

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00107/2015

with

Misc. Application No.92/2018

Jodhpur, this the 3rd September, 2019

Reserved on 07.08.2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

Jai Ram Khatik S/o Shri Beni Ram, aged 62 years, B/c Khatik, R/o 1-B-10, Housing Board, Gandhi Nagar, Chittorgarh (Rajasthan). He was employee Group 'A' Officer in BSNL, Sirohi.

.....Applicant

By Advocate : Mr. Dinesh Ojha proxy for Mr. P.R. Singh.

Versus

(1) The Union of India through Secretary, Ministry of Communication Department of Telecom, Sanchar Bhawan, New Delhi.

(2) The Chief General Manager, Telecom, Rajasthan Circle, Jaipur.

(3) The General Manager, Telecom, District Sirohi (Rajasthan).

(4) The General Manager, Telecom, District Pali (Rajasthan).

(5) The General Manager, Bharat Sanchar Nigam Ltd., Telecom, District Sirohi (Rajasthan).

.....Respondents

By Advocate : Mr. B.L. Tiwari for R/1

Smt. K. Parveen for R/2 to R/5

ORDER

Per Smt. Archana Nigam, Member (A)

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"(i) It is therefore, humbly prayed that this Hon'ble Tribunal may kindly be please to accept and allow this original application and the respondents may be directed to grant promotion to the petitioner on regular basis as Senior Time Scale of Indian Telecom Service Group-A posts from the date his juniors were allowed the same.

(ii) That the respondents may further be directed to accord the benefit of free call facility as available to STS of ITS of Group-A Posts.

(iii) That the respondents may further be directed to repay the entire amount illegally deducted i.e. Rs.38826/- from the retiral benefits in the name of damage rent for retention of govt accommodation at Sumerpur with an interest @ 24% per annum.

(iv) That the respondents may further be directed to grant IDA Scale to the petitioner as available to the Group -A Officer of the BSNL and accord all the retiral benefits in accordance with the Group -A posts in BSNL with an interest @ 24 % per annum.

(v) That the respondents may be directed to grant all other consequential benefits to the petitioner available to the Group A Officer in the respondent department from the date of his juniors have been accorded any such benefits.

(vi) That any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper may also be passed in favour of the applicant."

2. Brief facts of the case as stated by the applicant are that the applicant was working as Senior Divisional Engineer in Pali in Group B posts and was promoted on ad-hoc basis to the cadre of STS of ITS Group A Posts vide order dated 03.04.1998 for a period of 180 days or till regularly selected incumbent joins. The applicant continues to work on this post on officiating basis and the last order was issued in this regard on 01.12.2000. However, vide order dated 03.04.2001 the applicant was ordered to be reversed to the post of Senior Divisional Engineer. Against which the applicant has filed the Original

Application No.142/2001 before this Tribunal and in pursuance of order passed by this Tribunal in the said OA, the applicant was again promoted to STS of ITS Group A posts w.e.f. 01.06.2001 and was posted as Divisional Engineer Telecom, Sumerpur vide order dated 14.02.2002. However, on the same day i.e. on 14.02.2002 another order was passed whereby the applicant was reverted to the post of Senior Divisional Engineer w.e.f. 27.11.2001, but vide another order issued on the same day i.e. 14.02.2002 the applicant was once again ordered to be promoted on ad-hoc basis w.e.f. 04.12.2001 for a period of 180 days and the applicant was posted as Divisional Engineer Telecom, Sumerpur. Yet vide another order dated 13.03.2002 the applicant was reverted to the post of TES Group B and transferred to Sirohi Telecom Division. Against said transfer, the applicant again approached this Tribunal by way of filing OA No.74/2002, which was came to be decided on 16.05.2002 and the impugned order therein was quashed and it was observed that the applicant would continue to be promoted on ad-hoc basis to the cadre of STS of ITS group A posts so long as his junior incumbents enjoy this benefit. However, in the meantime, a disciplinary inquiry was initiated against the applicant which forbids the right of the applicant for absorption in BSNL, and this inquiry finally culminated into an order of exoneration dated 07.12.2004. It is further submitted that since the order of the transfer from Sumerpur to Sirohi automatically came to an end as the order was held to be illegal and therefore the applicant is entitled to continue at Sumerpur and therefore he was entitled to retain the Government residential quarter as per his entitlement. But the respondents vide communication dated 28.01.2005 issued by the

office of the GMTD Pali, addressed to GMTD Sirohi found the period from 16.05.2002 to 15.03.2003 as unauthorized occupancy of the government quarter and ordered for recovery of damage rent charges. Against the said communication, the applicant has filed Annexure-A/7 representation, but the respondents ignoring the same and having administrative bias against him illegally deducted a sum of Rs.9500/- from the applicant's salary of the month of February, 2005 without there being any notice or opportunity of hearing. In the meantime, the applicant was retired from the post of STS of ITS Group A posts on 13.4.2005 on attaining the age of superannuation and the respondents made a recovery of sum of Rs.29,326/- from the retiral dues of the applicant without affording any opportunity of hearing to him. Thereafter, vide order dated 15.12.2006, it was informed by the respondents that the applicant was not regularly promoted as a member of Group A services whereas junior incumbent have been promoted to the posts of Group A services ignoring his claim. It is further submitted that the applicant was not accorded other admissible benefits to Group A post despite the fact that the order of reversion dated 13.03.2005 was quashed and set aside by the Hon'ble Tribunal and in these circumstances, the applicant sent a notice for demand of justice on 15.12.2006 through his counsel, which was decided on 09.04.2007 by the respondents with the recalcitrant attitude and without application of mind and held the action of the respondent justified. It is further submitted that during the period the applicant remained at Sirohi, he was paid TA and DA for continuously 6 months and thereafter when he was transferred to Bhinmal from Sirohi he was paid the charges of lodging and DA and

therefore the applicant was retaining the government accommodation at Sirohi. It is further submitted that after exoneration from the Disciplinary Authority, the applicant was finally absorbed in the BSNL vide order dated 20.12.2006 w.e.f. 01.10.2000 and therefore the available benefits as available to the junior incumbents the applicant is also entitled for the same. Therefore, feeling aggrieved by the action of the respondents whereby they did not accord promotion to the applicant on regular basis in the grade of STS of ITS Group A Posts and not accorded other benefits available to an officer of this cadre, he has approached the Tribunal by way of filing, which was later on withdrawn by him as the jurisdiction does not lie. In these circumstances, the applicant approached the Hon'ble Rajasthan High Court by way of filing SB Civil Writ Petition No.6997/2008 which was decided on 13.11.2014, the said writ petition was dismissed as withdrawn with liberty to avail alternative remedy of filing OA before this Tribunal and it was also directed that duration of the writ petition shall not be construed to be a bar of limitation against the applicant. Hence, the applicant has filed the present OA.

3. The respondents in their reply stated that from perusal of the reliefs sought by the applicant are deriving from different cause of actions and as per Central Administrative Tribunal (Procedural) Rules, 1987, an application shall be based upon a single cause of action. The applicant can claim for more than one relief in one original application subject to the condition that it is based upon a single cause of action and the remedies sought are consequential to each other, but in the present case, the relief sought are arising from different cause of

actions. It is further submitted that the applicant was promoted purely on temporary basis to officiate in the cadre of STS of ITS Grade A for a period not more than 180 days or till regular incumbents join, whichever is earlier, vide order dated 01.12.2000. It is further stated that the incumbents locally promoted vide this order were to be reverted automatically on completion of 180 days or on joining of regular incumbent or by any other previous date ordered by this order. It is further submitted in the reply that recovery of damage rent charged against Shri J.R. Khatik was made as per rules, as this Tribunal while allowing OA No.74/2002, did not cancel the transfer order from Sumerpur to Sirohi nor the applicant after the judgment approached the department for cancelling the transfer order. Further, Shri J.R. Khatik never submitted any documentary evidence of educational/ medical ground to justify the need of retention of quarter at his last place of posting i.e. Sumerpur. It is mandatory to seek permission for the retention of quarter beyond the normal permissible period of two months as per DO letter No.2-12/98/NBT dated 20.09.2000. Consequently, the GMTD Pali Marwar has already accorded his permission for the retention of quarter for the initially period of two months w.e.f. 15.04.2002 to 15.06.2002 but due to non submission of documentary evidence regarding education/ medical need, the permission for the retention of quarter beyond the period of two months has not been accorded by the competent authority and ultimately resulting recovery of damage rent charged for non permissible period and as such recovery of Rs.38,826/- has been imposed vide order dated 28.01.2005. It is further submitted that the representation of the applicant was duly examined by the

competent authority and after that recovery order in accordance with rules has been issued. It is submitted that the applicant at the time of retirement was simply an officiating Divisional Engineer and as per standing rules/norms the officiating Divisional Engineer category comes under the status of TES Group-B and not as a ITS Group A cadre. There, he was allowed the concessional telephone facility as a limit of 500 free calls as admissible to TES Group B officer. It is further submitted that TES Group B officers were given promotion vide DOT New Delhi No.11/15/2001-STG-1 dated 17.12.2002 & 412-36/2002 Pers-1 dated 03.01.2002, while disciplinary case was pending against the applicant and the same was decided on 07.12.2004. The case of the applicant was examined and it was observed that the name of the applicant was not considered for ad hoc promotion to STS, ITS Group A part in 2002 DPC by DOT due to pending of the disciplinary case. The applicant was exonerated from the charges on 07.12.2004 and retired on 31.04.2005 whereas absorbed in BSNL vide order dated 20.12.2006. In the next CPC held on 29.05.2006 his name was not considered for promotion as he was retired on 30.04.2005. There is no rule for granting promotion (Ad hoc/ Regular) in respect of retired officer from back date. In view of the above, it is prayed in the reply that the applicant is not entitled for any reliefs from this Tribunal.

4. Heard learned counsel for the applicant Shri Dinesh Ojha proxy for Mr. P.R. Singh, and learned counsel for the respondent No.1, Shri B.L. Tiwari as well as Smt. K. Parveen, learned counsel for the respondents No.R/2 to R/5.

5. Learned counsels for both sides have argued their case as per the pleadings available on record and perused the pleadings available on record.

6. It is seen that the respondents in his reply as well as at the time of arguments have raised preliminary objections regarding maintainability of the present OA and submits that the OA was hopelessly time barred as the cause of action arose in 2002. It is stated by the respondents that multiple reliefs have been sought by the applicant which are deriving from different cause of actions, whereas as per the CAT procedure Rules, 1987, an application has to be based on a single cause of action and the applicant can claim for more than one relief in one original application if it is based upon a single cause of cause of action and the remedies sought are consequential to each other. We have perused the reliefs sought for by the applicant, which is as under:-

"(i) It is therefore, humbly prayed that this Hon'ble Tribunal may kindly be please to accept and allow this original application and the respondents may be directed to grant promotion to the petitioner on regular basis as Senior Time Scale of Indian Telecom Service Group-A posts from the date his juniors were allowed the same.

(ii) That the respondents may further be directed to accord the benefit of free call facility as available to STS of ITS of Group-A Posts.

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(v) That the respondents may be directed to grant all other consequential benefits to the petitioner available to the Group A Officer in the respondent department from the date of his juniors have been accorded any such benefits.

(vi) That any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper may also be passed in favour of the applicant."

From perusal of the aforesaid reliefs, we are of the considered opinion that in the present OA, the reliefs sought by the applicant are arising from different cause of actions, and the same is not maintainable as per the Rule 10 of CAT Procedure Rules, 1987, which reads as under:-

"10. Plural remedies an application shall be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another."

8. We have also seen that the applicant sought promotion on regular basis from the date his juniors were allowed, which was denied by the respondents on the ground that a disciplinary inquiry was initiated against him. The inquiry was finally culminated into an order of exoneration dated 07.12.2004 and the applicant was retired on attaining the age of superannuation on 30.04.2005 and he was absorbed in BSNL vide order dated 20.12.2006. It is also noted that in the next CPC held on 29.05.2006 his name was not considered for promotion as he was retired on 30.04.2005, as there is no rule for granting promotion (Ad hoc/ Regular) in respect of retired officer from back date. In our opinion there is also no illegality in the action taken by the respondents as the applicant has already retired from services, his case was not considered for promotion.

9. Learned counsel for the respondents at the time of hearing has also raised the objection regarding delay in filing of the present OA

and submits that the cause of the action arose for the applicant in the year 2002 and he has filed the present OA in the year 2015. In this regard, learned counsel for the applicant drew our attention to Annexure -A/14 by which the Hon'ble High Court of Rajasthan in SB Civil Writ Petition No.6997/2008 by which the Hon'ble High Court of Rajasthan while dismissing the said writ petition has condoned the delay for the period the applicant has approached the Hon'ble High Court of Rajasthan till the decision in the said writ petition i.e. from 2008 to 2014. However, it is the submission of the learned counsel for the respondents that though the Hon'ble High Court of Rajasthan has condoned the delay from 2008 to 2014, but the cause of action arose for the applicant in the year 2002 and the applicant has not shown any reason as to why he has not approached the appropriate forum between 2002 to 2008. We have also noted that the applicant has neither filed any application for condonation of delay nor the learned counsel for the applicant made any satisfactory submission during the course of arguments for condoning the delay from 2002 to 2008. In our considered opinion, there is more than 5 years delay in filing the present OA and further noted that there is no application for condoning the same. On the point of delay, learned counsel for the respondents at the time of hearing has relied upon the judgment of the Hon'ble Apex Court passed in Ramesh Chand Sharma vs. Udham Singh Kamal & Ors, reported in AIR 1999 SC 3837 wherein the Hon'ble Apex Court held that under Section 21 of the Administrative Tribunals Act, a petition filed after expiry of 3 years' limitation and no application for condonation of delay made before Tribunal, the Tribunal could not entertained the same. He has also relied upon the

judgment of Hon'ble Apex Court passed in Suman Devi vs. Manisha Devi & Ors., reported in AIR 2018 SC 3912 wherein the Hon'ble Apex Court held that the provisions of limitation act not applicable mere fact of permitting withdrawal of petition with liberty to file fresh petition cannot obviate bar of limitation.

10. From the discussions made in the aforesaid paras, it is clear that the OA suffers from the vice of plural remedies being sought in one application, which is not permissible as per CAT Procedure Rules, 1987. Further there is no satisfactory explanation putforth by the applicant for condoning the delay from 2002 to 2008. Accordingly, the OA is not maintainable on the point of multiple reliefs sought in single application. The OA is

thus dismissed. No order as to costs.

11. In view of the above, the MA No.92/2018 for deletion of respondent No.1 is also disposed of.

[Archana Nigam]
Administrative Member

[Hina P. Shah]
Judicial Member