

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA

No. O.A. 1568 of 2013

Reserved on: 11.9.2019

Order dated: 19.9.2019

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

Krishnasish Ghosh,  
Son of Late Radhanath Ghosh,  
Aged about 60 years,  
Retired as Private Secretary  
Under the General Manager,  
Bharat Sanchar Nigam Limited,  
At present residing at  
27C, Chandra Mondal Lane,  
3rd Floor,  
Kolkata - 700 026.

.... Applicant

VERSUS -

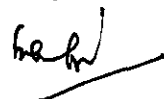
1. Union of India,  
Through the Secretary,  
Department of Telecommunication,  
Sanchar Bhawan,  
20, Ashoka Road,  
New Delhi - 110 001.

2. The Chairman cum Managing Director,  
Bharat Sanchar Nigam Limited,  
Statesman House,  
148-B, Barkhamba Road,  
New Delhi - 110 001.

3. The Chief General Manager,  
Bharat Sanchar Nigam Limited,  
West Bengal Telecom Circle,  
1, Council House Street,  
Kolkata - 700 001.

4. The Deputy General Manager (HR/Admn.),  
West Bengal Telecom Circle,  
1, Council House Street,  
Kolkata - 700 001.

... Respondents



For the Applicant : Mr. C. Sinha, Counsel  
 For the Respondents : Mr. D. Mukherjee, Counsel  
 Ms. M. Bhattacharya, Counsel

### ORDER

**Per Dr. Nandita Chatterjee, Administrative Member:**

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

(a) To direct the respondents to cause them to act in terms of the Recruitment Rules for the post of Sr. PA/PS and consider the case of your applicant for promotion to the post of Sr. PA/PS on regular basis w.e.f. 1.7.2000 or 1.3.2001 as the case may be with all consequential benefits.

(b) To direct the respondent to consider the case of promotion as PS w.e.f. the date his junior got such promotion.

(c) Any other order or orders as the Honble Tribunal deems fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record. Ld. Counsel for the respondents would refer to ***C. Jacob v. Director of Geology and Mining and Others (2008) 10 SCC 115*** in support of his arguments.

3. The submissions of the applicant, as advocated through his Ld. Counsel is that the applicant was appointed as Stenographer Gr. III in substantive capacity, w.e.f. 1.3.1978 and subsequently promoted to the post of Stenographer Gr. I. While functioning as Stenographer Gr. I, he was redesignated as Private Secretary in an officiating capacity w.e.f. 1.7.2000 which continued till his regular promotion to the said post w.e.f. 10.5.2007.

The applicant is aggrieved that, although a regular vacancy had existed at the material point of time, the respondent authorities acted in contravention to the recruitment rules to the post of Sr. PA/PS and denied him of regular promotion w.e.f. 1.7.2000 / 1.3.2001.

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As the applicant's repeated representations were of no avail, the applicant has approached the Tribunal praying for the above mentioned relief.

The applicant had advanced the following grounds, inter alia, in support of his claim:

- (a) Natural and procedural justice has been violated in the context of the applicant despite the fact that the applicant had fulfilled all the eligibility criteria as per recruitment rules, and
- (b) The action of the respondent authorities is de hors the recruitment rules.

4.1. The respondents, in their written statement, and, during hearing have controverted the claim of the applicant, as follows:-

- (i) That, the applicant was initially appointed as a temporary Stenographer in the cadre of Stenographer Gr. III w.e.f. 1.3.1978 and was promoted to Stenographer Gr. II on 31.3.1991. Thereafter, he was promoted to the post of Stenographer Gr. I on 11.11.1998.
- (ii) Vide orders dated 15.5.2000, the applicant was directed to officiate as Sr. Personnel Assistant to the General Manager.
- (iii) That, thereafter, the services and businesses of the Department of Telecom (DOT), the Department of Telecom Services (DTS) and Department of Telecom Operations (DTO) were transferred to BSNL w.e.f. 1.10.2000 and, the applicant, having submitted his option, was permanently absorbed in BSNL w.e.f. 1.10.2000 as a non-executive.
- (iv) That, a DPC was constituted for the posts of Sr. Personal Assistants and Personal Assistants within the territorial jurisdiction of West Bengal Circle, and the said recommendations of the DPC including the case of the applicant, were forwarded to the Department of Telecommunication at New Delhi and, no promotional policy having been

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framed by BSNL, the earlier promotional policy under Department of Telecommunication remained extant. On 8.1.2004, it was decided to restructure the existing cadre of Stenographers in the Field Unit of BSNL by introducing new recruitment rules for different grades of Stenographers. In compliance to the same posts of, Gr. II and Gr. I Stenographers were merged, designated as Personal Assistant (PA) and the merged grade was upgraded to Rs. 6500-10500/-. The merged grade was to be filled up 50% by Limited Internal Competitive Examination from amongst the stenographers of respective field cadres with five years regular service in the grade and remaining 50% by separate LICE from amongst regular Gr. 'C' and Gr. 'D' employees in the pay scale below that of Rs. 6500-10500/-. failing which by direct recruitment.

(iii) The grade of Senior Personal Assistant was upgraded to Rs. 7500-12000/- and was redesignated as Private Secretary. The corresponding recruitment rules laid down that the recruitment in the grade will be 100% by promotion from the PAs wherefrom 75% will be filled up on the basis of seniority cum fitness with three years regular service in the grade and 25% by Limited Internal Competitive Examination from among PAs with three years regular service in the grade. The post of Sr. Private Secretary was withdrawn but those who had been promoted as Sr. Private Secretary would continue to hold the designation in the Field Units.

The corporate office of the respondent authorities thereafter directed that all appointment and promotions were to be made with the new recruitment rules of PA and PS and that the earlier proposals are to be reviewed.

(v) Accordingly, on 12.8.2005, the gradation cum seniority list for the cadre of Private Secretary, Personal Assistant and Stenographers under

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the West Bengal Telecom circle (as corrected upto 28.2.2005) was circulated, wherein the applicant's name appeared against Srl. No. 7.

The said gradation list has been annexed by respondents in R-13 to their reply.

(vi) The recommendations of the DPC on the basis of such gradation list was forwarded on 16.6.2006 to the Corporate Office which, however, directed that a fresh DPC be held for promotion to the post of Private Secretary, having detected certain irregularities in respect of reservations in the post, and, further, on 18.10.2006, directed that the DPC be held afresh in accordance with the guidelines.

That, thereafter, a fresh recommendation along with vigilance clearance certificate of 15 PAs, including the applicant, were forwarded to the competent authority, who, thereafter, having approved the same, the promotion orders were issued on 10.5.2007.

4.2. The respondents have further argued that when the said gradation list as on 28.2.2005 was circulated, the applicant was very much in service, and had not raised any objection to the same. He availed of the said promotion, and it is only after his superannuation that he had started agitating before a judicial forum.

4.3. The respondents would also controvert the claim of the applicant that one Shri B.N. Samanta (not impleaded) had been regularly promoted to the grade of Stenographer Gr. I on 29.2.1996, much prior to the applicant. According to the respondents, the said B.N. Samanta, was admittedly senior in the grade of Stenographer Gr. I to the applicant and also in the draft gradation list as on 28.2.2005 and, that, the applicant had never raised any objection to the interse seniority position of Shri B.N. Samanta vis-à-vis his own seniority, while in service.

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4.4. The respondents have also argued against the claim of the applicant that one Shri K. Ghosh (not impleaded) was promoted superseding the applicant by stating that Shri K. Ghosh was eligible for promotion to the post of Sr. PA as on 11.11.2001.

5. In the instant case, as submitted by his Ld. Counsel, the applicant has preferred a representation only on 16.4.2012 (Annexure A-13 to the O.A.) and is aggrieved because such representation was not considered by the respondent authorities. The respondents' Counsel, during hearing, would vociferously argue that the applicant's claim is stale as because he chose not to challenge the inter se position within the material point of time citing the ratio in **C. Jacob (supra)**, in support which held as follows:

"There is need for circumspection and care in issuing directions for "consideration". If the representation on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing "consideration" of such claims.

The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of representation does not involve any "decision" on rights and obligations of parties. Little do they realize the consequences of such a direction to "consider". If the representation is considered and accepted, an ex-employee gets a relief, which he would not have got on account of long delay, all by reason of the direction to "consider". If representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the latches gets obliterated or ignored."

The scope of the Tribunal's issuing any order on such representation is limited given the ratio in **C. Jacob (supra)**. Undisputedly, the applicant had not objected to the gradation list (as on 28.2.2005) wherein his inter se seniority in the cadre of PS / PA was recorded. The said gradation list was circulated for comments on 12<sup>th</sup>

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August, 2005. His first representation on record, however, is that dated 16.4.2012.

Accordingly, in our considered view, the cause of action in the instant O.A. is indeed stale and does not merit consideration.

The maxim of "vigilantibus, non dormientibus, jura sub-veniant" (law assists those who are vigilant and not those sleeping over their rights) is applicable in this case, implying therefore that those who are not vigilant about their rights cannot expect to get any relief.

6. Accordingly, the O.A. is dismissed. There will be no orders on costs.

**(Dr. Nandita Chatterjee)**  
**Administrative Member**

**(Bidisha Banerjee)**  
**Judicial Member**

**SP**

