

CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA.  
OA/050/00886/2015

Dated of order : 24<sup>th</sup> April, 2019

**C O R A M**

Hon'ble Shri Jayesh V. Bhairavia, Member [Judicial]  
Hon'ble Shri Dinesh Sharma, Member [Administrative]

Manoj Kumar Patel, son of Keshab Chandra Patel, resident of 40, Hardinge Road, Telecom Colony, Quarter No. A/5, Patna 800 001.

Applicants.

By Advocate : Mr. J.K.Poddar

Vs.

1. The Union of India, through its Secretary, Ministry of Communication and IT, Department of Telecommunication, Sanchar Bhawan, 20 Ashoka Road, New Delhi.
2. The Secretary, Ministry of Communication and IT, Department of Telecommunication, Sanchar Bhawan, 20 Ashoka Road, New Delhi.
3. The Director [Staff], Ministry of Communication and IT, Department of Telecommunication, Sanchar Bhawan, 20 Ashoka Road, New Delhi.
4. The Union of India through the Secretary, Ministry of Personnel & Public Grievances and Pensions Department of Personnel & Training, Government of India, North Block, New Delhi – 110001.
5. The Secretary, Ministry of Personnel & Public Grievances and Pensions Department of Personnel & Training, Government of India, North Block, New Delhi – 110001.
6. The Deputy Secretary, Ministry of Personnel & Public Grievances and Pensions Department of Personnel & Training, Government of India, North Block, New Delhi – 110001.
7. The Central Vigilance Commission, Satarkata Bhawan, A- Block, GPO Complex, New Delhi – 110023.
8. Chairman-cum-Managing Director [CMD], Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, Janpath, New Delhi- 110 001.
9. Chief General Manager, Bharat Sanchar Nigam Limited, Bihar Circle, Sanchar Sadan, Budh Marg, Patna – 800001.
10. The Chief General Manager, Eastern Telecom Region, Bharat Sanchar Nigam Limited, Telephone Bhawan, 34, DVD Bag, Kolkata – 700001.

Respondents.

By Advocate : Mr. Bindhyachal Rai

Me. D. Choudhary for Respondent No.10

**O R D E R [oral]**

**Per Jayesh V. Bhairavia , Member [J]** : In the instant OA, the applicant has prayed for the following reliefs :-

8[i] For a direction on the respondents to shift back the date of grant of non-formal upgradation [NFU] to the officers of junior administrative grade [JAG] of ITS Group A in the senior administrative grade [SAG] of

ITS Group-A In the pay band – 4 of Rs. 37400-67000 with grade pay of Rs. 10,000/- w.e.f. 08.07.1983 including all consequential benefits from 13.10.2014 to 08.07.2013 i.e. the date when juniors to the applicant were granted such upgradation.

8[ii] For a direction on the respondents to include the name of the applicant below Sri S.K. Bhalla, Staff No.20321 and above Shri Sanjeev Kumar Narang, Staff No.20323 in the order contained in number 315-02/2013-STG III dated 24.10.2013, by which juniors to the applicant were granted non-functional up-gradation [NFU] to the officers of Junior Administrative Grade [JAG] of ITS Group 'A' in the Senior Administrative Grade [SAG] of ITS Group 'A' in the pay band – 4 of Rs. 37400 – 67000 with grade pay of Rs. 10,000/- w.e.f. 08.07.2013.

8[iii] For a direction on the respondents to re-designate the applicant to the post of additional General Manager w.e.f. date juniors to the applicant have been given such designation.

8[iv] For a direction on the respondents to sanction and release annual increments for the period 26.12.2011 to 25.12.2014 with consequential benefits of payment of difference of salary.

8[v] For quashing of Claus 7 of Office Memorandum contained in DoPT OM 11012/11/2007-Estt.[A] dated 14<sup>th</sup> December, 2007 by which Vigilance Clearance will not normally be granted for a period of three years after the currency of punishment, if a minor punishment has been imposed on an officer. In case of imposition of major penalty, Vigilance clearance will not normally be granted for a period of five years after the currency of punishment. Consequently, applicant, an officer of Indian Telecom Service has been deprived of [a] Empanelment [b] Deputation [c] Appointment to sensitive post and assignments to training programme [except mandatory training].

2. The brief facts in the present case, is as under :-

[i] It is submitted that while the applicant was working as Deputy General Manager, Bhubaneswar, Eastern Telecom Region, during the period April, 2007 to March, 2014, he was served with a memorandum dated 28.05.2010.

[ii] The Disciplinary Authority having considered the written statement of defence to the memorandum dated 28.05.2010, accepted the representation of the applicant in respect of charge no.5 to 11 and 13 and held those charges as not proved against the applicant.

[iii] The Disciplinary Authority, vide its order dated 26.12.2011, after receipt of advice from the UPSC, inflicted punishment of reduction of

pay to a lower scale in the time scale by one stage for a period of three years without cumulative effect and not adversely affecting the pension [Annexure-A/2].

[iv] The applicant preferred revision against the said punishment order dated 26.12.2011 before the Revisional Authority, which was rejected vide order dated 05.03.2013. Being aggrieved by this, the applicant preferred an OA No.208/2013 before the Central Administrative Tribunal, Cuttack Bench, which was dismissed vide order dated 16.04.2014. Against the aforesaid order dated 16.04.2014, the applicant preferred a Writ Petition [C] No.9168/2014 before the High Court of Orissa, Cuttack, which is pending adjudication.

[v] In the meantime, the applicant was transferred from Bhubaneswar to Bihar Circle, Patna where the applicant joined on 5<sup>th</sup> of May, 2014 at Patna. The applicant filed representation against the aforesaid penalty order, and in pursuance thereof, he was informed that the penalty shall be made effective from the date of order of punishment i.e. 26.12.2011, and the effect of punishment shall remain operative for a period of three years from 26.12.2011 to 25.12.2014, which was communicated to him by letter dated 17.11.2014 [Annexure-A/3]. The grievance of the applicant is that due to order of minor punishment, vide order dated 26.12.2011, he was deprived of the benefit of re-designation of the post of Deputy General Manager to Additional General Manager.

[vi] The applicant has further contended that vide order dated 13<sup>th</sup> December, 2010 [Annexure-A/4], the Additional General Manager [Pers. I], Corporate Office, BSNL, Delhi published the list of JAG [NFSG] of ITS Group 'A' [Un-absorbed] with the designation of deputy General

Managers are hereby re-designated as Additional General Manager with immediate effect, in which the name of the applicant was placed at Sl. No. 221. However, the applicant was not considered to be re-designated as AGM due to disciplinary case was pending against him [Annexure-A/4 referred].

[vii] It is further contended that the respondents, vide their letter dated 25<sup>th</sup> October, 2013 [Annexure-A/5] have granted Non-functional up-gradation [NFU] in the Senior Administrative Grade [SAG] of ITS Gr. 'A' w.e.f. 08.07.2013. However, the name of the applicant was not figured in the said list. Subsequently, vide order dated 19<sup>th</sup> June, 2015 [Annexure-A/6], the Department of Telecommunications, Govt. of India granted non-functional up-gradation to JAG of ITS Group 'A' in the Senior Administrative Grade [SAG] of ITS Group 'A' in Pay Band -4 of Rs. 37400-67000 with grade pay of Rs. 10,000/- w.e.f. 13.10.2014, wherein the name of the applicant was placed at Sl. No.3 [Annexure-A/6] but the said order has not been implemented till date.

[viii] It is contended that the juniors to the applicant have been given NFU in the SAG grade in 2013-14. However, the applicant has not been up-graded to NFU, therefore, he submitted a detailed representation before the respondents and requested to grant him benefit of NFU. It is also contended that the applicant received information under RTI vide letter dated 4<sup>th</sup> June, 2014 [Annexure-A/7] wherein it is indicated the DSE kept its assessment in view of his withheld vigilance clearance by Vigilance Branch, vide OM dated 26.09.2013, wherein along with 27 employees the case of the applicant was withheld for want of vigilance clearance and as per the instructions contained in OM dated 14<sup>th</sup> Sept., 1992 [Annexure-A/7 series]. It is further contended that as per OM

dated 2<sup>nd</sup> November, 2012 issued by the DOP&T, in pursuance of directions given by Hon'ble Supreme Court in the case of K.V. Jankiraman, AIR 1991 SC 2010, for want of vigilance clearance, promotion may be denied only in the following three circumstances : -

- [i] Government servants under suspension;
- [ii] Government servants in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending; and
- [iii] Government servants in respect of whom prosecution for a criminal charge is pending.

The said contention mentioned in the aforesaid OM was in fact not applicable to the applicant as the applicant was neither under suspension nor any disciplinary proceeding was pending as the penalty had already been awarded to him. The vigilance arbitrarily withheld the vigilance clearance of the applicant, and therefore, the exercise of the said vigilance department under Clause-7 of the OM dated 14.12.2007 amounts to double jeopardy in the case of the applicant. In this regard, the applicant preferred a detailed representation dated 19.05.2015 and requested the authorities to grant him NFU w.e.f. 08.07.2013 but it remained unanswered.

[ix] The applicant contended that the respondents have not granted the benefit of re-designation as Additional General Manager w.e.f. 13.12.2012 to him nor have allowed annual increments w.e.f. 26.12.2011 to 25.12.2014. The applicant preferred CWJC No.17482/2015 before the Hon'ble High Court of Patna which was dismissed on the ground of maintainability vide order dated 04.11.2015 [Annexure-A/10], hence the present OA.

[x] The applicant submitted that the minor punishment remained in force for a period of three years from the date of occurrence, therefore, he is entitled to promotion/NFU/re-designation during the currency of penalty and withholding of promotion is another category of penalty. The applicant placed reliance on the judgment passed by Hon'ble High Court of Patna in the case of Sant Kumar Sharma vs. State of Bihar and Ors. reported in BLJ 1996 [2] page 6 and contended that minor punishment inflicted upon the applicant – ceased its effect after completion of three years, therefore, the applicant is entitled for promotion and all other consequential benefits.

3. The respondents have filed their written statement and denied the claim of the applicant. The respondents have contended that the order dated 13.12.2010, whereby the officers working in JAG [NFSG] of ITS Ground-'A' [un-absorbed] with the designation of Deputy General Manager were re-designated as AGM. The applicant originally working with DOT as JAG and his name was included in the said list of AGM, as per the condition stipulated in clause-4 of the said order and taking note of that the applicant was charge-sheeted on 28.05.2010 and the disciplinary proceeding was pending against him. The effect of order dated 13.12.2010 was not given in the case of the applicant.

4. It is further contended that the disciplinary authority imposed punishment vide order dated 26.2.2011 whereby minor punishment for reduction to a lower stage in the same pay scale for a period of three years without cumulative effect was imposed, therefore, the penalty period remained effective from 26.12.2011 to 25.12.2014 and after completion of currency of the said punishment, the officer has not been granted NFSG vide DOT order dated 19.06.2015. However, the

Circle Office has not given effect of the said order and therefore, vide order dated 6<sup>th</sup> Jan., 2016, the Corporate Office, BSNL directed the CGM, Bihar Circle that under the rules of DPC relating to currency of penalty, any upgradation/promotion becoming due to the officer during the currency of penalty [which is fixed] has to be effected after the expiry of the penalty. Accordingly, in this case, the delay in recovery etc. shall not delay the grant of re-designation or the NFSG upgradation the officer [Annexure-B of written statement]. As per the aforesaid direction, the office of the Chief General Manager, Bihar Circle, BSNL, Patna issued an order dated 29.01.2016 [Annexure-B of the written statement] whereby the applicant has been re-designated as AGM w.e.f. 26.12.2014 [Annexure-C]. Thereafter, vide order dated 29.01.2016 the AGM [Admn.] issued another order whereby the applicant has been granted non functional upgradation w.e.f. 26.12.2014 [Annexure-D]. Therefore, the respondents submitted that the applicant has been granted all the benefits after completion of currency of punishment. The respondents have followed the instructions stipulated in the OM. Accordingly, the OA deserves to be dismissed.

5. Heard the learned counsel for the parties and perused the materials on record.

6. It is noticed that on the date of issuance of order for re-designation as AGM, disciplinary proceeding was pending against the applicant and subsequently punishment order was issued on 26.12.2011 and the currency period of the said penalty was remained in force from 26.12.2011 to 25.12.2014. It is noticed that NFU can be granted only to the officers who have re-designated as AGM. Since the

currency of punishment was over only on 25.12.2014, the applicant was re-designated as AGM and was granted NFU w.e.f. 26.12.2014 vide order dated 29.01.2016. We do not find any infirmity in the impugned order. The judgment relied upon by the applicant is not helpful in the instant OA on the contrary it is noticed that in the said judgment, the Hon'ble High Court of Patna directed the respondents to grant benefit of promotion on completion of punishment. In the present case, on completion of currency of punishment the respondents have re-designated the applicant from DGM to AGM and granted NFU w.e.f. 26.12.2014.

7. In view of the aforesaid discussions, the OA stands dismissed. No costs.

**Sd/-**

**[ Dinesh Sharma ]M[A]**

**Sd/-**

**[ Jayesh V. Bhairavia ]M[J]**

**mps.**