

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA

LIBRARY

No. O.A. 850 of 2013  
M.A. 46 of 2018

Date of order: 5/9/2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Adhir Kumar Mitra @ A.K. Mitra,  
 Son of Late Hira Lal Mitra,  
 Aged about 71 years,  
 Working for gain as Superintending Engineer (C),  
 Since retired, BSNL, SBCC-II, Kolkata,  
 Residing at AH-6, Sector - II, Salt Lake,  
 Kolkata - 700 091.

.. Applicant

1. Union of India,  
 Service through the Secretary,  
 Government of India,  
 Ministry of Communication and Information  
 Technology, Department of Telecommunication,  
 Sanchar Bhawan, 20, Ashoka Road,  
 New Delhi - 110 001.

2. Bharat Sanchar Nigam Limited,  
 Through its Chairman and Managing Director,  
 Having its Corporate Office at,  
 Bharat Sanchar Bhawan,  
 Harish Chandra Mathur Lane, Janpath,  
 New Delhi - 110 001.

3. The Principal General Manager,  
 BSNL, BW UNIT - Corporate Office,  
 Telegraph Office Building, GF,  
 Kashmere Gate,  
 Delhi - 110 006.

4. The Principal Chief Engineer (C),  
 W.B. Zone, BSNL, 148, C.R. Avenue,  
 Burra Bazar Telephone Exchange,  
 3<sup>rd</sup> Floor,  
 Kolkata - 700 007.

5. The Chief General Manager,  
 BSNL, West Bengal Telecom Circle,

hsl

1, Council House Street,  
Kolkata – 700 001.

6. The Controller of Communication Accounts,  
Department of Telecommunications,  
Govt. of India, West Bengal Telecom Circle,  
8, Esplanade East,  
Kolkata – 700 001.

.. Respondents

For the Applicant : Mr. A.K. Banerjee, Counsel  
Mr. P. Sanyal, Counsel

For the Respondents : Ms. G. Mukherjee, Counsel  
Mr. A.K. Chattopadhyay, Counsel

ORDER

PER DR. NANDITA CHATTERJEE, ADMINISTRATIVE MEMBER:

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who had superannuated from service on 31.1.2002 has, inter alia, prayed for a direction upon the respondent authorities to regularise the service of the applicant w.e.f. 1.7.1995 in the post of Superintending Engineer (Civil) with consequent benefits including revised pension as well as difference of pay and allowances.

An Miscellaneous Application bearing No. 350/00046/2018 arising from the instant original application, has been filed wherein the applicant has prayed for an alternative relief namely, that the applicant may be allowed to continue to remain in the CDA scale under DOT with consequential benefits of bunching of increments and extension of benefits of Sixth and Seventh Central Pay Commission in the appropriate scale of Rs. 14,300-18,300/- at the time of retirement.

Heard Ld. Counsel for both sides, examined pleadings and documents on record. Ld. Counsel for the applicant has submitted written notes of arguments.

3. The application has arisen from the cause of action generated on 1.7.95, namely, the date from which the applicant has sought regularisation in the post of

*[Signature]*

Superintending Engineer (Civil). The applicant has also sought relief of extending the effect of regularisation in the grade of Superintending Engineer (Civil) as per DOT's order dated 5.1.2005 wherein 22 Executive Engineers (Civil), reportedly junior to the applicant, have been so regularised.

The Original Application, however, was filed on 2.8.2013. Hence, as the delay is significantly beyond the period of limitation as permitted under Section 21 of the Administrative Tribunals Act, 1985, the Original Application appears to be hopelessly barred by limitation and, surprisingly, despite directions of this Tribunal dated 13.8.2013, no prayer has been made seeking condonation of delay. Respondent Nos. 2 to 5 have objected to maintainability of the Original Application on the grounds of delay. Hence, this matter deserves to be dismissed in limine under Section 21 of the Administrative Tribunals Act, 1985 on grounds of delay.

As the matter, however, relates to a senior citizen praying for grant of revised pensionary benefits, and, as pleadings having been completed in the matter and hearing concluded, we proceed to examine the relief prayed for on merit.

4. Ld. Counsel has submitted the case of the applicant as follows:-

The applicant had been appointed as Superintending Engineer w.e.f. 1.7.95 on adhoc basis from his previous post of Executive Engineer (Civil) and had continued in the said post upto his superannuation on 31.1.2002 in the senior scale of pay of Rs. 14,300-18,300/- which was granted and sanctioned by different authorities of DOT at different points of time. That, thereafter on 27.4.2015, the applicant had exercised his option with certain stipulations for absorption in BSNL and came to learn that he had been permanently absorbed in BSNL as per orders dated 11.10.2005.

The applicant is aggrieved that his period of adhoc service in the grade of Superintending Engineer (Civil) has not been regularised at par with 22 of his juniors with consequential benefits on account of his absorption in BSNL as per DOT's order dated 26.8.2008 (Annexure A-9 to the O.A.) including revised pension, special allowances and other benefits as admissible in the IDA scale

*hsl*

corresponding to the CDA scale of Rs. 14,300-18,300/- with extension of benefits of subsequent Pay Commissions and that, although the applicant had represented severally, ventilating his aforesaid grievance to different respondent authorities, his representations have not been considered favourably on account of total apathy and deliberate latches on the part of the authorities and, hence, the applicant has approached this Tribunal claiming the aforesaid relief.

5. The respondent Nos. 1 and 6 are the Department of Telecommunications, Ministry of Communication & Information Technology, Govt. of India and respondent Nos. 2 to 5 are representing BSNL. Both respondents have furnished their replies to the instant O.A.

In their reply, respondent Nos. 1 and 6 namely, Department of Telecommunications have argued that:

(a) the applicant had joined as a Section Officer / Junior Engineer (Civil) on 29.1.1962, promoted as Assistant Engineer (Civil) on adhoc basis w.e.f. 27.1.1971, on regular basis w.e.f. 27.2.1974 and thereafter as Executive Engineer (Civil) on adhoc basis w.e.f. 27.10.98 and on notionally regular basis w.e.f. 1.10.1986.

(b) That, DOT, vide their order dated 28.12.1994, had allowed the applicant to hold the post of Superintending Engineer (Civil) w.e.f. 28.12.1994 on charge holding basis (Annexure A-3 to the O.A.) wherein it was clearly stated that the officers so entrusted would be entitled to a charge holding allowance of Rs. 300/- per month in addition to the pay they are drawing in STS Grade, meaning thereby that the applicant was entitled to pay in Pre revised CDA Scale of Rs. 3000-4500/- per month. There was also a clear direction in the said order that : "the adhoc appointment will not confer on the officer any claim for seniority in the higher grade."

(c) The applicant's pay however, was erroneously fixed in the scale of Rs. 3700-125-4700-150-5000/- and he continued to receive the higher scale of pay of Rs. 3700-125-4700-150-5000/- since 1994 without any approval of the

*h.s.b*

competent authority. His pension was to be fixed in the pay scale of Rs. 12000-375-16500/-, equivalent to the pay scale of Rs. 3700-125-4700-150-5000/- and PPO dated 25.1.2002 was issued accordingly. His pay, however, was again re-fixed in the higher upgraded pay scale of Rs. 14300-400-18300/- w.e.f. 1.1.1996 modifying his pension vide PPO No. WB/TA/CAL/PPO-4464/01-02. When a revised LPC was prepared based on incorrect fixation, however, his pay scale was correctly revised w.e.f. 1.1.2006 on the basis of pre-revised CDA scale of pay of Rs. 12000-375-16500/- as per documents received from the pension disbursing authority and the proposal received for fixation of the applicant's pension in the CDA scale of pay of Rs. 14300-400-18300/-, could not be finalized as clarifications as well as Service Book, LPC and Revised Form 7 were not made available from the office of the BSNL.

Respondent Nos. 2 to 5 namely, BSNL in their arguments, have broadly reiterated the contentions of DOT as follows:

- (a) That the applicant was allowed to hold the post of Superintending Engineer (Civil) w.e.f. 29.6.2014 on charge-holding basis and it was made categorical that they would be entitled only to a charge-holding allowance of Rs. 300/- per month in addition to the pay they were drawing in the STS grade namely, the Pre-Revised Central Dearness Allowance (CDA) scale of Rs. 3000-4500/- and that the applicant, without approval of any competent authority, had actually received pay in the scale of Rs. 3700-125-4700-150-5000/- in higher scale of pay from 28.12.1994.
- (b) Again vide order dated 11.1.1996, the applicant along with 11 others, were promoted as Superintending Engineer (Civil) on adhoc basis w.e.f. 1.7.1995 and a specific direction was issued to the effect that "The adhoc appointment of the officers to Superintending Engineer (Civil) grade is subject to their regularization in the grade of Executive Engineer (Civil)." Though the applicant was regularized as Executive Engineer (Civil) w.e.f. 20.3.1997 only, he had started to receive the higher scale of Rs. 3700/- - Rs. 5000/- since 28.12.1994 without approval of the

*hah*

competent authority. Hence, when the applicant superannuated as Superintending Engineer (Civil) adhoc, his pension was fixed in the pay scale of Rs. 12000-15000/- equivalent to pre-revised CDA pay scale of Rs. 3700/- - Rs. 5000/- vide PPO dated 25.1.2002. His pension was again modified and raised to the upgraded pay scale of Rs. 14300/-Rs. 18300/- vide memo dated 26.4.2004, which was in clear violation of instructions circulated vide DOT, New Delhi O.M. dated 27.10.1997 and against the clarifications given by the Ministry of Finance in this regard. Since the applicant had completed only 4 years 10 months and 11 days in regular service in a Gr. 'A' post, such period being far less than the requisite period of 13 years, the applicant had no legitimate claim to be regularised as Superintending Engineer (Civil) and hence the Original Application is devoid of merit.

8. The crucial point of determination in this Original Application is whether the applicant is entitled to regularisation as Superintending Engineer (Civil) w.e.f. 1.7.1995.

9.(i) The order to which we refer to at the outset is that dated 28.12.1994 (Annexure R-1 to the reply) in which the applicant, who was functioning as Executive Engineer (Civil), had been posted as SE (C), TCC, Siliguri on charge holding basis for a period of one year from the date he assumed charge or till the posts are filled up on adhoc/regular basis and for such charge-holding, the applicant, with others, was entitled to a charge allowance of Rs. 300/- per month as well as the pay they drew in the STS Grade.

This has not been disputed by the applicant, meaning thereby he was well aware that he was only holding the charge of a Superintending Engineer (Civil) and was drawing a charge-holding allowance thereupon. The STS Grade corresponding to the pre-revised CDA Scale of Rs. 3000-4500/- would hence be applicable in the case of the incumbents holding charge of Superintending

hslw

Engineer (Civil). It was also noted in the order dated 28.12.94 (supra) that, in case any of the above officers are not recommended for regular promotion to the grade of Executive Engineer (Civil) presently under consideration, his continuance in charge-holding process on the basis of SE (C) would be reviewed. This implies that the incumbents so considered on charge holding basis for SE (C) were basically Executive Engineers (Civil) awaiting regular promotion to the grade of Executive Engineer (Civil) which was under consideration during the time of issue of the order, namely, 28.12.1994.

As it is not the applicant's case that the scale of Rs. 3700-5000/- is applicable to Executive Engineer (Civil), the scope of his drawing pay in scale Rs. 3700-5000/- by virtue of order dated 28.12.1994 does not arise and, if any such orders have been so issued, the same are clearly erroneous and without any support of competent direction or rules.

(ii) Thereafter, on 1.1.1996 (R-2 to the reply), DOT issued an order consequent to withdrawal of the Scheme of charge allowance and 12 officers in the Grade of Executive Engineer (Civil), were appointed as Superintending Engineers (Civil) in the pay scale of Rs. 3700-125-4700-150-5000/- on ad-hoc basis w.e.f. 1.7.95 and upto the dates shown against each of them. The applicant was shown to be placed on adhoc basis in the pay scale of Rs. 3700-125-4700-150-5000/- upto 28.12.1995.

This order was subject to the following conditions:-

- (a) The adhoc appointment of the above officers to Superintending Engineer Grade is subject to their regularisation in the Grade of Executive Engineer (Civil).
- (b) The adhoc appointment will not confer on the officers any claim for regularisation or seniority in the higher Grade.

This clearly implied that the incumbents named in the said order were Executive Engineers (Civil) subject to their regularisation in the Grade of Executive Engineer (Civil) and also that such appointments as Superintending Engineers on adhoc basis w.e.f. 1.7.95 would not give rise to any claim for

*Gopal*

regularisation or seniority in the higher grade namely, the grade of the Superintending Engineer (Civil).

It is interesting to note that this is exactly what the applicant is claiming in the instant Original Application i.e. regularisation in the higher grade of SE (C) w.e.f. 1.7.95 which is clearly precluded by the orders of the respondents dated 11.1.96 which was never challenged by the applicant (Annexure R-2 to the reply / A-4 to the O.A.). It is reiterated that, the applicant's drawal of a higher pre-revised CDA scale of Rs. 3700-5000/- w.e.f. 28.12.1994 was erroneous. The Executive Engineers (Civil) were ultimately regularised on 25.11.2002 whereby it was directed that the applicant had been promoted w.e.f. 1.10.1986 on notionally regular basis and the date of actual regular promotion was 20.3.1997. Therefore, the date of actual regular promotion of the applicant to the post of Executive Engineer (Civil) was 20.3.1997, the date when recommendations of DPC were forwarded by UPSC.

(iii) The Ministry of Finance had clarified certain issues as sought by the DOT, which is reproduced below:-

Clarification sought by Department	Clarification given by MOF
1. Whether the upgraded pay scale of Rs. 14300/- Rs. 18300/- is applicable to Direct Recruitment Gr. 'A' officers and promotees.	1. The upgraded pay scale of Rs. 14300-18300/- is applicable to all the SE's whether Direct Recruits or promotees who were holding the post as on 1.1.1996 and had put in 13 years of Gr. 'A' service on that date. However, in case of promotees, the condition of 13 years of regular Gr. 'A' service would be relevant, through JTS like direct recruits, if they enter through STS directly, then only 9 years of Gr. 'A' service will be required.
2. Whether officiating period in Gr. 'A' post shall be taken into account for computing 13 years of Gr. 'A' officer.	2. As already clarified, only regular service in Gr. 'A' post shall be taken into account for computing 13 years of Gr. 'A' service.

hch

From the above mentioned table it is abundantly clear that the upgraded pay scale of Rs. 14300-18300/- would be applicable to all the Superintending Engineers who were holding the said post on 1.1.96 and had put in 13 years of Gr. 'A' service on that date. In the case of promotees, however, if they enter through STS directly, then only 9 years of Gr. 'A' service is required.

Orders dated December, 1994 and June, 1996 clarify that the applicant had been officiating throughout and, as he was promoted only w.e.f. 20.3.1997, by the time he had superannuated on 31.1.2002, he had completed 4 years 3 months 10 days in a Gr. 'A' post which, being significantly shorter than the requisite period of 13 years, did not entitle the applicant to the upgraded pay scale of Rs. 14300-18300/-. The incorrect preparation of PPO on the basis of higher pay scale may have arisen from the fact that the applicant had been erroneously drawing the pre-revised pay scale of Rs. 3700-5000/- w.e.f. 28.12.1994 and thereafter the scale of Rs. 14300-18300/- w.e.f. 1.1.1996 to 20.3.1997 and had continued to receive the same scale w.e.f. 20.3.1997 to 31.3.2002 by which time he had superannuated. Hence, the applicant's contention is that he was eligible for promotion to the post of Superintending Engineer (Civil) w.e.f. 20.3.1997 and had put in 13 years of service thereafter in regular scale as Gr. 'A' Officer so as to be entitled as a regular Superintending Engineer (Civil), is not borne out by records.

(iv) 22 Executive Engineers (Civil) junior to the applicant but who were in service were regularised as Superintending Engineer (Civil) as on 5.1.2005. Admittedly the applicant was not in service as on 5.1.2005.

The applicant further claimed that as he was holding the post of Superintending Engineer (Civil) w.e.f. 28.12.94, he has put in 9 years of regular service w.e.f. 1.10.86 which entitled him to the scale of pay of Rs. 14300-18300/-. What the applicant has not disclosed is that he was actually holding the post of Executive Engineer (Civil) w.e.f. 1.10.86 on notional basis and was only made regular w.e.f. 20.3.1997 when the recommendations were sent by UPSC and that

*Gopal*

he had held the post of Superintending Engineer (Civil) w.e.f. 28.12.94 only on charge holding basis. The orders placing him on a charge holding basis had a clear stipulation that the charge holding basis of SE (C) was in STS grade and the applicant was not, under any circumstances, entitled to regular service of Executive Engineer (Civil) w.e.f. 1.10.1986.

In *Keshav Chandra Joshi v. Union of India, AIR 1991 SC 284* it was held that promotions are given on ad hoc basis either when direct recruitment is held up or a stop-gap arrangement is necessary due to administrative exigencies or to meet emergency or unusual situations. If such *ad hoc* or stop-gap arrangements are made *de hors* the rules then, unless subsequently regularized, such promotees do not have any substantive right as promotees and their entire length of service as adhoc promotees cannot be counted for seniority.

Also in *Badri Prasad v. Union of India, (2005) 11 SCC 304*, the Hon'ble Court observed that ad hoc promotees cannot claim regularisation even after continuously working for a long period.

(v) The fact that the applicant had been continuously and erroneously drawing pay in scale of Rs. 3700-5000/- w.e.f. 28.12.1994 has given rise to inaccurate pensionary benefits to which he is not entitled.

10. This matter, however, remains to be finally settled by Respondent No. 1 and 6 who has sought certain document from respondents No. 2 to 5. We therefore dispose of this O.A. by directing the respondent Nos. 2 to 5 to furnish forthwith the documents as had been sought for by Respondents No. 1 and 6 vide their letter dated 12.5.2005 (as referred to in para 6.12 of the reply of the respondent Nos. 1 and 6 filed on 26.6.2015) and, after receipt of such records, Respondent Nos. 1 and 6 are to take appropriate decisions as per Rules.

The entire exercise is to be completed within 12 weeks of receipt of this order.

11. The O.A. is disposed of accordingly. There will be no orders on costs.



(Dr. Nandita Chatterjee)  
Administrative Member  
SP



(Bidisha Banerjee)  
Judicial Member