

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

**CWP No. 8635 of 2018
DECIDED ON: APRIL 06, 2018**

R.L. AHUJA

.....PETITIONER

VERSUS

BHARAT SANCHAR BHAWAN AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. N.K. Malhotra, Advocate
 for the petitioner.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Articles 226/227 of the Constitution of India, petitioner has sought for the issuance of writ in the nature mandamus directing the respondents for granting him promotion w.e.f. 21.10.1998 on the post of regular SDE as well as fixing his pay scale w.e.f. 01.10.1998 as SDE and granting all the consequential benefits i.e. revision pay and pension from the due date; grant of arrears that too, along-with interest @24% per annum.

2. The contention of learned counsel for the petitioner is that petitioner joined the Bharat Sanchar Nigam Limited (for short 'BSNL') in the year 1983.

During his entire carrier his service remained satisfactory and unblemished and from the very beginning his Annual Confidential Reports (for short 'ACRs') remained good, very good or outstanding except one ACR which was recorded as 'average'. There was no adverse remarks against him in any of the ACRs. Some of his colleagues who were even junior to him were promoted by departmental promotion committee on 18.10.1998. In pursuance of which the orders with regard to the promotion and posting of JTO to TES GR.B was issued. However, the name of petitioner did not figure in the said list. Subsequent thereto, passing of afore-said order a combined gradation list of Junior Telecom Officials upto the requirement year 1990 was prepared and in view of the said list his name did not figure in the promotion list. The petitioner approached the department in this regard vide representation dated 23.10.1998 (P-4) but the respondent-department did not bother to take any action which was subsequently followed by reminders dated 28.12.1998. When no action was taken, petitioner moved an application under the RTI Act seeking information vide application dated 26.05.2015. However, the necessary information was not supplied though, a reply to the said application dated 14.07.2015 was received by the petitioner. Petitioner could not take up the matter with the concerned authority after his retirement i.e. since 2009 and it was only in the Month of August, 2017 when respondents passed the order rejecting his claim on the ground of grading of ACRs for the years 1991-92, 1992-93 and 1993-94 that he was not promoted on account of average grading ACRs for the afore-said period, which necessitated the filing of instant petition.

3.

Learned counsel for the petitioner further contended that in fact ACR

pertaining to the year 1991-92 was outstanding whereas, ACRs pertaining to the years 1992-93, 1993-94 were average. Since the above-said ACRs were neither counter signed by the Reviewing Officer nor conveyed to the petitioner and therefore, could not have been taken into consideration while ignoring the petitioner from promotion as SDE. Thus, the impugned order dated 21.10.1998 is not sustainable in the eyes of law and deserves to be set aside. Consequently, petitioner deserves his promotion as regular SDE w.e.c. 21.10.1998 and further is entitled to the consequential benefits that too, along-with interest.

3. This Court has given an anxious thought to the rival submissions made by learned counsel for the petitioner but does not find the same to be without any legal or factual weight.

4. Through the instant petition petitioner has sought the promotion as regular SDE w.e.f. 21.10.1998 when some of his colleagues were promoted though, his case was considered but therebeing, ACRs pertaining to the years 1991-92, 1992-93 and 1993-94 being 'average', petitioner did not come within the zone of consideration and as such he was not promoted. Since the passing of order dated 21.10.1998 petitioner was aware that he has not been promoted whereas his other colleagues have already been promoted and joined as SDE at different stations. He did not bother to move either to the department or to the Court. Rather, it can be said that after 21.10.1998, he served the department for approximately more than 10 years and superannuated in the year 2009. Even, after 2009 till the filing of instant petition, he did not come forward except filing the application under RTI Act etc. Obtaining an information under the RTI Act just to know that why he was ignored can be said to make a ground or cause of

action for filing the petition after an inordinate delay of approximately two decades.

5. It is well settled proposition of law that if a person chooses to sit over the matter and woke up after a long slumber, such a person is not entitled to invoke the jurisdiction by way of writ. Rather, a long delay and latches disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. It is also well settled proposition of law that the concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play. In this regard we can have the reference of the judgments rendered by Hon'ble Apex Court in the cases of **Jagdish Lal v. State of Haryana, 1998(1) SCT 26 (SC) : (1997) 6 SCC 538 and Esha Bhattacharjee vs. Raghunathpur Nafar Academy & others, 2013(4) RCR (Civil) 785.**

6. Firstly, the petitioner is not to be heard after the expiry of a period of two decades from the accrual of cause of action. Consequently it can be said that he did not approach the court with clean hands and has suppressed the material facts. In the petitioner he has categorically stated that his entire service remained satisfactory or unblemished and further that all the ACRs right from the beginning upto his retirement remained good, very good and outstanding except on e ACR which is average. But a perusal of the order dated 17.08.2017 as well as information sought makes it crystal clear that he was not considered for promotion on account of the reason that his ACRs pertaining to the years 1991-92, 1992-93 and 1993-94 were average. He did not challenge those ACRs at any point of time either by way of making representation for expunging the

remarks if any, made in those ACRs or by challenging the same in the competent court of jurisdiction.

7. So, taking the case of the petitioner from any of the angles, this Court is of the considered view that there is no merit in the instant petition. Accordingly, it stand dismissed but with no order as to costs.

APRIL 06, 2018
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>