

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

Original Application No.21/1130/2018

Date of Order: 24.07.2019

Between:

U. Veereswara Rao
S/o Seetharama Murthy
Aged about 44 years, Gr. 'B'
Occ: Junior Telecom Officer NMC HD
O/o Divisional Engineer NMC HD
Telephone Bhavan, Saifabad, Hyderabad.

.... Applicant

AND

1. Union of India rep by its Secretary
Department of Telecommunications,
20 Ashoka Road, New Delhi.
2. The Bharat Sanchar Nigam Limited
Rep by its Chairman cum Managing Director
BSNL Corporate Office, Barakumba Road
Statesman House, New Delhi 1.
3. The Chief General Manager (Maintenance)
Southern Telecom Region, Chennai.
4. The General Manager (Maintenance)
Southern Telecom Region, Hyderabad.
5. The Accounts Officer (EC)
O/o General Manager (Maintenance)
STR, Adarshnagar, Hyderabad-63.

... Respondents

Counsel for the Applicant ... Mr. B. Pawan Kumar.

Counsel for the Respondents ... Mr. Bhim Singh proxy of Mr. M. Brahma Reddy, SC
for BSNL and Mr. Laxman proxy of Mrs.K. Rajitha, Sr.
CGSC.

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

2. The OA is filed challenging the action of the respondents in issuing the revised pay fixation statement vide letter dated 14.9.2018 revising the second increment of the applicant w.e.f. 21.12.2017 instead of 01.06.2014.

3. Brief facts of the case are that applicant joined the respondents organization as Telecom Technical Assistant in the year 2002 and later promoted as Junior Telecom Officer (in short, JEO) in the pay scale of Rs.16400-40500 (E1 scale of BSNL IDA pay scales) in the year 2009. Respondent organization (i.e., BSNL) introduced Time Bound/Post Based Executive Promotion Policy for Group B level officers of BSNL, vide letter dated 18.01.2007, which provides for 4 financial upgradations. The 1st Financial Upgradation will be given on completion of 4 years of service in the current IDA scale subject to the condition that the Executive's basic pay in the current IDA scale has crossed or touched the lowest of the higher IDA scale for which his upgradation is to be considered or he/she has to be completed 6 years of service in the current IDA scale, whichever is earlier. The employee, who is upgraded to the next higher IDA pay scale, as per the said Scheme, has to compulsorily undergo two weeks of training for being eligible for drawal of second increment in the upgraded IDA scale. The training has to be

completed within a period of two years from the date of the upgradation 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 upgradation even if he or she is due for upgradation otherwise. The applicant is, thus, entitled for 1st Financial Upgradation on completion of four years in 2013. Accordingly, he was granted Time Bound IDA scale upgradation from E1 to E2, vide letter 12.11.2013. The pay of applicant was accordingly fixed vide letter dated 17.01.2014. Even though the OM dated 18.1.2007, stipulates that the training has to be completed within two years from the date of upgradation for drawal of the second increment, the respondents have never indicated the schedule of a training programme to the applicant. After awaiting for sufficient time, applicant submitted a representation requesting for approval of nomination of applicant for E1-E2 upgradation online training. Accordingly, applicant underwent online training and reported to be qualified vide letter dated 20.12.2017. In the meanwhile, the second increment of applicant due on 01.06.2014 was drawn by the respondents and further increments due up to 2017 were drawn. After drawing the cited increments, respondents have revised the pay, vide impugned fixation statement, by withdrawing the increments drawn from the years 2014 to 2017 (i.e. w.e.f. 01.06.2014 to 01.06.2017). Respondents have also indicated that the applicant is entitled for second

increment on 21.12.2017 after completion of the online training. Aggrieved over the same, the OA is filed.

4. The contentions of applicant are that respondents are responsible to intimate the applicant about the norms of the training programme, which they have failed to do. Applicant having completed the mandatory training as per the Scheme dated 18.01.2007, the second increment has to be restored from the original date, i.e. 01.06.2014 and it cannot be postponed to 21.12.2017 as was done by the respondents. Respondents have ordered a recovery of an amount of Rs.60,000/- under various headings from the pay and allowances of applicant, without any prior notice, which is bad in law. There is no provision for postponing increment as it tantamounts to imposition of penalty.

5. Respondents resisted, in their reply, the contentions of applicant by stating that there is an elaborate procedure to be followed in obtaining the financial upgradation under the Scheme dated 18.1.2007. The letter dated 05.05.2011 narrates the entire procedure to be followed. The instructions are clear and elaborate. Applicant, being a senior officer, is fully aware of the procedure, yet, not following them and claiming the benefit, is not fair.

6. Heard both the counsel and perused the pleadings on record.

7. (I) The applicant is a Group 'B' officer, who comes under the Executive cadre. Executives in the respondents organization have to appear for the online examination through CTMS portal for seeking financial upgradation under Time bound/post based executive promotional policy for Group 'B' level officers of BSNL. Applicant applied for writing online exam on 20.12.2007 through CTMS portal. There was a delay of more than two years in undergoing the training beyond the stipulated period. Respondents have given elaborate and clear instructions through their training wing/STR circle office. Applicant has neither reported nor approached the respondents in regard to any difficulty he faced in regard to the training.

(II) In contrast, the applicant claims that in his 20 years of service he has never nominated himself to any training excepting for E1-E2 training. He was waiting for the administration to send him for training like it used to be done for all other courses. Therefore, it is the mistake of the administration for having not sent him for training. For the mistake of the administration, he should not be penalized. Applicant also submits that if the increment was stopped, at the relevant point of time, he would have approached the administration to know the procedure. The revised fixation statement dated 22.09.2018 was issued to the applicant only on 2.1.2019. Applicant also states that the administration

is expected to provide two CDs for each officer in respect of each level of upgradation at the time of his upgradation by the respective Administration/HR wing of the field unit. This was also not done by the respondents. Therefore, the mistake is totally lies at the door step of the respondents.

(III) Taking into consideration the elaborate instructions given by respondents, vide their letter dated 05.05.2011, along with the annexures, it is difficult to appreciate the averments so made by the applicant. More so, he was placed in an Executive cadre. In case, he was not aware of the procedure, at least he should have ascertained from his colleagues, who have appeared for the exam, or from the respective training centre. It is also not out of place to adduce that the respondents organization has number of Executives, who would generally discuss amongst themselves issue of the nature in question since it has financial implications. Moreover, the applicant, being in a senior position, is expected to be aware of the rules and regulations of an important Scheme like the one in question. Respondents organization is a technology driven and, therefore, it is little difficult to understand as to how the applicant could not be aware of nominating himself for online exams. Respondents did their best to disseminate the information through training Centers/Field Units, etc. This being the

situation, applicant claiming that he has not been given CDs or he was not aware of the procedure to get himself nominated, appears to be reasons lacking logic to appreciate at this stage. It was indeed the mistake of the applicant in not following the norms prescribed under the Executive promotion policy. Had he followed the same, the present predicament would not have arisen. More so, being in a senior position, he has to be a role model for others in ensuring that guidelines are followed. Applicant stating that without notice recovery was made, does not serve his purpose. Even after issue of notice, the result could be the same. Hence, the aspect of issue of notice is only an empty formality and in regard to an empty formality, observation of the Hon'ble Supreme Court in **Haryana Financial Corporation v. Kailash Chandra Ahuja**, (2008) 9 SCC 31, is as under:

“40. In Aligarh Muslim University v. Mansoor Ali Khan, (2000) 7 SCC 529, the relevant rule provided automatic termination of service of an employee on unauthorized absence for certain period. M remained absent for more than five years and, hence, the post was deemed to have been vacated by him. M challenged the order being violative of natural justice as no opportunity of hearing was afforded before taking the action. Though the Court held that the rules of natural justice were violated, it refused to set aside the order on the ground that no prejudice was caused to M. Referring to several cases, considering theory of 'useless' or 'empty' formality and noting "admitted or undisputed" facts, the Court held that the only conclusion which could be drawn was that had M been given a notice, it "would not have made any difference" and, hence, no prejudice had been caused to M.

(IV) In view of the above, this Tribunal does not find any scope to intervene on behalf of the applicant. Therefore, the OA being devoid of merit, merits dismissal. Hence, dismissed with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 24th day of July, 2019

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