

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2015

CORAM

THE HONOURABLE MR.JUSTICE N.PAUL VASANTHAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

W.P.No.18611 of 2014

A.Sukumar

... Petitioner

Vs.

- 1.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 002.
- 2.The Chairman-cum-Managing Director,
BSNL Corporate Office,
Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpath, New Delhi-110 001.
- 3.The Chief General Manager,
BSNL, Chennai Telephones,
78, Purasaiwakkam High Road,
Chennai-600 010.
- 4.The General Manager (West),
Chennai Telephones,
Kodambakkam Telephone Exchange Complex,
Chennai Telephones.
- 5.The Accounts Officer (P&A),
II West,
Kodambakkam Telephone Exchange,
Kodambakkam,
Chennai.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue writ of certiorarified mandamus calling for the records pertaining to the order dated 14.8.2013 made in O.A.No.1229 of 2011 and quash the same.

For Petitioner : Mr.R.Rajesh Kumar

For Respondents :Mr.Y.Bhuvanesh Kumar for R2 to R5
R1 - Tribunal

ORDER

(Order of the Court was made by N.PAUL VASANTHAKUMAR,J.)

Heard Mr.R.Rajesh Kumar, learned counsel appearing for the petitioner and Mr.Y.Bhuvanesh Kumar, learned counsel appearing for the respondents 2 to 5.

2. This writ petition is filed challenging the order made in O.A.No.1229 of 2011, dated 14.8.2013, wherein the petitioner has prayed to set aside the orders dated 6.8.2011 and 26.8.2011 respectively and restrain the respondents from recovering the amount paid in excess to the petitioner and direct the respondents to reimburse the amounts recovered from the petitioner in lieu of the order passed by the 4th respondent.

3. It is the case of the petitioner that the petitioner belongs to Scheduled Caste community and was initially appointed as Lineman on 06.12.1979, which is a Group D post and thereafter, he was promoted as Telephone Mechanic (Telecom Mechanic) with effect from 8.6.1994. He has been working for more than 31 years and based on his meritorious service, he was awarded Bharat Sanchar Sarathi Award in the year 2002. One C.Peurmal, who joined the respondent Organization on 03.3.1981 as Lineman is junior to him, but he was getting more pay. Hence the petitioner submitted a representation to the 4th respondent on 04.11.2009 to step up his pay on par with his junior C.Perumal. By order dated 06.3.2010, the department accepted stepping up of pay as sought for by the petitioner on par with his junior C.Perumal with effect from 22.12.2003. The said order was cancelled by order dated 6.8.2011 and by order dated 26.8.2011 recovery was ordered without issuing notice to the petitioner. The said order dated 6.8.2011 as well as 26.8.2011 were challenged before the Central Administrative Tribunal and the Central Administrative Tribunal upheld those orders by stating the facts which are contrary to the records, namely, the said C.Perumal cannot be compared with that of the petitioner's service. Even though non-issuance of notice before passing orders was taken as a ground, no finding was rendered by the Central Administrative Tribunal with regard to non-issuance of notice and violation of principles of natural justice.

4. The learned counsel appearing for the respondents 2 to 5 fairly submitted that without issuing any notice to the petitioner, order dated 06.8.2011 and 26.8.2011 were passed re-fixing the salary and ordering recovery.

5. Similar issue was considered by this Court in W.P.No.29517 of 2013 by order dated 02.1.2014 (of which one of us NPVJ was a member) wherein similar order of re-fixation and recovery without issuing notice was set aside as it was in violation of principles of natural justice, particularly, when reduction in salary and ordering recovery have got civil consequences.

6. Applying the said decision to the facts of this case, the orders dated 6.8.2011 and 26.8.2011 as affirmed by the Central Administrative Tribunal in O.A.No.1229 of 2011 dated 14.8.2013 is set aside, however, this order will not preclude the 3rd respondent to issue notice calling for objection from the petitioner for passing fresh orders in accordance with law. While passing fresh order, the 3rd respondent shall also pass speaking order, regarding order of reduction in salary or recovery has to be made.

7. The writ petition is disposed of, as stated supra. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

- 1.The Registrar,
Central Administrative Tribunal,
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Chennai-600 002.
- 2.The Chairman-cum-Managing Director,
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Kodambakkam Telephone Exchange Complex,
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5.The Accounts Officer (P&A),
II West,
Kodambakkam Telephone Exchange,
Kodambakkam,
Chennai.

1 cc to M/s.R. Rajeshkumar, Advocate, Sr. 18611
1 cc to M/s.Y. Bhuvaneshkumar, Advocate, Sr. 424

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