

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

Civil Writ Petition No.8288 of 2019

Reserved on : July 09, 2019

Date of decision: July 31, 2019

Hukam Chand

...Petitioner

Versus

Central Administrative Tribunal and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Puneet Kumar Bansal, Advocate
for the petitioner.

Mr. Rajesh Gupta, Advocate
for respondents No.2 to 4.

HARINDER SINGH SIDHU, J.

1. The petitioner has filed this petition challenging the order dated 29.01.2019, passed by the Central Administrative Tribunal, Chandigarh Bench in OA No.060/00005/2014 whereby the original application filed by him was dismissed.

2. The petitioner was an employee of respondent-BSNL. He retired on 30.09.2005 on attaining the age of superannuation. At the time of his superannuation he was posted as Senior Telegraph Master which is a BCR Grade-III post.

3. On 18.11.2003, BSNL issued a circular dated 18.11.2003 (Annexure A1) resolving that:

“One extra increment in BCR Grade-III may be given one year prior to retirement, without benefit of FR 22(C), to those Group 'C'

officials who are in BCR Grade-III and are unable to get Grade-IV promotion on the following terms and conditions:-

- (i) This will be applicable only to those cadres, which are covered under OTBP/BCR Scheme and only those officials who have been absorbed in BSNL.*
- (ii) The officials should have earned at least one increment in BCR Grade-III i.e. he/she must have completed at least one year of regular qualifying service in BCR Grade III.*
- (iii) This benefit is being given in appreciation of the long years of good service rendered by an official and hence claim of this benefit on any other ground will not be entertained. The fitness of the official for getting benefit of one extra increment will be judged by a Screening Committee headed by appointing authority. The screening is to be held in advance so that benefit is extended from the due date.*
- (iv) In case any official, who had been given an extra increment under this scheme, subsequently become eligible promoted to Grade-IV due to any reason, such official would have to exercise option at the time of promotion either retention of the extra increment or for Grade-IV promotion. If the official on account of the extra increment would have to be refunded or to be adjusted accordingly.*
- (v) In the case of official who have preferred representation or filed cases in any court of law, claiming for Grade-IV promotion on any ground, the benefit of this Scheme will not be extended to such officials till the finalization of representation/court case.*
- (vi) The Scheme of extra increment will be effective from 01.06.2003. Hence, the official retiring after 01.06.2003, will get the financial benefit from the date only. This*

extra increment will be counted for the pensionary and other retirement benefit purposes.”

4. The petitioner claimed that he fulfilled all the conditions of the said circular. Hence he was entitled to the grant of one extra increment as per the circular. His claim having been declined by the respondent he filed the Original Application.

5. The OA was dismissed vide order dated 09.12.2014 holding that as the Central Government had not approved the decision of BSNL, the same being a policy decision, the petitioner could not claim the said benefit.

6. The petitioner filed CWP-5524-2014 assailing that order. The writ petition was allowed vide order dated 10.05.2018. The matter was remitted to the Tribunal for fresh adjudication on the following questions:-

“(i) Whether the policy decision of 2003 was implemented and remained in force till different policy decision was taken in the year 2011? If so, whether the petitioner fulfilled the eligibility conditions contained in the above-stated Circular dated 18.11.2003?

(ii) whether similarly placed employees were given the benefit of one extra increment under the Circular dated 18.11.2003, and if so, does it amount to discrimination with the petitioner?

(iii) whether the fresh policy decision was taken in the year 2011 and if so, can it be applied retrospectively?”

7. In response to the said questions the respondent-BSNL filed different affidavits before the Tribunal. In the first affidavit dated 14.09.2018 it was stated that the policy decision of 2003 was implemented

and remained in force till 22.03.2010. The applicant fulfilled the eligibility conditions but as the matter was having financial implications it remained pending for the approval of Directorate of Telecommunications till 04.11.2011 when finally approval was not granted. It was also stated that no similarly placed employee was given the benefit of one extra increment under the circular dated 18.11.2003.

8. Later, another affidavit dated 03.12.2018 was filed in which the answer to the questions formulated by the Hon'ble High Court was as under:-

- “(i) *The policy decision of 2003 was kept pending for want of approval of competent authority and remained as such till 22.03.2010 because w.e.f. 23.03.2010 Non Executive Promotion Policy was introduced. Yes the applicant fulfilled the eligibility condition, but the matter having financial implications remained pending for the approval of Department of Telecommunications till 04.11.2011 when finally it was not agreed to by the Competent Authority.*
- (ii) *No similarly placed employee was given the benefit of one extra increment under the Circular dated 18.11.2003.*
- (iii) *No fresh policy decision was taken in the year 2011. Rather it is a clarification of Circular dated 18.11.2003.”*

9. It appears that on 11.12.2018, the Ld. Tribunal granted opportunity to the respondent-department to submit a final affidavit clarifying the position as different stands had been taken in the earlier two affidavits. Pursuant thereto, affidavit dated 21.01.2019 was filed as under:-

- “1. That this Hon'ble Tribunal vide order dated 11.12.2018 had granted opportunity to the Department to file final affidavit clarifying position because in earlier two affidavits filed before the Hon'ble High Court as well as before this Hon'ble Court as well as before this Hon'ble Tribunal, they have taken different stands.*
- 2. That the submission in this regard is that in the affidavit filed before the Hon'ble High Court it was submitted that no prior approval was sought before issuing the Circular in question because BSNL Board was competent in this regard. However, this circular was not implemented because it was needed to be ratified by the Department of Telecom because it was having financial implications and ultimately this Circular was not implemented because it was not agreed to by the Department of Telecom.”*

10. Based thereon the Ld. Tribunal concluded that the circular for grant of extra increment under the BCR scheme remained pending before the Department of Tele-communication which was consulted in view of the financial implications which required budgetary support. The Department of Telecommunication did not approve the proposal. The circular dated 18.11.2003 remained on paper only and was not implemented. No employee received the benefits of extra increments based thereon. The petitioner was not held entitled to the said benefit. The OA was dismissed.

11. Evidently, the circular was not implemented. It had financial implications. It was not approved by the Department of Telecommunications. No employee received any benefit in terms of the

circular. Ld. Counsel for the the appellant has not been able to refer to any provision whereby the circular could be given effect to without approval of the Government.

12. Thus there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 31, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes