

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

C.WP.No.2488 of 2018 (O&M)
Reserved on : September 04, 2019
Date of decision: February 12, 2020

Dharam Pal

...Petitioner

Versus

Bharat Sanchar Nigam Limited and others

...Respondents

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

Present: Ms. Jyoti Sareen, Advocate
for the petitioner.

Mr. Rajesh Gupta, Advocate
for respondent Nos.1 to 4.

HARINDER SINGH SIDHU, J.

1. This petition has been filed impugning the order dated 24.10.2016 of Central Administrative Tribunal, Chandigarh Bench, whereby, OA No.060/00179/16 filed by the petitioner has been dismissed. The petitioner has also challenged the order dated 14.03.2017, whereby, his review application against the aforesaid order has also been dismissed.

2. The petitioner had filed the Original Application praying for quashing order dated 30.12.2015 vide which his claim for financial upgradation from E-4 IDA Scale to E-5 IDA Scale was declined on the ground that he had not undergone the E-3 to E-4 mandatory training of two weeks required for financial upgradation as per EPP guidelines and clarifications.

3. The petitioner was recruited as Junior Engineer in the year 1977. He came to the Department of Telecommunication on 16.03.1979.

He was promoted as Sub Divisional Engineer (S.D.E) on 03.08.1993 (E-2).

He was further promoted as Officiating Divisional Engineer Telecom (D.E.T) on ad hoc basis in the year 2002. He was absorbed in BSNL on 01.10.2000.

4. He got first Post Based Promotion (PBP) as D.E on ad hoc basis vide order dated 24.07.2008. He was granted first Time Bound Promotion (TBP) vide order dated 21.08.2008 w.e.f 06.09.2007. He submitted appeal claiming that he was entitled to the first Time Bound Promotion w.e.f 01.10.2004. The appeal was rejected vide order dated 30.04.2009.

5. Vide order dated 09.07.2011, the petitioner was convicted in a case under the Punjab Apartment and Property Regulation Act, 1995. On account of his conviction, he was placed under deemed suspension w.e.f 09.07.2011. Vide order dated 28.09.2012 penalty of compulsory retirement was imposed upon him. The penalty of compulsory retirement was set aside vide order dated 10.03.2014 of the CMD, BSNL. Consequently, order dated 01.01.2015 was passed whereby, the petitioner was deemed to have retired on 31.01.2014 on attaining the age of superannuation. He was to be entitled for regularisation of his pension and other retirement benefits as per Rules on the subject.

6. In the Original Application, it was pleaded on behalf of the petitioner that as per the Time Bound/ Post Based Executive Promotional Policy for Group-B level officers of BSNL dated 18.01.2007, Second Financial Upgradation is available to an employee on completion of five years of service in current IDA Scale. As per Clause (5)(f) of the Policy, two weeks training was prescribed for being eligible for drawal of second

increment in the upgraded IDA scale. The training was to be completed within a period of two years from the date of upgradation to the higher scale. It was the case of the petitioner that the second time bound promotion in DGM Scale (E-4) to (E-5) scale of Rs.16000/- to Rs.22300/- was due to him on 23.07.2013 but the same could not be granted in view of order dated 28.09.2012 imposing punishment of compulsory retirement on him. However, in view of subsequent order dated 01.01.2015, whereby, the order of compulsory retirement was set aside and the petitioner was deemed to have retired on attaining the age of superannuation w.e.f. 31.01.2014, he became entitled to the said upgradation from (E-4) IDA scale to (E-5) IDA scale, which was wrongly denied to him.

7. It was his case that he had not been deputed for training at any time after his Post Based Promotion vide order dated 24.07.2008 or Time Bound Promotion vide order dated 21.08.2008 w.e.f. 06.09.2007 therefore, the benefit of Second Financial Upgradation on account of his not having undergone the training could not be denied to him as he was not at fault in that regard.

8. The case of the respondents was that in the Time Bound Promotion Order (Annexure A-3), whereby, the petitioner and others were granted the IDA pay scale upgradation, it was clearly stipulated that every Executive whose pay is upgraded to the next higher IDA pay scale, will have to compulsorily undergo two weeks training for being eligible for drawal of Second Increment in the upgraded IDA scale. The training was to be completed within a period of two years from the date of issue of Time Bound IDA Scale upgradation order. The Executive who failed to undergo the prescribed two weeks training would not be eligible for consideration of

next IDA scale upgradation even if he/she was otherwise eligible for the same. It was further the case of the respondents that as per practice / norms the officer promoted on Post Based Promotion or after getting financial upgradation on Time Bound Promotion had to submit an application to the Cadre Section for nominating his name for mandatory training. The petitioner while posted as D.E.(Administration), Hoshiarpur had himself forwarded letter dated 19.03.2009 (Annexure R-2) to all Divisional Engineers/ Chief Accountant Officers under his own signatures regarding deputation of Executives for mandatory training. As per this letter, it was the obligation and responsibility of the Officer/Executive getting financial upgradation to be aware of the fact that he is required to undergo the mandatory training and he was required to intimate this to the concerned Training Coordinator and any failure on part of such Officer would render him personally liable for stoppage of any future increment for not attending the mandatory training. It was thus pleaded that the petitioner, being fully aware of the requirement to apply for mandatory training, could not plead that he was not at fault in not undergoing the training.

9. Quite contrary to his stand in the OA, the petitioner filed rejoinder relying on a document Annexure A-9 downloaded from the website of the respondents stated that he had undergone the two weeks mandatory training from 15.12.2008 to 27.12.2008. He further relied on clarification dated 13.04.2010 (Annexure A-6) to contend that only one training of two weeks was required to be undergone either after Post Based Promotion or after financial upgradation under the Time Bound Promotion policy. As the petitioner had undergone such training for two weeks as evidenced by document Annexure A-9, he was entitled to Second Financial

Upgradation from E-4 to E-5 IDA Scale which had been wrongly denied to him.

10. Taking note of the contradictory stand of the petitioner, wherein, in the OA he had pleaded that he could not be blamed for not undergoing the training as he had not been deputed for the same and his subsequent claim in the rejoinder that he had already undergone the training from 15.12.2008 to 27.12.2008 as evidenced from the document Annexure A-9, the Ld. Tribunal held that the petitioner could not take a stand in the rejoinder completely contrary to his stand in the OA. The Tribunal also found that the document Annexure A-9 did not substantiate the claim of the petitioner that he had undergone the training. Firstly, the name of the petitioner was not mentioned in the said document. The staff number of the employee who undertook the training was mentioned as 197900114, whereas in the promotion order dated 24.07.2008 and in the financial upgradation order dated 21.08.2008 the staff number of the petitioner was mentioned as 14927. The Ld. Tribunal concluded that document Annexure A-9 did not pertain to the petitioner. Further, the document Annexure A-9 pertained to upgradation training of E-2 to E-3, whereas, as per the order Annexure A-1, the petitioner was required to undergo training qua E-3 to E-4 upgradation. Thereby, it was concluded that the petitioner was not eligible for further financial upgradation from E-4 IDA Scale to E-5 IDA Scale. The OA was dismissed.

11. After the order of the Tribunal, the petitioner applied under the Right to Information Act, 2005 before the Chief General Manager (Telecom), Punjab Telecom Circle, Bharat Sanchar Nigam Limited, Hoshiarpur – respondent No.3 and was supplied the copy of his service

book which contained an entry regarding his having undergone the two weeks training. The respondents also supplied a copy of his service book where his staff number was mentioned as '197900114'. Relying on these documents the petitioner filed a Review Application No.060/00059/2016 before the Tribunal for review of its earlier order dated 24.10.2016 contending that the OA had been wrongly dismissed on the ground that the document Annexure A-9 did not relate to the petitioner.

12. The Review Application was dismissed by the Tribunal holding that there was no reason to differ from the conclusion made in the order dated 24.10.2016 that “it is thus manifest that the applicant has not undergone the mandatory training of two weeks. Consequently, he was not eligible for further financial upgradation from E-4 IDA Scale to E-5 IDA Scale.”

13. We have heard Ld. Counsel for the parties.

14. The case centres around the Instructions contained in the Office Memorandum dated 18.01.2007 and the subsequent clarification dated 13.04.2010. The relevant extracts from the OM Dated 18.01.2007 are as under:

“Time Bound IDA Scale up-gradation Policy.

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3. *Qualifying Service Conditions:*

3.1 *First Upgradation :* *The FIRST UPGRADATION of IDA Scale of individual Executive will be due for consideration on completion of 4 (Four) years of Service in the current IDA Scale subject to the condition that the Executive's basic pay in the current IDA scale has cross/touched the lowest of the highest IDA scale for which his/ her upgradation is to be considered OR he/ she has completed 6 (six) years of service in*

the current IDA scale, whichever is earlier.

3.2 SUBSEQUENT Upgradation: *The subsequent upgradation of IDA scale to the next higher IDA scale will be due on completion of 5 (Five) years of service in the current IDA scale.*

4. *The qualifying service conditions indicated in sub para 3 above will only enable the Executive for “consideration” for upgradation to next higher IDA scale. Completion of such period alone shall not be entitle any Executive for automatic upgradation to the next higher IDA scale.*

5. *The service rendered by any Executive in existing IDA pay scale in BSNL will only be counted for upgradation to next higher IDA scale.*

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f. Training: *Every Executive whose pay is upgraded to next higher IDA pay scale will have to compulsorily undergo TWO weeks of training (one Week in Administration/ Management/Customer Care and One week in latest developments in Core Competence Area) for being eligible for drawal of SECOND increment in the upgraded IDA scale i.e the training is to be completed within a period of two years from the date of the upgradation to the higher scale. The Executive who fails to successfully undergo the prescribed TWO weeks training will not be eligible for consideration of next IDA Scale upgradation even if he/she is due for upgradation otherwise. The detailed instructions with regard to training shall be issued by the training branch of BSNL.”*

The communication/ Instructions dated 13.04.2010 (A-6) issued by BSNL to all Heads of Telecom Circle is as under:

“The matter has been re-examined in consultation with Establishment & Training Branch of this office and it is clarified as under:-

“Two weeks training prescribes under Promotion Policy is mandatory only on one occasion i.e either on Post based promotion or on financial upgradation on a particular grade, whichever happens to occur earlier. If an Officer gets his post based promotion earlier to time bound promotion he will be sent for the training within two years of such promotion and subsequently on time bound promotion he need not be deputed for training or vice versa.”

As per clause (f) of the Office Memorandum dated 18.01.2017, every Executive whose pay is upgraded to the next higher IDA pay scale is required to compulsorily undergo a two week training for being eligible for drawal of 2nd increment in the upgraded IDA scale. This training is required to be completed within a period of two years from the date of upgradation to higher scale. The official who fails to successfully undergo the two weeks training would be rendered ineligible for consideration for next IDA scale upgradation even if he or she is due for such upgradation.

15. As per the clarification dated 13.4.2010 the two weeks training provided under the policy dated 18.01.2007 was mandatory only on one occasion i.e. either on Post Based Promotion or on Financial Upgradation on a particular grade whichever happens earlier. If an officer gets his post based promotion prior to the Time Bound Promotion, he was to be sent for the training within two years of such promotion and subsequently, on time bound promotion he need not be put to training or vice versa.

16. The petitioner has taken inconsistent and contradictory stands in these proceedings. In the Original Application he had pleaded that it was the responsibility of the respondents to send him for training. The respondents having failed to do so, they could not insist on his having

undertaken the training for financial upgradation to the next IDA Scale. In the rejoinder, he relied on Annexure A-9 contending that he had in fact undergone the training. He referred to the clarification dated 13.04.2010 and contended that only one mandatory training of two weeks was required which he had successfully completed. Apart from holding that the petitioner had not proved that the document Annexure A-9 pertained to the petitioner, the Ld. Tribunal while dismissing the OA vide order dated 24.10.2016 referred to Annexure A-9 that it pertained to upgradation training from E-2 to E-3. The petitioner had not undertaken the E-3 to E-4 mandatory training which was required for financial upgradation from E-4 to E-5 IDA Scale.

17. The petitioner sought information under the RTI Act. He filed Review Application and annexed therewith relevant extracts from his service book to show that Annexure A-9 pertained to him. While dismissing the Review Application, the Tribunal after referring to the clarification dated 13.04.2010 relied on by the petitioner, held that as per this clarification the petitioner had to undergo the training at the time of each upgradation and not just once as contended by him.

18. In the Writ Petition, the petitioner has pleaded that the Tribunal has erroneously relied upon the clarification dated 13.10.2010 and the same is not applicable to the case of the petitioner for 2nd Time Bound Financial upgradation. It is contended that the policy circular dated 18.01.2007 is relevant only where an employee is granted Post Based Promotion and Financial Upgradation in a particular grade. As the petitioner is seeking 2nd financial upgradation from E-4 to E-5 after completion of 05 years in E-4 IDA Scale and had already undergone mandatory 02 weeks training at the

time of 1st Financial upgradation, it is not a case of Post Based Promotion and financial upgradation in a particular grade, as such Clause (b) (3.2) and (f) of the Instructions dated 18.01.2007 are applicable. It is contended that the petitioner has not availed financial upgradation from E-3 to E-4 Scale and no training was required as it was adhoc Post Based Promotion.

19. The contention of the petitioner cannot be accepted. As rightly held by the Ld. Tribunal the policy instructions dated 18.01.2007 and the clarification dated 13.04.2010, contemplate a mandatory training at the time of each upgradation and not just one training. As Annexure A-9 pertains to successful completion of E-2 to E-3 upgradation training from 15.12.2008 to 27.12.2008, it is clearly not relevant for financial upgradation from E-4 IDA Scale to E-5 IDA Scale.

20. Accordingly, there is no merit in the petition and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

February 12, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No