

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 523 of 2012

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Gouranga Charan Das, aged about 63 years, S/o Late Balaram Das, Retired Sub Divisional Engineer, H/No. 100 Ck-3, Utkalmanji Marg, At Aparna Nagar, PO – Chauliaganj, Cuttack – 753004.

.....Applicant

VERSUS

1. Union of India, represented through the Secretary & Chairman, Department of Telecommunications, Sanchar Bhawan, 20 Ashoka Road, New Delhi – 110001.
2. Chairman-cum-Managing Director, Bharat Sanchar Nigam Limited (BSNL), Bharat Sanchar Bhawan, H.C.Mathur Lane, Janpath, New Delhi – 110001.
3. Deputy Director General (Personnel) BSNL, Corporate Office, New Delhi – 110001.
4. Chief General Manager, Telecommunication, BSNL, Orissa Telecom Circle, Bhubaneswar – 751001.
5. Chief General Manager, Telecommunication, BSNL, T&D Circle Sanchar Vikash Bhawan, Residency Road, Jabalpur – 482001.

.....Respondents.

For the applicant : Mr.A.K.Mohanty, counsel

For the respondents: Mr.S.Behera, Sr. counsel
Mr.S.B.Jena, counsel

Heard & reserved on : 26.2.2019

Order on : 13.3.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

In this OAs, the applicant seeks the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

"(i) To admit this original application;

AND/OR

(ii) Issue notice to the respondents as to why the OA should not be allowed and set aside the order dated 3.5.2012 rejecting the prayer of the applicant seeking placement in the lateral scale of Junior Telecom Officer (JTO) from 8.8.1995.

AND/OR

(iii) Direct the authorities to place of the applicant in higher scale retrospectively from 8.8.1995 instead of 9.2.1996 as per the scheme;

AND/OR

(iv) Direct the respondent No. 2, 3 and 4 to issue a revised order regarding lateral advancement of JTO's (erstwhile ASTT's) after completion of 12 years and the applicant be placed in higher scale from 8.8.1995;

AND/OR

(v) Pass such other order(s) as this Hon'ble Tribunal deem and proper in the interest of justice, equity and fair play."

2. Briefly stated, the applicant is aggrieved in this case for non-sanction of the benefit of the lateral promotion in his favour at par with other similarly placed employees in accordance with the guidelines of the Government. The applicant joined service initially as Assistant Superintendent Telegraph Traffic (in short ASTT) on 8.8.1983 and on 1.4.1994, the cadre of ASTT merged with the cadre of Junior Telecom Officer (in short JTO). On 26.8.1996, benefit of lateral promotion applicable for the JTOs was extended to the erstwhile ASTTs with effect from 1.4.1994 subject to the condition that the ASTTs will not be promoted till all the JTOs senior to them have not been promoted. Accordingly, the applicant was extended the benefit of the lateral promotion w.e.f. 24.5.1998 (Annexure-5 to the OA), which was subsequently revised to be from 9.2.1996 vide order dated 24.7.2001 (Annexure-6). The applicant represented on 14.11.2008 (for grant of the time bound promotion w.e.f. 8.8.1995 when he completed 12 years of service.

3. When no action was taken, the applicant filed the OA No. 153/2009 which was disposed of with directions to the respondents to consider the representation of the applicant dated 14.11.2008 for antedating his promotion to 8.8.1995 in place of 9.2.1996. The respondents have considered the representation dated 14.11.2008 and rejected the same vide the impugned order dated 3.5.2012 (Annexure-9).

4. This OA has been filed challenging the order dated 3.5.2012 mainly on the following grounds:-

- (i) Since the Telecom service is an all India cadre, implementation of promotion cannot be different in different state. Applicant's juniors in the cadre have got the benefit of promotion w.e.f. 8.8.1995, hence the applicant cannot be denied the same benefit.
- (ii) The fact that some of his seniors had not got promotion cannot be a ground to deny promotion to the applicant w.e.f. the date due to him.
- (iii) The guidelines on merger of ASTT & JTO cadres are violated in this case.
- (iv) Erroneous decision in his case has caused prejudice to the applicant.

5. The impugned order dated 3.5.2012 (Annexure-9) stated the following reasons while rejecting the representation of the applicant:-

- "4. Subsequently the date of effect of merger of ASTT with JTO was modified from 1.4.1994 to 9.2.1996 vide DOT, New Delhi letter No. 5-1/94-TE-II dated 13.1.1998. It was further clarified vide DTS, New Delhi letter No. 6-49/99-NCG dated 31.7.2000 that since in terms of recruitment rules of JTO notified on 9.2.1996, all the ASTTs turned JTO were to be treated at par with JTO and therefore all ASTT turned JTOs should get lateral advancement scale on completion of 12 years on or after 9.2.1996 and the service rendered by the ASTTs before the merger date i.e. 9.2.1996 would also be taken into account for the purpose of lateral advancement scale without considering seniority w.r.t. JTO. Accordingly the date of effect of your placement in advancement scale was revised from 24.5.1998 to 9.2.1996 along with others vide this office letter No. ST/22-9/95(Part) dated 24.7.2001. It is clearly established from DTS letter cited above that the orders granting advancement scale to erstwhile ASTTs of this circle were in order.
- 5. The criterion for granting lateral scale to ASTTs on completion of 12 years on or after 9.2.1996 without considering seniority has been strictly followed after receipt of DTS, New Delhi letter No. 6-49/99-NCG dated 31.7.2000 and your case has been duly considered in the light of rulings conveyed vide DTS letter cited above.
- 6. That your representation to CGMT, Orissa Circle has been thoroughly examined in this office in the light of DOT/DTS rulings in force from time to time and your have been suitably rep[lied vide this office letter of even No. dated 11.4.2002 as mentioned in your representation. Your case for grant of advancement scale has been considered w.e.f. 24.5.1998 pursuant to DOT, New Delhi letter No. 5-1/94-TE-II(Pt) dated 16.5.1995 and subsequently date of effect of advancement scale was revised to 9.2.1996 pursuant to DOT New Delhi letter No. 5-1/94-TE-II dated 13.1.1998 and DTS, new Delhi letter No. 6-49/99-NCG dated 31.7.2000. Hence your contention that cases related to certain periods must be decided on the basis of the rules and provisions prevailed till such time has been followed by Orissa telecom Circle properly.

In view of the departmental rulings issued from time to time in connection with placement in higher pay scale under lateral advancement scheme in respect of erstwhile ASTTs, you have been rightly granted lateral promotion w.e.f. 9.2.1996 and your claim for getting the benefit w.e.f. 8.8.1995 is not tenable as per rule."

6. The grounds mentioned in the impugned order have been reiterated in the para 11, 14, 15 and 17 of the counter. The counter has referred to the circular dated 31.7.2000 (Annexure-R/3 to the counter) in which it is clarified that the ASTTs turned JTO after merger w.e.f. 9.2.1996 are to be treated at par with the JTOs and they will get lateral advancement after completion of 12 years on or after 9.2.1996 and service rendered before the date of merger will be taken into account for the purpose of lateral advancement.

7. The applicant has filed Rejoinder reiterating the grounds in the OA and generally denying the averments in the counter. Regarding specific averments

in para 11 of the counter, nothing has been mentioned in the Rejoinder to contradict the same.

8. Heard learned counsels for both the sides. The applicant's counsel reiterated the averments in the OA. The respondents' counsel pointed out the question of delay in filing the OA vide para 2 of the counter and the fact that the representation of the applicant submitted prior to 14.11.2008 was rejected vide letter dated 11.4.2002 as mentioned vide para 6 of the impugned order dated 3.5.2012 and at para 3 of the counter. The applicant's counsel in reply stated that the claim of the applicant related to salary and it is a continuing cause of action for which the delay or limitation will not apply.

9. We have perused the pleadings on record and considered the submissions of the learned counsels for both the sides. The respondents have opposed the OA mainly on following three grounds:-

- (i) Delay in filing the OA (counter para 2);
- (ii) The letter dated 11.4.2002 rejecting earlier representation of the applicant has not been challenged in this OA (counter para 3); and
- (iii) The circular dated 31.7.2000 stipulated that promotion of erstwhile ASTTs will be after 12 years of service on or after 9.2.1996 (counter para 11).

10. First ground is the delay in filing the OA in which the judgment of Hon'ble Apex Court in the case of **C. Jacob**. From the facts of the case, the applicant was allowed lateral promotion vide order in 1999 w.e.f. 24.5.1998, which was later on modified to take effect from 9.2.1996 vide order dated 24.7.2001 (Annexure-6 of the OA). The applicant has represented to antedate the promotion to 8.8.1995 and this representation was rejected by the respondents vide letter dated 11.4.2002 as mentioned vide para 6 of the impugned order dated 3.5.2012 and at para 3 of the counter filed by the respondents. Nothing has been mentioned in the pleadings of the applicant about correctness of the averments of the respondents in this regard and whether the applicant had challenged the decision to reject his representation vide letter dated 11.4.2002. In fact nothing is mentioned in the OA or in the Rejoinder about the letter dated 11.4.2002. Then the applicant filed the OA No. 153/2009 and as per the direction of the Tribunal, the respondents had passed the impugned order dated 3.5.2012 which has been challenged in this OA.

11. In the case of **C. Jacob Vs. Director of Geology & Mining & Anr.** Hon'ble Apex Court examined the issue of delay and in the judgment reported in **AIR 2009 SC 267** and held as under:-

"7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department,

the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of acknowledgment of a jural relationship' to give rise to a fresh cause of action."

12. From the facts of the present OA, it is clear that the applicant having failed to challenge the first letter dated 11.4.2002 of rejection of his representation had filed the OA No. 153/2009 to get an order from the Tribunal to get his representation dated 14.11.2008 considered on the same subject for which his claim was rejected on 11.4.2002 and which was accepted by him from 2002 till 2008. Even if it is assumed that the letter dated 11.4.2002 was not known to the applicant, still then he had accepted the decision to promote him from 9.2.1996 since 24.7.2001 till he submitted the representation on 14.11.2008. The reply of the applicant in his Rejoinder that the delay will be counted from 3.5.2012 is not tenable in view of the ratio of the judgment of Hon'ble Apex Court in the case of C. Jacob (supra) as extracted above. It is clear that the limitation in this case will not be extended to the order dated 3.5.2012 passed by the respondents in compliance of the direction of the Tribunal. We are not at all convince by the argument of the learned counsel for the applicant that it is a continuing cause of action for which delay is not applicable. In fact it is a case of antedating the date of promotion which is likely to affect the status of the applicant's seniors who were promoted w.e.f. 9.2.1996 and a question of promotion which has been accepted for a long time cannot be reopened or unsettled. Hence, we are of the considered opinion that this OA is barred by limitation since there is no application for condoning the delay and the original cause of action was from 24.7.2001 promoting the applicant from 9.2.1996.

13. The second ground mentioned in para 9 relates to the rejection of first representation of the applicant by letter dated 11.4.2002. Nothing has been mentioned in the Rejoinder about this letter which is mentioned in para 3 of the Counter. In other words, the applicant does not specifically deny the averments in this regard. After being informed about the said letter/order, no action was taken by the applicant to challenge it in this OA. Whether the applicant has received the said letter or not, has not been mentioned in the Rejoinder filed by the applicant.

14. Third ground in para 9 relates to the clarification in the circular dated 30.7.2000 (Annexure-R/3 of the Counter) in which it is stated that the promotion of the erstwhile ASTTs will be from the date of completing 12 years of service on or after 9.2.1996. This circular of the respondents has not been challenged by the applicant in this OA. As per this circular, the date of promotion of the applicant has been correctly decided to be 9.2.1996 at par with other similarly placed JTOs as stated in the order dated 24.7.2001 (Annexure-6 of the OA).

15. The applicant in para 4.6 of the OA has pointed out that some of his juniors have been allowed promotion w.e.f. 8.8.1995 i.e. prior to 9.2.1996. In reply, the respondents in their counter stated as under:-

"8. That as regards the averments made in Para 4.6 of the Original Application it is submitted that the promotion under lateral advancement scheme in respect of ASTT turned JTO was governed by DOT New Delhi letter No. 5-1/94-TE-II dated 16.5.1995. Some ASTT turned JTO might have been granted the lateral advancement scale who had fulfilled the conditions laid down in para 3(i) & (ii) of DOT, New Delhi letter No. 5-1/94-TE-II (Pt) dated 16.5.1995. The names cited by the petitioner do not belong to Orissa Telecom Circle and their promotion cannot be commented upon by respondent NO.2. It may so happen that in the concerned circle there might not be any eligible JTO senior to them. As JTO is a circle cadre post, the petitioner cannot compare his position with respect to JTOs other circle. Therefore the petitioner had been granted the promotion under lateral advancement scheme w.e.f. 24.5.1998 in conformity with para 3(i) of the DOT, New Delhi letter No. 5-1/94-TE-II dated 16.5.1995.

9. That subsequently the date of effect of merger of ASTT with JTO was modified from 1.4.1994 to 9.2.1996 vide DOT, New Delhi letter No. 5-1/94-TE-II dated 13.1.1998. It was further clarified vide DTS, New Delhi letter No. 6-49/99-NCG dated 31.7.2000 that since in terms of recruitment rules of JTO notified on 9.2.1996, all ASTT turned JTOs should get lateral advancement scale on completion of 12 years on or after 9.2.1996 and the service rendered by the ASTTs before the merger date i.e. 9.2.1996 would also be taken into account for the purpose of lateral advancement scale without considering seniority w.r.t. revised from 24.5.1998 to 9.2.1996. Hence the demand of the petitioner that he is entitled for placement in higher scale on actual completion of 12 years is not justified."

16. The reply to above averments of the respondents, the applicant has stated the following in para 8 of the Rejoinder:-

"That with reference to the averments made by the respondents in para 8 of the counter it is respectfully submitted that condition 3(i) of OM dated 16.5.1995 is satisfied in this case due to the fact there was no senior to the applicant in JTO cadre who were not granted lateral advancement. Further the combined seniority list was also prepared by the circle much before issue of OM dated 13.1.1998. Conceding for the sake of argument that it was not issued by the circle, then the applicant was not responsible for such delay in preparing the combined seniority list by the circle office during the period from April 1994 to January 1998. Hence

such averment made by the respondents in this paragraph is devoid of any merit and as such is liable to be ignored by the Hon'ble Tribunal. Moreover in Annexure R/3 it is very clearly mentioned that such lateral advancement to ASTT can be given without any reference to the seniority of any JTO."

17. We are unable to accept the contentions of the applicant in para 8 of the Rejoinder. The seniority list at Annexure-7 of the OA was dated 3.1.2000 and it was a provisional seniority list subject to correction. The date of promotion of the applicant was changed to 9.2.1996 vide order dated 24.7.2001 (Annexure-6 of the OA) which was subsequent to the issue of the seniority list dated 3.1.2000. The applicant had represented to the respondents about his grievance and it was rejected vide letter dated 11.4.2002 which has not been denied by the applicant. Moreover, no evidence has been furnished by the applicant to the effect that some of his similarly placed juniors were given promotion w.e.f a date prior to 9.2.1996 and he had challenged the said decision within time stipulated under law.

18. Learned counsel for the applicant has filed a written note of submissions reiterating the grounds taken in the pleadings and stressing on the point that his juniors were allowed lateral advancement w.e.f. 8.8.1995 as would be revealed from Annexure-7 of the OA. We do not find any order enclosed by the applicant in Annexure-7 of the OA showing the date of promotion of any of the applicant's junior to be w.e.f. 8.8.1995. One promotion order dated 26.6.1997 was enclosed in Annexure-7 showing the date of promotion of some officers to be in March and June 1997. Another order dated 1.1.1998 was enclosed in Annexure-7 showing promotion of some officers to be May, 1998. No order showing the date of promotion of any of the erstwhile ASTT to be 8.8.1995 as contended by the learned counsel for the applicant. Hence, we have no hesitation to reject the contention of the applicant that any of his junior who was similarly placed as the applicant, was promoted w.e.f. 8.8.1995 since no document in support of such contention has been furnished before us.

19. Learned counsel for the applicant has enclosed a copy of the judgment of the Principal Bench of the CAT dated 9.10.2014 in OA No. 4504/2011 in the case of Santer Pal vs. Bharat Sanchar Nigam Limited. In that case, the dispute related to the fixation of pay of the erstwhile ASTTs at par with the JTOs w.e.f. 1.1.1996 as against the date from 9.2.1996 as allowed by the respondents. It was held that the merger of both the cadres will be effective from 1.4.1994 as per the earlier order and not from 9.2.1996 and the applicants in that OA would be entitled for revised pay scale as JTO w.e.f. 1.1.1996. In the present OA, the dispute is the date from which the lateral promotion of the erstwhile ASTTs will take effect. In the present OA, no pleading is available regarding the

effective date of merger of the cadre of ASTTs as JTOs. As stated earlier, the averments in para 11 of the counter about the change in date of merger and the circular dated 31.7.2000 (Annexure-R/3) have not been contradicted by the applicant in his Rejoinder. It is not permissible to come up with a fresh ground while filing the written notes of submissions. Moreover, as the nature of the dispute in the cited case was different and the issue of promotion and the circular dated 31.7.2000 were not considered in the case cited by learned counsel for the applicant in the written submissions, it is factually distinguishable from the present OA. Moreover, the dispute in the pay scale on account of merger is considered as a continuing cause of action in which delay will not be an issue, unlike in the case of date of promotion, which was accepted by concerned employees for a long time and changing the date may affect the right of other employees.

20. In the facts and circumstances as well as the position of law as discussed in the preceding paragraphs, the OA is not only barred by limitation under section 21 of the Administrative Tribunals Act, 1985 but also it is devoid of any merit. Hence, the OA is dismissed with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath