

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.1226/2010

Wednesday, this the 21st day of August 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

1. Shri A K Gupta s/o Shri K C Gupta
r/o N-120, 1st Floor
Greater Kailash 1
New Delhi – 110 048
2. Shri Gurbax Singh s/o late Shri Puran Das
464, Dr. Mukharjee Nagar
Delhi – 110 049
3. Shri A K Nagar s/o late Shri S N Nagar
r/o E-1/8, Malviya Nagar
New Delhi – 110 017

..Applicants

(Mr. Vinay Sabharwal, Advocate)

Versus

1. Union of India through
Secretary, Department of Telecom
Sanchar Bhawan, 20, Ashok Road
New Delhi – 110 001
2. Bharat Sanchar Nigam Ltd.
Through its Chairman-cum-
Managing Director,
Bharat Sanchar Bhawan
Janpath, New Delhi – 110 001

..Respondents

(Mr. D S Mahendru and Mr. Hilal Haider, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

This O.A. has, in fact, chequered career. It was filed by three applicants claiming the relief in the form of regular

promotion / pay scale in the Higher Administrative Grade (HAG) (pre-revised pay scale of ₹22400-525-24500 with effect from the dates of their respective entitlement to the posts, as mentioned in paragraph 4 (1) (a)-(c).

2. The applicants were holding the substantive post of Chief Engineer (Civil) in Bharat Sanchar Nigam Limited (BSNL). On 20.06.2003, the 1st applicant was appointed as Senior Deputy Director General (BW) on 'look after basis', without any extra remuneration. The 2nd and 3rd applicants were entrusted with the duties of Principal Chief Engineer (Arbitration) on 25.02.2003 and 11.04.2007 respectively, in similar way.

3. The claim of the applicants is that they are entitled to the pay, attached to the post of Senior Deputy Director General (BW) and the Principal Chief Engineer (Arbitration) for the period during which they were kept on 'look after charge' of these posts.

4. The respondents opposed the O.A. by stating that the arrangement was only temporary in nature without any entitlement for regular pay scale.

5. The O.A. was dismissed at the stage of admission, through order dated 15.04.2010. The applicants filed R.A. No.183/2010. That was dismissed on 10.02.2012. Thereupon, they filed W.P. (C) No.3027/2012 before the Hon'ble High Court of Delhi. The writ petition was disposed of directing that as regards 1st and 2nd

applicants, dismissal of the O.A. shall be treated as final and as regards 3rd applicant, the matter is remanded to consider the question of limitation.

6. After remand, the O.A. was allowed on 23.07.2016. Aggrieved by that, the respondents filed W.P. (C) No.3546/2017. The writ petition was disposed of on 02.05.2017, leaving open to the respondents to approach the Tribunal for clarification.

7. The respondents filed R.A. No.59/2018. Through an order dated 31.08.2018, the R.A. was allowed and it was directed that in the place of the figure “22400-525-24500”, the figure of “23750-600-28500” shall be substituted. The applicants filed W.P. (C) No.13501/2018 feeling aggrieved by the order passed in the R.A. It was pleaded that was that the R.A. was disposed of without hearing them and other contentions were also urged. The Hon’ble High Court disposed of the said writ petition on 14.12.2018, setting aside the order passed in the review and remanding the matter for fresh disposal of the R.A.

8. After such remand, the R.A. was heard in detail and through an order dated 15.07.2019, the same was allowed recalling the order dated 23.07.2016 passed in O.A. and directing that the O.A. be listed for hearing. Today, O.A. is heard in detail.

9. Mr. Vinay Sabharwal, learned counsel for applicants, and Mr. D S Mahendru & Mr. Hilal Haider, learned counsel for respondents addressed extensive arguments.

10. The relief claimed in the O.A. is in the form of a direction to the respondents to grant to the applicants the regular promotion /pay scale in the HAG, with effect from the dates of their respective entitlement to the posts, particularly mentioned in paragraph 4 (1) (a)-(c). The claim is referable to the period during which the applicants were put on 'look after charge' without any extra remuneration. The relevant orders (dated 20.06.2003 – page 38, dated 25.02.2003 – page 39 and dated 11.04.2007 – page 41), through which they have been kept on 'look after basis', read as under:-

Order dated 20.06.2003 (Applicant No.1)

“Shri A.K. Gupta presently holding the charge of Chief Engineer (Civil), CTO Project, New Delhi is hereby transferred and posted to BSNL (HQ) to hold the charge of the post of Sr. DDG (BW) with immediate effect on “looking after” basis without any extra remuneration till regular incumbent is posted. He will continue to draw the scale of pay he was drawing as Chief Engineer (Civil). It has also been decided that Shri Gurbax Singh, Chief Engineer (Civil), New Delhi will look after the duties of the post of Chief Engineer (Civil), CTO Project, New Delhi in addition to his duties without any extra remuneration until further orders.

Necessary charge reports may be furnished to all concerned.”

Order dated 25.02.2003 (Applicant No.2)

“It has been decided by the competent authority that Shri Gurbax Singh, Chief Engineer (Civil), Delhi will look after the duties of the Principal Chief Engineer

(Arbitration) in addition to his duties without any extra remuneration after the retirement of Shri A.K. Nayak, PCE (Arbitration) on 31.1.2003 and until further orders.”

Order dated 11.04.2007 (Applicant No.3)

“Sh. A K Nagar, CE (C) is hereby directed to look after charge of the post of PCE (Arbitration) without extra remuneration till further order. He will also continue to look after charge of the post of CE (C), CTO Project Delhi as additional charge without extra remuneration till further order.”

From the above, it is clear that the applicants were kept on ‘look after charge’ of the higher post, maybe in the HAG, with a clear stipulation that they shall not be entitled to “extra remuneration.”

11. Learned counsel for applicants submits that in the earlier rounds of litigation, some aspects of the O.A. have become final and the remand was only on a limited aspect. Once the order in the O.A. has been recalled through an order in R.A. No.59/2018, the O.A. is required to be heard on merits. In fact, it was the dismissal of the O.A. insofar as it relates to the 1st and 2nd applicants, that has attained finality.

12. The question as to whether an officer, who is kept on ‘look after charge’ of a higher post is entitled to be paid the scale of pay attached to that post, was dealt with in detail, recently by a Full Bench of this Tribunal in **Lokpal Singh Negi v. Govt. of NCT of Delhi & others** (O.A. No.2693/2018 and batch). After taking note of the various judgments of Hon’ble Supreme Court and relevant provisions of Fundamental Rules, the Full Bench held in its judgment dated 24.04.2019 as under:-

“17. We, therefore, hold that the view taken in OA No.3711/2011 does not accord with FR 49 and the settled principles of law, and that an employee holding a post in substantive capacity, but assigned the look after charge of a higher post, shall not be entitled to be paid the scale of pay attached to the higher post. In case, any special allowances are attached to the higher post, they shall be entitled to be extended the same, if the assignment of the look after charge exceeds a period of three months.”

13. It is not in dispute that the applicants were required to work on ‘look after charge’ of a higher post. In view of the judgment of Full Bench, we find that the applicants are not entitled to claim the salary referable to the posts, which they were asked to do on ‘look after basis’. The law, as it stands now, is covered by the judgment of the Full Bench of this Tribunal and we cannot ignore the same.

14. We do not find any merit in this O.A. It is accordingly dismissed.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

August 21, 2019
/sunil/