

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/484/2017
M.A. No.60/985/2018

Date of decision: 17.01.2019

...

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).

...

Krishan Dass Sawai, aged 57 years, S/o Late Sh. Hari Singh Sawai, HR No.198503133, Superintending Engineer (Electrical), Bharat Sanchar Nigam Limited, Electrical Circle, Chandigarh. Group A.

... APPLICANT

VERSUS

1. Bharat Sanchar Nigam Limited, Corporate Office, Bharat Sanchar Bhawan, 4th Floor, Harish Chander Mathur Lane, Janpath, New Delhi, through its Chairman-cum-Managing Director.
2. Director (HR), Bharat Sanchar Nigam Limited, Corporate Office, Bharat Sanchar Bhawan, 4th Floor, Harish Chander Mathur Lane, Janpath, New Delhi.
3. Principal General Manager (Electrical), Bharat Sanchar Nigam Limited, Corporate Office, I.R. Hall, Room No.8, Eastern Court, Janpath, New Delhi-110001.
4. Principal General Manager (Personnel), Bharat Sanchar Nigam Limited, Corporate Office, Bharat Sanchar Bhawan, 4th Floor, Harish Chander Mathur Lane, Janpath, New Delhi.
5. Ajai Sangal, HR No.199801785, Chief Engineer (Electrical), BSNL, 3rd Floor, CTO Building, Sanchar Sadan (GPO), Patna, Bihar.

... RESPONDENTS

PRESENT Sh. R.K. Sharma, counsel for the applicant.
Sh. K.K. Thakur, counsel for the official respondents No.1-4.
Respondent no.5 (Ex-parte)

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J):- ...

1. By means of present O.A., the applicant, inter-alia, assails order dated 10.01.2017 (Annexure A-1), whereby respondent no.5 despite being junior to the applicant, has been given the looking after arrangement in the grade of Chief Engineer Electrical, ignoring the claim of the applicant and order dated 22.2.2017 (Annexure A-3) vide which his claim has been rejected. He has also sought direction to grant him deemed promotion as Executive Engineer from the date when he was promoted on ad hoc basis from 1998 or from the date when vacancy occurred in the cadre of Executive Engineer and thereafter he be given deemed promotion as Superintending Engineer on completion of 5 years of service and thereafter as Chief Engineer accordingly.
2. The applicant has staked his claim on the basis of a judgment of the Hyderabad Bench of the Tribunal in O.A. No.1176 of 1999 titled **S.Q. Nasreen Quadri vs. UOI & Ors.** decided on 08.03.2001 as upheld by the Hon'ble Andhra Pradesh High Court in W.P. No.17457 of 2001 decided on 7.9.2008 and then by the Hon'ble Supreme Court dismissing Civil Appeal No.4484 of 2003 on 20.01.2009, whereby benefit has been extended qua similarly placed person of Civil Wing of BSNL.
3. Broadly, facts are not in dispute.
4. Applicant initially joined the respondent department as Assistant Engineer (Electrical) in the year 1986 as a result of direct recruitment through Union Public Service Commission. Person having eight years

service as Assistant Engineer (E) is eligible for promotion as Executive Engineer. Applicant was initially promoted on ad hoc basis on 31.12.1994 and continued as such till he was given regular promotion on 1.02.2003, after deliberations by UPSC against vacancy year 1998-99. Thereafter, he was promoted as Superintending Engineer on 27.6.2012. Next promotion is to the post of Chief Engineer, where Superintending Engineer is required to have four years service to be eligible for such promotion. Grievance of the applicant before this Court is that since he was already holding post of Executive Engineer since 1994, therefore, he be given deemed promotion from that date while calculating his experience for further promotion as Executive Engineer and consequently as Superintending Engineer and Chief Engineer on notional basis.

5. Learned counsel for the applicant argued that applicant has been given step-motherly treatment by not giving him deemed promotion either when he was promoted on ad hoc basis or when regular vacancy arose in the year 1998, for counting same as experience for promotion to the post of Superintending Engineer and then Chief Engineer. He submitted that the applicant, while submitting representation placed reliance on order passed by the Hyderabad Bench in the case of **S.Q. Nasreen Quadri (supra)**, where similar plea as raised by the applicant herein that since she was given promotion as Superintending Engineer (Civil) on ad hoc basis, therefore, ad hoc period be counted towards experience for promotion to next posts, was accepted by the Hyderabad Bench of the Tribunal as upheld by the Hon'ble Andhra Pradesh High Court and Hon'ble Supreme Court.

6. Learned counsel for the applicant submitted that it is settled proposition of law that for qualifying service, employees who are given additional charge or promoted on adhoc basis that working will be counted towards qualifying service for next promotional post. He submitted that the though the applicant had submitted representation by placing reliance on decided cases but without looking into the ratio laid down in indicated case, his claim has been rejected vide impugned order (Annexure A-3). He submitted that since respondents have not considered the ratio of the law and have rejected claim of the applicant by passing a non-speaking order, without explaining why he cannot be given benefit of the judgment, therefore, the impugned order be quashed and set aside. He also informed this Court that only difference is that the applicant before the Hyderabad Bench was from Civil Wing of the respondent department whereas applicant herein is from Electrical Wing. He submitted that once respondents have given relaxation of rules for employees working in civil wing, then the same relaxation can also be given qua applicant who is working in Electrical wing on parity. He also informs that subsequent to that also persons recruited along with the applicant in civil wing have been given notional seniority from the date when they were promoted on adhoc basis.
7. Respondents though have denied benefit based on rule formation but have not spelt out reason as to why they have not extended benefit to the applicant herein as has been given to applicant who was before the Hyderabad Bench.
8. Sh. K. K. Thakur is not in position to support the impugned order on the plea that it does not contain reason, as to why respondents have

denied benefit arising out of judgment in the case of S.Q. Nasreen Quadri (supra). However, he submitted that they rely upon judgment of the Mumbai Bench whereby it has been held that ad hoc service is not to be counted as experience towards promotion for next post. Sh. R.K. Sharma, learned counsel for the applicant submitted that the judgment relied upon by the respondents has already been taken care of in the case of S.Q. Nasreen Quadri (supra), on which the applicant has placed reliance.

9. We have given our thoughtful consideration to entire matter and have perused pleadings available on record with able assistance of learned counsel for the parties.
10. We are in agreement with the arguments raised at the hands of the applicant that the impugned order Annexure A-3 cannot sustain because it does not deal with the points raised by the applicant in his representation qua similarly placed persons in the case of S.Q. Nasreen Quadri (supra). Though the respondents have tried to spell out reason in written statement but that cannot improve the impugned order. Hence, we are of the view that respondents are required to revisit the contentions raised by the applicant in his representation and pass a fresh order in the light of the ratio laid down in the case of S.Q. Nasreen Quadri, who was working in Civil Wing of the respondent department, relied upon by the applicant.
11. Accordingly, without commenting anything on merits of the case, lest it may prejudice the case of either side, the impugned order Annexure A-3, is set aside. The matter is remitted back to the respondents to pass a fresh reasoned and speaking order in the light of judgment relied upon by the applicant, within a period of two

months from the date of receipt of a certified copy of this order.

Order so passed by duly communicated to the applicant.

12. M.A. also stands disposed of accordingly.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 17.01.2019.
Place: Chandigarh.

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