

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/1289/2013

Date of order: 3.9.2019.

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Vishwa Nath Bhattacharya,
Ex-Dy. General Manager,
BSNL,
Telecom Factories Kolkata Circle,
Son of Late Jamini Ch. Bhattacharya,
Residing presently at
Utsav Apartments, Flat No. E, 3rd Floor,
Block A, Teghoria Main Road,
P.O. - Hatiara,
Kolkata - 700 157.

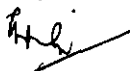
.. Applicant

- V E R S U S -

1. The Chief General Manager,
BSNL Telecom Factories,
Kolkata Circle, 3A,
Chowringhee Place,
(7th Floor),
Kolkata - 700 013.
2. The Bharat Sanchar Nigam Limited,
Corporate Office,
Through Chairman and Managing Director,
Bharat Sanchar Bhawan,
Janpath,
New Delhi - 110 001.
3. The Senior General Manager (Personnel),
Bharat Sanchar Nigam Ltd.,
Corporate Office,
Bharat Sanchar Bhavan Janapath,
New Delhi - 110 001.

.. Respondents

4. The Union of India,
Through the Secretary,
Ministry of Communications and Information
Technology,



Department of Telecommunication,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi - 110 001.

.. Proforma Respondents

For the Applicant : Mr. R.N. Bag, Counsel
Mr. T.K. Biswas, Counsel

For the Respondents : Mr. A.K. Gupta, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"(a) An order or direction be issued directing the respondents, their agents, subordinates and assigns to rescind/cancel/withdraw the letter dated 10.7.2013 regretting the representation dated 1.11.2012 made by the applicant praying benefit of NFSG pay scale. On completion of 13 years Group A service and to release the benefit of NFSG pay scale in favour of the applicant w.e.f. from the date the applicant has completed 13 years Group A service in Telecom Factories BSNL service.

(b) Any other or further order or orders be passed as to this Hon'ble Tribunal may deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record. The respondents have filed a supplementary affidavit on 11.12.2015. Both parties have submitted their written notes of arguments.

3. The submissions of the applicant, as articulated through his Ld. Counsel is as follows:-

(a) That, the applicant was promoted as Group 'A' (Junior Time Scale) post on 23.12.1998 in DOT. After formation of BSNL w.e.f. 1.10.2000, he was absorbed in BSNL in a Group 'A' post w.e.f. 1.10.2000.



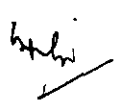
Subsequently, he was promoted to Group 'A' (Senior Time Scale) w.e.f. 1.3.2004, Group 'A' (Junior Administrative Grade) on adhoc basis w.e.f. 25.6.2009 and Group 'A' (Junior Administrative Grade) on regular basis w.e.f. 29.1.2010. He retired from service w.e.f. 31.1.2012 (A/N) as absorbed BSNL regular JAG with completion of more than 13 years Group 'A' service.

(b) The applicant had appealed to CGM, Telecom Factories, Kolkata Circle and subsequently sent reminders for Non-Functional Selection Grade (NFSG) as per BSNL order No. 400-222/2008-Pers 1 dtd. 15.6.2009. The appeal was, however, regretted by CGM, Telecom Factories Kolkata Circle vide letter dated 10.7.2013 in view of Recruitment Rules of BSNL Management Services – Schedule 1C, 3(b).

(c) As per RTI application dated 22.6.2012 and information submitted by BSNL Co. New Delhi dated 10.7.2012, BSNL Circular dated 15.6.2009 is valid for the period it represents. Further, as per RTI application dated 6.11.2012 and information submitted by Telecom Factories, Kolkata Circle dated 6.12.2012, CGM, Telecom Factory Kolkata Circle is empowered to grant NFSG pay scale, and two adhoc JAG officers who had become regular JAG officers along with the applicant w.e.f. 29.1.2010 were also granted NFSG pay scale.

(d) The Jabalpur Bench of this Tribunal passed an order dated 11.9.2013 for NFSG pay scale as per BSNL order dated 15.6.2009 to one Sri M. Narendar (Promoted from Group B) JAG Officer, Telecom Factory service who had also become regular JAG officer w.e.f. 29.1.2010 along with the applicant even after issue of Recruitment Rules of BSNL Management Services dated 14.7.2009.

The applicant prays that he may also be granted NFSG pay scale w.e.f. 1.1.2012.



4. The respondents, on the other hand, have controverted the claims of the applicant by arguing as follows:-

(a) That, the applicant was promoted as Assistant Manager (Junior Time Scale in short JTS) on 23.12.1998. As per option submitted by the applicant he was absorbed in Bharat Sanchar Nigam Limited (in short BSNL) as a Group "A" officer w.e.f. 1.10.2000. Thereafter, he was promoted as Assistant General Manager, Senior Time Scale (in short STS) on and from 1st March, 2004. Vide order dated 20.5.2009 he was promoted on adhoc basis and posted at Telecom Factory, Jabalpur Circle as Deputy General Manager (in short DGM) as Junior Administrative Grade (in short JAG). He was posted as regular DGM w.e.f. 29.1.2010.

(b) Shri A.M. Bodele and Sri M.C. Pramanick are two directly recruited Executives and accordingly, Non Functional Selection Grade was provided to them as per BSNL Order No. 400-106/2007/per-I dated 14.7.2009 as applicable to officers recruited as Group A level and absorbed in BSNL Officers as Deputy General Manager Grade who have entered the Thirteenth year of service as on 1st January of the year calculated from the year following the year of examination on the basis of which said officers were recruited.

(c) The applicant was a departmentally promoted Executive Officer from Group "B" and as such Non Functional Selection Grade is not applicable to him. Executives recruited by BSNL/Officers promoted from Group "B" by the department of Telecom and absorbed in BSNL as Deputy General Manager Grade who have completed five years of regular service as DGM on 1st January of the year are only eligible for the said scale of pay.

(d) Thus Non Functional Selection Grade scale of pay is extended only to eligible officers of Group "A" belonging to Telecom Factory Service as well

hsh
✓

as who have been absorbed in BSNL w.e.f. 1.10.2000. The applicant was a promotee Executive from Group "B". Therefore, the applicant is not entitled for the said scale i.e. NFSG.

5. The issue before us is to adjudicate whether the applicant is entitled to NFSG on the ground that he is similarly circumstanced as Shri M. Narendar, who, admittedly, has been accorded the NFSG pay scale vide orders dated 16.1.2010.

6.1. The applicant has challenged orders dated 10.7.2013 (Annexure A-17 to the O.A.). The said order is reproduced below:-

" Bharat Sanchar Nigam Limited
(A Govt. of India Enterprise)

No. TFKC/Admn./Staff-34/JAG(NFSG)/(41) 10th July, 2013

To
Shri V.K. Bhattacharya,
Ex. DGM, BSNL, TF, Gopalpur,
Flat No. E, 3rd Floor, Block "A",
UTSAV APARTMENTS,
Teghoria Main Road,
P.O. Hatiara,
Kolkata -700 157.

Sub: Grant of NFSG Pay Scale of Rs. 43200-66000/- (IDA Pay Scale).
Ref: Your letter dated 11.6.2013.

Sir,

I have been directed to refer to your representation dated 1.12.2011 and subsequent reminders on the subject and to state that your case has been examined in depth by this office and it is regretted that your request cannot be acceded to in view of the Recruitment Rules of BSNL Management Services - Schedule IC-Sl. 3(b) issued vide No. 400-106-2007-Pers.I dated 14th July, 2009. In this connection a copy of **Schedule IC-"Method of Recruitment, Field of promotion & Minimum qualifying services in the next lower grade for appointment of executives on promotion to Higher Grade of Telecom Factories of BSNLMS"** is enclosed for your ready reference.

Yours faithfully,

-Sd/-
(R.K. Upadhyaya)
Asstt. General Manager (Admn.)

Encl.: As stated above."

6.2. The applicant has also furnished during hearing a set of papers wherefrom it transpires that vide orders dated 16.1.2010, Sri M. Narendar, a JAG level Executive, was accorded NFSG scale w.e.f. 27.2.2007, which is extracted as under:-

hnd

BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprise)
O/o THE CHIEF GENERAL MANAGER, TELECOM FACTORY, MUMBAI-88.

No. TFM/ES-PF-MN-DGM/1994-2009/(61)

Dated: 16.01.2010

ORDER

Sub :- Granting NFSG Scale of Rs. 43,200-66,000 to absorbed Group 'A', E-5 level executives.

In pursuance of BSNL CO. ND letter NO. 400-222/2008-Pers.I dated 15.06.2009, approval of the Chief General Manager, Telecom Factory, Mumbai is hereby conveyed for placement of following absorbed JAG level executive presently working in IDA Pay scale of Rs. 32900-58000 to the NFSG (JAG) IDA pay scale of Rs. 43200-66000.

Sl NO	Name of the Executive	HRMS No.	Year of examination on the basis of which recruited	Date of initial appointment as Gr. 'A' (JTS)	Date of continuous appointment as JAG	Date of granting NFSG Scale
1.	Shri M. Narendar St.No. 74142	197903117	01.08.1979	27.09.1988	27.02.2007	27.02.2007

2. The above placement would be subject to the following:-

- The fixation of pay will be regulated as per jurisdiction / guidelines of 2nd PRC.
- The fixation of pay would be subject to post audit and in the light of audit observation. The over payment made if any, either in the form of arrears or otherwise, shall be recovered from the amount due to the officer concerned subsequently without notice.

Sd/-
(H.S. Badaruddin)
Asstt. General Manager (Admn.)"

6.3. The applicant would thereafter argue as follows:-

That, Mr. M. Narendar got promotion as DGM on regular basis w.e.f. 29.1.2010 along with the applicant and seven others but was not granted the NFSG pay scale. Being aggrieved by the inaction of BSNL TF authority, Mr. M. Narendar, DGM moved the Jabalpur Bench of the Tribunal praying for sanction of NFSG pay scale, which was registered as T.A. No. 34 of 2009 (W.P. No. 10253 of 2008 (S)). The said application was allowed on 11.9.2013 with following orders:-

hsh

ms

"9. In view of the aforesaid, we direct the respondents to consider and decide the case of the petitioner for grant of NFSG (equivalent IDA Pay Scale), payable on promotion for JAG and completion of 13 years period in Group 'A' Engineering Service, as per the provisions of letter dated 15.6.2009 (Annexure - P-4), within a period of two months from the date of communication of this order. In case of grant of the IDA pay scale (equivalent to NFSG), the petitioner shall be entitled to get all the consequential benefits including arrears of pay."


The applicant has referred to the status of Shri M. Narendar in para ff (page 29) of his Original Application as follows:-

"On 11.2.2011 vide letter No. 10-3/2011-TF the Sr. GM (TF), BSNL Corporate Office asked the CGMs Telecom Factories Circles as to how the officers in the said units who were officers of TF Grade and had been promoted to DGM on adhoc basis vide BSNL Co. order dt. 27.2.007 got benefit of NFSG pay scale of Rs. 43200-66000/- w.e.f. the date of promotion to DGM on adhoc basis. It appeared therefrom that Mr. M. Narendra, Mr. B.B. Bisoyi and Mr. A.M. Bodele got NFSG benefit with effect from the date of promotion to DGM on adhoc basis, Mr. M.C. Pramanik and Mr. Munna Khan got such benefit after promotion to DGM (Adhoc) w.e.f. the completion of 13 years from the year following the year of examination on the basis of which he was recruited and Mr. S.K. Singh got such benefit only after becoming DGM on regular basis w.e.f. on 29.1.2010."

6.4. In their reply or in their supplementary affidavit, however, the respondents have not offered any comments as to whether the applicant was similarly circumstanced as Shri M. Narendar.

During hearing, Ld. Counsel for the applicant fairly admits that, although the NFSG status of Sri M. Narendar was referred to in the pleadings, the applicant has not represented to the respondent authorities praying for treatment at par with that of Sri M. Narendar for grant of NFSG pay scale.

7. Accordingly, as the applicant is yet to exhaust his departmental remedies, as per Section 20(1) of the Administrative Tribunals Act, 1985, we hereby accord liberty to the applicant to represent to the competent respondent authority citing his similarity of circumstances with Mr. M. Narendar, within a period of three weeks from the date of receipt of a copy of this order. Once so received, the competent respondent authority shall examine the similarity of the applicant's circumstances with that of Mr. M. Narendar, (who admittedly had received his NFSG scale vide orders dated 16.1.2010 and w.e.f. 27.2.2007) and, thereafter, pass in accordance with law a reasoned and speaking order within a period of 12



weeks after receipt of such representation and convey such decision to the applicant forthwith thereafter.

8. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP