

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.3.2015

CORAM :

The Honourable Mr. Justice V. RAMASUBRAMANIAN
and
The Honourable Mr. Justice P. R. SHIVAKUMAR

Writ Petition Nos. 17214 and 20884 of 2011,
27407 to 27410 of 2012,
26275 & 27990 to 27993 of 2013
and
all connected pending Mps.

WP.No.17214 of 2011 :

1. UNION OF INDIA, MINISTRY OF
TELECOMMUNICATIONS (MINISTRY OF
DISINVESTMENT INFORMATION TECHNOLOGY
AND COMMUNICATIONS), NEW DELHI
REP. BY ITS SECRETARY
2. THE CHAIRMAN AND MANAGING DIRECTOR
BHARAT SANCHAR NIGAM LTD., (A
GOVERNMENT OF INDIA ENTERPRISE)
STATESMAN HOUSE, BARAKHAMBHA ROAD,
NEW DELHI.
3. THE ASST. DIRECTOR GENERAL (TE-II)
BHARAT SANCHAR NIGAM LIMITED,
STATESMAN HOUSE, BARAKHAMBHA ROAD,
NEW DELHI.
4. THE CHIEF GENERAL MANAGER, BHARAT
SANCHAR NIGAM LIMITED, NO. 78,
PURASAWAKKAM HIGH ROAD, CHENNAI.
5. THE DEPUTY GENERAL MANAGER
(ADMN), O/O. THE CGM, BHARAT SANCHAR
NIGAM LIMITED, 89, MILLERS ROAD,
PURASAWALKAM, CHENNAI.

... PETITIONERS

Vs

1.THE REGISTRAR, CENTRAL ADMINISTRATIVE
TRIBUNAL, MADRAS BENCH, HIGH COURT
BUILDINGS, CHENNAI-104.

2.V.MYTHILY

3.SUGUNA ELANGOVAN (T.A.No.119/2010)

4.S.USHA (T.A.No.119/2010)

5.K.PRAMILA (T.A.No.119/2010)

6.PADMANABHAN P. (T.A.No.119/2010)

7.RADHAI SANKARAN (T.A.No.119/2010)

8.V.THANGAMANI (T.A.No.119/2010)

9.BABY RANI SANKARAN (T.A.No.119/2010)

10.N.SELVAMANI (T.A.No.119/2010)

11.S.ARUL DHAS (T.A.No.34/2009)

12.D.SADAYAPPAN (T.A.No.30/2009)

13.M.SHANMUGAM (T.A.No.30/2009)

14.GIRIJA MOHAN (T.A.No.32/2009)

15.K.SRINIVASAN (T.A.No.30/2009)

16.S.SRIMATHI (T.A.No.30/2009)

17.R.JAGANNATHAN (T.A.No.30/2009)

18.K.PALANI (T.A.No.30/2009)

19.K.M.VASANTHA (T.A.No.119/2010)

20.N.TAMILMANI (T.A.No.119/2010)

21.KASTHURI GUNASEKARAN (T.A.No.32/2009)

22.SHANTHI VEDACHALAM (T.A.No.119/2010)

23.M.PRATHABAN (T.A.No.119/2010)

24.G.RANGANATHAN (T.A.No.119/2010)

25.C.RAJESWARI (T.A.No.119/2010)

26.GEETHA RAMACHANDRAN (T.A.No.119/2010)

27.A.R.LAKSHMANAN (T.A.No.119/2010)

28.G.MEENAKSHI (T.A.No.119/2010)

29.RAJAM THANGARAJ (T.A.No.119/2010)

30.TAMILSELVI GOPAL (T.A.No.119/2010)

31.IQBAL UNISSA (T.A.No.119/2010)

32.P.AMALA SELVI PERPETUA (T.A.No.119/2010)

33.M.A.JAYAPAL (T.A.No.119/2010)

34.M.PUSHPAVALLI (T.A.No.119/2010)

35.P.SRIDHARAN (T.A.No.119/2010)

36.S.SANKARI (T.A.No.119/2010)

37.R.DHINAKARAN (T.A.No.30/2009)

38.V.SARASWATHY (T.A.No.32/2009)

39.S.LEO CHRISTOPHER (T.A.No.119/2010)

40.MD.HASMATHULLAH SAYEED (T.A.No.119/2010)

41.A.MANI (T.A.No.53/2009)

42.S.A.SUBRAMANIAN (T.A.No.119/2010)

43.R.E.MARAN (T.A.No.119/2010)

44.F.S.K.RAVIKUMAR (T.A.No.30/2009)
45.T.RAVINDRAN (T.A.No.30/2009)
46.C.SUNDARAMOORTHY (T.A.No.30/2009)
47.MRS.RUTH JAGADISH (T.A.No.119/2010)
48.K.V.SURYAPRAKASAM (T.A.No.119/2010)
49.T.K.SACHITHANANDAN (T.A.No.119/2010)
50.N.J.SATHYANARAYANAN (T.A.No.34/2009)
51.R.DEENADAYALAN (T.A.No.30/2009)
(R3 TO R51-IMPLEADED AS PER ORDER DATED 23.7.2012 IN MP.NO.1 OF 2012
IN WP 17214 OF 2011)

WP.20884/2011:

1. UNION OF INDIA MINISTRY OF
DISINVESTMENT INFORMATION TECHNOLOGY &
COMMUNICATION REP. BY ASST DIRECTOR GENL (TE-
II) BHARAT SANCHAR NIGAM LTD STATESMAN
HOUSE NEW DELHI
2. THE DEPUTY GENERAL MANAGER
(ADMN) BHARAT SANCHAR NIGAM LTD O/O.THE
CHIEF GENERAL MANAGER CHENNAI TELEPHONES
NO.89 MILLERS ROAD CHENNAI-10. ... PETITIONERS

Vs

1. THE REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL MADRAS
BENCH HIGH COURT BUILDINGS CHENNAI-104.
2. M.MANI (STAFF NO.8366)
3. S.RAVINDRAN (STAFF NO.8007) ... RESPONDENTS

WP.27407/2012:

1. THE ASSISTANT DIRECTOR GENERAL
(TE-II) BHARAT SANCHAR NIGAM LIMITED
STATESMAN HOUSE BARAKHAMBHA ROAD NEW DELHI-
110 001.
2. THE DEPUTY GENERAL MANAGER
(ADMN) BHARAT SANCHAR NIGAM LIMITED OFFICE
OF THE CHIEF GENERAL MANAGER CHENNAI
TELEPHONES NO.89 MILLERS ROAD CHENNAI-10. ... PETITIONERS

Vs

1. THE REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL MADRAS
BENCH HIGH COURT BUILDINGS CHENNAI-104.

2. P.D.R.BALAJI

... RESPONDENTS.

WP.27408/2012:

1. UNION OF INDIA MINISTRY OF
DISINVESTMENT I.T & COMMUNICATION REP. BY
ASST DIRECTOR GENL (TE-II) BHARAT SANCHAR
NIGAM LTD STATESMAN HOUSE BARAKHAMBA RD
NEW DELHI-1.

2. THE DEPUTY GENERAL MANAGER
(ADMN) BHARAT SANCHAR NIGAM LIMITED OFFICE
OF THE CHIEF GENERAL MANAGER CHENNAI
TELEPHONES NO.89 MILLERS ROAD CHENNAI-10.

... PETITIONERS

Vs

1. THE REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL MADRAS
BENCH HIGH COURT BUILDINGS CHENNAI-104.

2. R.ILAVALAGANAR

3. A.MANI S/O.ARUMUGHAM

4. M.A.PRAKASAM S/O.M.APPADURAI

5. P.BASKARAN S/O.PARAMANANDAN

6. V.SUBRAMANIAN

7. R.VAJIR KHAN

8. H. Amarnath Sah (T.A.No.118 /2010)

9. Gandhimathi Manupillai (T.A.No.118 /2010)

10. K. Shanthi (T.A.No.118 /2010)

11. P.K. Thirumurthy Babu (T.A.No.118 /2010)

12. R. Sundaresan (T.A.No.118 /2010)

13. Vimala Srinivasan (T.A.No.118 /2010)
14. N. Baby (T.A.No.30 /2009)
15. S. Asha Latha (T.A.No.118 /2010)
16. K. Srinivasan (T.A.No.118 /2010)
17. M. Subbarayan (T.A.No.30 /2009)
18. P.V. Sekar (T.A.No.30 /2009)
19. R. Nagalingam (T.A.No.30 /2009)
20. D. Kannaiyann (T.A.No.30 /2009)
21. Lalitha Venkatesh (T.A.No.118 /2010)
22. K. Shankar (T.A.No.118 /2010)
23. S. Rajeswari (T.A.No.118 /2010)
24. R. Lalitha (T.A.No.118 /2010)
25. R. Sathyamurthy (T.A.No.30 /2009)
26. K. Natarajan (T.A.No.30 /2009)
27. E. Rajendran (T.A.No.30 /2009)
28. R. Ravisankar (T.A.No.118 /2010)
29. B. Thiagaranan (T.A.No.30 /2009)
30. S. Kempuraj (T.A.No.118 /2010)
31. S. Ravindran (T.A.No.55 /2009)
32. O.M. Srinivasan (T.A.No.118 /2010)
33. P. Sambasivam (T.A.No.118 /2010)
34. Kenny Joseph (T.A.No.118 /2010)
35. N. Raju (T.A.No.28 /2009)
36. K. Kirubanantham (T.A.No.118 /2010)

37.S.R. Ramesh (T.A.No.118 /2010)
38.M.S. Sridharan (T.A.No.118 /2010)
39.R.K. Gopi (T.A.No.118 /2010)
40.R. Ramalingam (T.A.No.118 /2010)
41.T. Mathiazhagan (T.A.No.118 /2010)
42.V. Geetha (T.A.No.30 /2009)
43.Vasanthakala (T.A.No.118 /2010)
44.P. Victor (T.A.No.118 /2010)
45.S. Victor (T.A.No.118 /2010)
46.T.P. Sridharan (T.A.No.118 /2010)
47.Hemalatha Umesh Naig (T.A.No.118 /2010)
48.G. Chinnakannu (T.A.No.28 /2009)
49.Malathy Umashankar (T.A.No.118 /2010)
50.T.V. Sundaresan (T.A.No.119 /2010)
51. K. Jayaprakash (T.A.No.119 /2010)
52. S. Lahsminarayanan (T.A.No.119 /2010)
53. R. Somasundaram (T.A.No.119 /2010)
54. A. Gajalakshmi (T.A.No.119 /2010)
(R8 to R 54 are impleaded as per order
dated 18.3.2015 in M.P.No.1/013
in W.P.No.27408/2012.)

... Respondents

W.P.No.27409 of 2012

1. UNION OF INDIA,
MINISTRY OF DISINVESTMENT,
I.T & COMMUNICATION,
REP. BY ASST DIRECTOR GENL (TE-II)
BHARAT SANCHAR NIGAM LTD,
STATESMAN HOUSE, BARAKHAMBA ROAD, NEW DELHI-1.

2. THE DEPUTY GENERAL MANAGER (ADMN),
BHARAT SANCHAR NIGAM LIMITED,
OFFICE OF THE CHIEF GENERAL MANAGER,
CHENNAI TELEPHONES, NO.89, MILLERS ROAD,
CHENNAI-10.

... Petitioners

Vs

1. THE REGISTRAR,
CENTRAL ADMINISTRATIVE TRIBUNAL,
MADRAS BENCH,
HIGH COURT BUILDINGS, CHENNAI-104.

2. V.ASHOK KUMAR
3. J.P.MURALI
4. MRS.GIRIJA MOHAN
5. V.SARASWATHY
6. R.JAMUNA
7. V.N.VENKATARAMAN
8. C.INDIRANI
9. A.DHANARAJ

... RESPONDENTS.

WP.27410 OF 2012:

1. UNION OF INDIA MINISTRY OF
DISINVESTMENT I.T & COMMUNICATION REP. BY
ASST DIRECTOR GENL (TE-II) BHARAT SANCHAR
NIGAM LTD STATESMAN HOUSE BARAKHAMB RD
NEW DELHI-1.

2. THE DEPUTY GENERAL MANAGER
(ADMN) BHARAT SANCHAR NIGAM LIMITED OFFICE
OF THE CHIEF GENERAL MANAGER CHENNAI
TELEPHONES NO.89 MILLERS ROAD
CHENNAI-10.

... PETITIONERS.

Vs

1. THE REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL MADRAS
BENCH HIGH COURT BUILDINGS CHENNAI-104.

2. G.DAYANITHI STAFF NO.8109

3. R.DEVARAJAN STAFF NO.7971

4. MRS.M.GEETHA STAFF NO.9194

... RESPONDENTS.

WP.26275/2013:

1. UNION OF INDIA MINISTRY OF
DISINVESTMENT INFORMATION TECHNOLOGY & COMMUNICATION
REP. BY THE ASST. DIRECTOR GENERAL (TE-II)
BSNL. STATESMAN HOUSE BARAKHAMB ROAD NEW
DELHI 110 001.

2. THE DEPUTY GENERAL MANAGER
(ADMN.) BSNL. OFFICE OF THE CHIEF GENERAL
MANAGER CHENNAI TELEPHONES NO.10 MILLERS
ROAD CHENNAI-10

... PETITIONERS.

Vs

1. THE REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL MADRAS
BENCH HIGH COURT BUILDINGS CHENNAI-104

2. AMBUJAM VASUDEVAN

... RESPONDENTS.

WP.27990 OF 2013:

1. UNION OF INDIA
MINISTRY OF DISINVESTMENTS INFORMATION
TECHNOLOGY AND COMMUNICATION REP BY THE
ASST. DIRECTOR GENERAL (TE II) BSNL NEW
DELHI 110 001

2. THE DEPUTY GENERAL MANAGER
(ADMN.) BSNL O/O.THE CHIEF GENERAL MANAGER
CHENNAI TELEPHONES NO.10 MILLERS ROAD
CHENNAI 10

... PETITIONERS.

Vs

1. THE REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL MADRAS
BENCH HIGH COURT BUILDINGS CHENNAI 104

2. D. DANIEL (STAFF NO.8801)

3. N.J.SATHYANARAYANAN (STAFF NO.7999)

4. S. ARULDHAS (STAFF NO. 9177)

... RESPONDENTS.

W.P.No. 27991 of 2013:

1. THE ASSISTANT DIRECTOR GENERAL
(TE-II) BHARAT SANCHAR NIGAM LTD
NEW DELHI - 1.

2. THE DEPUTY GENERAL MANAGER
(ADMN) BHARAT SANCHAR NIGAM LTD O/O.CHIEF
GENERAL MANAGER CHENNAI TELEPHONES NO.89
MILLERS ROAD CHENNAI.

... PETITIONERS

Vs

1 THE REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL CHENNAI-104.

2 SMT.P.AMALA SELVI PERPETUA

3 H.AMARNATH SAH

4 S.ASHALATHA

5 BABY RANI SANKARAN

6 CHITRA NAMASIVAYAM

7 A.GAJALAKSHMI

8 GANDHIMATHI MANNUPILLAI

9 S.GANESAN

10 GEETHA RAMACHANDRAN

11 R.K.GOPI

12 IQBAL UNNISA

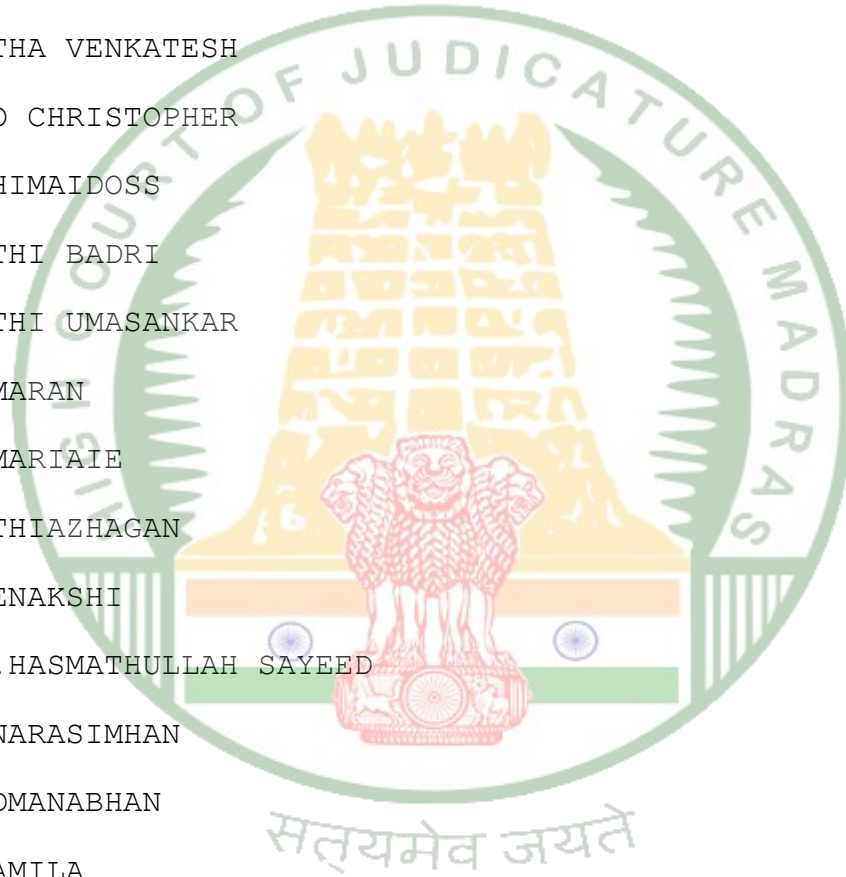
13 M.A.JAYAPAL

14 K.JAYAPRAKASH

15 V.KANNIAPPAN

16 S.KEMPURAJ

17 KENNY JOSEPH
18 K.KIRUBANATHAN
19 LAILA NAGESWARA RAO
20 A.R.LAKSHMANAN
21 S.LAKSHMINARAYANAN
22 R.LALITHA
23 LALITHA VENKATESH
24 S.LEO CHRISTOPHER
25 G.MAHIMAIDOSS
26 MALATHI BADRI
27 MALATHI UMASANKAR
28 R.E.MARAN
29 K.S.MARIAIE
30 T.MATHIAZHAGAN
31 G.MEENAKSHI
32 MOHD.HASMATHULLAH SAYEED
33 M.N.NARASIMHAN
34 P.PADMANABHAN
35 K.PRAMILA
36 M.PRATHABAN
37 M.PUSHPAVALLI
38 RADHAI SANKARAN
39 S.V.RAJALAKSHMI



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40 RAJAM THANGARAJ

41 K.RAJESWARAN

42 C.RAJESWARI

43 S.RAJESWARI

44 R.RAMALINGAM

45 S.R.RAMESH

46 G.RANGANATHAN

47 V.RAVICHANDRAN

48 R.RAVISHANKAR

49 RUTHU JAGADISH

50 T.K.SACHI THANANDAM

51 V.SAMANDI

52 P.SAMBASIVAM

53 S.SANKAR

54 S.SANKARI

55 N.SELVAMANI

56 K.SHANKAR

57 K.SHANTHI

58 SHANTHI VEDACHALAM सत्यमेव जयते

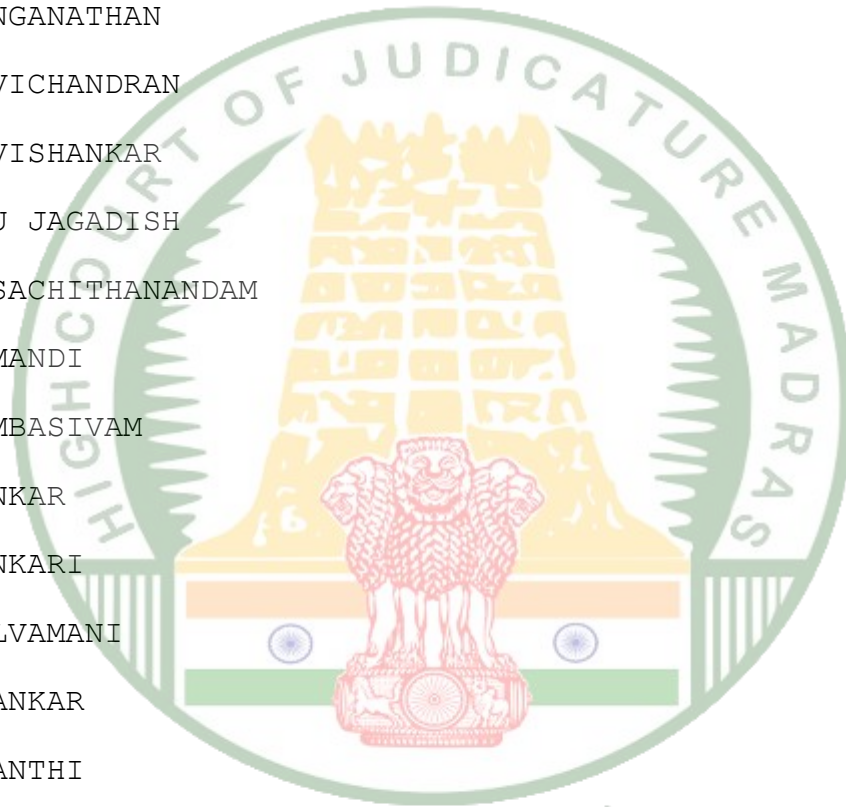
59 R.SOMASUNDARAM

60 K.SOUNDARARAJAN

61 M.S.SRIDHARAN

62 P.SRIDHARAN

63 T.P.SRIDHARNA



WEB COPY

64 K.SRINIVASAN
65 O.M.SRINIVASAN
66 S.A.SUBRAMANIAN
67 SUGUNA ELANGO VAN
68 R.SUNDARESAN
69 T.V.SUNDARESAN
70 K.V.SURYAPRAKASAM
71 N.TAMIL MANI
72 TAMILSELVI GOPAL
73 V.THANGAMANI
74 P.K.THIRUMOORTHY BABU
75 S.USHA
76 USHA VENKATASUBRAMANIAN
77 R.USHARANI
78 A.VASANTHA KALA
79 K.M.VASANTHA
80 S.VICTOR
81 VIMALA SRINIVASAN

... RESPONDENT

WP.27992 OF 2013:

1. UNION OF INDIA
MINISTRY OF DISINVESTMENT INFORMATION
TECHNOLOGY & COMMUNICATION REP. BY THE ASST
DIRECTOR GENERAL (TE-II) BHARAT SANCHAR
NIGAM LTD NEW DELHI-1.

2. THE DEPUTY GENERAL MANAGER
(ADMN) BHARAT SANCHAR NIGAM LTD O/O.CHIEF
GENERAL MANAGER CHENNAI TELEPHONES NO.89
MILLERS ROAD CHENNAI.

... PETITIONERS.

Vs

1. THE REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL CHENNAI-104.

2. T.RAJAGOPALAN

... RESPONDENTS.

WP.27993 OF 2013:

1. THE ASSISTANT DIRECTOR GENERAL
(TE-II) BHARAT SANCHAR NIGAM LTD. NEW
DELHI-1

2. THE DEPUTY GENERAL MANAGER
(ADMN). BHARAT SANCHAR NIGAM LTD. O/O.
CHIEF GENERAL MANAGER CHENNAI TELEPHONES
NO.89 MILLERS ROAD CHENNAI

... PETITIONERS.

Vs

1. THE REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL CHENNAI-104

2. G.CHINNAKANNU

3. N.RAJU

4. M.SUSAIMUTHU

... RESPONDENTS.

Prayer:

Writ petitions filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari

i) calling for the records of the 1st Respondent in T.A.Nos. 117 of 2010, 55 of 2009, 118 of 2010, 53 of 2009, 32 of 2009, 39 of 2009, 34 of 2009, 119 of 2010, 67 of 2009 and 28 of 2009 respectively dated 30.09.2010 (in W.P.No.17214, 20884 of 2011, 27407 to 27409 of 2012, 26275, 27990 to 27993 of 2013) and to quash the same and

ii) call for the records of the 1st respondent in O.A.No. 217 of 2010 dated 30.09.2010 and to quash the same (in W.P.No.27410 of 2012)

For Petitioners : Mr.M.Govindaraj

For R2 to R51 in WP.No.17214 of 2011;

For R2 in both WP.Nos.27407 & 27408 of 2012 and

For R8 to R54 in W.P.27408/12:

For R2, R4, R6 & R7 in WP.No.27409 of 2012; &

For R2, R3 in WP.No.27410 of 2012 : Mrs.Rita Chandrasekar

For R2 in WP.No.26275 of 2013 : Mr.V.S.Venkatesh

For Respondents 2 & 3 in WP.No.20884 of 2011 :

Not ready in notice.

No Appearance.

For R3, 5, 8 & 9 in WP.No.27409 of 2012 : No appearance

For R4 in WP.No.27410 of 2012 : No Appearance

For R2 to R4 in WP.No.27990 of 2013 : No appearance

R2 to R5, R14 to R16, R18 to R20, R23, R25, R26, R28, R30, R32, R34, R35, R38, R45, R48, R50, R52 to R54, R59, R60, R62 to R67, R69 to R71, R74, R76 & R77 in WP.No.27991 of 2013 :

No appearance

R6 to R13, R17, R21, R22, R24, R27, R29, R31, R33, R36, R37, R39, R40 to R44, R46, R47, R49, R51, R55 to R58, R61, R68, R72, R73, R75, R78, R79, R80 & R81 in WP.No.27991 of 2013 :

Not ready in notice - No Appearance

R2 in WP.No.27992 of 2013 : No appearance

R2 in WP.No.27993 of 2013 : Not ready in notice

R3 & R4 in WP.No.27993 of 2013 : No appearance

COMMON ORDER

(Order of the Court was made by V.Ramasubramanian,J)

The Bharat Sanchar Nigam Limited (hereinafter called the BSNL) has come up with the above writ petitions, challenging the common order of the Central Administrative Tribunal passed in a batch of applications filed by the contesting respondents herein against the order refusing to grant them pay parity and fixation of seniority.

2. Heard Mr.M.Govindaraj, learned counsel for the petitioners, Mrs.Rita Chandrasekar and Mr.V.S.Venkatesh, learned counsel appearing for some of the contesting respondents.

3. The Department of Telecommunications was actually bifurcated and the Telecommunication Sector was corporatized as the BSNL with effect from 1.10.2000. When it was the Department of Telecommunications forming part of Ministry of Communications, the Recruitment Rules, issued in exercise of the power conferred by the Proviso to Article 309 of The Constitution, prescribed that for promotion to the post of Upper Division Clerk (UDC), Lower Division Clerks (LDCs) should pass a departmental test. There was a 50% quota for direct recruitment and 50% quota for promotion.

4. The contesting respondents herein, who were the applicants before the Central Administrative Tribunal, passed the departmental test and gained promotions to the post of Upper Division Clerk, during the period from 1990-94. In the meantime, the Department of Telecommunications introduced a scheme in the year 1993, for the financial upgradation of the employees, who were stagnating in the lower posts. As per the said scheme, persons, who had completed 16 years of service in the same cadre, would be entitled to an upgradation known as One Time Bound Promotion (OTBP) and persons, who had completed 26 years of service, were entitled to another upgradation known as Biennial Cadre Review (BCR). After the introduction of OTBP and BCR schemes, it was found by persons, who had passed departmental test and who had gained promotions to the post of UDCs, that their juniors in the next below category started drawing more pay due to financial upgradation.

5. Therefore, some of them approached the Central Administrative Tribunals, Bangalore Bench and Chennai Bench and filed applications. The applications were allowed and the Department of Telecommunications filed an appeal before the Supreme Court in Civil Appeal No.10692 of 1995. The said appeal filed by the Union of India represented by the Ministry of Communications along with other appeals were dismissed by the Supreme Court by a common order dated 9.10.2002 (Union of India Vs. Leelamma Jacob & Others). It is relevant to note that after the filing of the appeal by the Union of India in the year 1995, but before the Supreme Court passed orders on 9.10.2002, the BSNL was already born on 1.10.2000.

6. As per the decision of the Supreme Court, those, who had not been able to pass the examination for promotion from Grade I to Grade II and who had continued to serve in Grade I, were allowed to leap-frog over the persons, who were meritorious. Therefore, the Supreme

Court rejected the appeal filed by the Union of India along with other appeals.

7. However, the BSNL did not implement the order of the Supreme Court uniformly throughout the country. But, latter, in compliance of the orders of the Supreme Court, a circular was issued on 24.2.2004 promoting those, who were formerly working as UDCs to Grade III with effect from 10.9.1992. Those, who had already passed the test, were also granted arrears of pay and pay fixation. Though some of them should have been promoted with effect from 27.9.1990, the benefit was granted to them only from 10.9.1992.

8. But, within a couple of months, another circular dated 30.11.2004 was issued, superseding the previous circular dated 24.2.2004. By this circular dated 30.11.2004, the Management sought to cancel the benefit of pay fixation and the grant of arrears of pay and ordered recovery. Aggrieved by the orders of refixation of pay and recovery of money already paid, the contesting respondents filed writ petitions on the file of this Court. But, in the meantime, the BSNL was notified as an institution coming within the jurisdiction of the Central Administrative Tribunal. Therefore, the writ petitions got transferred to the Central Administrative Tribunal. The Tribunal renumbered them as T.A.Nos.117 to 119 of 2010, 28, 30, 32, 34, 39, 53, 55 and 67 of 2009. These transferred applications along with O.A.No.217 of 2010 were allowed by the Tribunal by a common order dated 30.9.2010. Aggrieved by the said common order, the BSNL has come up with the above writ petitions.

9. The primary contention of Mr.M.Govindaraj, learned counsel for the petitioners is that the decision of the Supreme Court in Leelamma Jacob, is not applicable to the cases of the contesting respondents, in view of the fact that the Supreme Court was concerned in that case with promotion from Grade II to Grade III and not from Grade I to Grade II. It is also his contention that once the contesting respondents had opted to come to the main stream, they cannot go back on their options and have to accept the consequences of such option. The contesting respondents, according to the petitioners, have accepted the OTBP and BCR schemes and they cannot today turn around and claim the benefit of seniority that they allegedly had before the introduction of these schemes. The learned counsel also relies upon certain decisions of the Supreme Court, which, we shall advert to at the appropriate place.

10. In order to understand the scope of the contentions raised by the learned counsel for the petitioners, it is necessary to take note of certain orders passed by the Department itself. Fortunately, there are no disputes on facts and with respect to dates and events.

11. Admittedly, the contesting respondents belonged to the cadre strength of the Department of Telecommunications and they participated in the departmental test for promotion to the post of UDCs under the 50% quota fixed for promotion. They were successful and they were also promoted. After promotion, with effect from 9.9.1992, they were actually placed as seniors to those, who continued as LDCs and who did not pass the departmental examinations.

12. The facts, out of which, the case before the Supreme Court arose, indicate that even before the formation of the BSNL, the Recruitment Rules classified the posts into four grades namely Grade I, Grade II, Grade III and Grade IV, depending upon the scales of pay. It is true that for the purpose of determination of the dispute on hand, the Supreme Court was concerned in Leelamma Jacob only with Grade II with a scale of pay of Rs.425-640 and Grade III carrying a scale of pay of Rs.550-750. But, what happened in that case was that the contesting respondents before the Supreme Court were promoted from Grade I to Grade II and were selected for such promotion on the basis of the departmental examinations held in 1981. As a consequence, the other officers, who were not successful in the departmental examinations, became juniors to the appellants irrespective of the length of their service.

13. Therefore, the question that arose for consideration before the Supreme Court, as seen from paragraph 4 of the decision in Leelamma Jacob was as to 'whether a scheme subsequently adopted by the Department could deprive of the contesting respondents of the seniority, which they attained on being promoted in 1981.' This question was answered by the Supreme Court against the Department. Therefore, the question does not revolve around as to whether the issue relates to promotion from Grade I to Grade II or promotion from Grade II to Grade III.

14. The fundamental question is as to whether a scheme that was floated subsequently can alter the status and rights of the parties or not. Hence, we are of the considered view that the first contention of the writ petitioners/Department was rightly rejected by the Administrative Tribunal.

15. In so far as the second contention of the learned counsel for the petitioners is concerned, it is seen that the decision of the Supreme Court in Leelamma Jacob came only on 9.10.2002, nearly after two years of the creation of the BSNL. But, the order of the Supreme Court was implemented by the proceedings dated 24.2.2004. The Department itself understood the order of the Supreme Court to mean that the contesting respondents herein are entitled to the benefit of the judgment of the Supreme Court.

16. In sum and substance, the directions issued by the proceedings of the BSNL dated 24.2.2004 are as follows :

(i) While implementing the BCR scheme, all the officials, who were promoted earlier to Group II by virtue of passing the limited departmental examination and thus became senior to the officials, who were promoted later to Grade II through 2/3rd seniority quota or on the basis of the OTBP scheme could be considered for promotion to Grade III even if they have not completed 26 years of service, whenever their juniors got promoted on completion of 26 years;

(ii) The fitness of such officials shall be judged by the duly constituted DPC.

(iii) While doing so, no comparison should be made with the reserved categories promoted against shortfall vacancies; and

(iv) On review, if found suitable for promotion to BCR Grade III, such officials should be extended consequential benefits including arrears of pay and allowances.

17. After giving the above directions, the proceedings dated 24.2.2004 also gave further directions as to what should be done in respect of ongoing cases or cases which are already over. The relevant portion of the proceedings dated 24.2.2004 reads as follows :

"In view of the above, necessary action may be taken for promotion of the senior officials as per the Gr.II seniority to BCR Gr.III from the date their juniors in Gr.II were promoted to BCR Gr.III. All the court cases where the courts have given judgments/linked judgment with the SLP in the case of Smt.Leelamma Jacob & Others for promotion to BCR Gr.III may also be settled according to the above instructions. If any judgment or ongoing case is in variance to the orders contained in this letter, the same may be immediately reported to BSNL Corporate Office along with full details. After reviewing the matter and promoting the eligible officials to Gr.III, the total number of officials thus promoted and the total financial implications involved on this account should be intimated to this office, for records."

18. It is by virtue of the aforesaid proceedings dated 24.2.2004 that the contesting respondents were granted the benefit of pay fixation on par with the juniors, who did not pass the departmental examination. But, even without any notice, the BSNL first issued the proceedings dated 10.8.2004 holding that the benefit of fixation of pay could be granted only on actual completion of 26 years of

qualifying service. In other words, by the order dated 10.8.2004, the effect of the previous proceedings dated 24.2.2004 was sought to be annulled even without any notice or information to the contesting respondents.

19. As a matter of fact, the seniority of the contesting respondents vis-a-vis those, who did not pass the departmental examination, was confirmed by another proceedings issued in the interregnum on 28.4.2004. Therefore, the proceedings dated 10.8.2004 fixing the mandate that the benefit of the decision of the Supreme Court in Leelamma Jacob would be available only upon completion of 26 years of service, was completely contrary to the ratio in Leelamma Jacob.

20. The proceedings dated 10.8.2004 was followed by yet another order dated 30.11.2004, directing recovery of the amounts already paid, forcing the contesting respondents to approach the Tribunal. The Tribunal took note of the principle that was laid down in Leelamma Jacob and pointed out that the same would apply to the cases of persons, who had passed the exams and moved over to the higher post with an assurance that they will rank senior to those, above whom they scored a march by passing the departmental examination.

21. In the course of hearing of the writ petitions, Mr.M.Govindaraj, learned counsel appearing for the petitioners filed an affidavit to the effect that none of the juniors of the contesting respondents gained any promotion and that therefore, they had no cause of action. But unfortunately, that was not the case, with which, the Department defended the case before the Tribunal. In any case, we have not actually gone into the facts in respect of each individual.

22. Today, to a pointed question, the reply of the learned counsel for the petitioners is that despite having passed the departmental examination and having gained higher promotions and despite having been assured of seniority, the contesting respondents will not get a higher pay, unless they complete 16 years or 26 years of service. In other words, the passing of the departmental examination and the gaining of promotion with effect from 9.9.1992 have been turned into an exercise in futility. The Department, today, does not want to treat those, who have passed the departmental exams, gained promotions and became seniors on par with persons, who remained in the lower category without passing the exams. This, in our considered view, was contrary not only to the assurances given earlier, but also to the principles laid down by the Supreme Court in the decision in Leelamma Jacob.

23. One more argument advanced by Mr.M.Govindaraj, learned counsel appearing for the petitioners is that the examination referred to in the decision of the Supreme Court in Leelamma Jacob, was abolished in 1983. The learned counsel drew our attention to the OTBP scheme dated 17.12.1983. In paragraph 22(b)(ii) and (iii), it was indicated that promotion to LSG 1/3rd on the basis of a departmental examination will be abolished on the introduction of the scheme and that those vacancies will also be filled up in accordance with the instructions. It was also stated therein that the introduction of the scheme will not affect the officials, who have already been promoted on regular basis.

24. From the above, it is sought to be contended by the learned counsel for the petitioners that the departmental promotion referred to in Leelamma Jacob was completely different from the departmental test and promotion gained by the contesting respondents in this case.

25. On facts, it may be so. But, on principle, what happened in 1983 under a different scheme was repeated in 1992 under another scheme when the Department continued to be the Department of Telecommunications and before the formation of the BSNL. This is why, by the proceedings dated 8.4.1994, the respondents were granted promotion as UDCs on regular basis with effect from 9.9.1992. Therefore, the above distinction cannot be accepted.

26. Relying upon the decision of the Supreme Court in State of A.P. Vs. G.Sreenivasa Rao [1989 (2) SCC 290], it is contended by the learned counsel appearing for the petitioners that for pitching a claim for equal pay for equal work on the basis of Article 14, it must be established that the persons claiming parity should be on par with others.

27. But unfortunately, the said decision has no application to the facts of the present case. We are not concerned in this case with a claim for equal pay for equal work. We are concerned in this case with a claim by persons, who passed departmental examination and gained promotion much before the scheme was introduced and whose juniors were allowed to score a march merely because they stagnated in the lower post without being able to pass the test.

28. The next decision relied upon by the learned counsel for the petitioners in Union of India Vs. Ibrahim Munon [2010 (15) SCC 727], no doubt arose out of OTBP as well as BCR schemes. But, as seen from paragraph 6 of said decision, the case related to persons, who were transferred on their own request to another division and who became junior most in that division. Therefore, the said decision is also of no assistance to the petitioners.

29. In *Indu Shekar Singh Vs. State of U.P.* [2006 (8) SCC 129], the Supreme Court was concerned with cases of persons, who exercised the option upon the creation of a development authority. Therefore, the Supreme Court held that once an option is exercised, persons, who exercised the option, will have to gain or lose on the basis of the option.

30. The said decision, in our considered view, is also of no assistance. The Department itself granted the benefit of fixation of seniority for persons, who gained promotions on the basis of departmental examination. The said benefit was not taken away by any specific provision in the OTBP or BCR scheme. In such circumstances, the mere exercise of the option to come to the stream or to the BSNL cannot be held against the contesting respondents.

31. In *BSNL Vs. R.Santhakumari Velusamy* [2011 (9) SCC 510], the question that arose for consideration was whether reservation would apply to the upgradation of 10% of the posts, in Grade III under BCR or OTBP scheme. Therefore, the Supreme Court pointed out that there is a distinction between upgradation and promotion.

32. In this case, the respondents are neither seeking upgradation nor seeking promotion. The respondents sought only to grant them higher fixation on the basis of their seniority over and above the juniors and on the basis of the decision of the Supreme Court. This benefit was granted by the Department itself by the proceedings dated 24.2.2004. What was granted in February 2004 was sought to be withdrawn within a couple of months by the proceedings dated 10.8.2004 and 30.11.2004, even without any notice. Therefore, apart from the merits of the case, the withdrawal of the benefit, refixation of pay and recovery of the arrears, resulting in civil consequences for the contesting respondents have been done without even following the principles of natural justice. Hence, we find no illegality in the order of the Tribunal warranting interference.

33. Accordingly, the writ petitions are dismissed. No costs. Consequently, all connected pending MPs are also dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

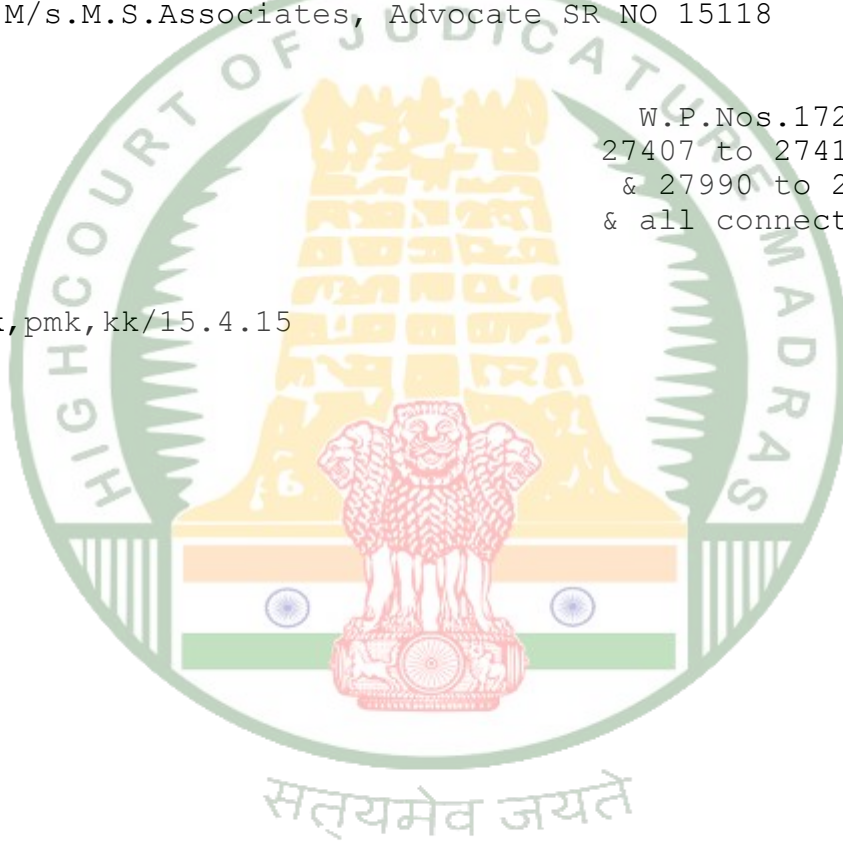
To

THE REGISTRAR,
CENTRAL ADMINISTRATIVE TRIBUNAL,
MADRAS BENCH,
HIGH COURT BUILDINGS,
CHENNAI-104.

+2 ccs to Mr.M.Govindarraj, Advocate, SR.No.15394
+5 CCs to Mr.V.S.Venkatesh, advocate SR NO 15206
+2 CCs to M/s.M.S.Associates, Advocate SR NO 15118

W.P.Nos.17214 & 20884/2011,
27407 to 27410 of 2012, 26275
& 27990 to 27993 of 2013
& all connected pending MPs

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