treated as BSNL recruited officials; may be quashed.

2. Letter No. 13-2/2010-TE(Pt.) dated 08.09.2011 (**Annexure A-2**), issued by BSNL whereby it has been directed that the clarification issued vide Sr. No. 24 of Office Letter dated 06.01.2011 (Annexure A-1) may be strictly adhered to by all Telecom Circles; may be quashed.

3. Memo. No. Staff/Genl/corr/KW/52 dated 02.01.2012 (Annexure A-3) issued by O/o Respondent No. 3, whereby the benefit of Ist Financial upgradation granted to the applicants under Non-Executive Promotion Policy vide order dated 20.07.2011 has been ordered to be withdrawn on the basis of clarification dated 08.09.2011 (Annexure A-2); may be quashed qua the applicants along with the orders re-fixing the pay of the applicants, passed by the respondents in pursuance of Memo. dated 02.01.2012.

4. impugned Memo No.Staff /E-184/RM/Ist UP-Gradation under NEPP/48 dated 26.03.2012 whereby respondent No.3 passed order for grant of 1st Upgradation to the applicants w.e.f. 06.12.2008 onwards instead of granting the same from due date, copy Annexure A-3(A) may be quashed.

5. Impugned orders dated 28.03.2012 issued by Respondent No.3 whereby appeal filed by the applicant against the impugned order dated 02.01.2012 (A-3) has been rejected, copy Annexure A-3(B) (Colly.) may be quashed;

6. Impugned Letter No. Staff /Genl./Corr/KW/57 dated 22.05.2012 whereby respondent No.3 has initiated action for conversion of the applicants from GPF Scheme to EPF Scheme with immediate effect, copy Annexure A-3(C) may be quashed.

7. Direction may be issued to the respondents to treat the applicants employees of erstwhile Department of Telecom and not BSNL with

all the consequential benefits including grant of benefit of Non Executive Promotion Policy w.e.f. due dates and restoration of their pay fixation; as if the impugned orders have never been passed judgment rendered by this Hon'ble Tribunal in O.A. no. 279/HP/2012 decided on 16.01.2013 titled as Sanjay Kumar and others versus UOI and Others, upheld by the Hon'ble Himachal Pradesh High Court in CWP no. 2196/2013 decided on 08.10.2015 and upheld by the Hon'ble Supreme Court in SLP(CC) no. 12125/2016 decided on 01.08.2016.”

2. Heard Mr. R.K. Sharma, learned counsel for the applicants as well as Mr. K.K. Thakur, learned counsel for respondents.

3. Mr. Sharma, learned counsel for applicants submitted that the applicants initially joined the respondent department as part-time casual labourer in the year 1986 and continued till 1998. In the year 1999, when they were to be replaced by another set of incumbents, by the intervention of this Court, they were allowed to continue as such. Pending decision in the O.A., their cases were considered for grant of temporary status for absorption against Group 'D' posts, in accordance with Casual Labourers (Grant of Temporary Status & Regularization) Scheme, 1989. In the year 2000, their cases were recommended for grant of temporary status as Mazdoors. As a natural consequence of the recommendations made by the Committee, the respondent department vide order dated 25.9.2000, appointed the applicants as regular Mazdoors.

4. On 1.10.2000, the erstwhile Department of Telecom (DoT), stood transformed into Bharat Sanchar Nigam Limited, (BSNL,) which is a company owned and controlled by the Govt. of India. The employees of DoT were given options to be absorbed in BSNL w.e.f. 1.10.2000 or to opt for Govt. service in some other departments. Since after the formation of BSNL vide order dated 12.1.2001 in pursuance of order dated 25.9.2000, all the

applicants were made regular Mazdoors and as per their options, they were permanently absorbed in BSNL. Since their cases for absorption were prior to formation of BSNL though orders of their regularization were made on 25.9.2000 i.e. prior to the transformation of BSNL. Subsequently, vide clarification dated 6.1.2011 all those persons, who having acquired temporary status as on 30.9.2000 and regularized on or after 1.10.2000 be treated as BSNL recruited officials. Subsequent to that they were granted the benefit of 1st upgradation vide order dated 20.07.2011, but the same was cancelled vide order dated 02.01.2012. Feeling aggrieved against letter dated 2.1.2012, the applicants made representation that they could not be treated as BSNL recruited employees as they were duly selected/regularized as Mazdoors against the vacancies of DoT and the process was initiated prior to formation of BSNL, therefore, they are to be treated employees of DoT.

5. However, when this plea was not accepted, similarly placed persons filed O.A. No. 181/CH/2012 which was allowed, holding that they be granted all benefits by considering them regular employees of DoT. Subsequently, O.A. NO. 279/HP/2012 filed by Sanjay Kumar and Ors., Vs Union of India & Ors. decided on 16.1.2013 by this Tribunal, holding that those who were regularized on 30.8.2000, but implementation thereof came to be after formation of BSNL i.e. 1.10.2000 be granted the benefit of NEPP Scheme. That order was approved by jurisdictional High Court of Himachal Pradesh in CWP No. 2196/2013 decided on 8.10.2015 and by Hon'ble Supreme Court in SLP (CC) No. 12125/2016 decided on 01.08.2016.

6. In the light of above, since the applicants are similarly placed like the applicants in the case of Sanjay Kumar (supra) which is acknowledged by learned counsel representing the respondents, accordingly the O.A. is allowed in the same terms. The operative para thereof reads as under:-

“ 4. It is apparent, from a perusal of the pleadings raised by the parties and the documentation placed on record, that the consideration on point of grant of status of Temporary Mazdoor/casual labourer and the consequential regularization came to be concluded on 30.08./2000 but implementation thereof came to be delayed for no fault on the part of the applicants. They cannot, accordingly be made to suffer for the delay in the relevant context. The competent authority having issued the Presidential Order (Annexure A-4) cannot validly deny the requested benefit to them on the premise that they were direct recruits into BSNL which they infact, were not. There is plethora of documentation on record to prove that the applicants were erstwhile DoT employees who were absorbed in BSNL w.e.f. 01.0.2000, vide order dated 30.08.2008 (Annexure A-4). We would accordingly, allow O.A. and uphold the entitlement of the applicants to the benefit of NEPP Scheme.”

7. Considering the above, we dispose of this O.A. in terms of the decision rendered in the case of Sanjay Kumar (Supra). The respondents will implement the order as expeditiously as possible preferably not later than 4 months. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 17.02.2018

‘SK’

