

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.P.No.28701 of 2017

V.Ilamparuthi

...Petitioner

-Vs-

- 1.The Central Administrative Tribunal
Madras Bench, Rep. by its Registrar
City Civil Court Buildings, Chennai
- 2.Union of India, Rep. by its Chief General Manager
BSNL, Chennai Telephones
78, P.H.Road, Kilpauk, Chennai-10
- 3.The General Manager (HR&ADMN)
BSNL, Chennai Telephones
78, P.H.Road, Kilpauk, Chennai-10
- 4.The Assistant General Manager (ADMN)
BSNL, Chennai Telephones
89, Millers Road, Kilpauk
Chennai-10

..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, calling for the records pertaining to the order dated 02.11.2016 passed by the 1st respondent in O.A.No.310/01887/2014, quash the same in so far as not issuing direction to the respondents to promote the petitioner as JTO with effect from 03.11.2003 with all consequential benefits and consequently direct the respondents 2 to 4 to promote the petitioner as JTO with effect from 03.11.2003 on par with 9 other persons who were promoted as JTOs based on the relaxed standard of marks in Chennai Circle with further time bound promotions and consequential benefits including monetary benefits and also to promote the petitioner as SDE on officiating and regular basis on par with those 9 JTOs who were promoted to that post in Chennai Circle based on the relaxed standard of marks, award costs.

For Petitioner : Mr.V.Ajoy Khose

For Respondents: Mr.J.Sathya Narayana Prasad for R2 to R4.
R1-Tribunal.

O R D E R

(Order of the Court was made by K.K.SASIDHARAN,J.)

The Writ Petitioner was given promotion prospectively in compliance of the order passed by the Central Administrative Tribunal and the orders in the related Writ Petition and Special Leave Petition. However, he was denied promotion to the post of Junior Telecom Officer with effect from 03.11.2003, the date on which 9 other officers were promoted based on the relaxed standard of marks in Chennai Circle of Bharat Sanchar Nigam Limited.

2. The Original Application filed thereafter to give promotion prospectively from 03.11.2003 was disposed of by the Tribunal by giving seniority from 15.07.2010, the date on which the Central Administrative Tribunal was pleased to allow the Original Application. The order is under challenge on the ground that having admitted the mistake in not granting promotion on the basis of the relaxed standard of marks, it was not correct to fix a prospective date for giving promotion.

3. The Petitioner joined service as a Trainee Technician in the erstwhile department of Telecommunications. Thereafter, he was given appointment in the post of Technician which was subsequently redesignated as Telecom Technical Assistant. The next avenue of promotion was to the post of Junior Telecom Officer (JTO). The post of JTO has to be filled up 50% by Direct Recruitment and the remaining 50% by promotion. The promotion quota should be filled up on merit and by a method of screening in the ratio of 15% : 35%.

4. The Petitioner took part in the examination for promotion to the post of JTO against the 15% merit quota. The examination was for filling the vacancies that arose in the year 1995. Since he failed in one paper, the petitioner was not given promotion. Thereafter, he appeared for the screening test for the post of JTO against the 35% quota.

5. The Department selected 214 Telecom Technical Assistant for promotion to the post of JTO against the 35% quota. Since there were only 114 posts, orders were issued only in respect of those vacant posts. Subsequently, the petitioner was absorbed in BSNL.

6. While so, by proceedings dated 10.03.2003, relaxation in the qualifying standard was given. It was given to the candidates who appeared for the post of JTO for 15% quota both in the year 1999 and in the year 2000. However, it was made clear that, in case, examinations were held both during the years 1999 and 2000, the relaxation would apply only to the later examination.

7. The Officers who wrote the examination in the year 2000 for 15% quota on the basis of relaxed standard of aggregate marks, were promoted as JTOs.

8. Since the Telecom Technical Assistants were allowed to appear for the competitive examination under 15% quota in the year 2000 and the examination conducted in the year 1999 was the last examination for the petitioner for the said quota, he submitted a representation to the 4th respondent to extend the benefit of relaxation to him. By proceedings dated 10.03.2003, the representation was rejected. The order was challenged in W.P.No.4358 of 2004. The Writ Petition was transferred to the file of Central Administrative Tribunal, Madras Bench, and it was renumbered as T.A.No.16 of 2009.

9. The Tribunal was pleased to allow the Original Application, by order dated 15.07.2010. The said order was challenged before the High Court in W.P.No.24362 of 2010. The Writ Petition was dismissed by order dated 04.01.2012. The order was unsuccessfully challenged before the Honourable Supreme Court in S.L.P.(Civil) No.25011 of 2012. The issue has become final on account of the dismissal of S.L.P., by order dated 09.08.2012 and due to the dismissal of the Review Application by order dated 12.03.2013.

10. The 3rd respondent, thereafter, issued an order dated 07.12.2013 promoting the petitioner as JTO with effect from 18.11.2013 by creating a supernumerary post for the year 1995. The 3rd respondent issued another order dated 30.05.2014 considering the petitioner as JTO with effect from 18.11.2013.

11. Even though the petitioner submitted series of representations seeking to promote him as JTO with effect from 03.11.2003, follow up action was not taken resulting in filing another Original Application before the Tribunal in O.A.No.310/01887 of 2014. The Tribunal passed an order dated 02.11.2016, allowing the petition and directed the respondents to give him notional promotion with seniority from 15.07.2010. The Tribunal issued the said direction taking into account the

later order dated 15.07.2010 passed by the Tribunal in T.A.No.16 of 2009. The said order is under challenge in this writ petition.

12. We have heard the learned counsel for the Petitioner and the learned counsel for the respondents.

13. The core issue is whether the petitioner is entitled to claim the benefit of the proceedings dated 10.03.2003 providing for relaxation on the qualifying standard for promotion to the post of JTO.

14. The Original Application filed before the Tribunal claiming the benefit of relaxation in qualifying standard was allowed by the Tribunal. The order was confirmed by the High Court as well as by the Honourable Supreme Court. It is a matter of record that the order was implemented by the respondents.

15. Even though the other employees like the petitioner were all given the benefits with effect from 03.11.2003, the petitioner was given promotion only from 18.11.2013. The petitioner once again approached the Central Administrative Tribunal with a grievance that while others were enjoying the order with effect from 03.11.2003, he alone was singled out.

16. The Tribunal was expected to consider the promotion given to the Petitioner on par with nine other officers. Though others were given promotion with effect from 03.11.2003, the petitioner alone was given prospectively. His promotion was to take effect from 18.11.2013.

17. The Tribunal prescribed an artificial cut off date taking into account the date on which the Tribunal allowed the Original Application in T.A.No.16 of 2009.

18. The facts are not in dispute. The Petitioner is eligible to the benefit of relaxation in qualifying standard taking into account the proceedings dated 10.03.2003. The order passed by the Tribunal in T.A.No.16 of 2009 has become final. The respondents instead of giving promotion to the petitioner with effect from 03.11.2003, fixed a wrong cut off date, taking into account the date of promotion.

19. The order passed by the Tribunal dated 02.11.2016 is modified. We direct the respondents 2 to 4 to pass a formal order granting promotion to the petitioner in the post of JTO with effect from 03.11.2003 instead of 18.11.2013. However, we

make it clear that the petitioner would not be entitled to the differential salary for the period from 03.11.2003 to 18.11.2013. The said period would be counted for all other practical purposes including fixing pensionable service and fixation of pension. There shall be further direction to the respondents 2 to 4 to pass the order as expeditiously as possible, and in any case, within a period of eight weeks from the date of receipt of a copy of this order.

20. The Writ Petition is allowed as indicated above. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Registrar, Central Administrative Tribunal
Madras Bench, City Civil Court Buildings, Chennai
- 2.The Chief General Manager
Union of India, BSNL, Chennai Telephones
78, P.H.Road, Kilpauk, Chennai-10
- 3.The General Manager (HR&ADMN)
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89, Millers Road, Kilpauk, Chennai-10.

+lcc to Mr.AjoyKhose, Advocate SR.64950

+lcc to M.Sathya Narayana Prasad, Advocate Sr.64602

W.P.No.28701 of 2017

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srg 14/09/2019