

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A.No.020/00643/2014

Date of Order :08.04.2019.

Between :

M.S.S.Ramachandra Murty, s/o late Suryanarayana
Murty, aged about 63 yrs, Hindu, Retd. Personnel
Assistant to DGM (Marketing), 6th Phase,
Venkatadri Nivas, KPHB Colony, Hyderabad-500 085.

...Applicant

And

1. The Union of India, rep., by its Secretary
(Dept. of Telecom), 20, Ashoka Road,
Sanchar Bhavan, Govt. of India,
New Delhi-110 001.

2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Corporate Office, Personnel Branch-II,
4th Floor, Janapath, New Delhi-110 001.

3. The Chief General Manager, Telecom
Bharat Sanchar Nigam Limited, Nampally Station Road,
Hyderabad-500 001.

4. The Principal General Manager,
Hyderabad Telecom District, BSNL Bhavan,
Adarsh Nagar, Hyderabad-500 063.

... Respondents

Counsel for the Applicant

... Mr.M.S.S.Ramachandra Murty,
(Party-in-Person)

Counsel for the Respondents

... Mrs.K.Rajitha, Sr.CGSC
... Mr.M.C.Jacob. SC for BSNL

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)**

ORDER

(As per Hon'ble Mrs.Naini Jayaseelan, Member (Admn.))

The applicant is a retired employee of Bharat Sanchar Nigam Limited (BSNL) and served as Personal Assistant to the Deputy General Manager (Marketing), O/o the PGM, BSNL, HTD, Hyderabad. The prayer of the applicant in this OA is to direct the respondents 2 and 3 to grant Time Bound Promotions under the Executive Time Bound Promotion Policy with effect from 01.10.2004 and second Time Bound Promotion with effect from 01.10.2009.

2. Earlier to the filing of the present OA, the applicant had filed OA.No.616/2014 to set aside the impugned office order of the 2nd respondent dated 10.06.2013, whereby with the approval of the competent authority, benefit of merger of 50% DA effectively amounting to 78.2% as on 01.01.2007 was allowed for the purpose of fitment in respect of Board level and below Board level Executives and non-unionized supervisors of BSNL with effect from the date of issue of Presidential Directives i.e. 10.06.2013. The said order categorically states that **no arrears** will be paid and the revised fitment on the basis of the Department of Public Enterprise (DPE) OM dated 02.04.2009 will be paid w.e.f. *prospective effect* only i.e. from the date of issue of Presidential Order i.e., on 10.06.2013. The applicant has prayed for a direction to the Respondents 2 and 3 to grant 50% DA effectively amounting to 78.2% for the purpose of fitment

.....3

for the period 01.01.2007 to 10.06.2013 for revision of pay notionally fixed on par with the existing working Executives with consequential benefits like DCRG, Leave Encashment, Commutation of Pension and also resultant hike in pension.

3. **The Brief facts of the case:**

On formation of BSNL on 01.10.2000, BSNL formulated its own Executive Promotion Policy (EPP) based on which an OM dated 18.01.2007 was issued, wherein Time Bound IDA Scale Upgradations were provided to the Executives on completion of *4 years of service* for the current IDA scale subject to condition that the Executive's basic pay in the current IDA scale has crossed/touched the lowest of the higher IDA scale for which his/her upgradation has to be considered or he/she has completed 6 years of service in the current IDA scale, whichever is earlier. The subsequent upgradation to the next higher IDA scale would be on completion of *5 years of service* in the current IDA scale and that the service in the existing IDA pay scale in BSNL will only be counted for upgradation to the next higher IDA scale.

4. The contention of the applicant is that he joined BSNL on its formation on 01.10.2000, and was given promotion under Assured Career Progression (ACP) Scheme with effect from 23.09.2005. When the said ACP financial upgradation was granted, the BSNL Promotion Policy was not yet finalized/no orders were issued.

5. The respondents in their reply statement have stated that as the applicant was granted promotion under ACP (old Policy) with effect from 23.09.2005, which is after 01.10.2004, the applicant was not entitled to continue to get the said benefit as per the BSNL EPP, as the option to continue to draw the benefit under old promotion policy was available only if it falls before 01.10.2004. If the applicant wanted to be covered under new EPP, he had to forego his ACP promotion granted under the old policy. The financial upgradation granted based on the earlier ACP Scheme was also withdrawn with a view to bring the applicant in the fold of BSNL EPP. Aggrieved by the said cancellation in the case relating to one K.Swaroop Rani & Others (including the applicant), the applicant filed W.P.No.24949/2007 before the Hon'ble High Court of AP, which was ultimately transferred to this Tribunal as TA.No.102/2010. Since the department withdrew the impugned cancellation order, this Tribunal dismissed the TA, vide order dated 05.04.2011. It is the case of the respondents that the applicant is covered by the BSNL EPP policy dated 18.01.2007, and entitled to first upgradation with effect from 01.10.2006 and second upgradation from 2011 on completion of 5 years. However, the applicant is seeking benefit of both under old and new BSNL EPP, which is not permitted as per the policy.

6. The applicant is seeking the benefits under the earlier ACP Scheme and also upgradation under the new EPP dated 18.01.2007, whereas the

policy under Para 1 (8) clearly mentions that with the implementation of IDA Time Bound pay scales upgradation scheme will be with effect from 01.10.2004, the promotions schemes viz., in-situ/ACP or any other time bound promotion/upgradation scheme would stand withdrawn unless specifically permitted based on the option exercised by the concerned employee at the time of joining BSNL. In the instant case, the applicant has availed of the time bound promotion under the said policy and the 2nd upgradation from 2011 on completion of 5 years and now the applicant is seeking benefits under both under old and new BSNL EPP. The applicant approached this Tribunal by filing OA.No.1104/2011 and the same was disposed of by order dated 08.11.2012 directing the department to take a decision in respect of financial upgradation under EPP. In compliance with the directions of this Tribunal, BSNL passed a speaking order dated 23.01.2013, which reads as under:

"It is very much clear as per the provisions contained in the Executive Promotion Policy and in particular, para 1 (I) (d) (8), any upgradation due to the Executives on or before 01.10.2004 based on the earlier policy under the ACP Scheme, such upgradation will be granted to the Executives on the basis as one time relaxation, if he/she is willing for such promotion and adjudged fit for regulatory conditions.

In view of the above provisions, any promotion granted under the old policy on or before 01.10.2004, shall be retained by the Executive by exercising his option and further there is no provision to retain such type of promotion granted to the Executive after 01.10.2004 under the old Promotion Policy.

Applying the said provision in your case as you were given Time Bound promotion under ACP policy with effect from 23.09.2005 which incidentally falls after

01.10.2004. As such the said upgradation shall be deemed to be withdrawn and you will be entitled for the first upgradation with effect from 01.10.2006 and further upgradations under the Executive Promotion Policy dated 18.01.2007.

Since you are eligible for the first upgradation with effect from 01.10.2006, the said benefit will be extended to you by modifying the date of upgradation as on 01.10.2006 under EPP policy duly cancelling the upgradation issued as on 23.09.2005 under ACP Scheme. The subsequent upgradation will be after five years of regular service reckoning from 01.10.2006 and as such you are entitled for 2nd upgradation with effect from 01.10.2011.

Hence, you are not entitled for grant of subsequent upgradation under Executive Promotion Policy dated 18.01.2007 taking the 1st upgradation as on 23.09.2005 issued under earlier Promotion Policy as it is not fit as per the provisions of Executive Promotion Policy, 2007.

In view of the above, your claim for treating the upgradation under the ACP Scheme, granted with effect from 23.09.2005 as the first upgradation under the Executive Promotion Policy is not correct hence regretted. However, you are entitled for the first upgradation to the next higher IDA pay scale with effect from 01.10.2006 and the second upgradation to the next IDA scale with effect from 01.10.2011 as per the Time Bound Promotion Policy and the financial upgradation issued with effect from 23.09.2005 under the ACP Scheme be withdrawn as ACP Scheme of Govt. of India has been discontinued w.e.f 1.10.2004."

7. It is undisputed that the applicant availed the benefit under the ACP Scheme of the Department of Telecommunications (DOT) and the applicant had also questioned the withdrawal of ACP in order to avail the time bound promotion under EPP. As per Para (d) (8) of the BSNL EPP dated 18.01.2007, it is clear that with the implementation of IDA Time Bound Pay Scale Upgradation Scheme with effect from 01.10.2004, provisions with regard to arrangements like In-situ/ACP or any other time

.....7

bound promotion/upgradation scheme of Government set up shall stand withdrawn. Since the applicant was granted ACP w.e.f. 23.09.2005, which falls after 01.10.2004, he is not entitled to continue to get the said benefit as per the BSNL EPP since the option to continue to draw the benefit under old promotion policy will be available only if it falls before 01.10.2004. Moreover, if the applicant wants to be covered by EPP, he has to forego ACP granted under old policy. Then, he can get the benefit under EPP by granting him the first upgradation on 01.10.2006 and second upgradation after 5 years from the date of first upgradation in the year 2011. The said financial upgradation granted based on the earlier ACP scheme was even withdrawn with a view to bring the applicant in the fold of BSNL EPP.

8. The applicant has questioned Clause 3.1 of the EP Policy dated 18.01.2007 and sought a direction to grant him time bound promotions under EPP w.e.f. 01.10.2004 and also second time bound promotion w.e.f. 01.10.2009 with actual benefits thereon. The abovementioned promotion policy was made on the recommendations of an expert committee for promotion of Group-B level officers of BSNL. This policy was formulated by the BSNL for the staff absorbed in BSNL. The EPP was formulated by the BSNL in consultation with the DOT and DPE and as per the existing policy the qualifying service conditions for the first and second financial upgradations have been laid down. It has been categorically laid down that any upgradation due to the Executive on or

before 01.10.2004 based on earlier time bound policies, such upgradation will be granted to the Executive on the basis of options as one time relaxation if he/she is willing for such promotion and adjudged fit in accordance with concerned regulatory conditions. Also such options once exercised, shall be final. Moreover, having accepted the ACP benefits under the DOT and having opposed the withdrawal of the ACP benefits by filing Writ Petition, the applicant is now estopped from claiming time bound promotions under EPP.

9. In view of the above, the OA is dismissed.

10. As the main OA is dismissed, the M.A.No.566/2015 and M.A.No.289/2018 for fixing an early date of hearing of the OA, and M.A.No.788/2015 seeking permission for making perjury application against the respondents for filing false affidavit, and M.A.No.862/2016 for filing additional documents also stands disposed of.

13. No order as to costs.

Sd/-

(NAINI JAYASEELAN)
MEMBER (ADMN.)

Sd/-

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 08th day of April, 2019