

NATIONAL COMMISSION FOR SCHEDULED TRIBES

File No. GSN/4/2010/MFIN9/SEPROM/RU-IV

Proceedings of the Sitting taken by Smt. K. Kamala Kumari, Hon'ble Member, NCST in the matter of Sh. G.S. Negi, Manager, MTNL regarding fixation of pay scale for the post of Manager and promotion.

Date of Sitting: 26.02.2014.

Lists of participants as **Annexure I**

A representation dated 03.02.2010 from Shri G.S. Negi, Manager, MTNL was received in the Commission regarding fixation of pay scale for the post of Manager and promotions and non implementation of Court directions by MTNL. The petitioner, Shri G.S. Negi has alleged in his representation that he joined MTNL in the year 1995 directly recruit as a Assistant manager (Legal) in Grade E-3 Rs. 5400-9050, and his pay was fixed in the pay scale vide order dated 17.03.1997 and same was revised to Rs. 13000-18250. Shri Negi has further mentioned in his representation that:-

- That he was promoted to the Post of Dy. Manager (Legal) on 20.04.1999 as per the draft Promotion Policy for Directly Recruited Executives but the higher pay scale was not granted as per DPE guide lines.
- That the he was again promoted to the post of Manager (Legal) on 23/05/2002 as per the draft Promotion Policy for Directly Recruited Executives approved by Board in its 161 meeting on 14.02.02 but here also higher pay scale was not granted as per DPE guide lines.
- Hon'ble High Court vide order dated 11.8.2003 in WP © 1029 of 1998, clearly mentioned inter-alia "*to my mind when the confusion is created by the respondent (MTNL) in their office why the Petitioner (G.S Negi) be denied the benefit of the pay scale when admittedly the petitioner was promoted as Dy.*

Manager in April, 1999. Therefore, Petitioner should be paid the pay scale of Rs. 14500-18700/- on promotion which he was entitled to and the same has also been admitted in para 9 of the reply filed by the respondent, from April, 1999 till his promotion in the month of May, 2002. Let respondent pay the petitioner from May, 2002 in the pay scale of Rs. 16000-20800/- as pray by the respondent (MTNL) in their reply provisionally" on second promotion.

- That MTNL had paid the pay scale Rs. 14500-18700/- on first promotion w.e.f April, 1999 to 23/5/02 and Rs. 16000-20800/- on second promotion w.e.f. 23/5/02 as per Hon'ble High Court order dated 11/8/03 to the petitioner till Nov. 2004 and released the arrears.
- That on 16.12.2004, MTNL has issued office order based on the Committee Report dated 7/11/03 and office order dated 15/16.12.03 in which management has downgraded one step below the pay scale of the Petitioner from the dated appointment.
- The Petitioner had challenged this office order dated 16.12.04, Committee Report dated 7/11/03 and office order dated 15/16.12.03 in which management has downgraded one step below the pay scale of the Petitioner's appointment by way of another writ petition bearing No. 19979 of 2004.
- That Hon'ble Court passed order vide dated 28/8/08 in W P © 19979 of 2004 and allowed this writ petition stating that Respondent/ MTNL can not sit in appeal over the previous order dated 11/08/03 passed by this Hon'ble Court and granted the pay scale of Rs. 14500-18700/- on first promotion as Dy. Manager (Legal) w.e.f April, 1999 to 23/5/02 and Rs. 16000-20800/- on second promotion as Manager(Legal) w.e.f. 23/5/02.
- That MTNL had filed an Appeal (LPA No. 644/08 in the matter of MTNL Vs G.S. Negi) before the High Court of Delhi. This MTNL appeal was dismissed dated 14/05/09 by Divisional Bench, Delhi High Court and upheld the single judge order and also clearly mentioned in para 10 of the order that "it was, thus, clearly now impermissible for the appellants (MTNL) to rely on an office order dated 08/09/2008 (i.r.o re-designation of Executives in MTNL is not applicable to the Petitioner) to contend and urge that Grade E-4 was for the post of manager which fell in the pay scale of Rs. 14500-18700/-".

K. Kamaladevi

के० कमला कुमारी / K. KAMALA KUMARI
सदस्य / Member
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

2. The NCST called for comments vide letter dated 11.02.2010. MTNL vide letter dated 16.04.10 informed that an SLP No. 11037 of 2010 has been filed in Hon'ble Supreme Court of India and any further action can be taken only after disposal of the SLP and had stated that the matter is sub-judice and no action can be taken at this Stage. The petitioner was informed vide letter dated 29.04.2010. The petitioner Shri Negi filed rejoinder dated 03.05.2010. The rejoinder was forwarded to MTNL vide NCST letter dated 17.08.2010.

3. MTNL vide letter No. MTNL/CO/Pers-II/1(110)/2004/Pt.file Legal Cell/2010-11 dated 06.01.2011 (**Annexure – II**) and copy was given to petitioner on 08.06.2011.

4. Shri Negi filed another rejoinder and representations dated 03.05.2010, 03.06.2011, 16.05.2013 and 03.01.2014 for his promotion as per the directly recruited promotion policy approved by the Board in the year of 2002 which the MTNL is not implementing the direction dated 16.01.2013 of the Hon'ble Supreme Court of India SLP No 11037 of 2010 mentioning inter-alia that "we are not inclined to interfere with the impugned order passed by the learned Single Judge as also by the Division Bench.

"It has also been brought to our notice by Mr. V. Shekar, Ld. Senior Counsel appearing on behalf of the respondent that the respondent has been kept in state of limbo since 2003, in that his future pay-scales have neither been fixed nor any emoluments have been paid to him. If that be so, we direct the petitioner MTNL to take necessary decision to release the benefits of the respondent within a period of four months today".

5. The petitioner met the Hon'ble Vice Chairperson and submitted representation vide dated 03.01.2014 and requested for further promotion as per the directions of the Hon'ble Supreme Court of India. Hon'ble Member Shri K. Kamala Kumari fixed a Sitting on 26.02.2014 for discuss the matter with MTNL, New Delhi.

DISCUSSION

I.a. The petitioner Shri G.S. Negi was given an opportunity to explain his case. The petitioner said that he was appointed as Assistant Manager equivalent to the



कै० कमला कुमारी / K. KAMALA KUMARI
सदस्य / Member
राष्ट्रीय अनुसूचित जन्जाति आयोग
National Commission for Scheduled Tribes
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

STS level (Class/ Group 'A' officer) in the year 1995 as and how he can be down graded as group 'B' officer.

b. The promotion policy approved by Board in its meeting 161st held on 14.02.2002 is operative till the complete absorptions of Group A and B Officers of D.O.T., the same has been completed in the March, 2013.

c. Thus petitioner is entitled the further promotions as per the promotion policy for directly recruited Executives.

d. Earlier two promotions has already been granted under the directly recruited promotion policy approved by Board in the year of 2002.

e. The financial upgradations granted by the department is under the wrong policy because the petitioner was not a Group B officers of D.O.T. The Group B promotion policy 2007 is only applicable to the Group B officers of D.O.T. who had been absorbed in MTNL in the year 2004-05 as per the terms and conditions of the circular dated 04.09.2003.

f. He is eligible for promotion with retrospective effect from 2002 as per draft promotion policy of MTNL of 2002 for direct recruited Executives.

g. That he is eligible for promotion as G.M. w.e.f. 23.05.2012 as per the promotion policy for direct recruited Executive 2002.

2.a The Officers of MTNL reiterated their stand communicated in thier correspondence. It was informed that "the order of Hon'ble High Court, Delhi and Hon'ble Supreme Court has already been implemented. The MTNL authorities further reiterated that Shri G.S. Negi was promoted based on the recommendations of Committee:

- Manager in E-5 w.e.f. 23.05.2002 as per order of Hon'ble Supreme Court
- Non-functional in E-6 w.e.f. 23.05.2006 in Group B Promotion Policy
- Non-functional in E-7 w.e.f. 23.05.2011 in Group B promotion policy
- It was also said that the committee had not recommended regular promotion to Shri Negi to the post of DGM. Hence, he could not be given any post based promotion/financial upgradation beyond E-7 under Sr. Management Promotion Policy, 2010.


के० कमला कुमारी / K. KAMALA KUMARI
सदस्य / Member
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

- Shri Negi had relied upon the promotion policy of directly recruited officers approved by Board in February, 2002. However, committee was not agreed with his contention and brought him under the purview of Group B Promotion Policy/Financial Upgradation Policy, 2007 which was effected retrospectively from 01.10.2004, as after his last promotion in May, 2002, the promotion policy for Group B officers had already come into existence w.e.f. 01.10.2004. Thus, his further promotions/financial upgradation were recommended by the Committee under said policy. The recommendations of committee were accepted by Competent Authority.
- It was further stated by MTNL that before giving post based promotion under Sr. management Promotion Policy, one has to be regular DGM in E-6 pay-scale.

3. The Commission enquired from Director (HR) about the promotion channel of Shri Negi. Director (HR) said that in the year 2004 new policy of promotion for executives have been approved, Shri Negi was finally upgraded to E-6 in the year 2006 and E-7 in year 2011. The Commission further asked the channel of regular promotion of Shri Negi. The Director (HR) reported that there are no vacancy in the grade E-6 in the normal channel. The petitioner refuted and said that the Technical officers of MTNL have been posted on the posts of DGM (Law) and GM (Law) and Shri Negi is being the professionally qualified officer is denied legitimate right of his promotion by adjusting the technical officers against legal posts.

4. The Commission observed that MTNL has not followed the Promotion Policy of Directly Recruited Officers equivalent to the STS level officer and the officer of Technical side have been posted against the Legal posts and the officers legally qualified in the cadre of promotion channel have been denied the legitimate right of his claim for promotion to the post of General Manager. The Director assured to look into the matter including the representation dated 03.01.2014 of Shri Negi and report the action taken to the Commission within 45 days.

K. Kamala Kumari

के० कमला कुमारी / K. KAMALA KUMARI
सदस्य / Member
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Annexure-1

List of participants

NCST

1. Shri Ravi Thakur, Vice Chairperson (also joined in the Sitting)
2. Smt. K. Kamala Kumari, Hon'ble Member (In chair)
3. Mrs. K.D. Bhansor, Deputy Director
4. Shri N. Balasubramanian, Research Officer

Officers of MTNL

1. Shri Sunil Kumar, Director (HR)
2. Shri Deepak Chanduka, GM (HR)
3. Shri M.K. Saxena, Jt. GM (HR)

Petitioner

Shri G.S. Negi

