

CENTRAL ADMINISTRATIVE TRIBUNAL

CHENNAI BENCH

OA/310/00704/2017Dated Thursday ,the 10th day of October, 2019

PRESENT

Hon'ble Mr. T. Jacob , Member(A)

R.Raveendran
SDE B& P and AC
Chennai Telephone Exchange
No.20, Haddows Road,
Chennai – 600006.

....Applicant

By Advocate M/s R. Rajesh Kumar

Vs

1. The Chief General Manager
BSNL, Chennai Telephones
78, Purasaiwakkam High Road,
Chennai- 600 010.
2. The General Manager (HR & A)
BSNL, Chennai Telephones
78, Purasaiwalkam High Road,
Chennai- 600 010.
3. The Deputy General Manager(Central)
Chennai Telephones,
No.10, Dams Road, Chennai – 600 002.
4. The Accounts Officer/CBA,
Chennai Telephones,
No.10, Dams Road,
Chennai – 600 002.

...Respondents

By Advocate Mr. B. Mohan

ORDER

(Pronounced by Hon'ble Mr.T.Jacob, Member(A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"I. To set aside the order bearing Letter dated 25/11/2016 issued by the 3rd respondent bearing Ref No.AO(P&A)/TBP-II/CENTRAL/2016-17/391 and order dated 3/3/2017 bearing No. AO(P&A).CBA/OP/2016-17/408 and Order dated 10/03/2017 bearing Ref No AO(P&A)/CBA/OP/2016-17/408 dated at Chennai-600 002 issued by the 4th respondent and consequently restrain the respondents from recovering the alleged amount paid in excess to the applicant.

II. Direct the respondents to reimburse the amounts recovered from the applicant in lieu of order bearing Letter dated 25/11/2016 issued by the 3rd respondent bearing ref No AO(P&A)/TBP-II/CENTRAL/2016-17/391 and order dated 3/3/2017 bearing No.AO(P&A).CBA/OP/2016-17/408 and Order dated 10/03/2017 bearing Ref No.AO(P&A)/CBA/OP/2016-17/408 dated at Chennai-600002 issued by the 4th respondent".

2. The brief facts of the case as submitted by the applicant are as follows:-

The applicant is a Group 'B' officer belonging to Executive category and the middle level management was given an up-gradation from E2A to E3 grade w.e.f 01.01.2012 vide order dated 19.10.2013. Time Bound Promotion Policy was implemented by the respondents by introducing upgradation of pay in a fixed duration of time in order to tide over stagnation in promotion. In terms of the above policy, one has to undergo training within a period of 2 years from the date of the upgradation order. The applicant was given first increment on 01.01.2013. The applicant's salary was upgraded and in the said period, the applicant was elected as a General Secretary of SEWA BSNL and was authorised by the approved body of the respondent organisation and thus

could not complete the training programme. The applicant was served with the impugned order seeking to recover the increment already granted to him on the ground that he has not completed the training. The applicant enrolled himself to the Training programme and completed the Training Programme on 03.12.2016. The applicant replied to the impugned order passed by the respondent. The respondent without considering the representation of the applicant passed the impugned order to recover the sum of Rs. 1,64,758/- from the salary of the applicant without giving any break-up. The impugned order of recovery was granted without taking into consideration that there is no recovery stipulated in the Time Bound Promotion order. Hence the applicant has filed this OA seeking the above reliefs inter alia on the following grounds:-

- i. The respondents ought to have considered that during the relevant period the applicant was the General Secretary of the SEWA BSNL duly approved by the respondent.
- ii. The respondents ought to have given administrative approval for delay in getting mandatory training and ought to have regularised the delay.
- iii. In the OM dated 18/1/2007 bearing NO 400-61/2004-Pers.I regarding the Time Bound Promotion Policy there is no scope of recovery.
- iv. The respondent ought to have considered the representation in proper perspective and ought to have cancelled the recovery.
- v. The applicant had completed the Mandatory training on 03.12.2016 itself and had duly communicated the Course Completion Order to the respondent.

vi. The Time bound Promotion policy was introduced in order to alleviate the grievance of the employees of not getting promotion for long period and thus it was welfare oriented policy but on the contrary the respondent have made the policy, highly detrimental to the interest of the employees.

vii. In the past the applicant had performed meritoriously and had received appreciation from the respondent organisation for doing a meritorious service during the heavy rain in December 2015 and has been a pioneer in the consideration between the BSNL management and the SC/ST employees of BSNL.

3. Respondents have filed reply contesting the OA. It is submitted that the applicant was given the up-gradation w.e.f 01.01.2012 vide order dated 19.10.2013. In the said up-gradation order, it was clearly stated that the promoted executives have to self nominate themselves on CMTS portal for online training. Further the applicant whose time bound promotion orders were issued on 19.10.2013 was expected to complete the mandatory training on or before 18.10.2015. Rules apart, during this two year period, the applicant never gave any representation to the administration expressing his inability. The letter for recovery dated 25.11.2016 was issued and that the applicant also gave a reply dated 19.12.2016. Thereafter upon the applicant's oral representation that he will secure necessary orders from the appropriate authorities for non recovery, the 4th respondent waited for reasonable time till 03.03.2017 and thereafter passed the impugned orders dated 03.03.2017 and 10.03.2017 for recovery in line with extant rules, since no such orders for non-

recovery were obtained by the applicant from any authority including the first to third respondents herein. Thereafter the applicant submitted representation dated 18.3.2017 falsely stating that the amount for recovery not being quantified in the impugned orders and also giving other untenable reasons for not having completed his training within the two years period as stipulated. The clarification letter on Mandatory training under Executive Promotion Policy Lr No.400-175/2007-Pers.I(pt/I) dated 02.08.2010 clearly states that if the exam is not completed within two years from the date of issue of up-gradation order, 2nd increment would not be granted till completion of training. On successful completion, the increment will be released on notional basis from the due date of increment and on actual basis with effect from the date of completion. As per the above guidelines, the excess paid amount of Rs. 1,64,758/- arrived through due drawn statement between 01.01.2014 to 02.12.2016 had to be recovered. To avoid hardship to the applicant the above amount is being recovered in reasonable instalments of Rs.10,000 p.m. and not in one lump sum.

4. In support of the case of the respondents, they have cited the following decisions:-

- i. The order dated 08.07.2016 of the Principal Bench in OA 506/2015 filed by Sh. Om Prakash Sharma.
- ii. The order dated 24.10.2016 of the Chandigarh Bench of the Tribunal in OA.179/2016 filed by Sh Dharam Pal.
- iii. The order of the Principal Bench of the Tribunal in.2180/2014 filed by Sh. Niranjana Singh Dhama wherein Writ Petition is pending before the Hon'ble High Court of New Delhi.

5. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

6. The factual matrix of the case is not in dispute. The BSNL is having the Executive Promotion Policy w.e.f. 18.01.2007 (Annexure A-1) is also not in dispute. Para I(f) of the said Executive Promotion Policy (EPP) is reproduced herein below:-

"f. Training: Every executive whose pay is upgraded to next higher IDA pay scale will have to compulsorily undergo Two weeks of training (one Week in Administration/ Management /Customer Care and One Week in latest developments in Core Competence Area) for being eligible for drawal of **Second** Increment in the upgraded IDA Scale i.e., the training is to be completed within a period of two years from the date of the up-gradation to the higher scale. The Executive who fails to successfully undergo the prescribed Two weeks training will not be eligible for consideration of next IDA scale up-gradation even if he/she is due for up-gradation otherwise. The detailed instructions with regard to training shall be issued by the training branch of BSNL".

7. It has been specified in the financial up-gradation order 19.10.2013 at para III that :-

"III.Hence the executives are requested to adhere to the instructions stipulated in BSNL ND Letter dated 11.02.2011. The promoted executives have to self nominate themselves on CMTS portal for online training".

8. Further, the clarification of mandatory training issued by the Corporate Office vide Lr.No.400-175-Pers.1(pt.1) dated 02.08.2010 reads as follows:-

If training is not completed within two years from the date of upgradation order, whether stoppage of increment is to be done permanently or till he completes the training at a later date. In such cases whether arrears of increment is to be drawn from the actual due date of increment or from the date of joining or relieving from the training.	If training is not completed within two years from date of issue of upgradation order, 2nd increment will not be drawn till completion of training. On successful completion of training, the increment will be released on notional basis (ie., without arrears) from the due date of increment and on actual basis w.e.f. the date of completion (ie., last date) of training.
--	--

9. The plea of the applicant that he was not deputed for such training is untenable because the applicant himself had to make the application for deputing him for the training. Admittedly the applicant did not make any such application during the two year period. The applicant whose time bound upgradation promotion orders were issued on 19.10.2013 was expected to complete the mandatory training on or before 18.10.2015. Consequently, the claim for not undergoing the mandatory training lies on the shoulder of the applicant. As stated earlier, all the concerned executives of the BSNL are supposed to be aware of the extant policy of the promotion and the mandatory training that makes him eligible for drawing the second increment. It could be seen on perusal of the records that, the applicant had completed the mandatory training within two years in the **first** time bound up-gradation earlier. Since he did not undergo the mandatory two weeks training for the stipulated period of two years, he was not eligible to draw the second increment and as such, any excess payment made to him is liable to be recovered from his salary. Over payment is the undue payment to the applicant which would lead to unjust enrichment. Hence the respondents have rightly effected recovery of Rs.1,64,758/- in reasonable instalments from the salary of the applicant for the intervening period (ie., from the second increment month ie., 01.01.2014 to 02.12.2016 i.e. the date of completion of the mandatory training) from the salary month of March 2017 onwards. As such, I see no illegality or irregularity in the order of the respondents in effecting recovery of over payment made to the applicant on due notice/intimation towards non completion of mandatory training within two

years period. Further there is no provision in the executive promotion policy to approve the delay in completion of mandatory training.

10. In the conspectus of the above facts and circumstances of the case and the orders, circulars and clarifications on the issue, I find no reason to interfere with the policy decision of the respondents and the impugned order of recovery.

11. The OA is liable to be dismissed and is accordingly dismissed with no order as to costs.

/kam/

(T.Jacob)
Member(A)
-10-2019