

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

OA/21/514/2012
Dated : 12/09/2018

BETWEEN

S. Ayub Basha,
S/o. S.A. Gafoorr,
Aged about 47 years,
Occ: Suptg. Engineer (Civil), BSNL
(on deputation) as
Executive Director (Infra),
National Fisheries Development Board,
Hyderabad
R/o. Flat No.202, PGR Enclave, Balajinagar,
Gudimalkapur,
Hyderabad – 500 028.

.... Applicant

AND

1. M/s. Bharat Sanchar Nigam Limited
rep. by its Chairman-cum-Managing Director,
20, Ashoka Road, Sanchar Bhawan,
New Delhi – 110 001.
2. The Director (HR),
Bharat Sanchar Nigam Limited,
H.C. Mathur Lane,
Janpath, New Delhi – 110 001.
3. The Principal General Manager (Building Works),
Bharat Sanchar Nigam Ltd., Corporate Office,
CTO Building, Kashmeregate,
Delhi – 110 006.
4. The Chief General Manager Telecom,
Bharat Sanchar Nigam Limited,
Sanchar Bhavan,
Nampally Station Road, Abids,
Hyderabad – 500 001.
5. The Additional General Manager (BW-I),
Bharat Sanchar Nigam Ltd., Corporate Office,
Telegraph Office Building,
Kashmere Gate,
Delhi – 110 006.

..... Respondents

Counsel for the Applicant	...	Mr. M.V. Krishna Mohan
Counsel for the Respondents	...	Mr. A. Radha Krishna, Addl. CGSC

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDICIAL MEMBER
THE HON'BLE MRS.NAINI JAYASEELAN,ADMN. MEMBER

ORAL ORDER

(Per Hon'ble Mr.Justice R. Kantha Rao, Judicial Member)

Heard Shri M.V. Krishna Mohan, learned counsel appearing for the Applicant and Shri B. Venkanna, counsel representing Shri A. Radha Krishna, learned Standing Counsel for the Respondents.

2. The applicant filed the O.A. to declare the Order dated 27.6.2011 issued by the 6th Respondent as illegal, arbitrary, unconstitutional and to set aside the same and to hold that the applicant is entitled for regularisation of his services in the cadre of Superintending Engineer (Civil) w.e.f. 6.11.2008 with all consequential benefits. The applicant submitted a representation requesting to regularise his services in the cadre of Superintending Engineer. By their order dated 27.6.2011 which is impugned in the present O.A., the 5th Respondent rejected the request of the applicant for regularising his services in the cadre of Superintending Engineer. Feeling aggrieved, he filed the present O.A.

3. While the O.A. is pending, the applicant submitted an application for voluntary retirement and in consequence thereof he voluntarily retired from service on 15.6.2013. Thereafter he filed additional affidavit on 22.11.2013 stating that the process of regularisation of the post of Superintending

Engineers was commenced in February 2012 and subsequently, the posts of some Superintending Engineers were regularised on 17.9.2013. It is the contention of the applicant that non-holding of Corporation Promotion Committee (CPC) was on account of the lapse on the part of the department and, therefore, he should be retrospectively promoted to the post of Superintending Engineer on regular basis for the limited purpose of computing his pensionary benefits.

4. Reply statement has been filed by the Respondents opposing the claim of the applicant. They contended inter-alia that the Review DPC/CPC as per P&T BW Service Group-A Rules 1994 was held on 8.8.2012 for regular promotion from EE (C) grade to SE (C). There were 12 eligible officers for consideration to the post of SE (C) and the CPC recommended 7 officers for regular promotion. The applicant's name did not figure in the DPC as all the officers who were in the zone of consideration were senior to him. It is further submitted that the another CPC was held on 25.9.2012 in which 24 officers were considered for the post of SE (C) and ultimately 8 officers were recommended for promotion while putting the result of two officers in sealed cover. According to the Respondents, in the said CPC also, the applicant's name could not find place for consideration as his seniors were available within the zone of consideration as per the extant rules. Therefore, they contended that the applicant cannot claim regular promotion unless he is found suitable and his name is figured within the zone of consideration by a regularly constituted DPC/ CPC. The applicant, according to the respondents, admittedly, was not senior enough to be considered for regular promotion to the post of SE (C) on the date of meeting of CPC. Contending as above, they sought to dismiss the O.A.

5. It is submitted by the learned counsel appearing for the applicant that since the process for regularising the posts of Superintending Engineers (C) started as far back as in 2012 and subsequently some of the Superintending Engineers (C) were promoted on 17.9.2013, the applicant could also be given promotion retrospectively. According to the learned counsel, since there are lapses on the part of the department in conducting CPC, the applicant shall not be deprived of the promotion even though he retired voluntarily.

6. On the other hand it is submitted by the learned proxy counsel for the respondents that even on the date of promotions of Superintending Engineers (C), the applicant's name could not be considered as he was junior to the officers who were in the zone of consideration and, therefore, he cannot agitate for granting promotion retrospectively.

7. However, the crucial question to be determined in the instant case is as to whether an officer who submitted an application for voluntary retirement unconditionally can claim retrospective promotion after his request for voluntary retirement was accepted and after he retired voluntarily.

8. In the application submitted by the applicant seeking voluntary retirement he did not state that before accepting his voluntary retirement he should be considered for regularisation in the post of Superintending Engineer (Civil). Unconditionally he submitted application for voluntary retirement, the department accepted the same and he retired voluntarily. Therefore, we are of the considered view that he has no right to claim promotion in the present O.A. Moreover, the prayer made in the O.A. is to regularise his services in the cadre of Superintending Engineer w.e.f. 6.11.2008 by declaring the rejection order dated 27.6.2011 as arbitrary, illegal and unconstitutional. While the O.A. is

pending, he retired voluntarily. Even the prayer made in the O.A. is not amended. Therefore, we are of the opinion that the applicant is not entitled for the relief basing on his additional affidavit. The O.A. is accordingly dismissed. MA/21/490/2013 shall stand closed. No order as to costs.

(NAINI JAYASEELAN)
ADMN. MEMBER

(JUSTICE R. KANTHA RAO)
JUDL. MEMBER

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