

CENTRAL ADMINISTRATIVE TRIBUNAL

(OA) Original Appl./3609/2012

JUDGEMENT

Central Administrative Tribunal
Principal Bench, New Delhi.

OA No.3609/2012

MA No.3058/2012

MA No.2323/2013

New Delhi this the 11th day of March, 2014

Hon ble Mr. G. George Paracken, Member (J)

Hon ble Mr. Shekhar Agarwal, Member (A)

1. M.P. Shrivastava

S/o Shri Nathu Ram

R/o B-121/1, Street No.9,

Bhajanpura,

Delhi-110053.

2. Laxmi Narain

S/o Late Shri Shiv Rattan

R/o C-457, Brij Vihar,

Ghaziabad, UP.

3. M.A. Rahman

S/o Mohammed Ghalib

R/o H.No.9-4-87-B/One

Toli Chouki Minar Colony,

Hyderabad.

4. Amar Chand

S/o Jawala Prasad

R/o Quarter No.1, A-Type-III,

Indirapuram,

GMS Road,

Dehradun.

..Applicants

By Advocate Shri M.K. Bhardwaj.

Versus

Union of India & Others through :-

1. The Secretary,

Govt. of India,

Ministry of Communication & IT,

Sanchar Bhawan, New Delhi.

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7. We have heard both the parties and perused the material produced on record.

8. The first ground taken by the applicants is that the respondents have discriminated against those who are working in the Department of Posts by withdrawing this benefit from them but have given relaxation to other similarly placed officers who are working with the Department of Telecom. The respondents in their reply have stated that the one time relaxation was granted only to those employees who have been absorbed in BSNL/MTNL and are now PSU employees. This relaxation has been given to them on the basis of representations submitted by the Executive Association of BSNL. They have denied that this is a violation of Articles 14 and 16 of the Constitution of India because the applicants have been discriminated against.

9. We have perused the O.M. dated 30.03.2007 by which this relaxation has been granted. This O.M. reads as follows:-

Subject : Grant of 2nd ACP to Civil Wing Officers - notice reg.

I am directed to refer to this office O.M. dated 8.11.2006, under which a notice has been issued for withdrawal of 2nd ACP granted by DOT vide Orders No.3-1/2000-CWG dated 16.09.2002, 24.04.2003, 01.09.2003 & 20.02.2004 respectively, to Civil Wing officers, not meeting the educational qualifications as prescribed in the relevant Recruitment Rules.

2. The representations received have been carefully examined. Keeping in view of the fact that most of the officers have already availed the benefit, stand absorbed in BSNL/MTNL and are PSU employees at present, it has been decided not to withdraw the 2nd financial upgradation under ACP scheme granted to the officers up to 20.2.2004 i.e. prior to issue of Presidential Order for permanent absorption of Group B officers in BSNL/MTNL. This is being ordered as one time measure to mitigate the hardship to the officers on withdrawal at this stage and not to be construed as general relaxation.

3. Accordingly, in respect of the officers covered under para 1 above, the 2nd financial upgradation under ACP scheme granted by DOT shall be regulated as under:-

(i) If the officer absorbed in BSNL, opts to avail 2nd Financial upgradation under ACP scheme granted by DOT, he/she shall have to forego the 1st IDA pay scale upgradation as on 1.10.2004 or later in terms of para 7 of promotional policy for Group B level officers of BSNL circulated vide O M No. 400-61/2004-Pers.I/308 dated 18.1.2007.

ii) On acceptance of 2nd ACP these officers will be considered for subsequent IDA pay scale upgradation only after completion of 5 year service in the current IDA scale as provided in para 1(I)(b)(3.2) of the Executive Promotional Policy of BSNL for subsequent IDA pay scale upgradation.

4. In respect of officers absorbed in MTNL, the same shall be regulated as per the Executive Promotion Policy of MTNL.

The respondents counsel argued that this relaxation granted to BSNL/MTNL employees was further subject to the conditions mentioned in Para-3(i) & 3(ii) of the above quoted O.M.

10. The applicants were granted the second ACP benefit along with other 102 officers when they were working under the undivided Department of Telecom Services. Subsequently, the department split into two

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i.e. Department of Posts and Department of Telecom. The applicants went to the Department of Posts whereas the others went to Department of Telecom and were subsequently absorbed in BSNL/MTNL. However, on the dates on which ACP benefits were granted all of them were similarly placed and working under Department of Telecom services. In our considered opinion, the relevant date for deciding whether the applicants and the other 102 officers are similarly placed or not is the date on which ACP benefit was granted to them and not the date on which the impugned orders were passed. Moreover, the fact that these 102 officers got absorbed in BSNL/MTNL is not relevant for the purpose of ACP benefit and consequently the distinction made by the department for treating their cases separately is also not relevant. There is no nexus between grant of ACP and subsequent absorption of some of these officers in BSNL/MTNL. As such this classification cannot be termed as reasonable. Even the fact that there were some conditionalities attached to the relaxation given not material. We, therefore, come to the conclusion that the respondents have erred by treating the case of the applicants differently from those who got absorbed in BSNL/MTNL. In our opinion, this constitutes a case of discrimination.

11. The respondents have also completely ignored the instructions of Government of India issued on 26.05.1977 by which diploma in Engineering with 10 years of technical experience has been recognized as equivalent to degree in Engineering. The respondents reply is silent on this issue. The applicants have also relied upon the ruling in the case of Narendra Singh Yadav, CWP No. 5203 of 2010 decided on 23.01.2012 in which the Hon ble High Court of Punjab & Haryana has allowed the petition on the grounds that diploma with ten years experience is equivalent to degree in Engineering based on the same instructions of Government of India.

12. The respondents, on the other hand, have cited the judgment of Hon ble High Court of Delhi in Writ Petition (C) No. 1293/2011 (UOI & Ors. Vs. S.C. Surliya & Ors.) decided on 16.10.2012 in which the argument of UOI has been accepted that the respondent did not have degree in Civil Engineering and therefore cannot be considered for promotion as Executive Engineer (Civil) since he was not holding a regular post of Assistant Engineer on or before 06.08.1994 i.e. the date on which the new Recruitment Rules came into force. However, we do not think that this citation would be helpful in the instant case because the issue of recognizing diploma with ten years experience as equivalent to degree was not agitated before the Hon ble High Court at all.

13. The applicant have also argued based on a number of citations that even if ACP benefit is withdrawn from them, recovery of excess amount cannot be made. In this regard, they have annexed with their O.A. the judgment of this Tribunal passed in OA-2904/2011 dated 23.12.2011 in the case of Officers Association of AIIMS & Ors. Vs. AIIMS & Ors. in which after analyzing various judgments such as (i) Shyam Babu Verma & Ors. Vs. UOI & Ors., JT 1994(1) SC 574; (ii) Babulal Jain Vs. State of M.P. & Ors., (2007)6 SCC 180; (iii) SK. Abdul Rashid & Ors. Vs. State of Jammu & Kashmir & Ors., (2008) 1 SCC 722; and (iv) UOI & Anr. Vs. Narendra Singh, (2008) 1 SCC (L&S) 547, it was held that the settled law is that the recovery of the amount already paid to the applicants cannot be made because the excess payment was not made on account of any misrepresentation of facts or fraud committed by the applicants. In the instant case also the mistake, if any, occurred on the part of the respondents and the applicants were in no way responsible for the same.

14. In the circumstances, we quash the impugned order dated 20.07.2012 by which the benefit of second ACP Scheme has been withdrawn from the applicants. We also quash the order dated 25.07.2012 by which recovery of excess payment from the applicants has been ordered. We direct that the applicants may be considered for grant of this benefit in terms of Government of India Instructions dated 26.05.1977 by which diploma in Engineering with ten years technical experience has been recognized as equivalent to degree in

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Engineering, keeping in mind that this benefit has not been withdrawn from those similarly placed 102 officers who have got absorbed in BSNL/MTNL. We further direct that, in any case, recovery of any excess payment will not be made from the applicant. The O.A. is accordingly allowed. There shall be no order as to costs .

4. In view of above, this OA is also allowed. Consequently, we declare that the Applicants are entitled to be considered for grant of 2nd financial upgradation in the next higher scale of Rs.10000-15200 with effect from the date of completion of 24 years of regular service. The Respondents shall, therefore, consider the case of the Applicants in the light of the aforesaid order of this Tribunal and if they are found covered, they shall also be granted the 2nd financial upgradation in the scale of Rs.10000-15200 with effect from the date they have completed 24 years of service. The aforesaid directions shall be complied with, within a period of 2 months from the date of receipt of a copy of this order.

5. There shall be no order as to costs.

(Shekhar Agarwal) (G. George Paracken)

Member (A) Member (J)

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