

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2015

CORAM

THE HON'BLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR. JUSTICE T.MATHIVANAN

W.P.No.6513 of 2015 and
M.P.No.1 of 2015

The Chief General Manager,
Bharat Sanchar Nigam Limited,
B.B.Kulam, Madurai. .. Petitioner

vs

1.A.G.Sankaralingam

2.The Central Administrative Tribunal,
Madras Bench, City Civil Court Building,
Chennai-600 104.

3.The Principal Controller of Communication
Accounts, T.N.Circle, DOT Cell,
No.238, 7th Floor, Telephone Exchange,
R.K.Mutt Road, Mandaveli,
Chennai-600 028. .. Respondents

This Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records relating to the order passed by the 2nd respondent made in TA No.3 of 2013 dated 05.09.2014 and quash the same.

For Petitioner ... Mr.T.Ravi Kumar
For 1st Respondent... Mr.G.Veerabathiran

For 3rd respondent... Mr.B.Ramaratnam,
Central Government Standing Counsel

ORDER

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

The Bharat Sanchar Nigam Limited has come up with the above Writ Petition challenging an order passed by the Central Administrative Tribunal, allowing a claim of the 1st respondent for medical reimbursement.

2. Heard Mr.T.Ravi Kumar, learned Standing Counsel appearing for the petitioner, Mr.G.Veerabathiran, learned Counsel appearing for the 1st respondent and Mr.B.Ramaratnam, learned Central Government Standing Counsel appearing for the 3rd respondent.

3. The 1st respondent herein was an employee of the Department of Telecommunications of the Government of India. He retired from service on 30.09.2002 after rendering service of about 39 years.

4. It appears that after his retirement, the 1st respondent went on a pilgrimage to Puri where he suffered a heart attack on 06.12.2002. After undergoing treatment for about 10 days at Bhubaneswar, the 1st respondent returned to Chennai. He was admitted in the Apollo Hospital at Chennai on 22.01.2003 where he underwent a bye pass surgery and took treatment upto 25.02.2003 before his discharge.

5. By the proceedings dated 28.02.2003, of the Board of Directors of Bharat Sanchar Nigam Limited, a Scheme known as ''BSNL Employees Medical Reimbursement Scheme'' was introduced, with retrospective effect from 24.02.2003. Therefore, the 1st respondent made a claim for reimbursement of the medical expenses incurred in undergoing the bye pass surgery. The claim was rejected by the Bharat Sanchar Nigam Limited by an order dated 07.04.2005.

6. Challenging the rejection of his claim, the 1st respondent filed a Writ Petition in W.P.No.3050 of 2006 on the file of this Court. During the pendency of the Writ Petition, the Bharat Sanchar Nigam Limited was notified as an Institution amenable to the jurisdiction of Central Administrative Tribunal. Consequently, the Writ Petition was transferred to the Tribunal and numbered as T.A.No.3 of 2013.

7. In the Transferred Application, the Bharat Sanchar Nigam Limited took a plea that since the 1st respondent took treatment before the introduction of the Medical Reimbursement Scheme for BSNL Employees and also, since the 1st respondent failed to exercise the option to go into the scheme, they were not responsible to answer the claim. In the light of such a stand taken by Bharat Sanchar Nigam Limited, the 1st respondent filed a Miscellaneous Petition in M.P.No.310 of 2014 for impleading the Principal Controller of Communication and Accounts, of the Department of Telecommunications as a party to the Transferred Application. In the application for impleading, the Central Government filed a counter affidavit contending that the 1st respondent ceased to be an employee of the Central Government with effect from 01.10.2000 and that with effect from the said date, the 1st respondent was only an employee of Bharat Sanchar Nigam Limited.

8. Therefore, considering the stand taken by Bharat Sanchar Nigam Limited as well as the stand taken by the Central Government, the Tribunal passed an order allowing the Transferred Application and directing Bharat Sanchar Nigam Limited to reimburse the medical expenses within a period of four weeks. It is against this order dated 05.09.2014, passed by the Tribunal, that the Bharat Sanchar Nigam Limited has come up with the above Writ Petition.

9. Before getting into the grounds on which Bharat Sanchar Nigam Limited challenges the order of the Tribunal, certain fundamental facts have got to be recorded. They are as follows:

1. that the 1st respondent joined the Department of Telecommunication in the year 1963 and reached the age of superannuation on 30.09.2002, after serving for a period of about 39 years;

2. that the Bharat Sanchar Nigam Limited was formed as a company registered under the Companies Act and that the employees of the Department of Telecommunication were called upon by the proceeding dated 14.01.2002 to exercise an option either to come to Bharat Sanchar Nigam Limited or to continue with the Central Government;

3. Even in the Memorandum dated 14.01.2002, issued by Bharat Sanchar Nigam Limited calling for options, it was indicated that the effective date of absorption into Bharat Sanchar Nigam Limited will be 01.10.2000, for those who exercise the option to get absorbed in Bharat Sanchar Nigam Limited;

4. The fact that the 1st respondent exercised an option, pursuant to the said office Memorandum dated 14.01.2002 to be absorbed into Bharat Sanchar Nigam Limited, is not disputed by the petitioner/ Bharat Sanchar Nigam Limited;

5. After more than a year, of the Office Memorandum dated 14.01.2002, calling upon the employees to exercise an option to switch over to Bharat Sanchar Nigam Limited w.e.f. 01.10.2000, the Board of Directors of Bharat Sanchar Nigam Limited floated a medical policy known as "'BSNL Employees Medical Reimbursement Scheme'" by a Circular dated 28.02.2003;

6. By the above said Circular, the Medical Reimbursement Scheme was floated w.e.f. 24.02.2003; and

7. The 1st respondent got admitted in the Apollo Hospital on 29.01.2003, underwent a bye pass surgery and got discharged admittedly on 25.02.2003, a day after the coming into force of the Medical Reimbursement Scheme.

10. According to the petitioner, the 1st respondent never exercised an option to come to the Medical Reimbursement Scheme floated by Bharat Sanchar Nigam Limited on 28.02.2003 w.e.f. 24.02.2003 and that he continued to enjoy the benefits of the Central Government Health Scheme. Therefore, it is claimed by the petitioner that the 1st respondent is not entitled to the benefits of the scheme floated on 28.02.2003. But the above contention, as rightly held by the Tribunal is fallacious. The Original Memorandum dated 14.01.2002, demanded the exercise of option from all employees of the

Department of Telecommunication, to be made on or before 28.02.2002. This is seen from paragraph 3 of the Office Memorandum dated 14.01.2002. The Office Memorandum dated 14.01.2002 also made it clear that the option exercised will be final and that no employee will be allowed to go back on the same. The Office Memorandum further threatens that those who did not exercise the option to come to Bharat Sanchar Nigam Limited on or before 28.02.2002 will be deemed to have opted the Government service.

11. Therefore, the fact that the 1st respondent exercised the option on or before 28.02.2002, while he was in service and the fact that the option had become final, confirming his absorption into Bharat Sanchar Nigam Limited is not disputed and cannot be disputed. On account of the admitted fact that the 1st respondent had exercised the option as per the terms and conditions of the Memorandum dated 14.01.2002 within the time stipulated therein, the 1st respondent was undoubtedly got absorbed into Bharat Sanchar Nigam Limited w.e.f. 01.10.2000.

12. Keeping the above in mind, let us have a look at the general terms and conditions incorporated in the Office Memorandum dated 14.01.2002. It is seen from Clause 16 of the said Office Memorandum that the Central Government assured to extend the CGHS facilities, until such time, a scheme is floated by the Bharat Sanchar Nigam Limited. Clause 16 of the Memorandum dated 14.01.2002 reads as follows:

''16. Medical Benefits:

It has been decided to extend CGHS facilities to those serving employees of BSNL who were availing CGHS facilities prior to their transfer to BSNL as agreed by Ministry of Health vide their letter No.4-81/2000 - C&P/CGHS-CGHS (P) dated 20.04.2001. The existing medical benefits as admissible in DOT would continue in BSNL till alternative arrangements are made in BSNL."

13. Therefore, it is clear from Clause 16 of the memorandum dated 14.01.2002 that Bharat Sanchar Nigam Limited cannot today put against the 1st respondent, the availment of Central Government Health Scheme benefits until Bharat Sanchar Nigam Limited came up with a scheme on 28.02.2003 w.e.f. 24.02.2003. Hence, the first contention of the learned Counsel for the petitioner is liable to be rejected.

14. The Central Government has taken a categorical stand before the Tribunal in their counter affidavit to the application for impleadment that though the claim of the 1st respondent was Rs.2,10,000/-, the claim was admissible to the extent of Rs.1,40,000/-, if the 1st respondent had continued to be an employee of the Central Government. In other words, the Central Government has taken a stand that the 1st respondent had ceased to be an employee of the Central Government w.e.f. 01.10.2000 and that therefore, even

the amount is admissible under the Central Government Health Scheme, is not payable by the Central Government.

15. From the stand taken by Bharat Sanchar Nigam Limited and the Central Government, it is clear that both of them are putting the ball at the door steps of the other. Eventually, it is the employee who is entitled to the benefits, has suffered and this has been taken note of by the Tribunal.

16. As a matter of fact, the Medical Reimbursement Scheme floated by the Circular dated 28.02.2003 by Bharat Sanchar Nigam Limited is not only for the benefit of the employees who were serving on the date of the introduction of the scheme, Clause 1.5 of BSNL Employees Medical Reimbursement Scheme says that all serving and retired employees of BSNL including deputationists will be eligible for the scheme. Therefore, the eligibility of the 1st respondent cannot be in doubt. Since he retired on 30.09.2002, he would come under the category of a retired employee who is covered by Clause 1.5 of the Scheme dated 28.02.2003.

17. Once it is clear that the 1st respondent had been absorbed into Bharat Sanchar Nigam Limited w.e.f. 01.10.2000 and once it is clear that the Medical Reimbursement Scheme floated by Bharat Sanchar Nigam Limited on 28.02.2003 would cover even the retired employees, there is no escape from the conclusion that the order passed by the Tribunal is perfectly in order. Therefore, we see no justification to interfere with the same. Hence, this Writ Petition is dismissed. The petitioner is directed to settle the amount within a period of six weeks from the date of receipt of a copy of this Order. No costs. Consequently, connected Miscellaneous Petition is also closed.

सत्यमेव जयते

Sd/-
Assistant Registrar

//True Copy//

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Sub Assistant Registrar

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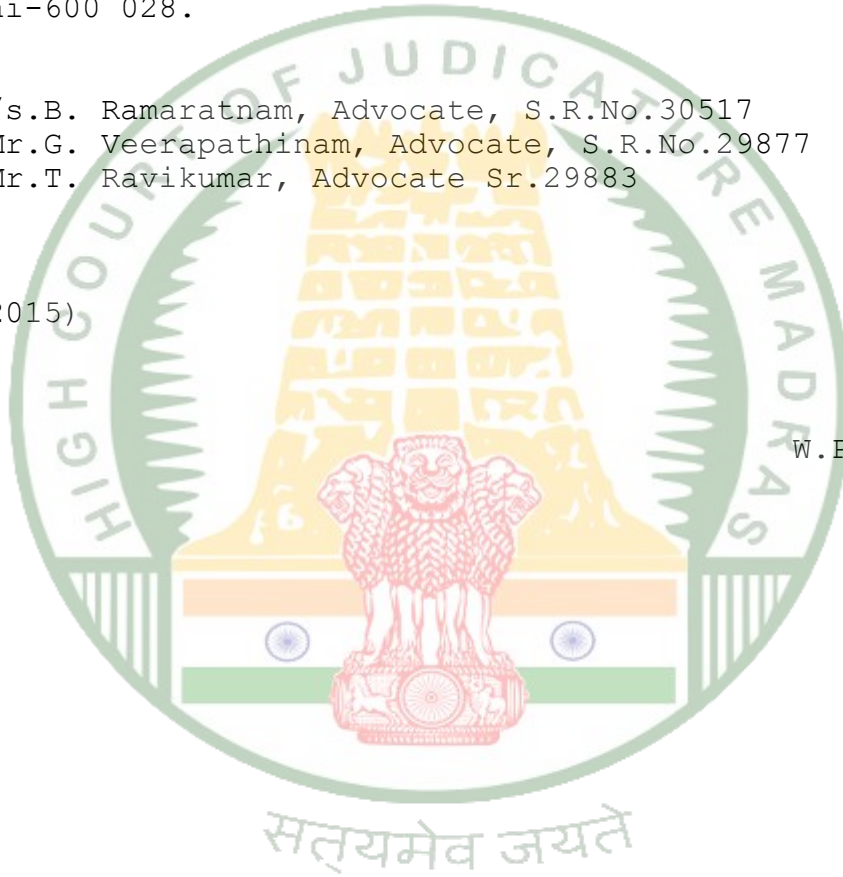
To

1. The Central Administrative Tribunal,
Madras Bench, City Civil Court Building,
Chennai-600 104.
2. The Principal Controller of Communication
Accounts, T.N.Circle, DOT Cell,
No.238, 7th Floor, Telephone Exchange,
R.K.Mutt Road, Mandaveli,
Chennai-600 028.

+1cc to M/s.B. Ramaratnam, Advocate, S.R.No.30517
+2ccs to Mr.G. Veerapathinam, Advocate, S.R.No.29877
+1cc to Mr.T. Ravikumar, Advocate Sr.29883

SAI (CO)
EU (30/06/2015)

W.P.No.6513 of 2015



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