

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00936/15**

Date of Order: 26.04.2019

C O R A M

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

Bijay Kant Jha, aged about 69 years, Son of Late Jatadhari Jha, resident of Mohalla-Kamalnagar in the town of Bhagalpur, PO- Mirjanhat, Distt.- Bhagalpur- 812001.

.... **Applicant.**

By Advocate: - Mr. I. D. Prasad

-Versus-

1. The Union of India, through the Chairman cum Managing Director, BSNL, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi-110001.
2. The Chief General Manager Telecom, Bihar Telecom Circle, Patna.
3. The Controller of Communication Accounts, BSNL, Bihar Circle, Patna.
4. The Accounts Officer, SEA Section Sanchar Sadar, Budh Marg, Patna-800001.
5. The Accounts Officer (DOT Cell) O/o Controller of Communication Accounts, CTO Annexee Building, Patna- 800001.
6. The Dy. General Manager (CA) Bihar Telecom Circle, SEA Section Sanchar Sadar, Budh Marg, Patna- 800001.
7. The Telecom District Manager, BSNL, MUnger

.... **Respondents.**

By Advocate: - Mr. K.P. Narayan

**O R D E R
[ORAL]**

Per Dinesh Sharma, A.M:- In this case, the applicant, who retired in the grade of Chief Account Officer(14500-18700) in the year 2006, has requested for grant of financial upgradation to the grade of Rs 16000-20800, w.e.f. 1.10.2005. This claim is based on his having been promoted to the grade of Chief Account Officer by letter dated 11.9.2001 (Annex. A11)

following a Department of Telecom O.M. dated 17.8.2001. This made him eligible for financial upgradation, after his completion of 4 years (from his date of joining) on 16.8.2005, w.e.f. 1.10.2004. He approached this Tribunal through OA 250/2012. Following the Tribunal's direction in its decision dated 03/10/12, the respondent authorities gave him upgradation, by their order dated 20.10.2014, wrongly w.e.f 1.10.2014. This order has been cancelled by another order dated 15.12.2014 and conveyed to him by letter dated 8.1.2015(Annex 1 and 2 respectively, the impugned orders). By these, the request for financial upgradation has been denied on ground that he was promoted in the CAO (adhoc) grade vide letter dated 18.8.2004 conveyed through office letter dated 20.8.2004. Both these letters have not been received by the applicant. Having retired in 2006, he is ineligible for further promotion. The applicant has challenged this order and reiterated his claim for promotion on ground of his having been promoted to the CAO grade in the year 2001.

2. The respondents have denied the claim of the applicant. According to them, the applicant got his ad-hoc promotion in the functional grade w.e.f. 20.8.2004, which was before the date when the applicant would have been due for financial upgradation on 1.10.2004. The question of subsequent upgradation would have been due only in 2008, whereas the applicant retired on superannuation on 31.1.2006. The order giving financial upgradation (dated 20.10.14) was found wrong on further examination of the applicants service book and was therefore cancelled and the applicant informed, with reasons, by letter dated 8.1.2015. The respondents have

questioned the averment of the applicant about his non-receipt of order dated 20.8.2004, since, obviously, he would not have continued in service in that grade till his retirement, if he had not received that order. They have also challenged the claim as barred by limitation, since the cause of action relates to the year 2004 whereas the OA has been filed in 2015.

3. The applicant has filed a rejoinder reiterating his claim and denying the statements of the respondents which are contrary to the OA. He has also alleged that if letters dated 18.8.2004 and 20.8.2004 (referred to in Ann.1 and 2) are produced before this Tribunal, it will support the applicant's case.

4. We have gone through the pleadings and heard the parties. There are two major issues involved here. The first one is whether the applicant has any right for financial upgradation on completion of four years based on his claim of having been promoted, ad hoc, to the grade of Chief Accounts Officer w.e.f. 17.8.2001. The second issue is whether any relief to such claim can be granted by this Tribunal in an action taken, roughly 10 years (or 8 years, if his first OA is to be considered, where this Tribunal passed an order without going into the merits of the issue) after such right allegedly accrued.

5. The applicant has not filed any petition for condonation of delay, despite the raising of this plea by the respondents and has alleged it to be within the period of limitation, assuming extension of period of limitation by the acts of this Tribunal/ respondents in entertaining his representations and responding (first favourably and later unfavourably) to

such requests. We do not think the applicant's right to approach this Tribunal within the period of limitation gets an automatic extension by filing such representations/ applications and by respondents entertaining such representations. Any person is free to grant a relief the redressal of which though a judicial process is barred by period of limitation. However, in case they don't, such denial, by itself, in the absence of any other legal right, cannot create a new cause of action. Thus, we do find the grant of relief in this case to be barred by period of limitation, and in the absence of any petition to condone the delay, see no reason to grant this relief.

6. However, in order to prevent multiplicity of litigation, we have also looked into other merits of this case. The case of the applicant depends on the factual correctness of his claim about having been promoted to the CAO's grade in 2001. The counsel for the respondents argued that even if he was promoted ad hoc, he was later reverted by another order dated 18.10.2001, on completion of the period of such ad-hoc promotion (Annex A/11, page 35 of OA). The counsels for the applicant denied such reversion and alleged that it amounted to only a technical break, and the applicant was continued, in that capacity, by further orders (e.g. dated 10.12.2002, at Annex A11, page 38 of the OA). Even if this claim of the applicant was to be accepted, the averment of the respondents- that he was promoted in a functional capacity (and not just another time bound ad hoc upgradation) on 18.8.2004 - is hard to refute. The claim of the applicants about the non-receipt of the orders dated 18/20.8.2004, is prime facie unacceptable. He has, by his own admission, worked as CAO till the date of his superannuation

in 2006, and it was not by way of limited period ad-hoc promotion orders, as done earlier. If, as alleged by him, the production of these orders would benefit his case, he should have produced them himself. In the light of these facts, his next time-bound financial upgradation would have been due only in 2008 and thus, the claim of the applicant fails, on merits too.

7. The OA is therefore dismissed, being barred by period of limitation, as well as on merits. No costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member