

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00713/2017

DATED THIS THE 11th DAY OF MARCH, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Anil Kumar Wagh
S/o V.S.Wagh
Aged about 59 years
As Director, Term
Department of Telecommunication
Bangalore and also residing at
No.15, SBI Staff Housing Colony
Basaveshwaranagar
Bangalore-560079.

....Applicant

(By Advocate Sri A.S.Gupta)

Vs.

Union of India
Represented by the Secretary
Ministry of Communication and
Information of Technology
Department of Telecommunication
No.815, Sanchara Bhavan
20- Ashoka Road
New Delhi-110 001.

...Respondent

(By Advocate Sri K.Dilip Kumar)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN)

This is a second round of litigation. The applicant has earlier filed OA.No.349/2010 which was withdrawn by him on 20.1.2012. Thereafter, he filed a Review Application No.1/2018 to recall the order made in OA.No.349/2010 but the same is also dismissed in limine on 17.01.2018. In the present OA, the applicant challenged the

order dtd.25.6.2008 passed by the respondent stating that as the said order is completed by 24.6.2009, the applicant has to be given regular promotion of JAG and subsequent promotion of SAG along with batch mates of 1986 recruitment and all the consequential benefits. But the respondent failed to grant regular promotion of Junior Administrative Grade(JAG) and subsequent promotion to Senior Administrative Grade (SAG). He submits that he received regular JAG promotion only on 1.7.2009 and Non-Functional Upgradation(NFU) SAG on 17.3.2016. The applicant submits that he was entitled to have the promotion and benefits on the basis of 1986 batch whereas he was granted promotion and benefit on the strength of 1995 batch on the strength of the order passed on 24.6.2009 which, according to the applicant, is unlawful, illegal and against the principles of natural justice. Therefore, the applicant filed the present OA praying for quashing of the order dtd. 25.6.2008 and to grant regular promotion of JAG and subsequent promotion to SAG along with batch mates of 1986/87 recruitment, instead of 1995 batchmate without loss of seniority and to extend all consequential benefits.

2. The respondents have filed reply statement wherein they submit that the applicant has already challenged the order of penalty in OA.No.349/2010 which was withdrawn by him vide order dtd.20.1.2012(Annexure-R2) without any liberty to pursue the matter anywhere again with the cost of Rs.100/-. Later, after 6 years, he has filed a review application against the withdrawal order which was also dismissed on the ground of delay as well as on devoid of merit. Aggrieved by the same, the applicant filed WP.No.12157/2018 before the Hon'ble High Court of Karnataka who had also dismissed the said WP vide order dtd.21.6.2018(Annexure-R4). Hence, it is evident that the case is of res-judicata and therefore the applicant cannot raise the same matter before this Tribunal. The OA is also barred by

limitation as the penalty was imposed on the applicant in 2008 and the OA is filed in 2018.

3. The respondents further submitted that a DPC for regular promotion to JAG of ITS Group-A against the vacancy year 1998-99, 1999-2000, 2000-01 and 2001-02 was convened in November-December 2002. The applicant was eligible to be considered against 1998-99. However, he could not be assessed against 1998-99 as sufficient number of officers with prescribed bench mark were already available. The applicant was considered and recommended for promotion to JAG against 1999-2000. However, the recommendation in respect of the applicant was placed in the sealed cover as a prosecution case became pending against him. He was also considered for promotion to JAG against the vacancy year 2002-03, 2003-04, 2004-05, 2006-07 and 2007-08. However the recommendations of the DPC in respect of the applicant were placed in the sealed cover on every occasion, in view of pending disc.proceedings against him. The pending disc.proceedings concluded into imposition of penalty of withholding of one increment for a period of one year without cumulative effect on the applicant vide order dtd.25.6.2008. Hence, the sealed covers were not opened and acted upon as per the provisions laid down in DoPT OM dtd.14.9.1992. Later, the applicant was again recommended and promoted to JAG of ITS Group-A against the vacancy year 2008-09 vide order dtd.6.10.2008. But the same could not be implemented since he was under the currency of punishment at that point of time. After expiry of currency of penalty, he was promoted to JAG notionally w.e.f. 1.7.2009. In accordance with his revised seniority in JAG, the applicant was considered for grant of NFU in SAG w.e.f. 17.3.2016. As such promotion of the applicant was considered by the DPC at his turn, as and when vacancy arises and he comes into zone of consideration for the

same. Therefore, the present OA is devoid of merit, baseless, timebarred and hence is liable to be dismissed with cost.

4. The applicant has filed written submission on the reply of the respondents stating that when the respondent took the process ending with withholding of one increment without cumulative effect for a period of about 10 years after the initial reference to the CBI of the allegations in 1998, they can hardly take shelter under limitation, when the applicant seeks justice in regard to promotion when due to him. He has given chronology of the inquiry proceedings at Annexure-A1 indicating that total time taken is more than 14 years during which period, no delay whatsoever was attributable to the applicant. He submits that res-judicata is limited to the penalty order dtd.25.6.2008 of withholding of one increment without cumulative effect, the questions of promotion to JAG and SAG subsequently remain. Hence, the respondents' contention that the present case is of res-judicata is not sustainable. He cited the cases of *Shri Arun Kumar vs. UOI*(Annexure-A2) decided by CAT, Chandigarh Bench in OA.No.358/HR/2008 and *Shri Gajraj Singh vs. UOI & Ors., 2003(1) SLJ 123 (CAT)* held by CAT, Principal Bench in support of his contention.

5. We have heard the Learned Counsel for both the parties and perused the materials placed on record. The applicant had originally asked for three reliefs viz. **(1)** to hold that the order dtd.25.6.2008 passed by the respondent bearing No.8/49/2000/Vig.II, as Annexure-A1 is arbitrary and without sanction of law as there was no finding given in the order to the alleged allegations and to quash the same **(2)** to hold that the respondent's denial to the applicant regular promotion to Junior Administrative Grade(JAG) in the year 1998 and subsequent promotion to

Senior Administrative Grade(SAG) along with batchmate of 1986 batch is arbitrary, illegal and without sanction of law **(3)** to grant regular promotion of JAG and subsequent promotion to SAG along with batch mates of 1986/87 recruitment, instead of 1995 batchmate, without loss of seniority and to extend all the consequential benefits. However, in view of the earlier applications filed by him vide OA.No.349/2010 decided on 20.1.2012 and RA.No.1/2018 ordered on 17.1.2018 and WP.No.12157/2018(S-CAT) which was filed before the Hon'ble High Court of Karnataka and dismissed on 21.6.2018, the applicant in his written submission has requested for not pressing the relief No.1 relating to the penalty imposed on him. He has made out a case for the other two reliefs relating to regular promotion to the JAG along with his juniors and to restore the rightful promotion due to him. The respondents have also admitted that a DPC for regular promotion to JAG of ITS Group-A against the vacancy years 1998-99, 1999-2000, 2000-01 and 2001-02 was convened in November-December 2002. The applicant was eligible to be considered against 1998-99. However, he could not be assessed against 1998-99 as sufficient number of officers with prescribed bench marks were already available. The respondents also state that the applicant was considered and recommended for promotion to JAG for the year 1999-2000. They also state that the recommendation in respect of the applicant was placed in the sealed cover as a prosecution case became pending against him. The same position continued till the issue of punishment orders in 2008. The crucial point to be noted is that when the DPC met on 26.12.2002, it was considering the vacancies for the previous years from 1998-99 onwards. Therefore, when the applicant was found suitable for the year 1999-2000 based on his eligibility and the availability of the officers suitable for promotion etc. there were no charges pending against him with respect to that

particular year, even though on the date of the meeting of the DPC i.e. 26.12.2002 a charge sheet had already been issued. The contention of the respondent that the recommendation regarding the applicant for the year 1999-2000 was placed in the deemed sealed cover as a prosecution case became pending against him cannot be accepted and only the charge sheet issued to him just before the date of DPC on 26.12.2002 can be taken into consideration. As rightly contended by the applicant, his case is exactly similar to the OA.No.358/HR/2008 ordered by the Hon'ble CAT, Chandigarh Bench of this Tribunal vide its order dtd.27.08.2010 wherein the Tribunal in para-16 stated as follows:

16. We find that the case in hand is fully covered by the decision in the case of Gajraj Singh (supra). We do not find any grounds made out to take a different view. It is not in dispute even in this case that the respondents have clubbed the vacancies for the year 19980-1999 to 2001-2002. The cases of persons who fell within the zone of consideration against the vacancies for the years 1999-2000 and 2000-2001 onwards have to be considered with regard to the record available on that relevant date or year and not with reference to an event which has taken place later in 2001 i.e. issuance of chargesheet to the applicant. It is not disputed that the applicant was eligible for the vacancy for the year 1998-99. He was promoted in 1997 itself, though on ad-hoc basis. Thus, the initiation of departmental proceedings in 2001 would not have any adverse impact on his claim for promotion against the vacancies for the years 1998-99 or 1999-2000.

6. This order of the Chandigarh Bench was challenged in the High Court of Punjab and Haryana vide CWP No.11715/2011 which was dismissed on 8.7.2011. The same being challenged in the Hon'ble Supreme Court in Special Leave Petition CC.14799/2012 was also dismissed on 14.09.2012 on the ground of delay as well as on merits. Therefore, it is clear that the applicant having been found eligible to be promoted to JAG for the year 1999-2000 should not be denied the same in view of the charges being issued in the year 2002 and because of the fact that had the DPC been convened before the charge sheet came to be issued, the applicant would certainly have been promoted and there was no case for keeping the recommendation relating to him in sealed cover for the year 1999-2000. We also

note that the final orders issued against the applicant resulted in a minor penalty.

7. Therefore, the OA is allowed to this extent and the respondents are directed to issue orders accordingly within a period of three(3) months with all consequential benefits. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00713/2017

Annexure A1: Order dtd.25.06.2008, No.8/49/2008, No.8/49/2000-Vig-II

Annexure A2: Letter dtd.23.2.2011 from the applicant to the Member Services

Annexures with reply statement:

Annexure-R1: Copy of the OA.349/2010

Annexure-R2: Copy of the order in OA.349/2010

Annexure-R3: Copy of the order dtd.20.1.2012 in RA.No.1/2018

Annexure-R4: Copy of the High Court order dtd.21.6.2018

Annexures with rejoinder:

Annexure-A1: Chronology of the inquiry proceedings

Annexure-A2: Copy of the CAT, Chandigarh judgment in the case of Arun Kumar Vs. UOI

Annexure-A3: Copy of CAT, Principal Bench judgment in the case of Gajraj vs. UOI & Ors.
