IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.3.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice P.R.SHIVAKUMAR

Writ Petition Nos.3100 to 3104 of 2015 and MP.Nos.1,1,1,1 & 1 of 2015

1.The Chief General Manager, BSNL,
Chennai Telephones, Chennai-10.

2.The Chairman-cum-Managing Director,
BSNL Corporate Office, Janpath,
New Delhi-110001. ...Petitioners in all the WPs

Vs

1.T.Sundar, DGM Finance (Retd.),
BSNL ...R1 in WP.3100/2015

2.M.Vasudevan, DGM ...R1 in WP.3101/2015

3.V.S.Krishnamurthy, DGM Finance (Retd.)
BSNL ...R1 in WP.3102/2015

4.V.Chandran, DGM Finance (Retd.), BSNL ...R1 in WP.3103/2015

5.Sheik Allauddin ...R1 in WP.3104/2015

6.The Registrar, Central Administrative
Tribunal, Chennai-104. ...R2 in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the second respondent in O.A.Nos.1709, 1711, 1712, 1713 and 1714 of 2013 dated 9.7.2014 and quash the same.

For Petitioners : Mr.K.Venkatramani, SC for Mr.P.R.Kumar

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For Respondent-1 in all the WPs : Mr.Karthik Mukundan

ORDER OF THE COURT WAS MADE BY V.RAMASUBRAMANIAN,J

All these writ petitions are filed by the Bharat Sanchar Nigam Limited (hereinafter called the BSNL), questioning the correctness of the orders passed by the Central Administrative Tribunal allowing the applications of the contesting respondents herein.

2. Heard Mr.K.Venkatramani, learned Senior Counsel appearing for Mr.P.R.Kumar, learned counsel for the petitioners and Mr.Karthik Mukundan, learned counsel appearing for the contesting respondents.

3. Admittedly, the contesting respondents were all working as Assistant Accounts Officers in the BSNL. All of them gained promotion to the post of Accounts Officer during the relevant year 1995. All the respondents had their next increment in the lower category of Assistant Accounts Officer due on 1.1.1996 or 1.2.1996. Therefore, they were entitled to exercise their option in terms of FR22(I)(a)(1) either (a) to have their pay in the promoted post straight away fixed with effect from the date of promotion or (b) to get the fixation in the promoted post after the accrual of next increment in the time scale of pay of the lower post. In case the Government servant who opts to get his pay fixed in the promoted post from the date of promotion, his pay in the promoted post shall be fixed at a higher stage above the figure arrived at by adding one notional increment on account of promotion to his pay in the lower post immediately prior to promotion. In case the Government servant who opts to get his pay in the promoted post fixed from the date of accrual of his next increment in the lower post than on the date of promotion, his pay in the pay band shall continue unchanged but the grade pay of a higher post will be granted. Re-fixation will be done on the date of his next increment by allowing two increments, one annual increment and the second on account of promotion. While computing those two increments his basic pay prior to the date of promotion shall be taken into account.

4. Thereafter, recommendations of the Fifth Pay Commission were implemented in the year 1999, but with retrospective effect from 1.1.1996. At that time, the scales of pay to the post of Assistant Accounts Officer as well as the Accounts Officer got modified. In order to take into account the said contingency, the Department of Personnel and Training, Government of India, issued an official memorandum in O.M.No.1/12/97-Estt (Pay-I) dated 23.4.1999. It was further amended on 10.8.1999. As per the said amendment, the Government ordered that the Government servants, who were promoted before 1.1.1996, should be given an opportunity to give fresh options to get their pay fixed in the promoted post in view of the introduction of the revised pay scales with effect from 1.1.1996. But, it was made subject to one condition, namely that the benefit

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will be applicable only to employees promoted after 1.1.1995 but before 1.1.1996 and whose date of next increment in the lower post falls on or after 1.1.1996.

5. Yet another event happened in the year 2003. As per the said event, the benefit of upgradation was granted to persons holding the post of Assistant Accounts Officer and Accounts Officer. Even at that time, the Government of India, Department of Personnel and Training issued another memorandum in O.M.No.16/8/2000-Estt (Pay-I) dated 25.2.2003. As per the said memorandum, the employees were allowed to revise the option exercised by them on promotion or appointment to a higher post or grade under FR 22(I)(a)(1) in the event of unanticipated developments or change of rules. Therefore, it appears that the contesting respondents revised the options that they had earlier exercised, after February 2003. The options were accepted and their pay scales were revised. Incidentally, the office memorandum dated 25.2.2003 did not give the benefit of arrears, but restricted the benefits only to have prospective effect.

6. However, by subsequent orders passed on 17.10.2013 and 25.10.2013, the management sought to revise the pay and ordered recovery. Therefore, challenging the orders of refixation of pay and recovery dated 17.10.2013 and 25.10.2013, the contesting respondents filed a batch of applications in O.A.Nos.1709 and 1711 to 1714 of 2013 on the file of the Central Administrative Tribunal. The Tribunal allowed all the five applications by a common order dated 9.7.2014. Aggrieved by the said order, the BSNL is before us.

7. The main contention of the learned Senior Counsel appearing for the BSNL is that an option once exercised, cannot be revised and that too, after a long lapse of eight years. The further contention of the petitioners is that the contesting respondents gained promotions in 1995 and had exercised a particular option in terms of FR 22(I)(a)(1) and that the same cannot be allowed to be revised after eight years in the year 2003.

8. But, the above contention loses sight of two important developments that had taken place, namely (i) the revision of the pay scales based on the recommendations of the Fifth Pay Commission; and (ii) upgradation ordered in the year 2003. The said contention also loses sight of two official memoranda (i) dated 23.4.1999 as amended on 10.8.1999; and (ii) dated 25.2.2003.

9. The relevant portion of the office memorandum dated 23.4.1999 as amended on 10.8.1999 reads as follows :

> *"The question as to whether the Government servants promoted before 1st January 1996 should be given another opportunity to give fresh option to get their pay fixed in the promoted post in view of the introduction of revised pay scales*

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with effect from 1st January 1996, has also been considered and it has been decided that the employees promoted after 1.1.995 but before 1st January 1996 and whose date of next increment in the lower posts falls on or after 1st January 1996, may be allowed another option to get their pay fixed in the promoted post under FR 22 I(a) (1) either from the date of promotion or from the date of next increment in the lower post falling on or after 1st January 1996."

10. On the scope of the above memorandum, there is no dispute. This memorandum issued in 1999 took note of the revision on the basis of the recommendations of the Fifth Pay Commission.

11. Similarly, the next memorandum dated 25.2.2003 is also of significance and it reads as follows :

"The undersigned is directed to refer to the existing provision relating to exercise of option by a Central Government servant for fixation of pay on promotion/appointment to the higher grade/ post under FR 22(I)(a)(i) and to say that a demand was raised by the Staff side in the National Council (JCM) that a Central Government servant may be allowed to revise the option exercised by him on promotion/appointment to the higher post/grade under FR 22(I)(a)(i) in the event of unanticipated developments or change of rules etc. The Staff Side had also demanded that a specific provision to this effect be incorporated in the existing rules/ orders.

2. 2. The demand of the Staff Side has been examined by the Government and the President is pleased to decide that pursuant to any unforeseen developments or change of rules, a Government Servant may give a revised option for pay fixation under FR 22(I)(a)(i) within one month from the date of orders of such unforeseen developments or change or rules. Acceptance of such revised option may thereafter be examined and decided on merits by the Ministry/Department concerned with the approval of Department of Personnel & Training. In case, it is decided to allow fresh option to the Government Servant concerned, the option once exercised shall be treated as final. The past cases of similar nature can be referred to this Department which will be decided on merit."

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12. There are only two conditions imposed in the first memorandum. The first condition is that promotions should have been gained during the period from 1.1.1995 to 1.1.1996. The second condition is that the next increment should fall on or after 1.1.1996. It is admitted by the petitioners that the contesting respondents fulfilled both the conditions prescribed under the office memorandum dated 23.4.1999.

13. Similarly, the office memorandum of Government of India dated 25.2.2003 imposed two conditions namely (i) that the occasion for revision of the option should arise on account of unanticipated developments or change of rules, and (2) that the revised option shall be given within one month from the date of the order of the unforeseen development or change of rules. The upgradation ordered in 2003 is not stated to be an anticipated development. It is an unanticipated development and the office memorandum gives scope for revision. The above said office memorandum of the Central Government came to be adopted by BSNL in its office Memorandum issued at New Delhi bearing No.4-20/2003-SEA dated 01.04.2003 upgrading the pay of the Junior Accounts Officer with effect from 01.06.1996 and with monetary benefits from 19.02.2003. The time of one month for exercising option shall be counted from the date of communication of the said office memorandum of BSNL. The contesting respondents exercised their options within one month thereafter. The BSNL also, on the basis of the option exercised by the private respondents, revised their scales in 2003 itself. Therefore, the exercise of option by the contesting respondents in the year 2003 is only in accordance with both the above office memoranda. The option thus exercised was also accepted and acted upon by BSNL and revised fixation came to be made in 2003 itself. There was no reason for the petitioners to upset the same in the year 2013 and order refixation of pay and recovery. In such circumstances, we do not think that the Tribunal committed any error and we find no reason to interfere with the impugned order of the Tribunal.

14. Accordingly, the writ petitions are dismissed. No costs. Consequently, the above MPs are also dismissed.

15. However, it is represented by Mr.K.Venkatramani, learned Senior Counsel that the contempt petitions arising out of the orders of the Tribunal are pending before the Tribunal.

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16. We give eight weeks' time for the petitioners to implement the orders of the Tribunal.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Registrar,
Central Administrative Tribunal,
Chennai-104

+5cc to MR.P.R.KUMAR Advocate sr no.12209

+5 cc to MR.MRNON, Advocate sr no.12396.

RS/asr

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