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AS:11019-DB

2024:GAU-

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4531/2024

THE CHAIRMAN CUM MANAGING DIRECTOR BSNL AND 2 ORS
CORPORATE OFFICE , 4TH FLOOR, BHARAT SANCHAR BHAWAN,
JANAPATH, NEW DELHI-01

2: THE DEPUTY GEN. MANAGER (PERS-I)

BSNL

CORPORATE OFFICE
4TH FLOOR
BHARAT SANCHAR BHAWAN
JANAPATH
NEW DELHI-01

3: THE DEPUTY GEN. MANAGER (PERS II)
BSNL

CORPORATE OFFICE
4TH FLOOR
BHARAT SANCHAR BHAWAN
JANAPATH
NEW DELHI-0

VERSUS

SHASHI KANT AND 3 ORS
S/O - LATE RAMESHWAR PRASAD,
EX CHIEF GENERAL MANAGER , BSNL, NE II CIRCLE, DIMAPUR,
NAGALAND, PIN-797112

2:THE UNION OF INDIA
THROUGH THE SECRETARY
MINISTRY OF COMMUNICATION AND IT

DEPTT. OF TELECOMMUNICATION
SANCHAR BHAWAN
ASHOKA ROAD
NEW DELHI-01

3:SATISH KUMAR
THE DEPUTY GEN. MANAGER (PERS-I)

BSNL

CORPORATE OFFICE
4TH FLOOR
BHARAT SANCHAR BHAWAN
JANAPATH
NEW DELHI-01

4:G.P VISHNOI
THE DEPUTY GEN. MANAGER (PERS-II)

BSNL

CORPORATE OFFICE
4TH FLOOR
BHARAT SANCHAR BHAWAN
JANAPATH
NEW DELHI-0

Advocate for the Petitioner : MR. K N CHOUDHURY, N GAUTAM,MR G GOSWAMI

Advocate for the Respondent : DY.S.G.I., MS. K BHATTACHARYYA(R-1),DR G J SHARMA (R-1),MR K BISWAKARMA (R-1)

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date : 25-10-2024

Date : 12-11-2024

JUDGMENT & ORDER (CAV)

(N. Unni Krishnan Nair. J)

Heard Mr. K. N. Choudhury learned Senior Counsel assisted by Mr. G. Goswami, learned counsel appearing for the petitioners. Also heard Mr. S. Samantha, learned counsel and Mr. G. J. Sharma, learned counsels appearing for the respondent no. 1.

2. The present proceeding was instituted towards presenting a challenge to an order dated 30.07.2024, passed by the learned Central Administrative Tribunal, Guwahati Bench in Original Application No. 182/2024. The petitioners had also assailed an order dated 13.08.2024, passed in Miscellaneous Application No. 95/2024, by which the application so preferred by the petitioners, herein, before the learned Tribunal for vacation of the interim directions passed vide the order dated 30.07.2024, in the connected Original Application was not finally considered and was adjourned for hearing on a later date.

3. At the outset, it is to be noted that this Court vide order dated 06.09.2024, while fixing the matter for admission hearing on 11.09.2024, had provided that notwithstanding the pendency of the present writ petition, it would be open for the learned Tribunal to proceed to hear the M.A. No. 95/2024 on 09.09.2024 and pass final order(s) thereon in accordance with law. Accordingly, the learned Tribunal had heard the said M.A. No. 95/2024 on 09.09.2024 and thereafter, had rejected the same vide an order dated 01.10.2024, which has been brought on record by the petitioners, by way of filing an additional affidavit.

4. Mr. K. N. Choudhury, learned Senior Counsel appearing for the petitioners by referring to the provisions of the "*BSNL Management Services-Telecom Operations*

Stream-Recruitment Rules-2023” has contended that with regard to the Telecom Operations Stream, the post of CGM/PGM (E9) is to be filled up by way of promotion from amongst executives in the grade of Sr. General Manager (SGM) with three years regular service in the grade. The said Rules also provide that for selection of officers for holding the post of Chief General Manager (CGM), a separate executive instruction would be issued with the approval of the competent authority. Accordingly, Mr. Choudhury submits that in terms of the provisions of the said Rules of 2023, the BSNL authorities had on 20.04.2023 issued a guideline for empanelment of officers for holding the posts of CGM in BSNL. In terms of the said guidelines, even the absorbed/BSNL recruited PGM grade officers were also made eligible for empanelment for appointment against the post of CGM. Mr. Choudhury further submits that in terms of the provisions of the said guidelines dated 20.04.2023, a second round of empanelment of officers for holding the post of CGM in BSNL was so undertaken and accordingly, vide a communication dated 01.06.2024 along with other officers, the respondent no. 1, herein, was so empanelled for holding the post of Chief General Manager in BSNL. In terms of the empanelment made vide the communication dated 01.06.2024, posting orders in respect of the empanelled officers came to be issued vide an order dated 07.06.2024 and the petitioner, herein, was transferred and posted as CGM, NE-II Circle. It was highlighted that the respondent no. 1 took over charge of his transferred post on 15.07.2024.

5. Mr. Choudhury, learned counsel for the petitioners has further submitted that the guidelines for empanelment of officers for holding the post of CGM in BSNL as circulated vide the communication dated 20.04.2023 was subsequently reviewed by the BSNL authorities on directions from the authorities of the Department of Telecommunication. On such review, the BSNL authorities vide communication dated 19.07.2024, had by holding that the empanelment process adopted by the BSNL is not tenable for ITS cadre post being operated in BSNL as per the cabinet approval, proceeded to relieve the officers mentioned in Annexure-A thereto from the post of

CGM, with immediate effect and directed the officers so relieved to join their duties against the post as mentioned in the said Annexure against their names. It was further contended that the respondent no. 1 in terms of the said order dated 19.07.2024, was posted as PCE (C), Chennai, TN Circle i.e., against the post earlier held by him. Mr. Choudhury has further submitted that both the post of CGM/PGM are placed at the same scale of pay and accordingly, on the transfer of the petitioner as PCE (C) TN Circle, no financial loss had occasioned to the respondent no. 1, herein, and accordingly, his empanelment being in violation of the provisions of the Rules holding the field, the decision arrived at by the authorities for cancelling such empanelment did not visit the petitioner with any civil consequences.

6. Mr. Choudhury has submitted that in pursuance to the order dated 19.07.2024; the respondent no. 1 had relinquished the charge of the post of CGM held by him at Dimapur, on 20.07.2024 and the charge of the post was also taken over by the officer who was directed to take over charge of the post in question from the petitioner. Mr. Choudhury further submits that the respondent no. 1 after having relinquished his charge had approached the learned CAT, Guwahati Bench by way of instituting O.A. No. 100/2023 before the CAT, Guwahati Bench. The Tribunal, on consideration of the matter was pleased vide the order dated 30.07.2024 to stay the operation of impugned order dated 19.07.2024, insofar as; it concerns the respondent no. 1, herein. Mr. Choudhury, also submits that the BSNL authorities by setting out all facts leading to the issuance of the said orders dated 19.07.2024, had filed a Miscellaneous Application being M.A. No. 95/2024 before the learned Tribunal praying for vacation of the interim directions passed by it vide order dated 31.07.2024 in O.A. No. 182/2024.

7. Mr. Choudhury, learned Senior Counsel has submitted that the petitioners have by way of filing an additional affidavit brought on record of the present proceedings, a copy of the order dated 01.10.2024, passed by the learned Tribunal in M.A. No. 95/2024 and prays that with a view to prevent multiplicity of proceedings, the same be also considered to be a part of the writ petition, inasmuch as, the said order was so

passed by the learned Tribunal in consideration of the prayer of the present petitioners for vacation of the interim directions passed by it, vide the order dated 30.07.2024 which is already under challenge in the present proceedings.

8. Mr. Choudhury, learned counsel for the petitioners by referring to the orders dated 30.07.2024, passed by the learned Tribunal in O.A. 182/2024 and the order dated 01.10.2024, passed by the learned Tribunal in M.A. No. 95/2024 has submitted that the background facts leading to the issuance of the orders dated 19.07.2024 and the communication dated 22.07.2024, issued by the BSNL authorities although being brought on record by the learned Tribunal, the learned Tribunal failed to appreciate the same while considering the M.A. No. 95/2024. Mr. Choudhury, has further submitted that given the provisions of the Rules holding the field, the empanelment and consequential posting of the respondent, herein, as CGM, NE-II, Circle, Dimapur, cannot be deemed to be a promotion. It is further contended by Mr. Choudhury that the learned Tribunal, clearly erred in proceeding to consider the issue involved by deeming the empanelment and posting of the sole respondent as CGM NE-II Circle, Dimapur, to be promotion, which has vitiated the orders dated 30.07.2024 and 01.10.2024. Mr. Choudhury, in the above premises submits that the order dated 30.07.2024 along with the order dated 01.10.2024, would call for an interference by this Court.

9. Per contra, Mr. S. Samantha, learned counsel appearing for the respondent no. 1 has submitted that the respondent no. 1 in pursuance to a notification dated 25.01.2024, submitted his candidature for being considered for empanelment for holding the post of CGM BSNL in the second round of CGM empanelment. The respondent no. 1 was thereafter, subjected to a process of selection including a Psychometric Test and on conclusion of the process of selection involved, the name of the respondent no. 1 was empanelled for holding the post of CGM in BSNL vide a communication dated 01.06.2024. It was further submitted that the respondent no. 1 was promoted on regular basis to the post of PGM in the year 2022. Mr. Samantha,

further submits that the respondent no. 1 having been so empanelled for holding the post of CGM by following the process as was prevalent at the relevant point of time and he on his such posting, having taken over the charge of the post CGM NE-II Circle, the BSNL authorities could not have unilaterally proceeded to issue the orders dated 19.07.2024, cancelling the empanelment so made and relieving the respondent no. 1 from the post of CGM NE-II Circle and further transferring him to his earlier post i.e., the post of PCE(C), TN Circle, which infact was a reversion to a post with lower status.

10. Mr. S. Samantha, learned counsel for the respondent no. 1 by referring to the orders dated 19.07.2024 has submitted that the same was made applicable only in respect of CGMs, who had joined against the post after 20.06.2024 and the persons who had joined prior thereto, have not been subjected to such reversion. Mr. Samantha has submitted that given the manner of empanelment for holding the post of CGM as laid down in the guidelines as contained in the communication dated 20.04.2023, the same is a promotion and accordingly, the orders dated 19.07.2024 having the effect of causing a reversion of the respondent no. 1 to his earlier post, could not have been so done by the authorities without affording to the petitioner an opportunity of hearing in the matter.

11. In the above premises, Mr. Samantha submits that the order dated 30.07.2024, passed by the learned Tribunal in O.A. No. 182/2024 and the order dated 01.10.2024, passed in the M.A. No. 046/0095/2024 would not call for an interference by this Court.

12. We have heard the learned counsel appearing for the parties and also perused the materials available on record.

13. At the outset, it is to be noted that this Court vide order dated 06.09.2024, passed in the present proceeding, had granted liberty to the learned Tribunal to proceed to hear the M.A. No. 95/2024 filed by the petitioners, herein. The said application was filed by the present petitioners for vacation of the interim directions

passed vide order dated 30.07.2024 in O.A. No. 182/2024. The learned Tribunal in terms of the liberty as granted by this Court vide the said order dated 06.09.2024, proceeded to hear the M.A. 95/2024 on 09.09.2024, and orders, on conclusion of the hearing thereon, came to be reserved.

14. The learned Tribunal vide the order dated 01.10.2024, proceeded to dismiss the said Miscellaneous Application filed by the petitioners, herein. The petitioners have by way of filing an additional affidavit brought on record, in the present proceeding, the order dated 01.10.2024 passed by the learned Tribunal in M.A. No. 95/2024 with a further prayer that the said additional affidavit be treated as a part of the writ petition. Considering the fact that the order dated 01.10.2024 was so passed by the learned Tribunal, in terms of the liberty granted by this Court and also appreciating that vide the said order dated 01.10.2024, the interim directions passed vide the order dated 30.07.2024, has been maintained, with a view of prevent multiplicity of the proceedings, the order dated 01.10.2024 as passed by the learned Tribunal is also being considered in the present order.

15. As projected by the petitioners, herein, the provisions of the "BSNL Management Services-Telecom Operations Stream Recruitment Rules-2023" which had come into effect w.e.f. 31.12.2022, provides for the manner of recruitment to the various post in the service so covered by the provisions of the said Rules. It was contended by the petitioners that the post of CGM and PGM were placed at the same level and authorized the same scale of pay.

16. On perusal of the said Rules, it is seen that Schedule-I of the said Rules provide for the method of recruitment/promotion to the various cadres of the Telecom Operation Streams. The said Rules insofar as, the holding of the post of CGM is concerned, provided that selection of officers for the post of CGM shall be as per separate executive instructions to be issued with the approval of the competent authority. The Schedule to the said Rules also mandate that the post of CGM/PGM,

GM, DGM level posts, to the extent mentioned in the cabinet approval, shall be filled up in terms of Cabinet decision communicated vide DOT O.M. dated 03.08.2022. It further provides that the GM level posts will be filled from DOT SAG officers/DOT SAG-NF officers who have completed the prescribed requisite length of service. It further provides that the post of CGM/PGM shall be filled up from regular ITS HAG and HAG NF level ITS officers deployed in BSNL who have completed the prescribed years of service.

17. From the materials available on record, it is further seen that in terms of the provisions of the said Rules of 2023, the BSNL authorities vide communication dated 20.04.2023, notified the guidelines for empanelment of officers for holding the post of CGM in BSNL. In terms of the said guidelines, inter alia, the ITS Gr. 'A' regular HAG and HAG (NFU) officers, the serving absorbed/BSNL recruited PGM grade officers were made eligible for holding the post of CGM. In the terms of the said guidelines dated 20.04.2023, the process of empanelment for persons holding the post of CGM in BSNL was carried out. In the second round of such empanelment, the case of the respondent was considered and on being found to be suitable, he was along with others empanelled for holding the post of CGM in BSNL vide communication dated 01.06.2024. In pursuance to the said empanelment of the respondent, he was vide order dated 07.06.2024, transferred and posted against the post of CGM NE-II Circle, Dimapur. The respondent, in compliance with the said order of transfer, assumed the charge of the post of CGM NE-II, Circle Dimapur on 15.07.2024. The petitioners, herein, have contended that basing on the provisions of the Rules noted above and holding the field, the said transfer and posting of the petitioner to the post of CGM NE-II Circle, Dimapur was not a promotion but, a case of transfer and posting only.

18. The contentions raised by the petitioners in the matter, would go to further reveal that the guidelines as formulated by the BSNL authorities vide the communication dated 20.04.2023, for empanelment of executive/officers for holding the post of CGM was examined by the Department of Telecommunication and the

Department of Telecommunication vide the Note dated 20.06.2024, had intimated the BSNL authorities that the said empanelment process adopted by BSNL is not tenable for ITS cadre post being operated in BSNL, as per cabinet approval. It was also intimated by the DoT authorities that the sanctity of the HAG promotion granted to ITS officers after DPC conducted by UPSC and with approval of ACC was inviolable for cadre posts and directed BSNL to comply with its directions conveyed therein with immediate effect. Accordingly, it is contended by the BSNL authorities that they were required to issue the orders both dated 19.07.2024 to relieve the Officers as mentioned in Annexure-A of the said orders from the post of CGM held by them with immediate effect. The name of the sole respondent figured at Serial No. 3 of the Annexure to the orders both dated 19.07.2024; and he on being relieved, was posted on transfer as PCE(C), TN Circle, i.e., the post earlier held by him, before he had been transferred and posted as CGM, NE-II Circle Dimapur. Thereafter, the BSNL authorities vide communication dated 22.07.2024, on review of the guidelines for empanelment of officers for holding the post of CGM, as notified vide the communication dated 20.04.2023, decided to withdraw the existing guidelines dated 20.04.2023 and 26.05.2023. Further the existing panel of officers empanelled for holding the post of CGM in BSNL was decided to have lapsed.

19. The petitioners have contended that the transfer and posting effected in respect of the sole respondent vide the order dated 19.07.2024, was so effected to an equivalent post without subjecting the respondent to any loss of pay or allowances and as such, the said transfer and posting as effected vide the orders both dated 19.07.2024, cannot be deemed to be a reversion so effected in respect of the sole respondent.

20. The above noted background facts leading to the issuance of the orders dated 19.07.2024, were highlighted by the petitioners, herein, in the M.A. No. 95/2024 preferred by them before the learned Tribunal, praying for vacation of the interim directions passed vide order dated 30.07.2024. The learned Tribunal, vide the order

dated 01.10.2024; had proceeded to dismiss the M.A. being 95/2024 thereby, maintaining the interim directions passed vide the order dated 30.07.2024.

21. A perusal of the order dated 01.10.2024, as passed by the learned Tribunal in M.A. No. 95/2024, would reveal that the learned Tribunal had not considered the contentions raised by the present petitioners before it in the said Miscellaneous Application. The learned Tribunal while proceeding to draw conclusions in its order dated 01.10.2024 to the effect that the posting of the sole respondent as CGM, NE-II Circle vide order dated 07.06.2024 was on promotion, had failed to consider the contention as raised by the petitioner, herein, in M.A. No. 95/2024 that the posting of the sole respondent as CGM, NE-II circle was not on account of promotion, but was a case of transfer and posting. Similarly, the learned Tribunal while proceeding to draw conclusion that the orders dated 19.07.2024, posting the sole respondent against the post of PCE(C), Chennai, TN Circle, amounted to a reversion being effected in his case, failed to consider the contentions made in the M.A. No. 95/2024 by the petitioners herein, highlighting the facts existing leading to issuance of the said orders dated 19.07.2024. The learned Tribunal was called upon to consider the said contentions as raised by the petitioners, herein, before it and only thereafter, it would have been permissible for the learned Tribunal to proceed to draw conclusions that the transfer and posting of the respondent, vide order dated 07.06.2024 was as CGM NE-II, Circle, Dimapur, was actually a promotion and a reversion had occasioned in his case vide the orders dated 19.07.2024. However, the learned Tribunal admittedly failed to take into consideration the contentions raised by the BSNL authorities before it and ignoring the same, proceeded to draw conclusions contrary to the above position in its order dated 01.10.2024.

22. Having concluded that the learned Tribunal had not appreciated the contentions of the petitioners, herein, while passing the order dated 01.10.2024 in M.A. 95/2024, we do not propose to consider the contentions raised by the petitioners, herein, on merits by appreciating the fact that the O.A. No. 182/2024 is pending final

consideration before the learned Tribunal. However, considering the fact that the interim directions as well as the conclusions drawn by the learned Tribunal, in the order dated 01.10.2024 being so drawn without first appreciating and thereafter, drawing conclusions with regard to the contentions raised before it by the petitioners, herein, we are of the considered view that the said orders dated 30.07.2024 and 01.10.2024, passed by the learned Tribunal cannot be sustained and would call for an interference.

22. At this stage, a representation dated 10.06.2024 available in the records of the present proceedings, preferred by the sole respondent against the order dated 07.06.2022, by which he was transferred and posted as CGM, NE-II Circle, Dimapur, is noticed. A perusal of the said representation would go to reveal that while the sole respondent therein, has prayed for a posting as a Circle Head in any one of the circles indicated therein, projecting himself to be a regular incumbent in the cadre of PGM, had not made any contention that he was infact promoted to the post of CGM vide the order dated 07.06.2024.

23. In view of the above discussions and conclusions reached by us herein above, the interim directions passed by the learned Tribunal vide order dated 30.07.2024, in O.A. No. 182/2024 and the order dated 01.10.2024, passed by the learned Tribunal in M.A. No. 95/2024 stand set aside.

24. With the above directions and directions, the writ petition stands allowed.

JUDGE

CHIEF JUSTICE

Comparing Assistant