

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 12418 of 2015 (CAT)

Date of decision: 30.06.2015

Bharat Sanchar Nigam Limited and others

....Petitioners

Versus

Ramesh Chand and another

.... Respondents

**CORAM: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. D.R. Sharma, Advocate
for the petitioners.

P.B. Bajanthri, J.

Bharat Sanchar Nigam Limited and two other petitioners have questioned the validity of the order dated 18.09.2014 passed by Central Administrative Tribunal, Chandigarh, Bench in O.A. No. 645/HR/2013 and order dated 17.04.2015 passed in R.A. No. 060/0015 of 2015. On 01.04.2011, petitioner promoted JTOs to the cadre of SDE (Telecom) in the pay scale of Rs. 20600-46500 against 67% Seniority-cum-Fitness (promotion quota). The Ist respondent is one among them. The aforesaid promotion order was not given effect to insofar as Ist respondent is concerned. After receipt of legal notice, petitioner issued consequential posting order to the Ist respondent. Abruptly, petitioner reverted the Ist respondent on 12.05.2011. On 11.07.2011, promotion order was once again given effect. On 12.07.2011 Ist respondent reported in the promotional post.

Once again petitioner reverted the Ist respondent on 16.07.2011. Thereafter,

on 01.08.2011, Ist respondent was promoted afresh and posting was given on 16.08.2011. However, promotion order dated 01.04.2011 was not given effect insofar as the Ist respondent and others are concerned on the sole ground that there were litigations where interim order was operating. Those litigations concluded on 02.04.2013. The petitioners implemented the promotion orders issued in the year 2011. However name of the Ist respondent was not included in the office order dated 18.04.2013 or in the order dated 23.04.2013, which prompted the Ist respondent to approach the CAT, Chandigarh.

The petitioners contended before the CAT that the Ist respondent is not entitled for promotion as he is facing disciplinary proceedings i.e. charge memo was issued on 23.02.2013. The said contention was taken note of by the CAT and allowed the O.A. on the sole reason that as on 01.04.2011, the date on which the Ist respondent was promoted, he was fully eligible. Therefore, the petitioners were directed to give effect to the promotion order dated 01.04.2011. The petitioners aggrieved by the order dated 18.09.2014 of the CAT, filed a review application numbered as RA No. 060/0015 of 2015, which was dismissed on 17.04.2015. The CAT while dismissing the review application, it has taken note of the decisions of the Supreme Court namely ***Union of India and others versus K.V. Jankiraman*** 1991 (4) SCC 109 and ***Union of India and others versus Anil Kumar Sarkar*** (Civil appeal No. 2535 of 2013) in which it was held that as on the date of DPC charge must not have been framed.

The petitioners aggrieved by the order of the CAT dated 18.09.2014 and 17.04.2015 passed in O.A. and R.A., presented this petition.

Learned counsel for the petitioner submitted that no doubt on 01.04.2011 among others the Ist respondent was promoted to the post of Sub-Divisional Engineer (Telecom) in BSNL from the post of JTO. However, the same was not given effect due to the litigations which were pending namely WP No. 23246 of 2011 (High Court of Madras) and WP No.16102 of 2011 and 26246 of 2011 filed by Sh. A.Krubasankara and another. In these petitions there was an interim order due to which the promotion orders issued in the year 2011 were not given effect. The said writ petitions were disposed of on 02.04.2013. Consequently the promotion orders issued in the year 2011 were given effect on 18.04.2013 and 23.04.2013. Learned counsel for the petitioner submitted that on 18.04.2013 and 23.04.2013 the Ist respondent was facing disciplinary proceedings i.e. charge memo was issued on 23.02.2013. Thus, the Ist respondent is not entitled for promotion and the Tribunal has erred in granting such a relief to the respondent.

The crux of the matter is whether the Ist respondent was eligible as on 01.04.2011, the date on which he was promoted among others? It is to be noted that without assigning any reason the Ist respondent was reverted on two occasions from the post of Sub Divisional Engineer to the post of JTO. In other words, promotion order was given effect on two occasions and he had discharged the promotional post for few days. Consequently, reverting him without notice and assigning any reason was highly arbitrary and it is in violation of Article 14, 16 and 311 of Constitution of India. At the same time, promoting the Ist respondent on 01.08.2011 was also arbitrary for the reasons that when once the name of the Ist respondent was

cleared for promotion as on 01.04.2011 and it was given effect, question of reverting or re-promoting him is not understandable. In this background, the contention of the petitioners that the promotion order dated 01.04.2011 was stalled due to various litigations and meanwhile charge memo was issued on the Ist respondent on 23.02.2013, consequently Ist respondent is not entitled for promotion as on 18.04.2013/23.03.2013 w.e.f. 01.04.2011, is untenable for the reasons that eligibility of the Ist respondent for promotion to the post of SDE is to be taken note of as on 01.04.2011 and not 18.04.2013 or 23.04.2013 as contended by the petitioner. In other words, as on 01.04.2011, the Ist respondent was fully eligible as is evidence from the promotion order dated 01.04.2011. Therefore, there is no illegality in the order dated 18.09.2014 and 17.04.2015 of the CAT passed in O.A. No. 645-HR-2013 and RA No. 060/0015 of 2015. The petitioners have not made out a case to interfere with the aforesaid orders. Accordingly, the orders of the CAT are upheld. The petitioners are directed to give effect to the promotion order dated 01.04.2011 insofar as Ist respondent is concerned within a period of 2 months.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

30.06.2015
pooja saini