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CA No. 350/1659/2017

AN APPLICATION :

Under Section 19 of the Administrative Tribunals Act, 1985

BETWEEN

MR. AMITABHA SENGUPTA
son of Late Hemesh Chandra Sengupta,
was Working as Personal Secretary
(retired on 28.02.2014)
Residing at Basundhara Building,
Flat No. C/1, First floor,
P/43, Bandipur Road,
P.S. Regent Park,
Kolkata - 700093

.....Petitioner / Applicant

AND

1. Union of India through the Secretary,
Ministry of Communication & Information Technology,
Department of Telecommunications,
Sanchar Bhavan, 20, Ashoka Road
New Delhi - 110001
2. The Director (H.R.)
BSNL, Bharat Sanchar Bhawan,
Janpath,
New Delhi - 110001
3. Chief General Manager (CTD),
Bharat Sanchar Nigam Ltd.,
34, B.B.D. Bag, Telephone Bhawan,
Kolkata - 700001
4. Sri Kalyan Das
Working as Deputy General Manager (WA),
Calcutta Telephones, Telephone Bhawan
34, B.B.D. Bag,
Kolkata - 700001
(now retired)

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5. Sri. K. Lal,
Working as Deputy General Manager (WA),
Calcutta Telephones,
P-10, New C.I.T. Road, 9th floor,
Kolkata - 700073
(now retired)
6. Smt. Shampa Paul,
Wife of Sanjay Ghosh
Working as ^{by} General Manager (Broadband)
Calcutta Telephones, Telephone Bhawan
34, B.B.D. Bag,
Kolkata - 700001
7. AGM/Staff-IHQ,
Calcutta Telephone District
34, B.B.D. Bag,
Kolkata - 700001

..... Respondents

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O.A.No.350/1659/2017

Date :31. 01.2018

Coram : Hon'ble Mr. A.K. Patnaik, Judicial Member

For the applicant : Mr.B.R. Das, counsel
Ms. S. Dutta, counsel

For the respondents : Ms. C. Mukherjee, counsel

ORDER(Oral)**A.K. Patnaik, Judicial Member**

The instant O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-"

- i) "Rescind, recall and/or withdraw the Communication 'A' so as to restrain the Respondent No. 7 from looking through CR documents and allowing the petitioner second time bound upgradation in the revised IDA pay scale of Rs.24,900 - 50,500/- w.e.f. 01.10.2009;
- ii) Rescind, recall and/or withdraw the ACRs for the years as per Annexure A4 prepared by Respondents 4 to 6 for all intents and purpose;
- iii) Re-fix the last pay on the basis of the pay scale as referred to in (i) above and recalculate all the pensionary benefits on the basis of such pay;
- iv) Pay all arrears on account of reliefs (i) and (iii) above, forthwith, with suitable interests thereon;
- v) Certify and transmit the entire records and papers pertaining to the applicant's case so that after the causes shown thereof conscionable justice may be done unto the applicant by way of grant of reliefs as prayed for in (i) to (iv) above;
- vi) Any further order/orders and/or direction or directions as to Your Lordships may seem fit and proper;
- vii) Costs."

2. I have heard Mr. B.R. Das, Id. counsel for the applicant and Ms. C. Mukherjee, Id. counsel for the respondents.

3. Brief facts of this case as submitted by Mr. B.R. Das, Id. counsel for the applicant are that the applicant retired from service of BSNL as a Personal Secretary in the scale of pay of Rs.20,600-46,500/- w.e.f 28.02.2014. He was assigned in the said category w.e.f. 16.06.2004. The applicant was allowed IDA pay scale effective from 01.10.2000 in replacement of CDA pay scale after absorption in BSNL from the Department of Telecommunication. It is further submitted by Mr. Das that the Government of India approved IDA pay scales for executives of BSNL to take effect from 01.01.2007 and the applicant was allowed scale of pay of Rs.20,600 -46,500/- after first upgradation as per BSNL circular dated 18.01.2007 introducing time-bound promotion to Group 'B' level officers. The applicant was allowed first time-bound promotion/upgradation in scale of pay of Rs.20,600-46,500/- w.e.f. October, 2004 i.e. after completion of four years of service in BSNL. The grievance of the applicant is that he was not given the second time-bound promotional scale viz. Rs.24,900 - 50,500/ as per his entitlement w.e.f. 01.10.2009 after five years from 1st time-bound upgradation. It is further submitted by Mr. Das that the applicant was never hauled up in any disciplinary proceeding and the five years-review period prior to 01.10.2009 was free from vigilance angle and therefore, the applicant could not be denied 2nd time-bound promotion even though the ACRs for the preceding five years showed his grading as below benchmark. The grievance of the applicant is that his ACRs for the preceding five years were not prepared, shown or communicated to him in time and they were not sent for counter signature of the Reviewing Officer(s) for the purpose of communication. Mr. Das also submitted that the ACRs which had no role to play in upgradation stand to be ignored by the Screening Committee for upgradation as per law laid down by the Hon'ble Supreme Court.

Moreover, the ACRs of the applicant were incomplete and not placed before the Screening Committee considering upgradation along with other officers well before 01.10.2009 and the applicant was informed by the Department at a belated stage that his case was under process and he would be intimated about the final result. Being aggrieved by such action of the respondents the applicant has approached this Tribunal seeking appropriate relief.

4. Mr. Das, Id. counsel for the applicant submitted that the ACRs of the applicant were received by him at a belated stage and as per the O.M. dated 18.01.2017(Annexure A/2) and circulars dated 27.02.2009(Annexure A/6) and 20.09.2012(Annexure A/3) the applicant is entitled to get the 2nd time bound upgradation of pay, but such benefit was not granted to him during his service career and ultimately he retired on attaining the age of superannuation on 28.02.2014.

5. On being questioned regarding applicability of Section 20 of the Administrative Tribunals Act, 1985, Mr. Das fairly submitted that the applicant may be granted liberty to file a comprehensive representation to the Respondent No.3 and the said authority may be directed to consider and dispose of the same in accordance with the rules and the circulars dated 18.01.2017(Annexure A/2, 27.02.2009(Annexure A/6) and 20.09.2012(Annexure A/3) within a specific time frame. I am of the view that it will not be prejudicial to either of the parties if such prayer of the Id. counsel for the applicant is allowed.

6. Accordingly the applicant is permitted to file a comprehensive representation ventilating his grievances to the Respondent No.3 i.e. the Chief General Manager(CTD), Bharat Sanchar Nigam Ltd., 34, B.B.D. Bag, Telephone

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Bhawan, Kolkata within a period of two weeks from today. The Respondent No.3 is directed to consider and dispose of the same by passing a well reasoned order as per rules and regulations governing the field within a period of six weeks from the date of receipt of the representation from the applicant and communicate the decision to the applicant forthwith. While considering the representation of the applicant the respondent authorities shall examine whether the circulars dated 18.01.2017, 27.02.2009 and 20.09.2012 as referred to by the Id. counsel Mr. Das are applicable to the case of the applicant and pass necessary orders accordingly. If the applicant's claim is found to be genuine then the consequential benefits shall be extended to him within a further period of six weeks from the date of taking decision in the matter.

7. It is made clear that I have not gone into the merits of the case and all the points to be raised in the representation are kept open for consideration by the respondent authorities as per rules and guidelines governing the field.

8. A copy of this order be handed over to Id. counsel for both sides. The applicant is granted liberty to annex a copy of this order along with his representation proposed to be filed to the Respondent No.3.

9. With the above observations the O.A stands disposed of. No order as to cost.



(A.K. Patnaik)
Judicial Member