

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

ORIGINAL APPLICATION NO.060/00813/2016

Chandigarh, this the day of 16th January, 2018

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**CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Vipin Sharma, Aged 60 years s/o Sh. G.B. Sharma, Principal General Manager (Building Works) (Retd.) (Group A), o/o Bharat Sanchar Nigam Limited, Corporate Office, New Delhi, resident of House No. 770, Sector 12, Panchkula.

....Applicant

(Present: Mr. R.K. Sharma, Advocate)

VERSUS

1. Union of India through the Secretary, Govt. of India, Ministry of Communication and Information Technology, Department of Telecom, New Delhi.
2. Bharat Sanchar Nigam Limited, Corporate Office, Bharat Sanchar Bhawan, Harish Chander Mathur Lane, Janpath, New Delhi through its Chairman-cum-Managing Director.

....Respondents

Present: Mr. K.K. Thakur, Advocate for Resp. No. 1
Mr. D.R. Sharma, Advocate for Resp. No. 2)

**ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)**

1. The challenge in the instant Original Application (O.A), instituted by applicant Vipin Sharma s/o Sh. G.B. Sharma, Principal General Manager, Bharat Sanchar Nigam Limited (BSNL) (since retired), is to the impugned orders dated 15.10.2014 (Annexure A-1) and letter dated 02.11.2015 (Annexure A-2), whereby the benefit of one increment on regular promotion to the post of Principal Chief Engineer/Principal General Manager was denied to him while re-fixation of his pay by the competent authority.

2. The matrix of the facts and material, which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant O.A., and expositied from the record, is that initially the applicant was appointed as Assistant Executive Engineer on 15.01.1979 in the erstwhile department of Posts and Telegraph (P&T) Civil Wing of the respondents. He was promoted as Executive Engineer (Civil) w.e.f. 29.10.1984. Then he was promoted to the post of Superintending Engineer (Civil), on regular basis, on 30.12.2004. Thereafter, he was given the charge of the post of Chief Engineer w.e.f. 02.04.2008, with the benefit of charge allowance. Ultimately, he was promoted on regular basis on the post of Chief Engineer on 13.06.2013.

3. The case set up by the applicant in brief insofar as relevant is that subsequently he was given the charge of Principal Chief Engineer Delhi Zone on 30.10.2014, and he joined as such on 07.11.2014. Later on, he was given the charge of Principal General Manager on 02.02.2015. He was promoted as Principal Chief Engineer on regular basis and posted as Principal General Manager (Building Works) in corporate Office, BSNL. Thereafter, he retired from service as Principal General Manager, BSNL on 30.09.2015, after attaining the age of superannuation.

4. According to the applicant, although he was promoted in the manner indicated hereinabove, on the same pay scale, but he was not granted benefit of any additional increment, either on 13.06.2013 or any subsequent date of his promotion as regular Principal Chief Engineer, as admissible under FR 22(1)(a) (i), read with Rule 13.2 of the BSNL Management Service Recruitment Rules, 2009. He moved a representation for redressal of his

grievance, but the same was rejected, vide impugned order dated 02.11.2015 (Annexure A-2), on the basis of the impugned letter dated 15.10.2014 (Annexure A-1), by the Competent Authority.

5. Aggrieved thereby, the applicant has preferred the instant O.A., challenging the impugned orders (Annexure A-1 and Annexure A-2), on the following grounds:-

“(i) That it is on the record that applicant was promoted as Principal General Manager (BW), Corporate Office vide letter dated 19.03.2015 in the same scale of E-9 Rs.62000-80000 as per para 3 of the said letter it was stated that pay of the executives shall be fixed as per BSNL MS Recruitment Rules 2009 (Duly approved by the DOT). Therefore, benefit of one increment on regular promotion to the post of Principal Chief Engineer/Principal General Manager, from the post of General Manager or equivalent, even if, the pay scale of the promoted and lower post is equivalent and this increment is admissible in terms of Rule 13.2 of the BSNL Management Service Recruitment Rules, 2009 read with FR 22 (1)(a) (i). Thus the action of the respondents in denying one increment to the applicant is liable to be quashed.

(ii) That it is on the record that applicant was working in the E-9 scale which was same as that of promoted post, hence one increment was due to the applicant on promotion as per BSNLMS Recruitment Rules, 2009 (Duly approved by DoT) and it was not pay fixation for scale E-9 A. But the respondent BSNL did not grant one increment to the applicant on regular promotion as PGM (BW). Thus the action of the respondents is bad in law.

(iii) That since the legal due increment of the applicant has been wrongly withheld by the respondents thereby causing wrongful loss to the applicant and gaining wrongful gain, they have made themselves liable to compensate the applicant with interest @ 18% from the date the amounts became due to the applicant till the date of actual payment thereof.

(iv) That thus, inaction on the part of the respondents as explained above is harsh, arbitrary and violative of their own rules and is not legally sustainable in the eyes of law.”

6. Levelling a variety of allegations and narrating the sequence of events, in detail, in all, the applicant claims that although as per Fundamental Rules and Recruitment Rules (Annexure A-4), he was entitled to one additional increment, which was wrongly denied to

him. On the strength of the aforesaid grounds, the applicant seeks to quash the impugned orders, in the manner, indicated herein above.

7. On the contrary, the respondents have refuted the claim of the applicant, and filed the reply, wherein it was pleaded that the applicant has not been granted benefit of increment of promotion to the post of Principal General Manager/Principal Chief Engineer, on the grounds of existing Govt. Rules. It was alleged that the benefit of additional increment was denied to the applicant, on the guidelines/directions, issued from time to time, relating to pay fixation, pension and other financial issues, pertaining to the employees of the BSNL. Regarding the admissibility of the additional increment, by virtue of FR 22(1) (a) (i) and BSNLMS Recruitment Rules, 2009, it was pleaded that the BSNL came into force w.e.f. 11.07.2009. However, on the basis of subsequent orders dated 24.01.2011 and 19.06.2014 (Annexures R-1 and R-2), the advance increment granted to all the Executives in E-9 A Scale has been withdrawn, by the BSNL, vide impugned order dated 15.10.2014 (Annexure A-1).

8. In all, according to the respondents, the benefit of additional increment was denied to the applicant, vide impugned order (Annexure A-2), in view of the impugned instructions (Annexure A-1), by the Competent Authority. Instead of reproducing the entire contents of the reply, and in order to avoid the repetition of the facts, suffice it to say, that while virtually acknowledging the factual matrix and reiterating the validity of the impugned instructions (Annexure A-1), and order (Annexure A-2), the

respondents have stoutly denied all other allegations and grounds, contained in the O.A., and prayed for its dismissal.

9. Controverting the pleadings of written statement, filed on behalf of the respondents, and reiterating the grounds, contained in the O.A., the applicant has filed replication. That is how we are seized of the matter.

10. Having heard learned counsel for the parties and having gone through the record, with their valuable assistance, we are of the firm view that the present O.A. deserves to be accepted in the manner and for the reasons, indicated herein below.

11. What cannot possibly be disputed here is that the applicant was promoted as Chief Engineer on regular basis, w.e.f. 13.06.2013. Thereafter he was given the charge of Principal Chief Engineer, Delhi Zone, on 30.10.2014. Again, he was given the charge of Principal General Manager on 02.02.2015. Ultimately, he was promoted as Principal Chief Engineer on regular basis, in the same pay scale and grade pay. Thereafter he retired from service, as Principal General Manager, BSNL, on 30.09.2015. The representation, moved by the applicant, for claiming one additional increment was rejected, vide impugned order dated 02.11.2015 (Annexure A-2), on the basis of the impugned letter/instructions dated 15.10.2014, by the Competent Authority.

12. Thus, it would be seen that the facts of the case are neither intricate nor much disputed, and fall within a narrow compass, to decide the real controversy, between the parties. Such being the position on record, now the short and significant question, that arises for our consideration, in this case, is as to whether the applicant is entitled to one additional increment on promotion to the post of

Principal Chief Engineer/Principal General Manager w.e.f. 13.06.2013, in the given facts and circumstances of the case, or not ?

13. Having regard to the rival contentions of the learned counsel for the parties, to our mind, the answer must, obviously, be in the affirmative, in this regard.

14. Admittedly, the BSNL Management Services Recruitment Rules, 2009 (hereinafter referred to as relevant Recruitment Rules) (Annexure A-4) are applicable in the present case. Rule 13.2 thereof postulates that “consequent to grant of any post based promotion, the executive’s pay will be fixed as per FR-22 1(a)(i) or as per the company equivalent rules in force from time to time, only in cases, where such post carries higher scale from the current scale of the executive being promoted. This rule, however, provides that **where executive’s pay scale is the same as that of promoted post, benefit of one increment in the current scale of the executive shall be granted on promotion.** However, in cases where the executive’s current pay scale is higher than that of the promoted post, such post based promotion will be treated as placements with grant of substantive status of the post.

15. It is not a matter of dispute that the applicant was promoted on the post of Principal Chief Engineer/Principal General Manager, in the same pay scale and grade pay of Chief Engineer. Meaning thereby, once the applicant was promoted to the indicated post in the same pay scale and grade pay, in that eventuality, he was very much entitled to the benefit of one additional increment, as contemplated under Rule 13.2 of the relevant Recruitment Rules.

16. Ex-facie, the main contention of learned counsel for the respondents that since the claim of additional increment of the applicant was rejected, vide impugned order dated 02.11.2015 (Annexure A-2), on the basis of instructions dated 15.10.2014 (Annexure A-1) of BSNL, so he is not entitled to the benefit of additional increment, is not only devoid of merit, but mis-placed as well. As mentioned above, once the applicant is entitled to one additional increment, under the Statutory Recruitment Rules (Annexure A-4), then indeed such benefit cannot be denied, to him, on the basis of contrary instructions (Annexure A-1). It is now well settled principle of law that the respondents can issue the instructions to supplement/explain the import of the statutory rules, but they have no jurisdiction to issue instructions, which are totally contrary to the statutory rules. Such instructions, issued contrary to the statutory rules, are not only arbitrary, but illegal as well. The benefit already accruing to the applicant, in pursuance of the statutory Recruitment Rules, cannot be denied to him, in the garb of executive instructions dated 15.10.2014 (Annexure A-1), as contrary urged on behalf of the respondents.

17. Therefore, it is held that the applicant is entitled to one additional increment, in the wake of promotion to the higher post in the same very pay scale. Hence, the contrary impugned order (Annexure A-2) is arbitrary, illegal and cannot be sustained, in the obtaining circumstances of the case.

18. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

19. In the light of the aforesaid reasons, the instant O.A. is accepted. The impugned orders/instructions (Annexures A-1 and

A-2), as these relate to the case of the applicant, are set aside. As a consequence thereof, the applicant is held entitled to one additional increment on promotion to the indicated post. The Competent Authority amongst the respondents is directed to re-fix his pay, after allowing one additional increment, and grant all consequential retiral benefits, in the same terms and manner, indicated hereinabove, within a period of three months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 16.01.2018

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