

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH  
JABALPUR**

**Original Application No.200/00857/2015**

Jabalpur, this Monday, the 23<sup>rd</sup> day of April, 2018

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER  
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

1. Smt. Pratibha Anil Karne, W/o Shri Anil Karne, Aged about 41 years, Address-Special MIG-3, 'SHRI' Parisar, Sanjeevani Nagar, Garha Road, Jabalpur-482003 (M.P.)
2. Sanjeev Kumar Dubey, S/o Shri Rameshwar Prasad Dubey, Aged about 44 years, Resi./o Shri J.D.Gajbhiye, Behind Gaytri Mandir Road, In front of Shri Ambe Kirana & General Store, Shashtri Ward, Barapathar, Seoni, Seoni-480661 (M.P.)
3. Sanjay Kumar Magre, S/o Late Shri Chimanlal Magre, Aged about 44 years, House No.5, Ashish Vihar NX, Near Ashish Nagar Garden, Bangali Square, Rind road, Indore-452016(M.P.)
4. Sanjeev Kumar Bawaniya, S/o Late Shri Phoolchand Bawaniya Aged about 40 years, Type III/5, B.S.N.L.Colony, Bhandariya Road, Khandwa (M.P.), Khandwa-45000 **–Applicants**  
All Applicants are working as Steno II

**(By Advocate –Shri Vijay Tripathi)**

**V e r s u s**

1. Union of India, through its Secretary, Ministry of Communication, Department of Telecommunication, Sanchar Bhawan, New Delhi-110001
2. Bharat Sanchar Nigam Limited, Through its Chairman-cum-Managing-Director, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi-110001

3. Bharat Sanchar Nigam Limited, Through its Chief General Manager, Madhya Pradesh Telecom Circle, BSNL Bhawan, Near Government Press, Hoshangabad Road,  
Bhopal-462015 (M.P.)

**- Respondents**

**(By Advocate –Shri Manish Chourasia)**

(Date of reserving the order:-31.10.2017)

**O R D E R**

**By Navin Tandon, AM**

The applicants are firstly aggrieved by deprival of consequential benefits from the date of their promotion as Stenographer Grade-II. They have also prayed for direction to respondents to designate them as Personal Assistant under the cadre restructuring scheme w.e.f. 01.01.2004. They have further prayed for direction to the respondents to consider them for 1<sup>st</sup> and 2<sup>nd</sup> time bound upgradation under EPP Scheme from their due date with all consequential benefits.

2. The applicants were initially appointed as Stenographer Grade III in the year 1997. They were due for promotion as Stenographer Grade-II. Since they were not promoted as Stenographer Grade-II, they approached the Hon'ble High Court by filing Writ Petition No.3895/2006 (S). The said Writ Petition was decided by the Hon'ble High Court on 12.11.2007 (Annexure

A-4) with a direction to promote the applicants as Stenographer Grade-II by counting their entire past services before transferring them from Maharashtra Circle to M.P.Circle. The Civil Appeal No.6698/2009 filed by the respondents was dismissed by the Hon'ble Supreme Court vide order dated 27.08.2014. Thereafter, vide order dated 06.05.2015 the applicants Nos.1 to 4 were promoted notionally as Stenographer Grade-II with effect from 29.01.2002, 27.01.2002, 21.01.2002 and 27.03.2002 respectively, however, no consequential benefits arising out of said promotion have been provided to the applicants, by applying the principle of 'no work no pay'.

**2.1** The applicants have further submitted that the BSNL Head Quarter of the respondents has issued an instruction dated 20.02.2004 whereby the cadre of Stenographer was restructured and the post of Stenographer Grade III has been declared as dying cadre. Apart from this, the post of Stenographer Grade I and Grade II has been merged together and in lieu of Stenographer Grade I and II, the post of Personal Assistant in the pay scale of Rs.5500-9000 was created. The pay scale of Rs.5500-9000 of the merged grade was also upgraded to the pay scale of Rs.6500-10500 w.e.f. 01.01.2004. Thus, as per Cadre Restructuring Scheme, the post of Stenographer Grade-II and Grade-I is no more in existence.

**2.2** The applicants have submitted that since they were promoted as Stenographer Grade II from the year 2002, in all fairness they should have been converted into the post of Personal Assistant w.e.f. 01.01.2004, as per Cadre Restructuring Scheme at par with other persons. However, nothing has been done by the respondents to convert the applicants as Personal Assistant.

**2.3** The applicants have also stated that the respondents have introduced Time Bound/ Post based Executive Promotion Policy (EPP) for the executive including PA, vide order dated 18.01.2007. As per the EPP a time bound IDA pay scale has been introduced. The first time bound IDA pay scale will be considered after four years of service in the IDA pay scale held by executive as on 1.10.2000. Thus, the applicants are entitled to get first upgradation in the year 2006 i.e. immediately after four years from the date of their promotion as Stenographer-II. The second upgradation will be provided to the next higher IDA pay scale after 5 years of service after first upgradation in executive IDA pay scale. Meaning thereby the applicants are entitled to get second up-gradation of executive IDA pay scale in the year 2011.

**3.** The applicants have prayed for the following reliefs in this Original Application:-

*"8 (8.1) Summon the entire relevant record from the possession of respondents for its kind perusal.*

*(8.2) Set aside the order dated 3.7.2015 Annexure A/2.*

*(8.3) Direct the respondents to give the pay and allowances attached with the post of Stenographer Grade II from the date the applicants have been promoted Stenographer Grade II as per the order dated 6.5.2015 (Annexure A/1).*

*(8.4) The respondents may be further directed to designate the applicants as personal Assistant under the cadre Restructuring Scheme w.e.f. 01.01.2004.*

*(8.5) The respondents may be further directed to consider the applicants for 1<sup>st</sup> and 2<sup>nd</sup> Time bound upgradation under EPP Scheme from their due date with all consequential benefits arising thereto.*

*(8.6) Direct the respondents to pay arrears of pay with 18% interest.*

*(8.7) any other order/orders, direction/directions may also be passed.*

*(8.8) Award cost of the litigation to the applicant."*

**4.** The respondents have submitted that in compliance of the order passed by the Hon'ble High Court, the applicants were already promoted to the post of Stenographer Grade-II from the date of eligibility vide order dated 06.05.2015. However, the actual monetary benefits are to be given as per basic principle from the date of assumption of charge as Stenographer Grade-II.

**4.1** They have further contended that the agenda for promotion of present applicants from Stenographer Gr. II to Personal Assistant is under process and the DPC will be conducted soon.

**4.2** After the above DPC, the successful candidates will be promoted as Personal Assistant from 01.01.2004 and thereafter they will come under the purview of BSNL EPP because they would become Executives and subsequently other DPCs for the Time Bound Promotions will be done as per BSNL EPP.

**5.** Heard the learned counsel of both parties and carefully perused the pleadings of the respective parties and the documents annexed therewith.

**6.** During the course of arguments, the learned counsel for the applicants placed reliance on a decision of the Hon'ble High Court of Madhya Pradesh in Writ Petition No.20434 of 2013 decided on 09.12.2013, wherein it has been held that if an employee is denied promotion because of some mistake or error on the part of the department and if he is denied chance to work on a higher post, salary for the period in question when he was denied chance to work cannot be denied to him.

**7.** In the instant case we find that the applicants were earlier wrongly found to be not eligible for grant of promotion as

Stenographer Grade-II. However, when they approached the Hon'ble High Court, the High Court allowed their case and directed to consider the services rendered by the applicants in Maharashtra Circle for the purpose of their eligibility for promotion to the post of Stenographer Grade-II in MP Circle. Therefore, there was a patent irregularity on the part of the respondent-department in not considering their case in due time by taking into account their services rendered in Maharashtra Circle. The order of the Hon'ble High Court was upheld by the Hon'ble Supreme Court by dismissing the SLP filed by the respondent-department. However, the applicants were granted notional promotion from the year 2002 vide order dated 06.05.2015.

**8.** The Hon'ble High Court of Madhya Pradesh in Writ Petition No.20434 of 2013 decided on 09.12.2013 has held thus:

“....finally, the law is clear to the effect that if an employee is denied promotion because of some mistake or error on the part of the department and if it is denied chance to work on a higher post, salary for the period in question when he was denied chance to work cannot be denied to him. It is only an exceptional circumstance, when some reason which is attributable to the employee concerned, the promotion is delayed then such an action is taken. In the present case, no such exceptional situation warranting or holding the petitioner guilty in any manner brought out to the notice of this court.

Accordingly, it is the case where due to mistake or error on the part of the department, the petitioner was not denied promotion on due date at par with his junior and when promotion is denied to the petitioner on the error of

the department, the petitioner is entitled for all consequential benefits".

**9.** On a perusal of above decision of the Hon'ble High Court, we find that the present case is fully covered by the said decision. In the instant case we also find that the applicants were denied promotion because of some mistake/error on the part of the respondent-department and the applicants were denied chance to work on the higher post. Therefore, the salary for the period in question when they were denied chance to work cannot be denied to them. In the present case, the respondents have failed to point out any exceptional situation warranting or holding the applicants guilty in any manner.

**10.** Thus, due to mistake or error on the part of the respondent-department, the applicants were denied promotion from due date and when promotion is denied to the applicants on the error of the department, the applicants are fully entitled for all consequential benefits including arrears of pay and allowances.

**11.** In the result, the Original Application is allowed. The impugned order dated 3.7.2015 (Annexure A/2) is quashed and set aside. The respondents are directed to give pay and allowances attached with the post of Stenographer Grade II to the applicants

Nos.1 to 4 from the due date they were promoted Stenographer Grade II as per the order dated 6.5.2015 (Annexure A/1) w.e.f. 29.01.2002, 27.01.2002, 21.1.2002 and 27.3.2002 respectively.

The respondents are further directed to consider designating the applicants as Personal Assistant under the cadre Restructuring Scheme w.e.f. 01.01.2004 and to further consider the applicants for 1<sup>st</sup> and 2<sup>nd</sup> Time bound upgradation under EPP Scheme from their due date with all consequential benefits arising thereto. The respondent are directed to implement the above directions within a period of three months from the date of communication of this order, failing which the applicants shall be entitled to interest on the amount due at the rate of 6% from the due date. No costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

**(Navin Tandon)**  
**Administrative Member**

*rkv*