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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A. 350/00098/2015

DATE OF HEARING : 09.08.2023

DATE OF JUDGMENT: 14.9.2023

Coram: Hon'ble Mr. Jayesh V. Bhairavia, Judicial Member

Hon'ble Mr. Suchitto Kumar Das, Administrative Member



In the matter of:

Ankur Kumar Singh, son of Shri Awadh Kishor Singh, aged about 39 years, working as Junior Accounts Officer in the office of DGM, ETP Circle, Optical Fibre Cable Project, P&T Housing Complex, Quarter No. 7 & 8, VIIM, CIT Scheme, Ultadanga Main Road, Kolkata-700067 and residing at Keshar Apartment, Block D9, Teghoria, 460, Jhautalla Road, Kolkata-700157.

.....Applicant

VS.

1. Bharat Sanchar Nigam Limited, through the Chairman & Managing Director, Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, 7th Floor, Harish Chandra Mathur Lane, Janpath, New Delhi-110001.

2. The Chairman & Managing Director, Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, 7th Floor, Harish Chandra Mathur Lane, Janpath, New Delhi-110001.

3. The Director (HR), Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, 7th Floor, Harish Chandra Mathur Lane, Janpath, New Delhi-110001.

4. The General Manager (FP), Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, 7th Floor, Harish Chandra Mathur Lane, Janpath, New Delhi-110001.

5. The Chief General Manager, Bharat Sanchar Nigam Limited, Eastern Telecom Project Circle, 2/5A, Judges Court Road, Kolkata- 700027.

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6. General Manager (Pers), BSNL, Bharat Sanchar Bhawan,
Harish Ch. Mathur Lane, New Delhi-1.

.....Respondents

For The Applicant(s): Mr. B. Chatterjee, Counsel
Mr. S. K. Datta, Counsel

For The Respondent(s): Mr. A. Sinha, Counsel
Mr. D. Mukherjee, Counsel



ORDER

Per: Hon'ble Suchitto Kumar Das, Administrative Member

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:

"(a) An order directing the respondents to quash and set aside the impugned Provisional Seniority/Gradation List in the Grade of JAO in BSNL dated 10.12.2014;

(b) An order directing the respondents to consider and dispose of the representation dated 27.12.2014 against the impugned Provisional Seniority list dated 10.12.2014 in accordance with law;

(c) An order directing the respondent authority to publish the final seniority list in the Grade of JAO after rectifying the provisional seniority list dated 10.12.2014;

(d) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. For the sake of clarity, facts in the case are delineated and discussed hereinunder :-

2.1 The applicant was a Junior Accounts Officer in BSNL at the time of filing this application. BSNL published the Recruitment Rules for the post of JAO on 31.08.2001. Method of recruitment prescribed for the said post is 50%

through direct recruitment, 40% through departmental promotion from the cadre of non-executives and 10% through promotion from the cadre of Sr. Accountants.

2.2 The process of recruitment was started by the respondent authority with a notification of examination for the cadre of direct recruitment to the post of JAO against 50% quota, who are later appointed to the post of JAO with the respondent authority in the year 2004. The promotion for the post of JAO from Internal Senior/Junior Accountants against 10% quota were finalized in the year 2006. Promotion against 40% quota was to be conducted through the process of screening examination (Part-I) and a final examination (Part-II) based on the results of Part-I examination.



2.3 As per the applicant, Part-I examination was held in 2005 but was cancelled and was conducted afresh in 2007. The results of this examination were declared in 2009 and Part-II examination was held in January, 2010. Results of Part-II examination were declared in January, 2010. Selected candidates were promoted against 40% quota to the post of JAO in June, 2010. The provisional seniority list of JAOs was published by the respondents on 10.12.2014.

2.4 The applicant who was promoted as JAO in June, 2010 made a representation to the authorities on 27.12.2014 that his seniority was wrongly fixed at sl. no. 1566 in the said provisional list placing him below the persons who were recruited/promoted as JAOs against vacancies which arose later than the vacancies against which the applicant was eventually promoted. He claimed seniority on the basis that the process of his promotion started in

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the year 2004 when the process of direct recruitment was initiated. Two promotion lists were notified on 15.01.2015 and 16.01.2015 in which the applicant's name did not find a place. An omnibus reply to representations made by JAOs promoted against 40% quota in June, 2010 was given by the respondent authorities that since the applicants were promoted in 2010, the benefits of DoPT OM dated 04.03.2014 issued in the wake of N.R. Parmar judgment of the Hon'ble Supreme Court was not available to them and their actual date of promotion was to be reckoned for determining the inter se seniority of direct recruitees and promotees as per rules in force in 2010.



3. Learned Counsel for the applicant submits that the applicant, who was a candidate for promotion against 40% quota, was denied the benefits of promotion till 2010 due to the inordinate delay in conducting the entire process of promotion which actually commenced in 2004 but went on till 2010. Learned Counsel vehemently submits that the applicant was in no way responsible for this delay and as per DoPT OM dated 04.03.2014, his seniority should have been fixed taking the recruitment year for the post of JAO as 2004 when the process of recruitment was initiated by the respondents. He further submits that since the seniority list of JAOs was published for the first time in 2014, the provisions laid down in N. R. Parmar judgment which came into force w.e.f. 27.11.2012 as per DoPT's OM dated 04.03.2014 were applicable to his case with respect to fixation of seniority.

Learned Counsel submits that a number of persons were appointed as JAOs either by promotion against 10% quota or by direct recruitment as a result of recruitment process initiated much after the initiation of the

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03.03.2008. The OM dated 03.03.2008 clarified that the rotational quota system for determining inter se seniority of direct recruits and promotees will be applicable by taking the date of appointment as the reference point. This was set aside by the Hon'ble Supreme Court in the judgment dated 27.11.2012 in *N. R. Parmar case* in which the Hon'ble Supreme Court ruled that the recruitment year and not the date of actual appointment to a post will be the reference point for determining the seniority of incumbents in a particular post. Following the judgment, DoPT issued an OM on 04.03.2014 cancelling its OM dated 03.03.2008 and stipulating that the recruitment year which was defined as the year in which the recruitment process is initiated will be the reference point for determining the inter se seniority. The OM also said that if the recruitment was initiated for one mode of recruitment for a particular post it would be deemed to have been initiated for all other modes of recruitment provided for that particular post. The provisions contained in this OM were made effective from 27.11.2012, i.e., the date of N. R. Parmar judgment.



5.2 In the instant case, the applicant had represented to the authorities that his seniority in the post of JAO should be fixed in terms of DoPT OM dated 04.03.2014. The respondents in their reply to this OA have categorically maintained that the provisions of OM of 04.03.2014 cannot be applied for determining the seniority of JAOs who were appointed as JAOs in 2010 or earlier, as the OM specifically states that it will be applicable after 27.11.2012.

5.3 Since the issue to be adjudicated in the instant case is applicability or otherwise of the provisions of DoPT OM dated 04.03.2014 in determining the inter se seniority of the applicant, it would be appropriate to reproduce below

the said OM in full :-

No. 20011/1/2012-Estt. (D)
Government of India
Ministry of Personnel, Public Grievances & Pension
Department of Personnel & Training

North Block, New Delhi,
Dated the 4th March, 2014

OFFICE MEMORANDUM

Subject: Inter se seniority of direct recruits and promotees - Instructions thereof

The undersigned is directed to refer to the subject mentioned above and to say that the fundamental principles of inter se seniority of direct recruits and promotees in Central Civil Services/posts were laid down in the Department of Personnel & Training (DoPT) O.M. No. 9/11/55-RPS dated 29.12.1959 which provided, inter alia, that the relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees, which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively, in the Recruitment Rules.

2. The carrying forward of unfilled slots of a vacancy year, for being filled up by direct recruits of later years, was dispensed with through modified instructions contained in DoPT O.M. No. 35014/2/80-Estt.(D) dated 7.2.1986 which provides that rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. The unfilled direct recruitment/promotion quota vacancies would be carried forward and added to the corresponding direct recruitment/promotion quota vacancies of the next year (and to subsequent years where necessary) for taking action for the total number of direct recruitment/promotion according to the usual practice. Thereafter, in that year, while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees, as determined according to the quota for that year, the additional direct recruits/promotees selected against the carried forward vacancies of the previous year, would be placed en-bloc below the last promotee/direct recruit, as the case may be, in the seniority list, based on the rotation of vacancies for that year.

3. All the existing instructions on seniority were consolidated by DoPT through a single O.M. No. 22011/7/86-Estt(D) dated 03.07.1986.

4. In view of divergent stance taken by different Ministries/Departments on interpretation of 'available direct recruits and promotees' in the context of O.M. dated 7.2.86, the DoPT had issued O.M. No. 20011/1/2006-Estt.(D) dated 3.3.2008 which provided that the actual year of appointment, both in the case of direct

recruits and promotees, would be reckoned as the year of availability for the purpose of rotation and fixation of inter se seniority.

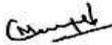
5. The matter has been examined in pursuance of Hon'ble Supreme Court Judgment on 27.11.2012, in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar vs. UOI & Ors In consultation with the Department of Legal Affairs and it has been decided, that the manner of determination of inter-se-seniority of direct recruits and promotees would be as under:

- a) DoPT OM No. 20011/1/2006-Estt.(D) dated 3.3.2008 is treated as non-existent/withdrawn *ab initio*;
- b) The rotation of quotas based on the available direct recruits and promotees appointed against the vacancies of a Recruitment Year, as provided in DoPT O.M. dated 7.2.1986/3.07.1986, would continue to operate for determination of inter se seniority between direct recruits and promotees;
- c) The available direct recruits and promotees, for assignment of inter se seniority, would refer to the direct recruits and promotees who are appointed against the vacancies of a Recruitment Year;
- d) Recruitment Year would be the year of initiating the recruitment process against a vacancy year;
- e) Initiation of recruitment process against a vacancy year would be the date of sending of requisition for filling up of vacancies to the recruiting agency in the case of direct recruits; in the case of promotees the date on which a proposal, complete in all respects, is sent to UPSC/Chairman-DPC for convening of DPC to fill up the vacancies through promotion would be the relevant date.
- f) The initiation of recruitment process for any of the modes viz. direct recruitment or promotion would be deemed to be the initiation of recruitment process for the other mode as well;
- g) Carry forward of vacancies against direct recruitment or promotion quotas would be determined from the appointments made against the first attempt for filling up of the vacancies for a Recruitment Year;
- h) The above principles for determination of inter se seniority of direct recruits and promotees would be effective from 27.11.2012, the date of Supreme Court Judgment in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar Vs. UOI & Ors

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- i) The cases of seniority already settled with reference to the applicable interpretation of the term availability, as contained in DoPT O.M. dated 7.2.86/3.7.86 may not be reopened.

7. As the conferment of seniority would be against the Recruitment Year in which the recruitment process is initiated for filling up of the vacancies, it is incumbent upon all administrative authorities to ensure that the recruitment process is initiated during the vacancy year itself. While requisition for filling up the vacancies for direct recruitment should be sent to the recruiting agency, complete in all respects, during the vacancy year itself, the timelines specified in the Model Calendar for DPCs contained in DoPT O.M. No.22011/9/98-Estt(D) dated 8.9.98 and the Consolidated Instructions on DPCs contained in O.M. No.22011/5/86-Estt(D) dated April 10, 1989 should be scrupulously adhered to, for filling up the vacancies against promotion quotas.


(Mukta Goel)
Director

Tele: No. 23092479



5.4 It is not in dispute that the seniority list of JAOs containing the name of the applicant was notified for the first time vide the Provisional Seniority List dated 10.12.2014. Thus, it is clear that the seniority of the applicant was determined on 10.12.2014, notwithstanding the fact that he was appointed as JAO in 2010. Para (h) of the OM quoted above says that the principles laid down in the OM for determination of inter se seniority of direct recruits and promotees would be effective from 27.11.2012. It, therefore, follows that the seniority of the applicant which was determined in 2014 should have been in consonance with the provisions of OM of 04.03.2014.



5.5 In this matter we are also guided by the conclusion reached by the Hon'ble Apex Court in its judgment in *Hariharan vs. Harshvardhan Singh Rao & Ors.* in *SLP (C) No. 16161 of 2018* where it was held that the N.R. Parmar (supra) is applicable to the case, as the inter se seniority of the direct recruits and promotees was determined in 2016 although both groups of officials were appointed to the post in 2010. For the limited purpose of applicability of the OM of 2014 issued after the N. R. Parmar judgment, the facts of the case in this OA is similar to the facts in the Hariharan (supra).

5.6 At this juncture, following facts are also taken note of. The applicant has been promoted to the post of AO in 2018 on the basis of the impugned seniority list. The judgment in N. R. Parmar case was overruled by a three-judge bench of the Hon'ble Supreme Court in *Meghachandran Singh case* in 2019. However, the judgment was given prospective effect from the date it was delivered. In 2022, the judgment in Meghachandran (supra) was held to be per-incuriam in *Hariharan (supra)* and was recommended for consideration by a larger Bench.

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5.7 As far as the instant case is concerned, given the timeline of the facts, issue to be adjudicated is whether the judgment in N. R. Parmar (supra) and DoPT OM of 04.03.2014 would apply in this case or not.

5.8 In the light of the discussions in para 5.5 and 5.6 above, we are of the considered opinion that the respondents have erred in not applying the provisions of DoPT OM of 04.03.2014 while determining the seniority of the applicant in the grade of JAO. Provisional seniority list dated 04.03.2014 and the letter of the BSNL authorities dated 30.01.2015 are accordingly set aside.

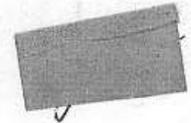


Respondents are directed to recast the seniority of the applicant in accordance with the principles laid down in DoPT OM dated 04.03.2014 and grant him all consequential benefits as a result of such exercise within a period of 04 (four) months from the date of this order.

It is made clear that in case the applicant is considered eligible for promotion from a date earlier than the date of his actual promotion, he will be entitled to notional benefits and not to any arrears of backwages for the period from his notional promotion to the date he actually took over the responsibilities of the higher post.

6. OA stands disposed of. No costs.


(Suchit Kumar Das)
Administrative Member
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(Jayesh V. Bhairavia)
Judicial Member