

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00544/15**

Reserved on : 04.04.2019
Pronounced on: 16.04.2019

CORAM

**HON'BLE MR. JAYESH V. BHARAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Dipa Ghose, W/o Late Rabin Ananda Ghose, son of Shri B.K. Shosh, Sub-Divisional Engineer (Electrical), Bharat Sanchar Nigam Limited, Gaya (Bihar) Resident of 3/6, Gobra Gorasthana Road, Kolkata Municipal Corporation, Topsia, Kolkata-700046 (W.B.)

.... **Applicant.**

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Chairman and Managing Director, Bharat Sanchar Nigam Limited, Corporate Office, Bharat Sanchar Bhawan, Janpath, New Delhi.
2. The Director (HR), Bharat Sanchar Nigam Limited, Corporate Office, Bharat Sanchar Bhawan, Janpath, New Delhi.
3. The Principal General Manager (Electrical), Bharat Sanchar Nigam Limited. Corporate Office, Electrical Wing, Bharat Sanchar Bhawan, IR Hall, Eastern Court, Janpath, New Delhi.
4. The Deputy General Manager (EW-QC), Bharat Sanchar Nigam Limited, Corporate Office, Electrical Cell, Bharat Sanchar Bhawan, Janpath, New Delhi.
5. The Chief General Manager, Telecom, Bharat Sanchar Nigam Limited, Bihar Circle, Patna (Bihar).
6. The Chief Engineer (Electrical), Bharat Sanchar Nigam Limited, Electrical Zone, Patna.

.... Respondents.

By Advocate: - Mr. K.P. Narayan

ORDER

Per Dinesh Sharma, A.M:- The case of the applicant is that he was granted promotion to the grade of Executive Engineer (Electrical) in the IDA

pay scale of Rs. 29,100- 54,500 vide order dated 14.08.2012. However, this order was not given effect to allegedly due to some disciplinary action being contemplated against him which culminated in issuance of charge sheet to him on 06.06.2014. Such denial of promotion on a date when there was no action pending against him is against the laws and against the judicial pronouncements of the Hon'ble Supreme Court, Hon'ble High Courts and difference benches of the CAT. The applicant has also submitted that he was not granted the benefit of time bound financial upgradation which are due since 01.10.2004 and 01.10.2009 which is contrary to their own circular dated 20.09.2012.

2. The respondents have denied the claims of the applicant on ground of these being barred by principle of waiver, acquiescence and estoppel and also barred by limitation. They have alleged that a complaint regarding double payment by way of tampering in pay order dated 23.08.2012 was forwarded to the Vigilance Cell, Bihar Circle, Patna. Since it was learnt that the matter was under investigation, as per Clause- 4.0 of the promotion order dated 14.08.2012, the controlling authority of the applicant did not relieve the applicant for joining at the new assignment. The respondents have questioned the seeking of plural relief (promotion as well as financial upgradation) which is in violation of Rule 10 of CAT (Procedure) Rules, 1987. They alleged that no application was received regarding pay upgradation of applicant from his controlling officer.

3. During the pendency of the OA, a miscellaneous Application (No. 297/2016) was filed by one Ms. Dipa Ghose, wife of late Rabin Ananda

Ghose, informing the Tribunal that the original applicant Rabin Ananda Ghose died on 24.12.2015. She requested for allowing her name to be substituted in place of the applicant. This prayer was allowed vide order dated 25.07.2016. The Tribunal also directed the learned counsel for the applicant, by the same order, to satisfy the Tribunal on the issue of limitation on the next date of hearing.

4. The case was finally heard on 04.04.2019.

5. After going through the pleadings and hearing the parties, it is clear that the applicant was promoted by order dated 14.08.2012 but was not allowed to join at the place of posting due to what the department has considered as pending disciplinary action. It has been decided in a number of cases that a disciplinary action cannot be said to be pending till a formal chargesheet is issued. In this case, the chargesheet was issued only in the year 2014. Thus, though there was no legally justifiable ground for preventing the applicant from getting the promotion, in effect his promotion could not materialize and he continued to work at the junior level. Raising the issue for his promotion which happened by order dated 14.08.2012, by filing this OA in the year 2015 is clearly barred by limitation. The applicant did not even file any prayer for condonation of this delay on any ground. Thus, his claim for promotion, following the order dated 14.08.2012, is clearly barred by period of limitation.

6. Regarding the request for financial upgradation the claim is for getting it from the year 2004 and 2009 which also is apparently barred by the period of limitation. However, the reply of the respondents that this was

not processed due to there being no application received regarding such pay upgradation from his controlling officer, is *prima facie* not reasonable excuse for not granting such upgradation. Since financial upgradation is not a promotion and every employee is entitled to get it in the absence of any reasons for disqualifying, such upgradation should have been granted from the dates when it became due without needing a representation from the employee side. Hence, though the claim is barred by period of limitation, since the loss due to non-granting of such financial upgradation is a continuing loss, we feel that the interest of justice will be served if the respondents are directed to consider grant of due financial upgradation to the applicant and revise the corresponding family pension benefits to the widow of the original applicant (current applicant). The orders to this effect shall be passed by the respondents within three months of receipt of this order. The OA is disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member