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

+ **W.P.(C) 8835/2016 and CM APPL. 36111/2016 (stay)**

KALPANA BHATTACHARYA Petitioner

Through: Ms. Shrabani Chakrabarty, Advocate.

versus

UNION OF INDIA & ORS Respondents

Through: Mr.A.P. Sahey, CGSC.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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16.10.2019

1. The facts of the present case have been succinctly set out in a detailed order passed by this Court on 20th December, 2016, which reads as under:-

“1. The, petitioner-Kalpna Bhattacharya has now filed the complete paper book, which was placed on record before the Tribunal.

2. Learned counsel for the petitioner has submitted that the impugned order dated 16 March, 1999, made subject matter of challenge in Writ Petition .No. 15297(W)/2005 before the Calcutta High Court and was subsequently transferred to the Central Administrative Tribunal, Calcutta Bench and registered as TA No. 21/2012, was passed by the Assistant Director General, Department of Telecommunications, Sanchar Bhawan, 20 Ashoka Road, New Delhi. As this order constituted the cause of action, the Delhi High Court would have jurisdiction, despite the immediate impugned order having been passed by the Calcutta Bench of the Central Administrative Tribunal. It is

stated that the petitioner is now stationed and working in Delhi.

3. Keeping in view the aforesaid submission, we are not inclined to dismiss the petition on the ground of lack of jurisdiction or forum convenience.

4. The petitioner had joined the services of Department of Telecommunication on 23rd October, 1979 as Telephone Operator. She was promoted as Telephone Supervisor (Operator) on 23rd October, 1993. The petitioner had appeared for and successfully cleared the departmental examination for promotion to the post of Junior Accounts Officer on 16th October, 1995. She had thereafter undergone 12 weeks of training for the said post, but had declined promotion as she did not want to be posted outside Calcutta for personal reasons. The petitioner's representation dated 10th February, 1996 for being retained in Calcutta was rejected vide office memorandum dated 3rd April, 1996. The petitioner vide letter dated 10th June, 1996 had agreed to forgo her promotion as Junior Accounts Officer for one year and had requested that she should be allowed to join her present posting as Telephone Service Operator as early as possible as she had no leave to her credit. The petitioner had requested that the period of her absence from 1st May, 1996 when she was posted at New Delhi may be treated as medical leave. Pursuant to this request letter, the petitioner vide communication dated 5th July, 1996 was informed that the Telecom Commission had been pleased to accept her disinclination for promotion to the grade of Junior Accounts Officer for one year. She would be considered for promotion to the grade of Junior Accounts Officer with effect from 1st July, 1997, subject to availability of vacancy as per the guidelines contained in OM No. 22034/3/81-Estt. (O) dated 1st October, 1981.

5. Pursuant thereto, the Department of Telecommunication had issued the order dated 10th July, 1996 that the petitioner and two others had temporarily forgone or declined their promotion as to the cadre of Junior Accounts Officer. This was subject to the

conditions laid down vide DOT/ND memo No. 18-59/96 SEA dated 16th June, 1996, which stipulates as under:-

“01. The concerned officials will be considered for promotion after one year from the date of declining of promotion is accepted by the appointing authority subject to availability of vacancy.

02. They will loose (sic) their seniority which will be fixed w.r.t. their date of joining in JAO cadre.”

The petitioner accepted the said conditions and had joined the posting as Telephone Service Operator in Calcutta.

6. After more than one year at the said posting, the petitioner made a representation dated 6th December, 1997 that she should be allowed to officiate at the post of Junior Accounts Officer since she was suffering financially as well as losing out on seniority. The petitioner was granted promotion to the post of Junior Accounts Officer vide order dated 28th December, 1997.

7. In September 1998, the petitioner filed OA No. 1117/1998 before the Calcutta Bench of the Central Administrative Tribunal claiming that she should be given regular promotion to the post of Junior Accounts Officer from the date when her juniors were given the said promotion and also all service benefits, including arrears of pay and seniority. The aforesaid OA was disposed of vide order dated 21st December, 1998 observing that the Original Application would be treated as a representation and the claim of the petitioner for being promoted to the post of Junior Accounts Officer on regular basis would be examined by the department.

8. The respondents had thereafter passed a detailed order dated 16th March, 1999, the operative portion of which records as under:-

“6. As far as posting in Calcutta is concerned it is to

petition (sic mention) that the cadre of Junior Accounts Officers has all India transfer liability. A large number of JAOs (which includes a number of ladies and SC/STs) seniors to Smt. Kalpana Bhattacharya who are working outside their home circle viz. Calcutta Telephone District/West Bengal Telecom Circle have requested for transfer to their home Circle.

7. The limited number of posts of JAOs in CTD/WBT are almost saturated. In order to transfer back the officials belonging to Calcutta Telecom District/WBT working outside of their home circle and to make up the shortage in the grade of JAO in other Circles, it was necessitated to shift/transfer the JAOs not only from Calcutta but also from other Circles, to the Circles which are having acute shortage. In order to safeguard the interest of other officials who are seeking transfers to their home Circle, transfers have taken place. The official Smt. Kalpana Bhattacharya, might have got priority in her transfer back to her home circle being a lady candidate, had she joined NTR without seeking declination of promotion. But she declined her promotion initially to the grade of JAO. Now also, after issuing the regular promotion orders to the grade of JAO, Smt. Kalpana Bhattacharya, has not reported to the allotted Circle till date.

8. In view of the above, the request of the official Smt. Kalpana Bhattacharya, has already been considered for promotion to the grade of JAO on regular, basis and orders issued vide this office letter No. 18-59/96-SEA, dated 6.11.98. For posting in Calcutta the request of the official cannot be acceded to for the reasons as explained in above paras. The official may be informed accordingly and dated acknowledgement thus obtained from the official may

please be forwarded to this office for record.”

9. The impugned order passed by the Tribunal dated 21st August, 2015 upholds the said order and dismisses TA No. 21/2012. In view of the aforesaid position, we have no doubt in our mind that the petitioner was not promoted to the post of Junior Accounts Officer as she had expressed her desire to remain posted in Calcutta. She had forgone her claim. However, she had the right to be considered for promotion as Junior Accounts Officer after one year, in subject to availability of vacancy.

10. The petitioner relies upon order dated 8th September, 1997 by which promotions were granted to 197 employees, who had appeared and had qualified as Junior Accounts Officer. The said promotees on completion of their training were appointed as Junior Accounts Officer on 19th September, 1997. The contention of the petitioner is that she should have been promoted along with these officers, who were promoted vide Office Memorandum dated 8th September, 1997, as the period of one year was over by then.

11. Learned counsel for the respondents will obtain instructions on the said aspect and file a short response/affidavit meeting the contentions raised within three weeks. Rejoinder, if any, may be filed within four weeks after service of the reply/counter affidavit.

Re-list on 28th February, 2017.”

2. Therefore, it seen from the above order that the short question on which the present petition was re-listed whether the Petitioner should have got her promotion as Junior Accounts Officer (JAO) with effect from the same date that 197 employees junior to her were appointed as JAOs. The contention was that she should have been promoted along with them by the OM dated 8th September, 1997, as by then the period of one year, for which she was

prepared to forgo her seniority, had already expired. It is on this specific aspect that the learned counsel for the Respondents was to obtain instructions and file a short response.

3. In the counter affidavit filed on 17th May 2017, it is pointed out that even officers senior to the Petitioner who declined promotion earlier, were not considered in the order dated 19th December, 1997, by which promotion was granted to officers junior to the Petitioner as JAOs in terms of the order dated 8th September, 1997. It is stated that while accepting the offer of the Petitioner to decline promotion for a period of one year from 5th July, 1996 it was stated that she would be considered for promotion to the date of JAO “after 1st July, 1997 subject to the availability of vacancy and with a further condition that she will lose her seniority which will be fixed with reference to her date of joining in the JAO cadre.” In other words, it is admitted by the Respondents that the claim of the Petitioner to be promoted matured after 1st July, 1997.

4. The explanation offered for not promoting the Petitioner in September, 1997 is that since her request for re-allotment was being considered in her home circle, i.e. Calcutta Telephones District and that since the strength in the said district in the grade of JAO ‘was almost saturated’ she could not be considered for re-allotment in her home circle in the year 1997. It is stated that her case was considered only in 1998 as soon as there was a vacancy and she was promoted as JAO by the order dated 6th November, 1998.

5. It transpires that the order dated 6th November, 1998 promoted the

Petitioner as JAO to the Corporate Office, MTNL in Delhi and not in Calcutta. Therefore, the excuse that the strength of the Calcutta Telephones district was almost saturated and it was not possible to promote the Petitioner in 1997 does not appear to be a satisfactory explanation for not considering the case of the Petitioner in September, 1997 itself, when as many as 197 persons were promoted as JAOs, who happen to be junior to the Petitioner.

6. When this matter came up for hearing again on 5th December, 2017 Respondent No. 2, BSNL again raised the issue of maintainability. It has been correctly noted by this Court by its order on that date that this objection had already been considered and rejected by the Court by its order dated 20th December, 2016. Nevertheless, permission was given to Respondent No. 2 to file a separate reply.

7. Pursuant thereto, a separate reply has been filed on behalf of Respondent Nos. 2, 3, 4, 7, 8 and 9. No new plea has been taken in this reply, except to state that the Petitioner by the order dated 6th November, 1998 was given promotion as JAO on a regular basis along with similar cases where promotion was declined on an earlier occasion, and posted to the Corporate Office, MTNL. It is pointed out that the said order mentioned that all the said JAOs including the Petitioner “will rank juniors to all JAOs promoted vide letter dated 19th December, 1997”.

8. The above explanation overlooks the fact that even according to the Respondents the one year period for which the Petitioner was willing to

forgo her seniority got over on 1st July, 1997 itself. Clearly, there were vacancies available as on that date, as is evident from the fact that 197 persons got promoted in September, 1997 and which orders have been again alluded to while making promotions of JAOs by the letter dated 19th December, 1997. In any event, with the Petitioner not getting promoted as JAO in Calcutta, the fact that there were no vacancies of JAOs in Calcutta could clearly have not come in the way of the Respondents considering her case for promotion when the case of 197 persons junior to her was considered.

9. The Court is informed that the Petitioner has superannuated on 30th November, 2018. The Court directs that her notional seniority will be fixed with effect from the date her juniors were promoted and all consequential benefits will be worked out on that basis. The consequential orders to this effect be passed not later than 8 weeks from today.

10. The petition is disposed of in the above terms. The pending application is also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 16, 2019

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