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भारत संचार निगम लिमिटेड
(भारत सरकार का उपक्रम)
BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprise)

No: 61-04/2012-Pers.(Legal)

Dated: 01.05.2017

To,

All Heads of Telecom Circles and
Administrative Units of BSNL.

Subject: Common Judgment dated 05.04.2017 passed by Hon'ble High Court of Madras in WP No. 16800/2015 (filed by Sh. P. Chandrasekar) challenging the order dated 24.04.2015 of CAT Madras Bench in OA No. 664/2012 regarding.

Sir,

I am directed to refer to the subject mentioned above and to enclose a copy of a common Judgment dated 05.04.2017 passed by the Hon'ble High Court of Madras in WP No. 16800/2015. The abovesaid WP was filed by one Sh. P. Chandrasekar, Retd DE, challenging the order dated 24.04.2015 of Hon'ble CAT Madras Bench in OA No. 664/2012 wherein the Hon'ble CAT had dismissed the OA in favor of BSNL. The claim of the Applicant is that he is entitled to one increment on fixation of pay on regular promotion as DE when benefits of Pay fixation had already been given to him under FR 22(1)(a)(i) in the same scale on his ad-hoc promotion.

2. The Hon'ble CAT held that applicant's claim for benefit in pay fixation on regular promotion in the same post, which in effect implied only a change of character from ad hoc to regular, when his pay had already been fixed under FR 22(1)(a)(i) on his ad hoc promotion, is not supported by the provisions of FR or the BSNL's EPP or the BSNL MSRR-2009. Such a claim if accepted would amount to grant of a double benefit. The Hon'ble High Court of Madras finds in its order dated 05.04.2017 that the petitioner has no case that he was not given the benefit of pay fixation under FR 22(1)(a)(i) consequent to his promotion as Divisional Engineer on ad hoc basis vide order dated 19 December 2007. The question of payment of one increment would arise only in case the said increment was not given earlier inspite of giving ad hoc promotion. To sum up both the order, of the Hon'ble CAT & High Court it logically flows that when ad-hoc promotion of an official to a higher post is regularized, it does not lead to any higher responsibility and hence fresh pay fixation is not required on regularization.

3. The Hon'ble High Court of Madras, vide judgement dtd. 05.04.2017 inter-alia held that :

"05. The Executive Promotion Policy and the BSNL Management Service Recruitment Rules provides for the grant of one increment on Promotion. The benefit of one increment in the current scale would be given only in cases, where the promotion is from time bound upgradation scale to adhoc/regular post based promotion in the same scale.

"08. In the subject case, the petitioner was given the pay scale applicable to the regular Divisional Engineer, even when he was given ad hoc promotion. The BSNL was therefore correct in denying the request made by the petitioner for the grant of one increment consequent to the regular promotion."

4. All the Circles are requested that the above order may be brought to the notice of all concerned authorities for information and defending similar cases, if any, at present/ future.

Encl: As Above

Yours faithfully,

[Pitambar Sahoo]

Asstt. General Manager (Pers. Legal)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH : AT CHENNAI**

Original Application No. 664 of 2012

Today, this *Friday* the 24th day of April 2015

CORAM: HON'BLE SHRI K. ELANGO MEMBER (J)

HON'BLE SHRI NARESH GUPTA MEMBER (A)

P. Chandrasekar, LA DGM (CS-CM), Bharat Sanchar Nigam Limited, Tamil Nadu Circle, o/o GM, Sales & Marketing, Greams Road, Chennai- 600006

..... Applicant

(by Advocate : M/s Raj & Raj Associates)

Vs.

1. The Chairman-cum-Managing Director, BSNL Corporate Office, Bharat Sanchar Bhawan, Harish Chander Mathur Lane, Janpath, New Delhi- 110001
2. The Chief General Manager, Bharat Sanchar Nigam Limited, Tamil Nadu Circle, No. 80, Annasalai, Chennai- 600002

..... Respondents

(by Advocate : Mr. M. Govindaraj)

ORDER

Per : Naresh Gupta, M(A)

This OA has been filed by P. Chandrasekar under Section 19 of the AT Act, 1985, seeking to call for the records of the Respondents relating to the impugned order of the 2nd Respondent made in letter No. APTA/Misc/Pay 2 & 15/2009-10 dated 19.11.2010 and No. APTA/Misc/Pay 2 & 15/2010-11 dated 08.12.2011 and confirmed by the 1st Respondent in No. 1-11/2012-PAT (BSNL) dated 10.05.2012 and to set aside the same and to grant the pay fixation benefit of one increment on STS (DE) regular promotion of the Applicant w.e.f. 16.08.2010 and pass such other or further orders in the circumstances of the case.



Naresh Gupta

2. The case of the Applicant is that he was SDE on 01.10.2000 and was given Time Bound Promotion as Sr. SDE on 01.10.2004. Then prior to next time bound promotion to DE scale, which was due in 2009, the Applicant was given ad hoc promotion to the post of Divisional Engineer on 19.12.2007 after convening a DPC based on the performance rating for the last five years, and he joined the post on 01.01.2008. The pay on this ad hoc promotion was fixed under FR 22(1)(a)(1) as done for time-bound promotion and he was asked to carry out the work of DE, with duties and responsibilities attached to that post. While working as Divisional Engineer on ad hoc basis, he was given regular post based promotion on 16.08.2010 as per the Executive Promotion Policy and as per BSNL Management Services Recruitment Rules, with due pay fixation benefits. This regular promotion was also ordered after convening of DPC and based on the performance rating for the last 7 years, as per clause 1(II)(ix) of Executive Promotion Policy circulated vide Corporate Office letter No.451-03/2010-Pers (DPC) dated 13.07.2010, but the pay fixation benefit of one additional increment as per 1(II)(v) of Executive Promotion Policy and clause 13.2 of BSNL Management Services Recruitment Rules, 2009 was not given. The request of the Applicant was denied by the 2nd Respondent vide the impugned letters dated 19.11.2010 and 08.12.2011 stating that the pay on adhoc promotion was fixed under FR 22(1)(a)(i) as per clause 1(II)(v) of Executive Promotion Policy, whereas adhoc promotion was not part of Executive Promotion Policy or BSNL Management Services Recruitment Rules.

3. The Applicant has submitted that for executive promotion, the Executive Promotion Policy was introduced on 18.01.2007 (Annexure A/1). It covers (1) Time Bound Promotion and (2) post-based promotion. As per the order, Time Bound promotion is given, initially after 4 years and thereafter every five years, till the regular promotion is ordered. The pay is fixed under FR 22(1)(a)(1) with no additional responsibility and without change in nature of duties and portfolio. For STS and JAG, after adhoc or after Time Bound and Adhoc promotion, regular post-based promotion is ordered based on regular vacancies as per Executive Promotion Policy and BSNL Management Services Recruitment Rules vide order No.400-106/2007-Pers.1 dated 14.07.2009. Consequent to grant of any post based promotion as per Executive Promotion Policy [clause 1. II (v)] and BSNL Management Services Recruitment Rules (clause 13.2), the officer's pay will be fixed under FR 22(1)(a)(1) only in cases where such post carries higher scale from the



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current scale of the executive being promoted. Further, where executive's pay scale is the same as that of promoted post, the benefit of one Increment in the current scale of the executive shall be granted on promotion. All the clauses in Executive Promotion Policy under Post-based promotion refer only to regular promotion and in particular this is emphasized in clause 1. II(ii) & 1. II (vi). The BSNL Management Services Recruitment Rules 2009 (Annexure A/3) vide clause 7.2 and 13.2 also refer only to regular promotion as Post Based Promotion. Only Regular Promotion is ordered citing EPP and MSRR and not 'Ad hoc'. One promotion in the name of Ad hoc is ordered as 'temporary and to officiate' as DE (STS) and DGM (JAG), prior to 'Regular promotion', which is not covered under Executive Promotion Policy or in BSNL Management Services Recruitment Rules. The pay on promotion is fixed under FR 22(1)(a)(1) as done for Time Bound Promotion and officiating promotion, as per BSNL CO's letter No.19-1158/2010 RTI dated 29.04.2011. The rejection of the claim of the Applicant for one Increment on his regular promotion to the post of Divisional Engineer was not correct.

4. The Applicant represented to the 1st Respondent on 12.01.2012 but the 1st Respondent BSNL Corporate Office, vide letter dated 29.03.2012, asked the Applicant to quote the order under which he has become eligible for pay fixation benefit to which the Applicant replied on 12.04.2012, but no action has been taken so far to grant the pay fixation benefit of one Increment as per Executive Promotion Policy clause No. 1(II)(v). For another representation routed through GM(F), it has been replied by the 1st Respondent's Corporate Office vide letter date 10.05.2012 that the reply given by CGMT on 19.11.2010 was in order and one Increment at the time of regular promotion subsequent to adhoc promotion was not admissible.

5. The Applicant has contended that he was entitled to one Increment on his regular promotion as Divisional Engineer w.e.f. 16.08.2010 in accordance with the Executive Promotion Policy vide clause 1(II)(v) and the BSNL Management Services Recruitment Rules, 2009 clause 13.2 which interalia reads as follows:

"Further, where executive's pay scale is the same as that of promoted post, benefit of one increment in the current scale of the executive shall be granted on promotion."

The said promotion is post based and the executive pay scale is the same as that of promoted post and therefore, the Applicant was entitled for the

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benefit of one increment and the denial of such fixation was arbitrary and illegal. In reply dated 29.04.2011 to a RTI query of the Applicant, the 1st Respondent stated that the pay fixation of benefit on Ad hoc Promotion is regulated under FR 22(1)(a)(1) and after 01.01.2007 fixation was done as per letter No.1-50/2009-PAT(BSNL) dated 05.03.2009. The pay of the Applicant was fixed under FR 22(1)(a)(i) and it does not bar grant of one increment on his regular promotion and fixation of pay as stipulated under the Executive Promotion Policy vide clause 1(II)(v) and the BSNL Management Services Recruitment Rules, 2009 (clause 13.2).

6. In their reply, the Respondents have submitted that the case of the Applicant was for pay fixation relating to post based promotion to the grade of Divisional Engineer, first on ad hoc basis w.e.f. 19.12.2007 and later on regular basis w.e.f. 16.08.2010, which is governed by the rules of post based promotions. There was no issue of time bound pay upgradation involved in the case. In matters of promotion, the post of DE in BSNL is covered by the BSNL MS RR-2009 which came into effect w.e.f. 11.06.2009. Prior to the date, the relevant RRs of DoT period were in place according to which promotions, both adhoc and regular, entailed pay fixation benefit under the FRSR applicable for Government servants if it involved higher responsibility. Specifically, pay fixation on promotion to a higher post is covered under FR 22(1)(a)(i). The Applicant herein availed himself of the benefit of pay fixation under FR 22(1)(a)(i) on his promotion to the grade of DE on adhoc basis vide order dated 19.12.2007. Later, he was regularized in the same post i.e. DE w.e.f. 16.08.2010 (when BSNL MS RR became applicable for BSNL executives) which in effect implied that his adhoc status changed to substantive status in the same post. Under FR 22(1)(a)(i), the benefit of pay fixation would be given only once to any Government servant. The same was applicable in BSNL also.

7. The Respondents have further submitted that under the BSNL MS RR, according to Rule 13.2

“on grant of any post based promotion, the executive’s pay will be fixed as per FR-22 1(a)(i) or as per the Company equivalent rules in force from time to time.”

This does not distract from the position under FR 22(1)(a)(i) that the benefit of pay fixation would be available only once to any Government servant in a post. When adhoc promotion of an official to a higher post is regularized, it

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does not lead to any higher responsibility and hence fresh pay fixation is not required on regularization, as is the case of the Applicant, who had already got the benefit of pay fixation on his adhoc promotion to the grade of DE. The claim of the Applicant for benefit of one extra increment on his regular promotion which seamlessly followed adhoc promotion to the grade of DE is not covered by FRSR nor under the BSNL MS RR/EPP. The provisions in Rule 13.2 of BSNL MS RRs being quoted by the Applicant relates to a situation where an executive gets a higher scale of pay, say E-4 of Divisional Engineer level through time bound promotion while being a SDE (E-3 level). If the Applicant gets promoted to the grade of DE (on functional basis i.e. post based promotion, either adhoc or regular) which carries E-4 scale, he would get an extra increment as per rule noted below.

13.2where executive's pay scale is the same as that of promoted post, benefit of one increment in the current scale of the executive shall be granted on promotion...

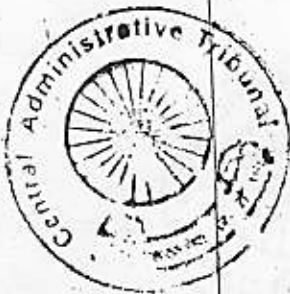
In the case of the Applicant, the ad hoc and regular promotion relate to the same functional post, i.e. DE. The Applicant was promoted on regular basis in STS cadre as per BSNL's Corporate Office order dated 16.08.2010 and BSNL, TN Circle Order dated 21.08.2010. Though It was said in condition No.5 of order dated 21.08.2010 that on regular promotion, the pay will be fixed as contemplated in BSNL MS RR 2009 communicated vide No.400-106/2007-Pers.I dated 14.07.2009 read with order No.400-61/2004-Pers.I dated 18.01.2007 and O.M.No.1-50/2008-PAT (BSNL) dated 05.03.2009, it was only a general statement in any order of promotion, but if any employee has already availed himself of the pay scale of the promoted post through ad hoc promotion, then this provision would endow only a limited benefit in terms of pay, like shifting the date of pay fixation to date of next increment. This option was available within one month of the date of regular promotion. The Applicant was under a misconception that when promoted to regular STS from adhoc STS he was eligible for one additional increment as per order dated 18.01.2007 [Para 1.0(II)(V)] as both scales happen to be the same. But the benefit of one increment in the current scale would be given only in cases where the promotion is from time bound upgradation scale to adhoc/regular post based promotion in the same scale, and was not applicable for promotion from adhoc to regular in the same scale, which was intimated vide office letter dated 19.11.2010. The same was confirmed by BSNL, New Delhi vide letter dated 10.05.2012. As per the BSNL's OM



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No.400-61/2004-Pers.I dated 18.01.2007 [Para 1.0(II)(v)] and BSNL Management Services Recruitment Rules 2009 Order No.400-106/2007-Pers.I dated 14.07.2009 (Rule 13.2), consequent to grant of any post based promotion, the Executive's pay would be fixed as per FR-22 1(a)(I) or as per the company equivalent rules in force from time to time, only in cases, where such post carries higher scale from the current scale of the executive being promoted. Further where executive's pay scale is the same as that of promoted post, the benefit of one increment in the current scale of the executive shall be granted on promotion. However, in cases where the executive's current pay scale is higher than that of the promoted post, such post based promotions will be treated as placements with grant of substantive status of the post. The above rule does not provide for benefit of one increment when an officer is promoted/regularized from adhoc to regular in the same post. Moreover, the officer was already given the benefit of pay fixation through grant of increment in the higher scale on 01.01.2008 on his post based Ad hoc promotion from Sr. SDE time bound scale to Divisional Engineer post.

8. In his rejoinder, the Applicant has submitted that ad hoc promotion was not post based promotion. When temporary vacancies exist, seniors are given ad hoc promotion against temporary vacancies, instead of TBP after conducting DPC and based on performance ratings as done for TBP. Adhoc promotion is a temporary arrangement against temporary vacancies and is not a part of EPP or MSRR and pay is fixed under FR 22(1) (a) (I) as pay fixed for Time Bound promotion under FR 22 (1) (a) (I). Only regular promotion is the Post Based promotion governed by EPP and MSRR and pay fixation benefit under provision. "Further where the executive's scale is the same as that of promoted post benefit of one increment in the current scale of executive shall be granted" was applicable for Regular Promotion. The above benefit was not limited to only promotion from Time Bound Promotion to Post Based promotion. The benefit of one increment was applicable for Adhoc to Regular Post Based promotion since both were in the same scale. In the case of all Executives who get TBP the pay is fixed under FR 22(1)(a)(I) and one additional increment is given on their regular promotion. In the Applicant's case, he was not given TBP. Being senior, adhoc promotion was ordered directly to officiate as DE on purely temporary and adhoc basis against temporary vacancy, which was not covered under EPP or MSRR and pay was fixed under FR 22 1 (a) (I) as done for TBP.



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9. Heard the learned Counsel for the Applicant and the Respondents on 13.03.2015 when the learned Counsel for the Applicant furnished a copy of the judgment in *S. Prathaban vs. BSNL Ltd. & Ors.* in OA No. 379/2012 and some other OAs (batch) decided by this Tribunal (Madras Bench) on 20.02.2015, in support of the case of the Applicant. However, it is seen that in that case, the issue was of stepping up of pay of seniors at par with that of juniors and reliance was placed on the judgment of the Ernakulam Bench of CAT in OA No. 109/2011 and batch on 07.12.2011 wherein it was observed inter alia that "the root cause of the anomaly is the policy of the respondents which allows the benefit of pay fixation upon time bound financial upgradation as well as upon ad hoc/ regular promotion." In the instant case, the claim is for giving the benefit of one increment in fixation of pay on regular promotion as DE when already the pay fixation had been done under FR 22(1)(a)(i) in the same post earlier w.e.f. 19.12.2007 when the Applicant was promoted as DE on ad hoc basis. His claim for benefit in pay fixation on regular promotion in the same post which in effect implied only a change of character from ad hoc to regular, when his pay had been fixed already under FR 22(1)(a)(i) on his ad hoc promotion, is not supported by the provisions of FR or the BSNL's Executive Promotional Policy or the BSNL Management Services Recruitment Rules, 2009. Such a claim if accepted would amount to grant of a double benefit.)

10. The relief sought by the Applicant cannot be allowed. The OA is accordingly dismissed. No order as to costs.

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SECTION OFFICER 31/5/15



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.03.2017

Delivered on : 05.04.2017

CORAM:

THE HON'BLE MR.JUSTICE **K.K.SASIDHARAN**

AND

THE HON'BLE MR.JUSTICE **M.V.MURALIDARAN**

W.P.No.16800 of 2015

P.Chandrasekar

...Petitioner

vs.

1.The Chairman-cum-Managing Director,
BSNL Corporate Office,
Bharat Sanchar Bhawan
Harish Chander Mathur Lane,
Janpath, New Delhi - 110 001.

2.The Chief General Manager,
Bharat Sanchar Nigam Limited
Tamil Nadu Circle,
No.80, Anna Salai,
Chennai - 600 002.

3.The Registrar,
Central Administrative Tribunal,
City Civil Court Buildings,
Chennai - 600 104.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying a writ of Certiorarified Mandamus, to call for the records of the 3rd
respondent Hon'ble Central Administrative Tribunal, Chennai Bench made

in O.A.No.664 of 2012 dated 24.04.2015 and quash the same and allow the O.A. by directing the respondents 1 and 2 to grant one additional increment to the petitioner as prayed for in the Original Application.

For Petitioner : Mr.N.Chandra Raj

For Respondents : Mr.M.S.Velusamy for R1 and R2

ORDER

K.K. SASIDHARAN,J.

This writ petition is directed against the order dated 24 April 2015 in O.A.No.664 of 2012, dismissing the original application filed by the petitioner claiming one increment consequent to his promotion to the post of Divisional Engineer (STS) with effect from 16 August 2010.

Factual Matrix:

2. The petitioner was given ad hoc promotion to the post of Divisional Engineer and he joined the post on 1 January 2008. The pay of the petitioner consequent to his ad hoc promotion was fixed under FR 22(1)(a)(i)) with duties and responsibilities attached to the post. While working as Divisional Engineer on ad hoc basis, the petitioner was given regular promotion on 16 August 2010. The request made by the petitioner

to give him pay fixation benefit of one additional increment as per 1(II)(v) of Executive Promotion Policy and Clause 13.2 of BSNL Management Services Recruitment Rules, 2009 was rejected by Bharat Sanchar Nigam Limited (for short BSNL). The petitioner therefore filed Original Application. The Central Administrative Tribunal (hereinafter referred to as "Tribunal") concurred with the submissions made on behalf of the BSNL and dismissed the Original Application. Feeling aggrieved, the petitioner is before this Court.

Submissions:

3. The learned counsel for the petitioner by placing reliance on Clause 1(II)(v) of Executive Promotion Policy and Clause 13.2 of BSNL Management Services Recruitment Rules, contended that the Rule is very clear that in case, the pay scale of the executive is the same as that of the promoted post, he should be given benefit of one increment in the current scale on promotion. According to the learned counsel, even after regular promotion, the petitioner was not given the benefit of increment. The Tribunal misconstrued the entire matter and dismissed the Original Application.

4. The learned Standing Counsel for BSNL supported the order passed by the Tribunal.

Analysis:

5. The Executive Promotion Policy and the BSNL Management Services Recruitment Rules provides for the grant of one increment on promotion. The benefit of one increment in the current scale would be given only in cases, where the promotion is from time bound upgradation scale to adhoc/regular post based promotion in the same scale.

6. The petitioner is under a mistaken impression that on regular promotion, he would be given one more increment notwithstanding the fact the increment given earlier when he was given ad hoc promotion.

7. The petitioner has no case that he was not given the benefit of pay fixation under FR 22(1)(a)(i) consequent to his promotion as Divisional Engineer on ad hoc basis vide order dated 19 December 2007. In short, the petitioner was given the pay scale applicable to the regular promotees.

The question of payment of one increment would arise only in case the said increment was not given earlier inspite of giving ad hoc promotion.

8. In the subject case, the petitioner was given the pay scale applicable to the regular Divisional Engineer, even when he was given ad hoc promotion. The BSNL was therefore correct in denying the request made by the petitioner for the grant of one increment consequent to the regular promotion.

9. The Tribunal analysed the materials produced by the parties and arrived at a correct finding. We do not find any error or illegality in the said order warranting interference by exercising the power of judicial review.

10. In the up shot, we dismiss the writ petition. No costs.

(K.K.SASIDHARAN.,J.) (M.V.MURALIDARAN.,J.)

5 April 2017

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K.K.SASIDHARAN,J.
and
M.V.MURALIDARAN,J.

(svki)

To

- 1.The Chairman-cum-Managing Director,
BSNL Corporate Office,
Bharat Sanchar Bhawan
Harish Chander Mathur Lane,
Janpath, New Delhi - 110 001.
- 2.The Chief General Manager,
Bharat Sanchar Nigam Limited
Tamil Nadu Circle, No.80, Anna Salai,
Chennai - 600 002.
- 3.The Registrar,
Central Administrative Tribunal,
City Civil Court Buildings, Chennai - 600 104.

Order in
W.P.No.16800 of 2015

05.04.2017