

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**M.A. No. 278/19(arising out of OA No. 230/19)**

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)  
Hon'ble Mr. Swarup Kumar Mishra, Member(J)**

Mr. Jugal Kishore Samal, aged about 72 years, S/o-Late Hrushikesh Samal, Permanent resident of Village-Talajanga, PO-Kapila, PS-Binjharpur, Munsif/District-Jajpur, at present residing at Nuasahi, Tinigharia, PO-Nayabazar, Dist-Cuttack.

.....Applicant

**-Versus-**

1. Director General, Bharat Sanchar Nigam Ltd. (BSNL), Sanchar Bhawan, New Delhi-110001.
2. The Chief General Manager(Telecom), Bharat Sanchar Nigam Ltd. (BSNL), Odisha Telecom Circle, BSNL Bhawan, Ashok Nagar, Bhubaneswar, Dist-Khordha-751001.
3. The General manager, Telecom District(GMTD), Bharat Sanchar Nigam Ltd., Balasore, At/PO/Dist-Balasore.

.....Respondents

For the Applicant : In person

For the Respondents: Mr. K. C. Kanungo

Heard & reserved on: 18.07.2019 Order on: 30.07.2019

**O R D E R**

**Per Mr. Gokul Chandra Pati, Member(A):**

The O.A. No. 230/2019 has been filed by the applicant challenging the order dated 01.03.2005(Annexure A/6 series) passed by Respondent No.3, by which Mr. A.K. Kisku was made the chairman of the DPC to consider the applicant's OTBP and BCR promotions and recommendation of the DPC held on 07.03.2005 (Annexure-A/6). The applicant claims that though he was entitled for the benefit under OTBP and BCR scheme w.e.f 30.11.1984 and 01.07.1992 respectively as per the order at Annexure-A/2, but the DPC recommended his case for the said benefits w.e.f 31.12.20004 and 01.01.2005 respectively.

2. The facts in brief as noted in the MA and the OA are that the applicant was not allowed the benefit under the OTBP and BCR Schemes when he became eligible as there was a disciplinary proceeding pending against him. Although his case has been considered by the DPC held in 2003, it was kept in sealed cover due to pendency of disciplinary proceeding. On 31.12.2013, the minor penalty was imposed on the applicant concluding the proceeding against him.

Thereafter, the sealed cover was opened and findings of the DPC was communicated vide letter dated 20.05.2004(Annexure-A/2). But the respondents granted the benefit of the OTBP and BCR schemes to the applicant w.e.f 31.12.2004 and 01.01.2005 respectively as per the recommendation of the subsequent DPC meeting held on 07.03.2005. The applicant is aggrieved by this decision of the respondents on the ground that the findings of the earlier DPC held in 04.08.2003, which were kept in sealed cover, have been changed by the subsequent DPC held in 2005 . The other ground is that the DPC constituted in 2005 was not a valid DPC as the chairman of the DPC was not eligible to act as Chairman. Since the OA was filed in 2019 for which the cause of action which arose after grant of benefit under OTBP and BCR scheme on 31.12.2004 and 01.01.2005 respectively, the applicant has also filed MA No. 278/19 with a prayer for condonation of delay.

3. In the MA, the ground advanced by the applicant is that he obtained the information regarding the DPC meeting held on 07.03.2005 under RTI Act and after getting such information, he made a representation on 02.07.2012 before Respondent No. 2 which was rejected vide order dated 23.03.2015(Annexure-A/8) in a mechanical manner. The applicant submitted another representation on 01.09.2016(Annexure-A/9) before the respondent No. 3, which is pending. It is further stated in the MA that the applicant is a retired person and the delay in filing the present OA is neither intentional nor deliberate, but due to the compelling circumstances beyond his control, for which he has prayed for condoning the delay in filing the OA.

4. Upon notice, the respondents have filed objection to the MA stating that the OA has been filed for the cause of action which arose in 2005 and hence, it is filed after a lapse of 14 years. It is further stated that the applicant has failed to give any cogent reason and adduce any evidence in support of delay in filing the OA. Respondents have cited the judgment of Hon'ble High Court dated 01.05.2019 in I.A No. 216 of 2018 and CMAPL No. 470 of 2018, copy of which is enclosed at Annexure-R/1 to the objection to the MA. It is further stated that the plea of the applicant that he submitted representation before the authorities after getting information under RTI Act does not erase and cure the delay and latches in the matter and that the law on delay is settled by different judgments of Hon'ble High Court. It is also stated that this Tribunal also passed the order dated 21.02.2019 in MA No. 418/18 arising out of another O.A 577/18 following the judgment dated 23.08.2018 of the Hon'ble Apex Court in State of Uttarakhand & Anr. Vs Shiv Charan Singh Bhandari & Ors( 2013) 12 SCC 170 wherein it was held that any direction to consider the representation without examining the merits and order passed in compliance with such direction, will not extend the limitation and it is not a fresh cause of action.

5. We have considered the submissions and gone through the judgments placed before us by the respondents. From the facts of the case, the grievance of the applicant is that he was given the benefit under OTBP and BCR scheme from 31.12.2004 and 01.01.2005 respectively, although earlier DPC held in 2003 had allowed him the benefit from earlier dates. The applicant has also mentioned that similar benefit has been allowed to other employees vide order dated 06.11.2008 of this Tribunal in OA No. 637/2005 (Annexure-A/4). However, the reasons for delay in taking any action after 2005 or challenging it in the light of the order of this Tribunal on 06.11.2008 have not been explained in the MA or in the OA. The applicant has simply mentioned that he obtained the information under RTI Act on 13.06.2012 about the constitution of the DPC meeting held in 07.03.2005 to consider his case. The delay in receiving the information under RTI Act will not extend the limitation for the purpose of the Administrative Tribunals Act, 1985.

6. It is seen that the facts of the OA No. 637/2005 relied by the applicant in the OA are distinguishable since in that case, the applicant's OTBP or BCR benefits were not delayed on account of disciplinary proceedings. Further, the applicant's claim for retrospective promotion at this belated stage will unsettle the situation.

7. The law is well settled on the issue of delay. Unless there is sufficient cause and justification for delay, it cannot be condoned. It is seen from the MA that the only reason mentioned is that the applicant being a retired person and delay was not intentional. However, the circumstances under which the OA could not be filed in time even after obtaining RTI information in 2012 have not been explained satisfactorily in the MA. As stated that Annexure-R/2, applicant's claim was rejected on 20.03.2015 and even considering from this date, the OA is delayed.

8. In the circumstances as discussed above, we are not satisfied with the grounds mentioned in the MA for condoning delay. Accordingly, the MA No. 278/19 is dismissed.

9. The OA being barred by limitation is also dismissed.

10. Copy be sent to the applicant by post and handed over to respondents' counsel.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)

