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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Decided on: 09.09.2013

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W.P.(C) 5946/2012

MAHANAGAR TELEPHONE NIGAM LTD. AND ORS.

..... Petitioners

Through: Sh. R.V. Sinha and Sh. R.N.
Singh, Advocates.

versus

RAM PRAKASH TIWARI AND ORS. Respondents

Through: Sh. Matadin, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. This is writ petition against the order and judgment of the Central Administrative Tribunal (hereafter "CAT") dated 22.05.2012 in O.A. No. 3070/2011.

2. Briefly, Ram Prakash Tiwari and others (the applicants before the CAT) were initially appointed in the Department of Telecommunications and worked under the Mahanagar Telephone Nigam Ltd. (hereafter "MTNL", the respondent before the CAT, and the petitioner in the present proceedings) on deemed deputation with effect from 01.04.1986. Subsequently, they were absorbed with effect from 01.11.1988 as Group 'C' employees. Through an Office Order

dated 03.08.2004, MTNL circulated its promotion policy and rules for Group 'C' (later non-executive) employees, called the 'NEPP'. Under clause 3(a) of the NEPP, which regulates promotion from NE-1 up to NE-11 and finally to the Executive Level, the eligibility period for promotion upwards from one level to the next is provided. Crucially, for promotion from NE-9 to NE-10, a period of "*4 years of service in the grade*" is required, which is also the period prescribed for promotion from NE-10 to NE-11. After the policy became effective, all the applicants who were already in NE-9 scale were given financial upgradation to NE-10 scale after 4 years of service in the lower grade. The exact dates of appointment in the Department of Telecommunications, and dates of promotion of all ten applicants are recorded by the CAT in its impugned order at paragraph 3, and need not be reproduced here. It is also not disputed that all the applicants, at the time of entering the NE-9 scale had more than the minimum period of 16 years of service. The dispute in this case arose when the applicants were not promoted to the NE-11 scale after 4 years in the NE-10 scale, which they claim is proper under Clause 3 of the NEPP.

3. Before the CAT, the applicants argued that they got the financial upgradation under OTBP (NE-9 scale) under the then Departmental Rules and on getting the one-time relaxation in terms of MTNL Corporate Office letters dated 22.11.2006 and 25.05.2007, on completion of 16 years of service before the implementation of the NEPP (which, as noted above, was issued on 03.08.2004, but came into effect retrospectively from 01.10.2002). Thus, they claimed that their promotion to NE-11 was due under the NEPP policy now, given

that the time period reflected in Clause 3 had been met in their case. Contrary to this, the MTNL relied on clause 4(B)(ii) of the NEPP which notes:

“In case of existing employees, only those officials who have entered the NE-9/NE-10 scale upto the date of implementation of this promotion policy only and have not completed 16/26 (OTBP/BCR of the existing scheme) years of service, will be eligible for NE-10/NE-11 scale, only after completion of 26/29 years of total service. This is as indicated below: Scale: NE-9 to NE-10 (after 25 years); NE-10 to NE-11 (after 29 years); NE-11 to Executive Cadre (Starting with Executive Scale of JAO/JTO) (after 31 years).”

4. MTNL argued that as soon as the applicants got their promotion from NE-9 to NE-10 as per the promotion policy, they fell under clause 4(B)(ii) and for further promotion to NE- 11, they were governed by this clause, the conditions of which they did not fulfil. It was argued that the applicants had been given upgradation from NE-9 to NE-10 under the OTBP Scheme on a one-time relaxation only (through Office Order No. MTNL/CO/GM(HR)/NEPP/2006/618, dated 22.5.2007). Thus, if the applicants got NE-10 promotion without completion of 26 years, that would not translate to getting NE-11 scale promotion without the completion of 29 years.

5. The CAT decided in favour of the applicants holding that as on the date the NEPP came into effect, they did possess 16 years of service, and thus, clause 4(B)(ii), and the eligibility periods specific therein, did not apply. Rather, the applicants fell within the regular promotions governed by clause 3. On the question of limitation raised

by the MTNL, the CAT recognized that the last order issued in this matter was on 28.07.2011, and the applicants were seeking relief from 01.10.2002, but the O.A. in question was filed only on 24.08.2011. This delay of 9 years, the MTNL had argued, barred the OA under the judgment of the Supreme Court in *D.C.S. Negi v. Union of India and others* (CC No. 3709/2011, decided on 07.03.2011). This objection was dismissed on the ground that:

“7.....[i]t is not the case of the respondents that they have considered the representations of the applicants earlier and the impugned order dated 28.07.2011 is only a reply to their repeated representations.....”

6. Learned counsel for the MTNL argues that both findings of the CAT are perverse. On the question of limitation, it is argued that the judgment of the Supreme Court in *D.C.S. Negi* (supra) and *S.S. Rathore v. State of Madhya Pradesh*, AIR 1990 SC 10, are controlling and the consideration of belated representations does not extend the period of limitation. On merits, learned counsel argues that clause 4(b)(ii) controls the promotions of the applicants in this case. Although promotion from NE-9 to NE-10 was granted after 4 years of service as provided under clause 3, the completion of 16 years under clause 4(b) was met in that case. However, for promotion from NE-10 to NE-11, the requirement of completion of 29 years was not met in this case.

7. On the question of limitation, neither the case of *S.S. Rathore* (supra) nor that of *D.C.S. Negi* (supra) bar the applicant's rights in

this case, as the matter was agitated by the applicants way back in 2002, and the present O.A. was not just a reply to the impugned order of the MTNL, in which case the period of limitation may have considered to begin from that point, and *dictum* in those cases may bar their rights. That, however, as the CAT has recognized, is not the case here. However, given that the present O.A. has been filed in 2011, in the interests of justice, it is important to consider this fact, as done by the CAT, in considering the consequential rights available to the applicants.

8. On the question of merits, the applicants in question no doubt completed 16 years of service by the time the NEPP came into force, and were placed in NE-9. Subsequently, they were promoted to NE-10 after 4 years of service based on clause 3. Clause 4 of the policy applies only when, as is expressly stipulated, the applicants had not completed 16 years of service. Once inducted into NE-10, and once clause 3 becomes operative on their entering the NEPP scales, their promotion is regulated by that clause itself, and clause 4 cannot apply intermittently. Once 16 years of service had been completed, the subsequent requirement of completion of 26/29 years under clause 4 is removed from the picture as far the applicants are concerned, and they become induced into the regular vertical scheme of clause 3. We, therefore, hold that the Tribunal did not fall into error in granting them relief.

9. Accordingly, we direct that the respondents shall be fixed and fitted into the NE-11 scale with effect from the dates they became

eligible to hold the post in terms of paragraph 3(a) of the policy. Further, increments shall be notionally released to them after the appropriate fitting. However, they shall be entitled to the actual arrears constituting the difference between the amount paid to them and what they are entitled to only from the date they applied to the Tribunal in O.A. No. 3070/2011 with effect from 1st August, 2011. The writ petition is partly allowed in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

SEPTEMBER 9, 2013