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

+ **Date of Decision: 02.08.2022**

% **W.P.(C) 8404/2020 & C.M. Nos. 27250-27251/2020, 31022/2020 & 2074/2021**

RAJESH KUMAR SINGH Petitioner
Through: Mr. Tripurari Ray, Mr. Anirudh Ray,
Advocates.
versus

UNION OF INDIA
THR ITS CHAIRMAN & ORS. Respondents
Through: Ms. Monika Arora, Mr. Yogesh
Panwar, Mr Balkrishan Sharma,
Advocates for respondents/ UOI.
Mr. S.K. Gupta, Advocate for
respondent No.4/ MTNL.
Mr. Vivek Gurnani, Advocate for
Mr.Zoheb Hossain, Advocate for
Applicant – Indian Telecom Services
Association in C.M. No. 2074/2021.

% **W.P.(C) 8641/2020 & C.M. Nos. 27822-24/2020**

VIJAY PRATAP SINGH Petitioner
Through:
versus

UNION OF INDIA THR ITS CHAIRMAN & ORS. Respondents
Through: Ms. Monika Arora, Mr. Yogesh
Panwar, Mr Balkrishan Sharma,
Advocates for respondents/ UOI.
Mr. S.K. Gupta, Advocate for
Respondent No.4/ MTNL.



CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SATISH CHANDRA SHARMA, C.J. (ORAL)

1. Regard been had to the similarity in the controversy involved in both the matters, they were anomalously heard together and are being disposed of by a common order.
2. The facts of W.P.(C.) No. 8641/2020 are as under.
3. The present petition is arising out of order dated 15.09.2020 passed by the Central Administrative Tribunal (CAT) in O.A. No.1099/2020 titled *Shri Vijay Pratap Singh Vs. Union of India & Others*.
4. The facts of the case reveal that the petitioner before this Court/ Shri Vijay Pratap Singh – a member of the Indian Telecom Services (ITS), has joined the ITS in the year 1989. He was holding the post of Director (Operations) in Bharat Broadband Network Limited, New Delhi at the relevant point of time when the Original Application was preferred.
5. The undisputed facts of the case reveal that the Department of Telecommunication (DOT) issued an Office Memorandum dated 12.05.2020 in respect of appointment to the post of Chairman & Managing Director (CMD), Telecommunications Consultants India Limited (TCIL) on deputation/ immediate absorption basis. The Government of India, Ministry of Telecommunication constituted a Selection Committee for the post and the notification issued by the DOT prescribing qualifications for the post reads as under:



“3. Qualification:

The applicant should be a graduate with good academic record from a recognized University/ Institution.

4. Experience:

The applicant should have adequate experience at a senior level of management in a large organization of repute.

Applicants with experience in Finance/Marketing/ Production will have added advantage.

5. Pay scale:

(a) Central Public Sector Enterprises

Eligible Scale of Pay

(i) Rs.8250-9250 (IDA) Pre 01/01/1992

(ii) Rs.11500-13500 (IDA) Post 01/01/1992

(iii) Rs.23750-28550 (IDA) Post 01/01/1997

(iv) Rs.62000-80000 (IDA) Post 01/01/2007

(v) Rs.150000-300000 (IDA) Post 01/01/2017

(vi) Rs.22400-24500 (CDA) Pre-revised

(vii) Rs.67000-79000 (CDA) Post 01/01/2006

(viii) Rs.182200-224100 (Level 15-CDA)

The minimum length of service required in the eligible scale will be one year for internal candidates, and two years for others as on date of vacancy.

(b)

(i) Applicants from Central Govt. / All India Services should be holding a post of the level of Additional Secretary in Govt. of India or carrying equivalent scale of pay on the date of application.

(ii) Applicants from the Armed Forces of the Union should be holding a post of the level of Lt. General in the Army or equivalent rank in Navy/Air Force on the date of application.



(c)

Applicants from State Public Sector Enterprises/ Private Sector should be working at Board level position on the date of application.”

6. The aforesaid notification makes it very clear that one of the mandatory qualifications prescribed for the post as contained under Clause 5 (b)(i) provides that the “*Applicants from Central Govt./ All India Services should be holding a post of the level of Additional Secretary in Govt. of India or carrying equivalent scale of pay on the date of application*”.

7. The contention of the petitioner is that though he was serving on the post of Director (Operations), he was enjoying the pay scale of Rs.182200-224100 and, therefore, he is entitled to be considered for the post of Chairman & Managing Director, TCIL.

8. The Tribunal has dismissed the said Original Application, and the paragraphs 7 to 15 of the order passed by the Tribunal read as under:

“7. From a perusal of this, it is evident that the qualifications are stipulated in terms of (a) educational qualifications (b) experience (c) and the nature of post held or scale of pay drawn by the applicants. A distinction needs to be maintained here. As regards Central Government officers, the stipulation under clause 5 (b)(i) is to the effect that the applicants should be holding a post of the level of Additional Secretary in Government of India or the one “carrying equivalent scale of pay on the date of application”. For the officers working in CPSE, the stipulation is under clause 5 (a) in terms of the pay scale.

8. What is prescribed for the applicants from Central Government / All India Services is in terms of the level of the post, i.e., Additional Secretary. The expression “equivalent



scale of pay on the date of application” refers to the other equivalent posts, and it is not in terms of the salary drawn by the applicants. For example, there may be a post in the Central Government with a description other than that of Additional Secretary carrying equivalent scale of pay. Such candidates are eligible to apply. However, if an officer, not being an Additional Secretary is drawing an amount or salary equal to that of the Additional Secretary, a serious doubt, in fact, arises. The rule making authority has employed the word “carrying” and not “drawing”. While the former is referable to the post, the latter is referable to the individual, holding the post.

9. *It is no doubt true that the applicants are drawing the scale, which is almost equivalent to the one, attached to the post of Additional Secretary. However, it is not in dispute that the posts held by them do not “carry” a scale of pay of Additional Secretary. The applicants are allowed the scale of pay on NFU basis, and incidentally that is equivalent to that of Additional Secretary. The pay attached to the post, substantially held by the applicant is for less.*

10. *The Scheme of NFU was introduced in the year 2009. According to this, if an IAS officer of a particular year is promoted to a higher level, other Group ‘A’ officers of organised services, who are seniors to him by two years shall also be allowed the same scale of pay, on NFU basis. Similar facility is provided at other levels also. This is almost an ‘anti stagnation measure’. Two important conditions are imposed while allowing NFU. They read as under:-*

“(i) The upgradation granted under these orders are purely non-functional upgradation personal to the officer and it does not bestow any right to the officer to claim promotion or deputation benefits based on nonfunctional upgradation in such a manner.

(ii) Pay fixation on grant of non-functional upgradation under these orders has to be done as



per the provisions of CCS (RP) Rules 2008. At the time of regular promotion to this grade, the pay need not be fixed again for the officers who have been granted upgradation under these orders. The officers may exercise their option from fixation of pay under relevant provision of FR 22 (i) (a) (1) within one month from the date of issue of this order.”

11. The effort is to ensure that the NFU is not treated as equivalent to that of promotion to the higher post. The instances of an employee drawing the scale of pay attached to a higher post, even while he occupies a lower post, are not uncommon. For instance, an Assistant Engineer in CPWD would be extended the pay scale of next higher post in case he could not get promotion for want of vacancy, even while otherwise being eligible. In such cases, he would continue to draw the same pay scale, even after he gets regular promotion. However, as long as he draws higher scale of pay even while continuing in the lower post, it cannot be said that the post carries the same scale of pay as that of higher post.

12. It may be true that on the previous occasions, the candidates, who were drawing pay scale attached to the post of Additional Secretary, albeit on NFU basis were called for interview. The respondents, however, stated that it was a mistake and that there are no instances of such persons being selected or appointed.

13. Learned counsel for applicants has relied upon the judgments of Hon'ble Supreme Court in support of the proposition that the Selection Committee cannot alter the Rules in the process of selection. We do not find any instance of the respondents altering or modifying the criteria for selection.

14. We do not find any merit in these O.As. They are accordingly dismissed.

15. All the M.As. in respective O.As. shall stand disposed of. There shall be no order as to costs. ”



9. The undisputed facts of the case reveal that the petitioner before this Court was granted the pay scale of the post of Additional Secretary not on account of promotion but he was granted Non-Functional Upgradation (NFU) on account of a scheme introduced by Government of India in the year 2009. The Scheme of the Government of India provides that in case an IAS officer/ officer of a particular year is promoted to a higher level, other Group-A Officers of organized services, who are senior to him by two years shall also be allowed the same scale of pay, on NFU basis. The aforesaid benefit of pay scale is anti-stagnation measure and the conditions which govern the NFU make it very clear that NFU is not treated as equivalent to promotion to that higher post.

10. Undisputedly, the petitioner was not holding the post of Additional Secretary though a higher pay scale has been granted to him, on NFU basis. Therefore, in the considered opinion of this Court, the Tribunal was certainly justified in holding that the petitioner was not in the pay scale of Additional Secretary and he was not holding the post of Additional Secretary or post equivalent to Additional Secretary, and is not entitled to be considered for the post of CMD.

11. Learned counsel for the petitioner has vehemently argued before this Court that in the preceding years, certain persons – who were granted the pay scale of Additional Secretary on NFU basis, were called for interview. The order of the CAT makes it very clear that the respondents have categorically stated that it was mistake in the past and there are no instances of such persons being selected or appointed. Otherwise also, in case the arguments advanced by learned counsel are accepted, it will create anomaly



in the matter of appointment as some of the persons – who are not in the level of Additional Secretary or who are lower in rank, will be entitled for interview and the persons – who are holding equivalent rank and post who have not been granted NFU, will be deprived of their right to participate in the process of selection.

12. The petitioner – who was Director (Operations) at the relevant point of time, is certainly not at all entitled to be considered for the post of Chairman & Managing Director as he was not holding a post of the level of Additional Secretary, nor is he holding any other equivalent post carrying equivalent scale of pay on the date of application. The benefit of grant of NFU will not certainly upgrade the post which the petitioner was holding at the relevant point of time as it is a financial upgradation only granted to the petitioner keeping in view the anti-stagnation measure introduced by the scheme of NFU in the year 2009.

13. This Court do not find any reason to interfere with the order of the CAT. The writ petition is, accordingly, dismissed.

14. In the light of the aforesaid, the other connected petition being W.P.(C) 8404/2020 also stands dismissed.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J.

AUGUST 02, 2022

B.S. Rohella