

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.259 of 2011

Jabalpur, this Friday, the 03rd day of August, 2018

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

Shrimati Kamla Bai, W/o Late Shri Gangewar,
Aged about 49 years, Canteen Bearer, Telecom Factory,
Wright Town, Jabalpur-482002
R/o Ganga Nagar, Chandan Colony, Jabalpur-482003 -**Applicant**

(By Advocate –Shri S.K.Mishra)

V e r s u s

1. The Chairman cum Managing Director,
Bharat Sanchar Nigam Ltd. Statesman House,
Barakhambha Road, New Delhi-110001
2. The Chief General Manager, Telecom Factories Circle
Jabalpur, Telecom Factories, Wright Town, Jabalpur-482002
3. The Chairman Canteen Managing Committee,
Telecom Factory, Wright Town Jabalpur-482002 - **Respondents**

(By Advocate –Shri S.P.Singh)

(Date of reserving the order:-30.01.2018)

O R D E R

By Ramesh Singh Thakur, JM

The applicant is against the order dated 23.07.2002 (Annexure A-6) whereby, the respondent department has denied the pay scale as per hierarchy of post of Bearer in Departmental Canteen in ACP-I promotion.

2. The applicant has sought for the following reliefs in this O.A.

“8(i) Quash the E.O. No. 73/JB/2002-2003 dated 23.07.2002 (Annexure A/6) in respect of the applicant and letter no. EC-3/BSNL/JBP/2003-2004 dated 25.11.2003 (Annexure A/5) and issue appropriate direction to the respondent to grant. The following pay scale to the applicant under ACP I and II and pay arrears after fixation in proper pay scale w.e.f. 09.08.1999.

	CDA Pay Scale	Corresponding IDA Pay Scale
ACP-I	3050-4400	4550-6650
ACP II	4000-6000	5700-8100 when due in future

(ii) Any other relief which this Hon'ble Tribunal deems fit including the cost of this O.A.”

3. Precisely, the case of the applicant is that he was appointed as Bearer in the departmental canteen of Telecom Factory, Wright Town, Jabalpur with effect from 26.10.1988 in the pay scale of 750-940 which was revised subsequently as per recommendation of Vth Pay Commission as 2610-3540 from 1.1.1996.

4. On the recommendation of 5th pay commission Assured Career Progression Scheme (ACP) was introduced and two promotions known as ACP I & II were recommended to each employees, who do not get any promotion, after 12 years and 24 years service respectively.

5. The Central Govt. issued and laid down the procedure and conditions for grant of ACP-I and II vide order dated 09.08.1999

(Annexure A-1) which was forwarded by the DoT, New Delhi for implementation vide letter dated 24.11.1999 (Annexure A-2) and in condition 7 it has been laid down that ACP-I and II promotions are to be given as per hierarchy of the post. As per Annexure A-3 the clarification was issued by DoT and defined hierarchy of the bearer of canteen carrying pay scale of 2610- 3540 under ACP-I in pay scale 3050-4590 and under ACP-II pay scale of 3200-4900 were to be given. Thereafter, with effect from 01.10.2000 BSNL came into existence and all the employees of the DoT were absorbed therein. BSNL adopted same service conditions of the employees which were applicable on them as DoT employees. The respondents Nos. 2 & 3 has arbitrarily decided contrary to the clarification issued by DoT vide Annexure A-3 and has given pay scale of 2650-4000 and 2750-4400 under ACP-I and ACP-II.

6. The main ground of challenged of the applicant are that denying of the pay scale as per hierarchy is arbitrary and unlawful. The respondents has not properly granted the ACP-I with effect form 09.08.1999 of the pay scale of 3050-4590 as per clarification issued by DoT ND vide Annexure A-3 instead of pay scale 2750-4400. As per Annexure A-3, the hierarchy of the canteen post has been laid down against serial no. 6. Furthermore, the similarly placed bearer of Defence Factories canteen have been given the

pay scale of 3050-4590 under ACP-I. So the action of the respondents is discriminated.

7. The replying respondents have filed their reply and have submitted in their preliminary submission that ACP Scheme provides ACP-I and ACP-II on completion of 12 and 24 years of service and the respondent department has decided the case of the applicant in accordance with the clarification and guidelines received from BSNL corporate office, New Delhi from time to time.

8. In the main reply the respondents has submitted that as per DoT letter dated 26.02.1998 (Annexure R-2) the applicant was allowed pay scale of 2610-3540 on implementation of 5th CPC. Earlier the applicant has been appointed as Bearer (Group D) in the department of T.F. Jabalpur and was working with effect from 26.10.1998 and her pay scale was 750-940. On recommendation of 5th Pay Commission whereby the ACP was recommended and two promotions known as ACP-I and ACP II were recommended for each employee on completion of 12 and 24 years of service respectively, who did not get any promotion. So, the applicant had been granted ACP-I with effect from 26.10.2000 in the pay scale of Rs. 2650-4000 on completion of 12 years of regular service. In the light of different past CPC and up gradations etc., clarification was

issued vide letter dated 01.08.2001 which was again referred to BSNL, ND vide letter dated 04.01.2002 (Annexure R-3), for re-clarification.

9. The matter was examined in detail by the DoT and vide letter dated 12.02.2002 (Annexure R-4) all the Telecom Factories were advised to rationalize the designation of canteen employees and recommended as under:

(a) 1st ACP in the pay scale of 2650-4000

(b) 2nd ACP in the pay scale of 2750-4400.

So in the light of above, the applicant has already upgraded under ACP-I in the pay scale of 2650-4000 with effect from 26.10.2000 on completion of 12 years of regular service as per hierarchy mentioned in the DoT letter dated 12.02.2002 (Annexure R-4). The replying respondents has specifically submitted that the applicant was allowed up gradation (ACP-I) to the pay scale of 2650-4000 under ACP scheme and as per hierarchy vide letter dated 23.07.2002 and subsequent corrigendum dated 05.10.2004 with effect from 26.10.2000 (Annexure R-1) instead of 09.08.1999 in accordance with the clarification and guidelines received from BSNL, New Delhi from time to time.

10. The applicant has filed the rejoinder and has reiterated its earlier stand. It has been further submitted that the applicant that as

per clarification issued by the Department of Telecom, New Delhi point No. 6 of Annexure A-3 is in respect to canteen employee of Telecom Factory, Jabalpur. So this clarification has not been superseded by any subsequent clarification. The clarification issued vide Annexure R-4 is contrary to the condition No.7, Annexure A-I of DoPT letter dated 09.08.1999. It has been specifically submitted by the applicant that as per order issued as Annexure R-4 the next higher grade/post available in the Telecom Factory, Jabalpur as per hierarchy is the scale of 3050-4590. So the pay scale of 2650-4000 can not be the up-graded pay scale as per hierarchy for the purpose of ACP promotion. Since no post carrying pay scale of 2650-4000 operates in canteen of Telecom Factory, Jabalpur, therefore the applicant is entitled to get next higher grade of Cook in the pay scale of 3050-4590.

11. We have heard the learned counsel for the parties and also gone through the pleadings and the documents annexed therewith.

12. The respondents have admitted the fact that the applicant was appointed as a Bearer in the departmental canteen of Telecom Factory, Jabalpur with effect from 26.10.1988 and the applicant was in the pay scale of 750-940. It is also admitted by the replying respondents that later on 5th Pay Commission was implemented and a revised and upgraded pay scale of 2610-3540 was allowed with

effect from 01.01.1996 which is also clear as per Annexure R-2. It is also admitted by the replying respondents that the 5th Pay Commission recommended ACP under which two promotions known as ACP-I and II were recommended for each employee on completion of 12 and 24 years of service respectively, who did not get any promotion. So the applicant had been granted ACP with effect from 26.10.2000 in the pay scale of 2650-4000 on completion of 12 years of regular service.

13. The replying respondents has submitted that in the light of past CPCs and upgradation etc., the clarification dated 01.08.2001 was referred again to BSNL as per Annexure R-3 and re-clarification was issued as per Annexure R-4 and all the Telecom Factories were advised to rationalize the designation of canteen employees and recommended as under:

(a) 1st ACP in the pay scale of 2650-4000

(b) 2nd ACP in the pay scale of 2750-4400.

14. On the other side the case of the applicant is that the respondent department has not followed the condition No.7 issued by the Department of Personnel and Training as laid down in Annexure A-1 dated 09.08.1999, whereby the detail procedure and conditions for implementation of ACP Scheme, which was forwarded by the DoT, New Delhi vide letter dated 24.11.1999

(Annexure A-2) for implementation. In the said letter it has been specifically laid down that financial up-gradation under the scheme shall be given to the next higher grade in accordance with the hierarchy in the cadre/category of post without creating new post for the purpose. However, in case of isolated post in the absence of defined hierarchal grades, financial up gradation shall be given by the Ministry/Department concerned in the immediately next higher grades. The contention of the applicant is that the instructions issued by the DoPT are equally applicable to the employees of statutory department canteen, Telecom Factory Jabalpur.

15. The respondent department has not reverted the specific contention regarding the applicability of the order of DoPT. So it is presumed that the orders of the DoPT are applicable to the respondent department.

16. Regarding the second contention of the applicant that the respondent department has given ACP-I and II in respect of bearer as per Annexure A-6 and applicant was given ACP promotion with effect from 26.10.2000 in the up-graded pay scale of 2650-4000 instead of prescribed hierarchal pay scale of 3050-4590 as clarified by DoT, New Delhi vide Annexure A-3, it is itself clear as per condition 7 of Annexure A-1 the financial up-gradation shall be

given to the next higher grade in accordance with the hierarchy in the cadre/category of post without creating new post for the purpose and in the case of the applicant the ACP after 12 years of service is in the scale of 3050-4590. In view of the clarification issued by the DoT dated 01.08.2001 (Annexure A/3), the respondent department has not denied regarding the applicability of various instructions issued by the DoT and DoPT.

17. So as per Annexure A-3 the applicant is entitled for first ACP after 12 years of service for financial up gradation in the scale of 3050-4590. So the Annexure A-6 is contrary to the instructions issued by DoPT and DoT as per Annexure A-1 and A-3 respectively. As regards the relief sought for by the applicant to grant second ACP, the same cannot be granted.

18. Moreover, the contention of the applicant regarding the adoption of IDA pay scale by the BSNL there is no denial. Resultantly, it is clear that BSNL has adopted the IDA pay scale.

19. In view of the discussion as above, this Original Application is partly allowed and Annexure A-6 dated 23.07.2002 is quashed and set aside qua the applicant. The respondents are directed to grant the applicant ACP-I in the IDA pay scale of Rs. 4550- 6650/-

with effect from the due date, within a period of 60 days from the date of receipt of a certified copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member
rn

(Navin Tandon)
Administrative Member