

CENTRAL ADMINISTRATIVE TRIBUNAL

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MADRAS BENCH

DATED THIS THE 23rd DAY OF FEBRUARY, TWO THOUSAND TWELVE

PRESENT:

THE HON'BLE MR. B. VENKATESWARA RAO, MEMBER(J)

THE HON'BLE MR. R. SATAPATHY, MEMBER(A)

OA.441/2010

S. Ganesh
working as Junior Accounts Officer,
Southern Telecom Region,
Guindy, Chennai 600 032.

...Applicant

versus

Bharat Sanchar Nigam Limited
rep., by its Chairman, Managing Director,
Corporate Office, Statesman House,
148, Barakhamba Road,
New Delhi 110 001.

...Respondents

By Advocates: M/s Karthik & Mukundan, for the applicant.
Mr. M. Govindaraj, for the respondents.

ORDER

(pronounced by the Hon'ble Mr. R. Satapathy, Member(A))

The above OA is filed by the applicant under Sec.19 of the
Administrative Tribunals Act, 1985 seeking the following reliefs:-

"To declare Clause 3.1 of the OM No. : Order No.400/61-2004-
Pers.I, dated 18.01.2007, issued by Joint Deputy Director
General on behalf of the Ist Respondent, in so far as it
prescribes that 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 crossed / touched the lowest of the higher IDA scale
for which his / her upgradation is to be considered, as
unconstitutional, void, as it is violative of Article 14 & 16 of the
Constitution of India and consequently direct the respondents to
consider and grant the applicant the first upgradation w.e.f. the
date of completion of 4 years in the current IDA pay scale with
all monetary and other benefits flowing therefrom and pass such
further or other orders as may be deemed fit and proper"



2. Shri S. Karthik Rajan, learned counsel, appeared for the applicant and Shri M. Govindaraj, learned counsel, appeared for the respondents.

3. The learned counsel for the applicant has attacked Clause 3.1 of the OM No. Order No.400/61-2004-Pers.1, dated 18.1.2007 issued by the Joint Deputy Director General in so far as it deals with the Time Bound/post based executive promotion policy Group 'B' Officers of the BSNL (Annexure A1).

4. The learned counsel for the applicant states that the provision contained in Clause 3.1 is arbitrary and violative of Art.14 & 16 of the Constitution inasmuch as it introduces two sets of eligibility criterion. According to the learned counsel for the applicant, if this condition is allowed to continue, there will be a possibility that a junior in the same cadre will get upgradation first as compared to his seniors in the same cadre.

5. The respondents have entered appearance and filed a reply statement but there is nothing in the reply to justify that there can be two liability criterion for grant of upgradation.

6. Now let us consider the rival claims.

7. For the purpose of clarity, we would like to quote here the impugned provision of the OM dated 18.1.2007.

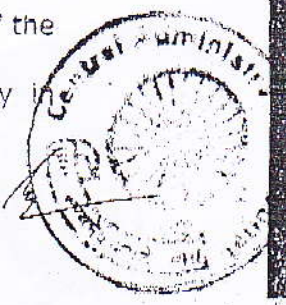
"3.1 FIRST Upgradation: The FIRST UPGRADATION of IDA Scale of individual Executive will be due for consideration on completion of 4 (Four) years of Service in the current IDA scale subject to the condition that the Executive's basic pay in the current IDA scale has crossed / touched the lowest of the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



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8. A reading of the above provision would reveal that the Group B officers in the cadre of BSNL will be eligible for time bound IDA scale upgradation to the executive scale on completion of four years of service in the current IDA provides that he has touched the minimum of the next IDA scale. The second criterion is that all other officers will be considered for grant of upgradation when they complete six years of service. The learned counsel for the applicant has vehemently argued that in matter of upgradation, the element of pay scale is not taken into consideration since the purpose of time bound IDA scale upgradation is meant to relieve stagnation in the same cadre. All those who are stagnating should be treated equally. Dividing the same class of people into two groups based on pay scales in the existing IDA scale and giving preference to certain people who may have reached higher pay scales on completion of four years is arbitrary. The respondents have not produced any authority to make such a classification. It is true that a reasonable classification can be made to achieve certain purposes. But in the instant case, fixing up of four years and six years service for determining eligibility for upgradation for Group A officers does not appear to be based on intelligible differentia.

9. We have carefully gone through the pleadings and the detailed written submission furnished by the respondents. However, the respondents have not been able to justify how a discriminatory provision having an element of pay scale can be justified to deny the benefit of upgradation to the senior in the same scale. Therefore, we agree with the learned counsel for the applicant that Clause 3.1 of the OM dated 18.1.2007 which is extracted above is discriminatory in nature and therefore it should go.



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(A)

10. The learned counsel for the applicant has filed written arguments and placed reliance on the Judgement of the Hon'ble Supreme Court in the case of State of Orissa and another vs. N.N. Swamy and others reported in 1997 (2) SCC 508. The learned counsel for the respondents has also filed written submissions.

11. A perusal of the above Judgement cited by the learned counsel for the applicant would reveal that the prescribing qualification, experience and other requisite conditions for appointment and promotion cannot be discriminated in the same category of people.

12. In the instant case also we find that the applicant has been prescribed six years as eligibility for upgradation but have introduced another category of people who have completed four years for becoming eligible for promotion on the ground that they have reached the lowest of the next IDA scale. This differentiation of six years and four years based on salary does not serve the purpose for removing stagnation which is the intention of the Scheme that has been introduced. Any Government order should not suffer from arbitrariness. The arbitrary division of six years and four years based on scale of pay will definitely violate Art.14 & 16 of the Constitution.

13. For the aforesaid reasons and placing reliance on the above mentioned Judgements of the Hon'ble Apex Court, we set aside Clause 3.1 of the OM dated 18.1.2007 to the extent it refers to

"the grant of upgradation on completion of 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 crossed / touched the lowest of the higher IDA scale for his /her upgradation is to be considered".



14. The rest of the portion of the provision of Clause 3.1 will remain unaffected.

15. The OA is allowed to the extent indicated above with no order as to costs.



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Neeraj Kumar
DEPUTY REGISTRAR