

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.116 of 2012

Cuttack this the 9th day of April, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(A)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

1. Sri Pradyumna Kumar Nayak, S/o. Late Muralidhar Nayak, aged about 44 years, at present working as Junior Telecom Officer (Civil) Civil Subdivision-III, Bharat Sanchar Nigam Ltd., Bhubaneswar-751 022.
2. Sri Santap Kumar Jena, S/o. Late Jaganath Jena, aged about 40 years, at present working as Junior Telecom Officer (Civil) in the Office of the Subdivisional Engineer(C), Bharat Sanchar Nigam Ltd., BSNL Civil Sub-Division, Sambalpur-768 001.
3. Sri Pradipta Chandra Pusti, S/o. Late Hrudananda Pusti, aged about 44 years, at present working as Junior Telecom Officer (Civil) in the Office of the Subdivisional Engineer(Civil) Civil Subdivision-I, Bharat Sanchar Nigam Ltd., Bhubaneswar-751 001.

...Applicants

By the Advocate(s)-M/s.A.Ku.Mohanty
S.Rath
D.Ku.Mohanty

-VERSUS-

1. Chairman cum Managing Director, Bharat Sanchar Nigam Ltd., BSNL House, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.
2. The Principal General Manager (BW), Bharat Sanchar Nigam Ltd., Corporate Office, B.W. Unit, 10th Floor, Chandralok Building, new Delhi-110 001.
3. The Chief Engineer(C), Bharat Sanchar Nigam Ltd., Civil Orissa Zone, Door Sanchar Bhavan, Unit-IX, Bhubaneswar-751 022.

...Respondents

By the Advocate (s)-Mr.S.B.Jena

ORDERDR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicants who were working as Junior Telecom Officer (Civil) under the Bharat Sanchar Nigam Limited (BSNL), Bhubaneswar at the time of filing of the O.A. have prayed for the following reliefs:

- i) ...to declare that the provision of Para-I(d)(8) of BSNL office order dated 18.1.2007(Annexure-A/9) regarding time bound upgradation policy is not applicable in respect of the applicants in view of the provisions contained in BSNL circular letter dted 12.9.2005 and dated 20.5.2010; and
- ii) to direct the Respondents to grant first financial upgradation to the applicants to the next higher scale of pay of Rs.11875-300-17275 w.e.f. 7.4.2005/25.3.2006 onwards i.e., after completion of 12 years of service as per the ACP Scheme introduced w.e.f. 9.8.1999; and
- iii) to pass such other order(s)/directions as may be deemed fit and proper in the bona fide interest of justice; and
- iv) to order and direct that the cost of litigation be paid to the applicant by the respondents.

2. The brief facts of the case are as follows:

The applicants joined the Department of Telecommunications as Junior Engineer(Civil) in the scale of pay of Rs.1400-2300/- during the period from 7.4.1993 to 25.3.1994. After the introduction of ACP Scheme the applicant nos. 1 & 2 were granted the scale of pay of Rs.5000-150-8000/- with effect from 9.8.1999 vide Office Order dated 10.5.2001(A/4). The applicant No.3 did not get the financial upgradation under the ACP Scheme. BSNL was incorporated with effect from 1.10.2000. The applicants were transferred to

BSNL on deemed deputation basis and were subsequently absorbed there. They were placed in IDA Scale of Rs.9850-250-14600 from 1.10.2000 notionally and the actual benefits of the higher scale of pay were allowed to them with effect from 1.12.2001. The BSNL introduced the Time Bound Promotion Scheme with effect from 1.10.2004 vide order dated 20.8.2007(A/6). Again, vide order dated 4.6.2008, the applicants were granted the first promotion/upgradation in the scale of Rs.11875-300-17275/- with effect from 1.10.2006. Subsequently, vide order dated 20.5.2010(A/8), TBOP/upgradation was withdrawn in respect of Executive cadres of Civil/Architect/Electrical/Telecom Factory and CSS/CSSS categories and the ACP Scheme was made applicable to these cadres also. The applicants submitted representation on 28.5.2010 to the Chief Engineer(Civil) for granting them financial upgradation as per the ACP Scheme after 12 years of their services as JE(Civil)/JTO(Civil) (A/11 series). The applicants claim that similarly placed JTOs (Civil) of BSNL were granted the 1st financial upgradation under the ACP Scheme to the next higher scale of Rs.11875-300-17275 with effect from 23.9.2004 onwards after completion of 12 years of service vide order dated 19.7.2010(A/12). The applicants are aggrieved that they have not been granted the same benefit from the date of completion of 12 years of service as per the ACP Scheme and

have filed this O.A. praying for the reliefs as mentioned at Para-1 above.

3. The applicants have based their prayer on the ground that after the discontinuation of the TBOP/Uupgradation Scheme, they were to be governed under the ACP Scheme and were entitled to financial upgradation on completion of 12 years of service. The financial upgradation under the ACP Scheme is due to them from date(s) prior to 18.9.2007 when the Promotion Policy of BSNL was finalized. Denial of such upgradation is illegal, arbitrary and bad in law. It is also discriminatory since similarly placed JTOs (Civil) of BSNL have been granted the benefit in view of the provisions contained in BSNL Circular dated 12.9.2005 and 20.5.2010. The provision of Para-1(d)(8) of Office Memorandum dated 18.1.2007 regarding Time Bound Upgradation Policy is not applicable in respect of the applicants. The Chief General Manager, BSNL, Orissa Circle had issued instructions to the Chief Engineer(Civil), BSNL, Orissa (Respondent No.3) to carry out the TBOP Policy vide his letter dated 30.11.2007(A/13), but the Respondent No.3 did not carry out the instructions issued by the Chief General Manager. Moreover, for exactly similarly placed JTOs (Civil) of BSNL, the 2nd ACP was sanctioned by the Chief General Manager, BSNL, Kerala Telecommunications vide his orders dated 29.9.2010 and 30.9.2010 (A/14). The Ernakulam Bench of this Tribunal in their orders dated 6.8.2010 in O.A.No.589 of

2009 (N.Raveendran Nair vs. CMD, BSNL & another) have directed the respondents to take necessary steps for implementing the ACP Scheme as adopted by the respondents vide their orders dated 20.5.2010. The applicant has annexed the order dated 6.8.2010 at A/15.

4. The Respondents in their counter-reply filed on 17.9.2012 have contested the claim of the applicants and submitted that they are not entitled to the reliefs as prayed for. The applicants got their first IDA Scale upgradation at A/10 in pursuance to Time Bound IDA Scale Upgraation Policy under A/9 dated 18.01.2007. Therefore, they cannot challenge the provisions of A/9 after five years of availing the financial benefits of the scale upgradation from the same scheme. Moreover, the applicants are not entitled to the higher scale of pay of Rs.11875-17275 after completion of 12 years of service under the ACP Scheme in view of the embargo envisaged in Para-1(d)(8) of OM dated 18.1.2007 at A/9. The applicants were granted Personal Pay to compensate for the reduction in their pay. By order dated 3.3.2000 at A/3, the ACP Scheme of the Government of India was made applicable to BSNL upto 30.9.2004 after which the benefit of Time Bound IDA Scale Upgradation Policy was extended. Completion of 10 years of regular service of the applicant was after 1.10.2004 and therefore, they are not entitled to the financial upgradation under the ACP Scheme. The contention of the applicants about

similarly placed JTOs is incorrect since for those JTOs, the completion of 12 years happened to be before 1.10.2004 and that is why they were given the financial upgradation under the ACP Scheme.

5. The applicants in their rejoinder filed on 8.12.2017 have reiterated that they are entitled to the reliefs claimed as per the BSNL Corporate Office order dated 12.9.2005(A/5) read with orders dated 20.5.2010(A/8) which clearly state that the ACP Scheme of Government of India dated 9.8.1999 will be followed in BSNL for the JTO(Civil)/JOT(Electrical). It is the applicants' contention that the embargo envisaged prescribed in Para-1(d)(8) of OM dated 18.1.2007 (A/9) was withdrawn vide orders dated 21.4.2009 at A/7. Since in the BSNL TBOP was introduced with effect from 18.1.2007 the applicants were entitled to 1st financial upgradation with effect from 7.4.2005/25.3.2006 when they completed 12 years of service.

6. We have heard the learned counsels from the both the sides and perused the documents submitted by them. The issue to be decided by this Tribunal is whether the applicants will be entitled to 1st financial upgradation to the next higher scale of pay of Rs.11875-300-17275/- with effect from 7.4.2005 (for Applicant Nos. 1 & 2) and 25.3.2006(for Applicant No.32) on completion of 12 years of service under the ACP Scheme.

7. At A/13 is a letter from the Chief General manager, BSNL, Orissa to the Chief Engineer(Civil), BSNL, Orissa Civil Zone, Bhubaneswar dated 30.11.2017 which reads as follows:

“Sub: Grant of 1st Financial up gradation under ACP scheme after implementation of BSNL Executive Time Bound Promotion Policy – reg:

Ref: Your letter No.EST-1/09-11/CE(C)-BN/ACP/1056 dt. 01.10.2007 and No.EST-I/CE(C)-BS/ACP/1195 dt. 01.11.2007.

Approval of the competent authority is hereby conveyed for carrying out all the time bound promotion cases including ACP based on earlier time bound promotion policies including those referred to this office vide your letter under reference as per existing rules and guidelines after verifying the service book of all the eligible executives under your administrative control. The proposal sheet sent to this office vide reference-2 above and a copy of the representation of Sri JSP Sinha, AE(Bldg.), Circle Office for his time bound promotion are returned herewith for necessary action at your end”.

8. It is obvious from the above mentioned letter that the 1st financial upgradation under the ACP Scheme was to be considered after the implementation of BSNL Executive Time Bound Promotion Policies after suitable adjustment of the benefits already obtained under the Time Bound Promotion Policy. Our attention has been drawn to the orders passed by the Ernakulam bench of this Tribunal in O.A.No.589/2009(supra). The order of the Ernakulam Bench of

this Tribunal can be quoted hereunder verbatim in the interest of clarity and consistency.

“ The applicant working as Assistant Engineer under the first and second respondents filed this Original Application for a direction to the respondents to grant second Assured Career Progression benefit on completion of 24 years of service.

2. The Original Application has been admitted and notices ordered to the respondents. The respondents in pursuance to the receipt of the notice filed a reply statement dated 24.11.2009. The stand taken in the reply statement is that as the applicant has opted for absorption in the BSNL, ACP Scheme is applicable to the Government employees and unless it is adopted or decided by the NSNL, the applicant is not entitled for such benefit. The BSNL after its formation decided to formulate a scheme of its own regarding promotion. However, during the intervening period of formation of BSNL the Government orders regarding financial upgradation were kept in abeyance and not made applicable to the employees of BSNL. But, as per the promotion policy issued on 18.1.2007 the BSNL allowed time bound financial upgradation to its executive on completion of 4 to 6 years of service which the applicant has also got the benefit. Further it is the case taken in the reply statement that ACP Scheme is one of the financial upgradation scheme of Government of India and hence, the scheme is applicable to the executives of BSNL whenever it becomes due to them on or before 1.10.2000 and later it was revised to 1.10.2004. On the basis of that, the Department issued an order dated 20.5.2010 by which it is decided on detailed examination of the recommendation made by the committee that the earlier restriction given for application of ACP scheme has been withdrawn and consequently the grant of financial upgradation as envisaged as per letter No.25-5/2005-Pers.II dated 12.9.2005 is made applicable to the executives of BSNL also. Further the counsel appearing for the respondents produced an order dated 29.7.2010 wherein the application of the ACP scheme to the applicant and similarly placed executives has been accepted and the matter is pending with the Accounts Wing of the Department.
3. Considering the stand taken in the reply statement, we are of the view that the Original Application can be

disposed of by directing the respondents 1 and 2 to take necessary steps for implementation of the scheme now accepted by the Department and to pass appropriate orders thereon with regard to the claim of the applicant after assessment of other matters regarding his service including the qualifying period, within a reasonable time at any rate within 60 days from the date of receipt of a copy of this order. Ordered accordingly.

4. With the above this Original Application stands disposed of with no order as to costs".

9. A perusal of the above order of Ernakulam Bench of this Tribunal makes it abundantly clear that the restriction imposed at Para-1(d)(8) of OM dated 18.1.2007 about the non-application of the in situ ACP or any other time bound promotion is no longer applicable once the BSNL has taken a decision vide order dated 20.5.2010 to extend the benefit of ACP on upgraded scale to the executive cadres of Civil/Architect/Electrical/Telecom Factory and CSS/CSSS categories.

10. The order of the Ernakulam Bench of this Tribunal is quite clear and by adopting the same ratio in the order we also direct the respondents to consider the case of the applicants for grant of financial upgradation under the ACP Scheme as accepted by the Department vide order dated 20.05.2010(A/10). Any financial benefits granted on the time bound promotion scheme needs to be adjusted on the application of the ACP Scheme to the applicants from the date they are eligible for the same. Necessary orders to this effect may be passed as per their eligibility/from the date of

completion of 12 years within a period of eight weeks from the date of receipt of this order.

11. With the aforesaid observation and direction, this O.A. is disposed of with no order as to costs.

(DR.MRUTYUNJAYA SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

BKS

