



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A /350/132/2014

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

Sabyasachi Bhattacharyya,
Son of Late S.N. Bhattacharyya,
Aged about 52 years, working as
Senior TOA(G) Cash Collection Centre,
Budge Budge, 20/1 Mahatma Gandhi
Road, Kolkata-700 037, residing at
Nungi Ghosh Para, P.O. Batanagar,
P.S. Maheshtala, South 24 Parganas,
Kolkata-700 140.

.....Applicant

V. e. r. s. d. s.

1. Union of India, Service through the Secretary,
Ministry of Telecommunication, Bharat Sanchar
Nigam Ltd., Sanchar Bhawan, New Delhi-1;
2. General Manager, Bharat Sanchar Nigam Limited,
Telephone Bhawan, Kolkata-700 001;
3. The Assistant General Manager(A),
Office of the Chief General Manager,
Telecom Stores, 3A, Chowringhee Place,
Kolkata-700 013;
4. SDE(Staff), Calcutta Telephones,
Office of the Area Manager/Alipore,
2/5A, Judges Court Road, Kolkata-700 027

.....Respondents

For the applicant : Mr. H.K. Basu, counsel

For the respondents : Mr. T.K. Chatterjee, counsel
Mr. N. Mukhopadhyay, counsel

Heard on : 11.03.2019

Order on : 12.4.19

ORDER**Bidisha Banerjee, Judicial Member**

Heard Id. counsel for both sides.

2. The applicant served from 27.08.1983(F/N) to 03.11.1985(F.N) at Armed Forces Headquarter, Ministry of Defence. He joined Telecom Stores under G.M. on 04.11.1985(F/N). In the postal department upon completion of 16 years of service, an LDC is entitled to OTBP benefits.

3. The applicant has pleaded that by an order dated 03.09.1999(Annexure A/1) he was given promotion under OTBP Scheme and placed in the scale of Rs.5000-8000 before completion of 16 years of service in terms of Department of Telecommunication's orders dated 09.09.1992, 16.10.1990 and 20.04.1999, while he was serving as Sr. TOA. Subsequently vide order dated 7th October, 1999, the promotion order was cancelled without assigning any reason. Long thereafter on 13.10.2012 he served a demand of justice through his Learned Counsel, upon the Assistant General Manager(A), Telecom Stores, Kolkata and the SDE(Staff), BSNL, Calcutta Telephones seeking rectification of the recorded date of his joining service in the Service Book as 27.08.1983(F/N) in place of 04.11.1985 and for proper calculation of OTBP benefits with effect from 27.08.1983. On 22nd January, 2013 he was intimated by the BSNL that the period of service rendered in other departments/Ministries would not be taken into account before granting such promotion. The communication dated 22.01.2013 reads as under:-

"In response to your letter even dated 13.10.2012 in r/o date of effect of OTBP/BCR Promotion as per observation orders it is clearly clarified that period of service rendered in other department/ministries will not be taken into account before granting such promotion.

Hence, seeking such periods taking into account is regretted."

Aggrieved the applicant has preferred the present O.A. to seek the following reliefs:-

- "a) Issue a Notice and/or writ upon the respondents specially upon the respondent Nos.2 and 3 to show cause as to why they will not be directed of the act in pursuance to the order dated 3rd September, 1999 being order No.E-16/Gr.-II/Promotion/98, issued by Office of the Chief General Manager, Telecom Stores, Calcutta forthwith;
- b) Issue a Notice and/or writ upon the respondents specially upon the respondent nos. 2 and 3 to cancel the order dated 7th October,1999 vide order No.E-16/T.O.A. Gr.-II/Promotion/100 the Office of the Chief General Manager, Telecom Stores, Kolkata-700013 and also order dated 29th November, 1999 vide Order No.E-16/T.O.A. Gr-II/Promotion/141 by the Office of the Chief General Manager, Telecom Stores, Kolkata-700013 forthwith;
- c) Issue a mandatory order commanding the respondents, their officers, agents, subordinates to produce or cause to be produce the records of the case before this Hon'ble Tribunal, so that *conscientious justice may be done by quashing and/or setting aside the same;*
- d) Issue a mandatory order directing the respondents to recall, withdraw and rescind the impugned order dated 7.10.1999 subsequently communicated by letter No.GMC/1001/Staff/LC/12-13 of AGM/Adm/ALP BSNL, Calcutta Telephones dated 22.1.2013;
- e) To pass such further order or orders as this Hon'ble Tribunal may deem fit and proper."

4. At hearing, Ld. counsel for the respondents would invite our attention to Annexure R-2 to the reply which is an order dated 05.11.1985 issued by the Department of Telecommunication (DOT). The order indicates that the applicant, Sabyasachi Bhattacharyya, who was relieved from the Ministry of Defence, was appointed as LDC in the scale of Rs.260-400 with usual allowances as admissible, with effect from 04.11.1985(F/N) and such appointment was purely on temporary basis and the services of the official was liable to be terminated at any time without assigning any reason and that he "**will not claim benefit of his past service and he will be treated as new entrant.**" Ld. counsel for the respondents would submit that having accepted such terms of appointment, the applicant agreed to join the Department of Telecommunication.

Further, on 20.07.1986, as evident from Annexure R-3, it was clearly indicated that the past services rendered by the applicant as Lower Division Clerk, Office of the Chief Administrative Officer, Ministry of Defence, New Delhi during the period from 27.08.1983 to 03.11.1985(AN) would count only towards pension, increment, leave, pay, fixation etc. but in no case he would get the benefit of seniority in the cadre of Lower Division Clerk in the O/o the G.M.T.S., Calcutta. His interse-seniority would be fixed from the date of his appointment in the O/o the G.M.T.S., Calcutta i.e. from 04.11.1985(F/N) as per departmental rules. OTBP granted earlier by reckoning erstwhile service under Ministry of Defence was erroneously done, hence, rightly taken away. Accordingly ld. counsel would submit that having accepted the terms of appointment as above and with open eyes the applicant is estopped from claiming benefit of past service to reckon for OTBP.

LD. counsel for the respondents would further allege that the O.A. was hopelessly barred by limitation since the applicant has preferred this O.A. after six years from the demand of justice and he had never agitated the matter earlier.

5. We discern that the applicant has failed to bring out any rule that would permit counting of his past service under Ministry of Defence, towards seniority for the purpose of grant of TBOP(or OTBP) in the Ministry of Telecommunications. Further, the order dated 20.07.1986 is under challenge. The applicant has accepted the order and its implications without demur. As such, he is estopped from claiming otherwise or to seek benefit of the period of service rendered under Ministry of Defence for any purpose other than pension. That apart, his challenge to an order of 1999 is a hopelessly belated claim.

6. In order to grant any benefit in the present O.A. an order of 1986 vintage would be required to be gone into and rectified/modified which relief has not been sought for. Therefore, the parent order being not challenged, the consequent order of 1999, challenged after a delay of almost 15 years, cannot also be rectified. Further, the claim being as such a stale one, is not tenable. Accordingly the O.A. is dismissed warranting no interference with the order impugned. No costs.

(Dr. Nandita Chatterjee)
Administrative Member
sb

(Bidisha Banerjee)
Judicial Member

