

\$~7

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9735/2015**

M. UDAYA KUMAR

..... Petitioner

Through

Mr. Sudarshan Rajan and Mr. Arjun
Gadhoke, Advs.

versus

BHARAT SANCHAR NIGAM LTD. AND ORS. Respondents

Through

Mr. Pradeep Kumar Mathur, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

%

27.11.2018

1. The present order may be read in continuation of the previous order dated 12.11.2018.
2. Today, the learned counsel for the petitioner, on instructions, states that the petitioner has never officiated in the promotional post of Section Officer. That being the position, the petitioner is not entitled to the relief of promotion to the post of Section Officer (Deputy Manager) with effect from 01.07.2003 even on notional basis, for any purpose whatsoever, for the reasons already recorded in our order dated 12.11.2018.
3. In the said order, in the last two paragraphs, we observed, as follows :

“We may notice that another relief sought by the petitioner before the Tribunal was for a direction to the respondents to cause notional fixation of pay of the petitioner with effect from 01.07.2004, and actual fixation of pay with effect from 07.12.2010 in the promotional post of Deputy Manager with all consequential benefits and this relief was premised on the

OM dated 09.07.2010 issued by the DOP&T on the subject “notional fixation of pay with effect from 1st July of the respective select lists in the grades of Section Officers and Assistants”.

From the impugned order it appears that the Tribunal has not particularly addressed this issue raised by the petitioner. For reconsideration of that aspect, we are inclined to remand back the case to the Tribunal. However, since the petitioner seeks an adjournment to take instructions on the first aspect noted hereinabove, we adjourn the matter to 27.11.2018.”

Learned counsel for the respondent points out that the reliance placed upon by the petitioner on the office memorandum dated 09.07.2010 and the subsequent communication dated 06.09.2010 is also misplaced, and that this aspect has also been dealt with by the Tribunal in the impugned order and therefore, no part of the order requires interference. In this regard, attention is drawn to the following observations made by the Tribunal in the impugned order :

“18..... Moreover, it has been clarified that DoP&T Om dated 9.07.2010 applies only to CSS Cadre. The applicant, having been absorbed permanently in BSNL Recruitment Rules and not covered under the OM dated 9.07.2010.”

Learned counsel for the petitioner submits that the communication dated 06.09.2010 records the approval to the appointment of the Section Officers [Select Lists (SL) 2001-2007 Seniority Quota (SQ) & SLs 2001-2005 (LDCE Quota)] with effect from 1st July of the concerned Select List year for the purpose of fixation of pay on notional basis. The actual benefits however, would be available only from the date, the officers are so appointed to the grade of Section Officer, as the case may be, and assume

the charge of the post.

4. The submission is that in the order 21.12.2011, the respondent BSNL had recognised the position that the petitioner was promoted as Dy. Manager against the vacancy year 2004-05. The submission, therefore, is that the petitioner is entitled to the grant of notional pay fixation from 01.07.2004 and consequential benefits from the date of actual promotion as Dy. Manager.

5. On the other hand, learned counsel for the respondent points out that the communication dated 06.09.2010 is founded upon OM dated 09.07.2010, which was issued in relation to grant of notional fixation of pay in the cases of Assistants or Section Officers of CSS. The petitioner no longer served as Assistant or Section Officer of CSS when the OM dated 09.07.2010, was issued, since he was already absorbed in BSNL in the year 2000. Moreover, a perusal of the order dated 06.09.2010 shows that the same related to the departmental note dated 01.09.2009. He has also drawn the attention of the Court to the said departmental note dated 01.09.2009 which pertain to 19 officers, all of whom were senior to the petitioner, and those 19 officers were already in select list of Section Officers – In CSS at the time of their absorption in BSNL. The petitioner was not in the same position as those 19 officers.

6. Having considered the aforesaid position, we are of the view that even the relief of notional fixation of pay as Dy. Manager from 01.07.2004 was not justified and has rightly been rejected by the Tribunal. The OM dated 09.07.2010 reads, as follows :

Dated : 9th July, 2010

“OFFICE MEMORANDUM

Subject: Notional fixation of Pay w.e.f. 1st July of the respective Select Lists in the grades of Section Officer and Assistant.

The undersigned is directed to say that the matter regarding grant of notional fixation of pay in the grades of Assistant and Section Officer of CSS w.e.f. 1st July of the concerned Select List Year has been under consideration of this Department primarily in view of the undue delay in finalizing the respective Select Lists on account of various administrative reasons.

2. The matter has been considered by this Department, and the undersigned is directed to convey the approval of the competent authority to the appointment of the officers included in the concerned Select Lists, the issue of which had been considerably delayed, in respect of Assistants (promotee) (SLs 2001-2006) and Section Officers (SLs 2001-2007 (SQ) & SLs 2001-2005 (LDCE Q) may be deemed to have been made effective from 1st July of the concerned Select List Year, for the purpose of fixation of pay on notional basis. The actual benefits however, would be available only from the date, officers are so appointed to the grade of Section Officer/Assistant, as the case may be, and assume the charge of the post. However, fixation of pay in respect DR Assistants would continue to be w.e.f. the date of their joining.

3. This issues with the concurrence of the Estt. (Pay) & Estt. (D) of DOP&T.”

7. The departmental note dated 01.09.2009 in relation to 19 officers, in so far as it is relevant, reads as follows :

“Subject : Inclusion of Assistants of CSS, absorbed in BSNL in Select List 2003

DOP&T, CS Division vide their O.M. No.5/25/2004-CS.I, dated 5.6.2006 and O.M. No. 5/24/2004-CS.I(S), dated 12.8.08 have issued the Select List of CSS Sections Officers

for the year 2003 against Seniority Quota. Some of the BSNL employees, working as Section Officers (ad hoc) in BSNL corporate office, had submitted representations (copies enclosed) to Additional Secretary, DoT regarding extending the benefit of inclusion of their names in the Select List 2003 (Seniority Quota) for appointment as Section Officer on regular basis.

2. The matter has been examined in consultation with the DoP&T, the cadre controlling authority for CSS cadre. Accordingly, it has been decided with the approval of the competent authority that

- Assistants upto Serial No. 217 of Select List 1990 in case of General Category***
- Assistants upto Serial No. 293 of Select List 1990 in case of SC Category***
- Assistants upto Serial No. 252 of Select List 1994 in case of ST Category.***

Who were absorbed in BSNL as per DoT Order No. A.11013/9/2003-Admn.II, dated 22.3.2004) deemed to be included in Select List 2003 of Section Officer Grade against Seniority Quota, if found fit.

3. BSNL may, therefore, consider promoting the Assistants absorbed in BSNL, who are covered under the above zone prescribed by DoP&T, to Section Officer Grade on regular basis w.e.f. 1.7.2003, if found fit.”

(emphasis supplied)

8. It is in the aforesaid light that the communication dated 06.09.2010 relied upon by the petitioner has to be read and understood, which reads as follows :

“In continuation of this Department’s note of even number, dated 1st September, 2009, the undersigned is directed to forward herewith a copy of DoP&T’s OM No.6/3/2009-CS I(S), dated 9.7.2010 vide which they have conveyed the

approval of the competent authority to the appointment of the Section Officers [SLs 2001-2007 (SQ) & SLs 2001-2005 (LDCE Q)] with effect from 1st July of the concerned Select List year, for the purpose of fixation of pay on notional basis. The actual benefits however, would be available only from the date, officers are so appointed to the grade of Section Officer, as the case may be, and assume the charge of the post.

9. Keeping in view the aforesaid position, it is clear that the promotion to the grade of Dy. Manager is covered by the Recruitment Rules of BSNL as claimed by the respondent. Merely because the petitioner has been allocated against the vacancies of the year vacant post 2004-05, would not entitle him even to notional fixation since, as a matter of fact, he came to be promoted only in the year 2010 to that post. We therefore, find no merit in the writ petition. The writ petition is accordingly dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 27, 2018

rc