

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/01299/2018**

DATED THIS THE 05th DAY OF SEPTEMBER, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri. Sreenivasababu. S
Son of late K.Seebaiah
Aged about 47 years
H.R.No.200204174
Sub-Divisional Engineer-FC (SPI Ccts), MPLS
Bharath Sanchar Nigam Limited
New Telephone Exchange Building
6th Floor STR, Bangalore.

....Applicant

(By Advocate M/s.Next Gen Legal Services)

Vs.

1. Chairman and Managing Director
Bharat Sanchar Nigam Ltd.,
Bharat Sanchar Bhavan
Harishchandra Mathur Lane
Janapat Road, Janapat
New Delhi-110001.
2. Chief General Manager Maintenance
Southern Telecom Region
Bharat Sanchar Nigam Limited
No.11, Link Road, Ganapathy Colony
Guindy, Chennai-600032.
3. Chief General Manager Telecom
Karnataka Telecom Circle
Bharat Sanchar Nigam Ltd.,
No.1, Swamy Vivekananda Road
Ulsooru, Bangalore-560008.
4. General Manager Telecom District
Bharat Sanchar Nigam Ltd.,
BSNL Bhavan, Ashoka Road
Tumkur-572101.

...Respondents

(By Advocate Sri V.N.Holla, Sr.SC for CG)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that while working as JTO(Groups) at Kunigal SDCA, Tumkur SSA, Karnataka Circle, the applicant got promotion from JTO to SDE through LDCE and joined the new post on 2.8.2013 at Madikeri, Karnataka under the Southern Telecom Region(STR). During the change over from Karnataka circle to STR circle, the HR details of the applicant was not transferred from Karnataka circle to STR circle which may be due to system fault or SAP problem which is not in the knowledge of the applicant and it is beyond his control. When he applied for E2 to E3 training at RTTC Mysore within 2 years from the issue of order, due to the above said problem, his nomination was not approved as per reference letter at Annexure-A2 and because of which he is unable to complete the online examination training within the prescribed period of 2 years for E2 to E3 TBP(Time Bound Promotion) upgradation as per the order dtd.6.11.2012(Annexure-A3). He tried to resolve the issue, due to which his training was delayed for one year and later on in the year 2015, he completed E2 to E3 TBP upgradation online training examination successfully at RTTC Mysore Karnataka as per reference letter at Annexure-A4. The applicant was supposed to get E3 to E4 TBP upgradation order on 30.8.2017 w.e.f 1.1.2017. Due to non completion of online training on prescribed period to hold the upgradation of E3 to E4(Annexure-A5), the respondents recovered the increment drawn by him vide orders dtd.1.11.2017(Annexure-A6) and 7.4.2018(Annexure-A7). The applicant enclosed the pay slips of Nov., 2017 to March 2018 in respect of recovery increment/over payment amount vide Annexure-A8 to A12. When he made representations to the respondents to condone the delay in completion of online upgradation training examination(Annexure-A13 & A14), the respondents

rejected the same vide order dtd.16.12.2017(Annexure-A1). He submits that after recovery of increment/over payment amount in instalments every month from his salary, the respondents issued order dtd.11.12.2017 for E3 to E4 TBP upgradation(Annexure-A15). He submits that the action of the respondents for not condoning the delay in completing the online upgradation examination by the applicant is in violation of natural justice. The respondents did not consider the fact that the applicant was working as a JTO (Groups) at Kunigal SDCA Tumkur SSA, Karnataka Circle when he got promotion to SDE through LDCE and joined the new post on 2.8.2013 at Madikeri, Karnataka under STR. Even though he applied online training examination within the prescribed period, it was not approved by the concerned authority as his details were not transferred from Karnataka Circle to STR circle during change over which may be due to system fault or BSNL internal SAP problem. There is no fault on the part of the applicant. Hence, the applicant has filed the present OA seeking the following relief:

- a. Quash the impugned order No.CGM/STA/TBP/KTK/16-17/47, dated at Chennai 16.12.2017*
 - b. Direct the respondents to condone the delay in completing the online upgradation examination and direct to refund entire recovered increment drawn/over payment amount to the applicant by the respondent i.e., sum of Rs.51,365/- along with interest and damages.*
2. The respondents, on the other hand, have submitted in their reply statement that the applicant was transferred from Karnataka Circle to Southern Telecom Region(STR) on his promotion as SDE and joined STR on 2.8.2013. Since STR entered into ERP w.e.f. 1.7.2012, the HRMS details for the staff transferred subsequently are not transferred from their parent circle to STR through HRMS. The applicant was issued with Time Bound Promotion Scale upgradation order E2 to E3 by Tumkur SSA vide order dtd.6.11.2012 when he was working as JTO

in Karnataka Circle. It is stated by the applicant that he applied E2-E3 upgradation online examination within 2 years of issue of TBP but STR circle was not aware of that as in CTMS(Centralized Training Management System) only the request can be seen/approved by the circle concerned for those the HRMS details are available. This came to know only through the applicant's representation dtd.6.10.2017 requesting to condone the delay. Based on his representation dtd.6.10.2017, a request to the CTMS Help desk was made and the details came to know that the applicant applied for E2-E3 upgradation online exam on 20.12.2014 (i.e. after two years of issue of TBP order) and his request was rejected by Tumkur SSA since he was already transferred to STR and no data is available with the Tumkur SSA(Annexure-R4). Subsequently, the applicant applied on 6.11.2015 for E2-E3 online upgradation exam on 7.12.2015 i.e. after a lapse of one year from the said application for online exam on 20.12.2014 and the nomination was approved by STR and the SDE got qualified. When his case was forwarded for TBP scale upgradation from E3 to E4 along with other cases by PGMM, Bangalore, his case was not considered by the CGMM vide order dtd.30.8.2017 due to his non completion of online upgradation exam within 2 years of issue of TBP order and no compliance from PGMM, Bangalore regarding stoppage of second increment due to this as per existing guidelines was received. In the assessment done by PGMM, Bangalore, nothing was mentioned regarding action taken for completing the upgradation examination after two years of issue of TBP order. Hence, PGMM, Bangalore was addressed regarding the action taken on stoppage of increment till the completion of online upgradation examination and on receipt of reply regarding the recovery of excess payment from PGMM, Bangalore, the applicant was

granted next TB Scale upgradation i.e. E3 to E4 w.e.f. 1.1.2017 vide letter dtd.11.12.2017.

3. The respondents submit regarding condoning the delay in completing the online upgradation examination that as per Part D (n) of BSNL CO letter dtd.5.5.2011(Annexure-R5), Executives should register themselves in a manner so that they clear their respective mandatory trainings within the stipulated period of two years from the date of their respective upgradations. Normally the executives who wish to write online upgradation examination will apply online themselves through CTMS portal. Portal will be opened for nomination for 45 days from the 1st of the beginning of the quarter and the examination will be held on various dates in the last month of the quarter concerned as per the guidelines of above BSNL CO letter. This was also mentioned in the Time Bound order dtd.6.11.2012 issued by Tumkur SSA. The circle coordinator then and there will approve the nomination through CTMS after verifying the genuineness of the case. Even if the individuals find any difficulty in self nomination, they will contact either orally or in writing the circle coordinator who takes up the matter and gets it approved. The executives during their self nomination in CTMS portal, message “kindly note that once you have nominated yourself, it may take up to 10 days to process your nomination by your SSA Circle as they have to verify your records. If there is inordinate delay in approving your nomination, please contact your circle office” will be displayed in CTMS portal(Annexure-R6). This nomination can be done by the circle coordinator even one day before the examination if the executive so desires. At the end of the second month of the particular quarter, the circle coordinator will issue consolidated approval which can be verified by the individuals who have applied for the examination. If there is any omission in

the list of the approval, such cases can be settled on the request of the individuals then and there within that quarter in which the employee applied for online upgradation exam.

4. The respondents further submit that subsequent to the transfer of JTOs on promotion as SDEs from other circles, STR circle office, to sort out such problems, instructed such executives who applied for online upgradation exam and not approved by circle office, to send their nomination through FAX along with their TBP order vide CGM letter dtd.8.11.2013 and uploaded in STR portal. The same was endorsed by GMM BG as well as DGMM Hubli and uploaded in their portal(Annexure-R7 series). List of some executives who have benefited by this arrangement is enclosed at Annexure-R8. This can be verified from the mark statement(Annexure-R9) wherein though approval was given by STR circle for 6 SDEs, only Sri Jalesh's name is appearing in the mark statement as he was working in STR for a long time and the others were transferred from Karnataka circle in 2013 on their promotion which implies that even their names could not be seen in CTMS portal by STR, based on their request, the nominations were approved and they got qualified. In the applicant's case, though he applied for online exam for the Quarter Ending (QE) 31.12.2014, the same was not available in CTMS portal of STR as his HRMS package was not transferred to STR since STR entered into ERP w.e.f. 1.7.2012 and hence STR circle was not aware of this. In spite of clear instructions by training wing/ STR circle office, the applicant never approached STR circle coordinator regarding his online nomination for the QE 31.12.2014. Based on his representation dtd.17.10.2017, it is ascertained from CTMS help desk that the nomination was rejected by Tumkur SSA as the officer was promoted as SDE and transferred to STR Madikeri on 16.7.2013 and

no data available at Tumkur SSA as per the mail at CTMS help desk(Annexure-R4). The TBP scale upgradation E2 to E3 was issued on 6.11.2012 by Tumkur SSA and the applicant is supposed to complete the online exam before two years of issue of order i.e. before 5.11.2014 whereas the applicant applied for online exam even for the first time on 20.12.2014 i.e. after two years of date of issue of TBP order and subsequently after one year on 6.11.2015 for the examination on 7.12.2015. The approval of eligible executives for online examination for the QE 31.12.2014 was circulated to all concerned by the office on 20.11.2014, well in advance. The applicant's name was not in the list since his case was not known to STR. The applicant did not approach the circle coordinator for his name missing in the list. But some of the other executives who were transferred from Karnataka circle to STR on promotion along with the applicant and wanted to write the online upgradation exam have approached STR circle coordinator and their nominations were approved by contacting CTMS help desk. Their names were included in the consolidated approval given by STR circle office and they completed the online examination and no such missing case is there in STR circle. Being not followed the guidelines in writing the online upgradation exam in spite of clear instructions by BSNL CO, the applicant's request to condone the delay in writing the online exam was not considered and accordingly the recovery of excess payment of Rs.88865/- was made from the pay and allowances of the applicant. The respondents have cited the cases of *OA.No.2180/2014 of CAT, Principal Bench* and *OA.179/2016 of CAT, Chandigarh Bench* with regard to the recovery from pay and allowance on account of not undergoing stipulated mandatory training within two years of TBP in support of their contentions. Accordingly, they pray for dismissal of the OA.

5. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that he was supposed to complete the upgradation TBP examination within two years w.e.f. 6.11.2012 on which date the respondents issued order promoting the applicant from E2 to E3. He has actually applied for online examination application TBP on 11.10.2014 i.e. well before 25 days for completion of 2 years from 6.11.2012. But the respondents allotted date of examination on 20.12.2014. Due to non transfer of HR details from Karnataka circle to STR circle, his nomination was rejected and after transfer of HR details he once again applied for online examination application TBP and successfully passed on 7.12.2015. Delay is due to system fault or SAP problem and not his fault. The respondents have not given opportunity to the applicant while issuing recovery order on 6.10.2017 recovering the increment drawn/over payment, without any proper departmental enquiry and did not consider the representation. He passed the TBP examination in the year 2015 much before the issuance of recovery order i.e. in 2017. The applicant relied on the judgment of the Hon'ble Apex Court in *Kusheswar Nath Pandey vs. State of Bihar & Others (Civil Appeal No.6658/2013)[(2013) 9 SCR 593]* in support of his claim.
6. The respondents have submitted additional reply reiterating the submission already made in the main reply and submit that though the applicant applied for online exam on 11.10.2014, he could write the exam only in Dec., 2014(after two years of issue of TBP order dt.6.11.2012) as the online upgradation exams are conducted in the last month of the respective quarter. While applying in CTMS portal, there were clear instructions to contact respective circle office for any discrepancy and inordinate delay in approving the nomination. Even the office issued instructions on 8.11.2013 to intimate problems if any faced by the

executives in applying the online exam taking into account the SDEs joined in STR on promotion from other circles in Aug., 2013. But the applicant did not contact circle office regarding approval of his nomination. Hence, the lapse is not a SAP problem. When he was not able to complete the online upgradation exam in Dec., 2014, he never tried to complete the same in the subsequent quarters and has applied after a lapse of one year i.e. in Dec.,2015 which shows his negligence. There is no provision to condone the delay in TBP policy issued by BSNL CO. The issue raised in the OA is fully covered and answered in the judgments of the CAT, New Delhi and Chandigarh Bench vide Annexures-R10 & R11 of the reply. And for recovery of the excess amount drawn by the applicant, which was not legally due to him, no departmental enquiry is required. To continue the benefit of TBP granted on 6.11.2012, it was incumbent upon the applicant to complete the mandatory training. Having not done that, he has no vested right to enjoy the benefit.

7. We have heard the Learned Counsel for both the parties and perused the materials placed on record. The issue in this case is in a very small compass. Vide Annexure-A3, the applicant got Time Bound Promotion(TBP) upgradation w.e.f. 6.11.2012 with the condition that he will have to successfully complete the online examination for becoming eligible for drawal of second increment in the upgraded pay scale within a period of two years from the date of issue of the order i.e.6.11.2012. The applicant therefore, would have to successfully complete the examination within two years from 6.11.2012. In between, he was transferred to a different circle and therefore when he is supposed to have applied for the examination on 11.10.2014, the nomination was rejected since his HR details had not been transferred to the new office. The applicant would claim that it is

because of the system error that he could not pass the relevant examination within the period of two years. He gives various explanations for the same but the crux of the issue is that the applicant had not taken any care to abide by the conditions of the upgradation order and as rightly contended by the respondents, even at around the period when the two year period had not expired, he had not made any effort to ascertain whether his nomination has been accepted or otherwise. The respondents have mentioned about the offline procedure available in such cases. It is clearly the fault of the applicant who is in the cadre of a Senior Engineer and who could have completed this examination well in time before the end of the two year deadline. Even by his own admission, he applied only within a month before the expiry of the said period knowing very well that the examinations are usually held only in the last month of the quarter concerned. There is absolutely no merit in the OA and therefore, dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/01299/2018

Annexure-A1: Order No.CGM/STA/TBP/KTK/16-17/47, Dated 16.12.2017
Annexure-A2: Reference regarding applicant nomination was not approved
Annexure-A3: Order No.E-433/TBPP/JTO/2012/108 dated at Tumkur 6.11.2012
Annexure-A4: Upgradation examination completion order dtd.7.12.2015
Annexure-A5: Order dtd.30.8.2017
Annexure-A6: Order dtd.1.11.2017 regarding recovery of overdue

Annexure-A7: Order dtd.7.4.2018 regarding recovery of overdue payment

Annexure-A8 to A12: Salary slip from November 2017 to march 2018

Annexure-A13: Representation dtd.6.10.2017

Annexure-A14: Representation forwarding letter dtd.10.10.2017

Annexure-A15: Order dtd.11.12.2017

Annexures with reply statement:

Annexure-R1: BSNL – New Delhi OM dt.18.1.2017

Annexure-R2: BSNL – New Delhi letter dt.30.5.2017

Annexure-R3: BSNL – New Delhi letter dt.2.8.2010

Annexure-R4: SSA, Tumkur Gmail copy dt.2.11.2017

Annexure-R5: BSNL – New Delhi – Training under Executive Promotion Policy dt.5.5.11

Annexure-R6: Copy of Class Rooms upgradation courses

Annexure-R7: Online upgradation exam calling for nomination

Annexure-R8: BSNL – Southern Telecom Region letter of approval of

Annexure-R9: Mark statement showing list of officers who have
applied/appeared/qualified in the upgradation exam

Annexure-R10: CAT PB New Delhi order dt.6.5.2016

Annexure-R11: CAT, Chandigarh Bench order dt.24.10.2016

Annexures with rejoinder:

Citation: Kusheswar Nath pandey vs. State of Bihar and others (Civil Appeal No.6658 of 2013), (2013) 9 SCR 593

Annexures with additional reply statement:

-NIL-
