

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

**CWP No. 16527 of 2014(O&M)
DATE OF DECISION :- February 03, 2016.**

Bhagat Ram and another

...Petitioners

Versus

Bharat Sanchar Nigam Ltd. and others.

...Respondents

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. V.K. Sharma, Advocate for the petitioners.

Mr. K.K. Gupta, Advocate for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

C.M. No. 1382-CWP of 2016

Heard.

The application is allowed as prayed for.

CWP No. 16527 of 2014

1. The Writ Petitioners have challenged the dismissal of their application praying for a direction to the respondents to grant Lateral Advancement, treating their notional service from 1.4.1992 to 31.3.2004 as regular service.
2. The Writ Petitioners have contended that they were

initially appointed to the post of Telegraph Assistants on 22.9.1981 and 23.11.1981 respectively. Later on, the cadre of Telegraph Assistant was merged into JTO w.e.f. 01.04.1992. The Ministry of Communications, Department of Telecommunications, issued a scheme on 26.6.1990 known as Lateral Advancement Scheme for JTOs for giving them higher grade of ₹2000-3500 on completion of 12 years of service.

3. The petitioners who were eligible for promotion to the post of ASTT appeared in the departmental competitive examination. As promotion was denied to them, the Writ Petitioners approached the Central Administrative Tribunal, Chandigarh Bench with O.A. NO. 1006-HR-1993 which was allowed in their favour on 21.2.1997. As per the directions issued in the above case, the petitioners were notionally promoted as ASTT w.e.f. 1.4.1992. Actual benefits were accorded to them from 1.11.1993. The cadre of ASTT was merged with the cadre of JTO and as such the petitioners were treated as JTOs. The respondents framed Lateral Advancement Scheme for JTOs for giving them higher grade of ₹2000-3500 on completion of 12 years of service. The petitioners having contended that they have completed 12 years of service from 1.4.1992, submitted representations for according Lateral Advancement. The representation submitted by the Writ Petitioners was rejected on 16.7.2012 on the ground that they have not actually worked on the post of JTO for 12 years. In other words, notional promotion with effect from 1.4.1992 does not entitle the petitioners to claim the

benefit.

4. The respondents have contended that the Writ Petitioners had not put in 12 years of actual regular service as JTO and, therefore, they were ineligible for the incentive contemplated under the scheme.

5. The Tribunal has held that actual service put in by the Writ Petitioners alone should be considered for giving the benefit of Lateral Advancement Scheme. The Tribunal refused to consider the notional promotion period for counting 12 years of service required under the above scheme.

6. Learned counsel appearing for the Writ Petitioners vehemently submitted that the Writ Petitioners were promoted to the cadre of ASTT w.e.f. 1.4.1992, though actual benefit was conferred upon them w.e.f. 1.11.1993 as per the orders passed by the Department of Communications (Annexure A7) dated 23.1.1998. The notional period of promotion shall also be counted for the purpose of calculating 12 years of service to apply the Lateral Advancement Scheme found under Annexure A3 and Annexure P5. It is his further submission that except the ineligible JTO's who had not completed 12 years of service, all other JTO's who completed the said period had already been conferred with the benefit of Lateral Advancement Scheme. Therefore, the impugned order passed by the respondents declining the benefit of Lateral Advancement Scheme is patently wrong.

7. Learned counsel appearing for the official respondents

resisted the above arguments on the ground that 12 years of regular service should have been put in by the Writ Petitioners to avail Lateral Advancement Scheme before ever they were promoted to the cadre of Sub Divisional Engineer on 16.9.2004. As the petitioner had not 12 years of actual service, the department has rightly rejected their claim. Referring to Annexure P5 dated 16.5.1995 he submitted that even if an ASTT had completed 12 years of regular service he had to wait till all the eligible Senior JTO's were placed in their lateral scale on completion of their 12 years of service. Citing two sample cases where the JTO's Senior in position as per the combined seniority maintained by the respondents had not been conferred with Lateral Advancement benefit as on the date when the petitioners were promoted to the cadre of Sub Divisional Engineer on 16.9.2004 he submitted that the petitioners were not entitled to the said benefit under the above notification.

8. The following two substantial questions have arisen for determination :-

(i) Whether the period of notional promotion should be counted as regular service as contemplated under Annexure A3 and Annexure P5 to confer the Lateral Advancement benefit.

(ii) Whether the petitioners can legitimately claim the benefit of Lateral Advancement Scheme when their Seniors found in combined seniority had not been conferred with the said benefit.

9. Annexure A3 dated 26.6.1990 is the scheme announced

for Lateral Advancement of JTOs on completion of 12 years of service. The said scheme contemplates that JTOs who have completed 12 years of service since the date of appointment in the cadre as on 1.1.1990 and onwards are entitled to the benefits of Lateral Advancement Scheme.

10. Annexure P5 dated 16.5.1995 makes applicable the Lateral Advancement Scheme to the cadre of ASTT which had merged with the cadre of JTO. It has been stipulated therein that with the merger of ASTT with JTO, the Lateral Advancement Scheme will also be applicable to the erstwhile ASTTs on completion of their 12 years of regular service in the cadre. It has been made clear in Annexure P5 that no ASTT would be given lateral promotion even on completion of 12 years of regular service until all his eligible senior JTOs are placed in his Lateral Advancement Scheme on completion of his 12 years of service.

11. It is true that Annexure A3 which exclusively deals with Lateral Advancement Scheme for JTO's speaks of '12 years of service'. As far as ASTT's are concerned there was no such stipulation found in Annexure A3 dated 26.6.1990. The application of Lateral Advancement Scheme of ASTTs on merger with JTOs has been dealt only in Annexure P5 dated 16.5.1995. It specifically speaks of regular service for ASTTs to claim the benefits under Lateral Advancement Scheme.

12. The Writ Petitioners were promoted to the cadre of ASTT notionally from 1.4.1992 with actual benefit w.e.f. 1.11.1993 as per

the orders passed by the respondents on 23.1.1998 (Annexure A7).

In our considered view, Lateral Advancement Scheme emphasizes actual regular service of 12 years put in by ASTT to claim the benefit under the above scheme. By no stretch of imagination, it can be concluded that the period of notional promotion is to be treated as actual regular service of an employee.

13. Of course, the learned counsel appearing for the respondents submitted the decisions of Hon'ble Supreme Court in ***State of Punjab versus Gurdeep Kumar Uppal 2003(11) SCC 732***, ***State of Punjab versus Ishar Singh 2002(10) SCC 674*** and ***State of Haryana versus Haryana Veterinary and A.H.T.S. Association 2000(8) SCC 4*** and the decisions of this Court in ***Kamla Devi versus State of Haryana 2002(3) SLR 110*** and ***State of Punjab and others versus Surjit Kaur 2011(3) S.C.T. 328*** to bring home the point that ad-hoc service put in by an employee cannot be counted as a regular service for giving higher scale.

14. In our considered view, the above decisions would not apply to the facts and circumstances of this case where the question as to whether the period of notional promotion shall be counted for computing regular service has arisen for determination.

15. At any rate, inasmuch the actual regular service of 12 years to get the benefit of Lateral Advancement Scheme floated by the respondents has been insisted upon under Annexure P5, the period of notional promotion given to the Writ Petitioners at the intervention of the Court cannot at all be counted for the purpose of

conferring benefit under the Lateral Advancement Scheme.

16. Let us now take up the 2nd issue that has arisen for determination. The respondents have produced the Combined Gradation List of Junior Telecom Officers on the merger of ASTT cadre with JTO cadre corrected upto recruitment year 1991. The Writ Petitioners figure at Sr. No. 263A and 279A in the above Gradation List respectively, whereas one Rakesh Kalra and Bhupinder Singh figure at Sr. No. 249 and 262 respectively. Rakesh Kalra and Bhupinder Singh who figure at Sr. No. 249 and 262 had been promoted along with these Writ Petitioners to the cadre of Sub Divisional Engineer on 16.9.2004. Both of them being Seniors to the Writ Petitioners occupying the cadre of JTO had not been conferred with the benefit of Lateral Advancement Scheme. As per the Lateral Advancement Scheme applied to the cadre of ASTT which was merged with the cadre of JTO (Annexure P5) even if an ASTT had completed 12 years of regular service he has to wait till all the eligible senior JTOs are placed in the lateral scale on completion of their 12 years of service. In other words, ASTT who has completed 12 years of regular service has to wait till all their Senior JTOs are placed at their lateral scale after completing their 12 years of service. Unless the senior JTOs complete their 12 years of service and are placed in the lateral scale, the ASTT cannot claim the benefit of Lateral Advancement Scheme just because he has completed 12 years of actual service. There was nothing to show that Rakesh Kalra and Bhupinder Singh who were senior JTOs were otherwise

ineligible to claim the benefit under the Lateral Advancement Scheme on completion of their 12 years regular service. Therefore, even under the parameters laid down by the respondents under Annexure P5 which was not at all challenged by the Writ Petitioners, they are not entitled to the benefits claimed by them.

17. For all these reasons, we find that there is no scope for interfering with the decision of the Tribunal. Therefore, the Writ Petition fails and it stands dismissed.

**(M. JEYAPPAUL)
JUDGE**

**(RAJ MOHAN SINGH)
JUDGE**

February 03, 2016

p.singh