

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22-09-2016
DELIVERED ON: 30-09-2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Petition No.14723 of 2016
and W.M.P.No.12870 of 2016

Anandhi

..Petitioner

Vs.

1. The Chief General Manager
BSNL, Tamil Nadu Circle,
No.80, Anna Salai,
Chennai - 600 002
2. The General Manager
BSNL, Bibikulam
Madurai - 625 002
3. The Central Administrative Tribunal
Rep. by its Registrar
Chennai - 600 104

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari fied mandamus calling for the records in respect of the impugned order passed in O.A.No.1203 of 2012 dated 11-09-2015 on the file of the third respondent and quash the same and direct the respondents to grant First Time Bound IDA Pay Scale Upgradation with effect from 01-10-2004 to the petitioner and Second Time Bound IDA Pay Scale Upgradation with effect from 01-10-2009 to the petitioner and for restoration of seniority and other promotional benefits to the petitioner and pass further orders.

For petitioner : Dr. S. Padma

For Respondents: Mr. M. Vaidyanathan, Standing Counsel
for RR1 and 2
R3 - Tribunal

ORDER

(Order of the Court was delivered by A.SELVAM, J.)

This writ petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for records relating to the order passed in O.A.No.1203 of 2012 dated 11-09-2015 by the Central Administrative Tribunal, Madras Bench and quash the same.

2. The writ petitioner as applicant has filed O.A.No.1203 of 2012 on the file of the Central Administrative Tribunal, Madras Bench praying to call for the records relating to the orders dated 15-07-2011 and 26-05-2012 passed by the second respondent and quash the same and also for consequential relief wherein the present respondents have been shown as respondents.

3. It is averred in the Original Application that the applicant has been appointed as Junior Telecom Accountant in the Department of Telecommunication on 04-02-1984 and subsequently, promoted to the post of Assistant Accounts Officer on 29-07-1998 and another promotion has been given on 11-05-2001. On 06-03-2002, the petitioner has been promoted and posted as Accounts Officer and even now, she is working in the same post. On 18-01-2007, Time Bound /Post Based Promotion Policy i.e., IDA Scale Upgradation Scheme has been introduced. As per the Scheme, the first upgradation has to take effect from 01-10-2004. In the year 2008, first review has been conducted for giving first Time bound/ Post based promotion. The relevant period for the first Time bound upgradation is 1999-2004. During that period, the petitioner has been promoted to the post of Assistant Accounts Officer. No disciplinary proceeding has been pending against the petitioner. On 08-08-2005, the petitioner has given a complaint with regard to sexual harassment in work place. On 19-08-2006, the Divisional Engineer sent Confidential Report ('ACR' in short) in the year 2005-2006 assessed by different Officers. The first period is covered from 01-04-2005 to 15-09-2005 wherein adverse remark has been given by one Mr. Ayyappan under whom the petitioner has served less than two months. As per Guidelines, the Reporting Officer is not having authority to give report and hence the report given by him is not sustainable. The second report has been given by one Mr. Chandrasekaran, against whom the petitioner has lodged a complaint for sexual harassment in work place. The petitioner has challenged the confidential report by way of appeal and superior officer has pressurized the petitioner to withdraw the complaint. The petitioner has refused to withdraw the same. Under the said circumstances, the appeal filed by the petitioner has been dismissed on 28-12-2006 by the second respondent. On 18-01-2007, implementation of Time Bound/Post Based Promotion

Policy has been introduced. The first Review Meeting has been conducted in the year 2008. The relevant period is 1999-2004. The petitioner has not been considered. The second respondent has sent a report that the petitioner cannot be considered for first Time bound Upgradation from 2004, without any reasons. The petitioner has also challenged adverse remarks made by two different Officers. The second respondent has passed the impugned orders dated 15-07-2011 and 25-06-2012 and in order to quash the same, the present Original Application has been filed.

4. In the reply statement filed by the respondent, it is averred that after making review for relevant period it has come to know that against the applicant more than two average entries have been made in the ACR. Under the said circumstances, the applicant is not entitled to get promotion under IDA and therefore, the present Original Application deserves to be dismissed.

5. In the rejoinder, it has been specifically averred to the effect that adverse entries have not been communicated to the applicant and as per Rules, the same should be communicated.

6. The Central Administrative Tribunal, Madras Bench after considering the rival contentions put forth on either side has dismissed O.A.No.1203 of 2012 by way of passing the impugned detention order and in order to quash the same, the present writ petition has been filed at the instance of the applicant as writ petitioner.

7. The learned counsel appearing for the writ petitioner has sparingly contended that as per Rulings of the Honourable Supreme Court, adverse entries in ACR have to be communicated to the concerned employee and in the instant case, even though it has been specifically stated on the side of the respondents that more than two adverse entries are recorded in the ACR of the petitioner, the same have not been communicated. But the Central Administrative Tribunal, without considering the crux of the decision given by the Honourable Supreme Court has erroneously dismissed the Original Application and therefore, the impugned order passed by the Central Administrative Tribunal is liable to be quashed.

8. In support of the contentions put forth on the side of the writ petitioner/applicant, the following decisions are relied upon:

(i) 2008 (8) SCC 725 (Dev Dutt Vs. Union of India) wherein the Honourable Supreme Court has held that the entries as "very good", "good", "average" or "poor" has to be communicated to the concerned employee.

(ii) In 2013 (9) SCC 566(Sukhdev Singh Vs. Union of India) the Honourable Supreme Court has once again clinched the issue by way of observing as follows:

"In our opinion, every entry in the ACR of public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because communication of such an entry may adversely affect the employee in two ways: (I) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of entry is arbitrary and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi Vs. Union of India (1978 (1) SCC 248) that arbitrariness violates Article 14 of the Constitution."

9. The learned counsel appearing for the respondents has fairly conceded the dictum reported in 2013(9) SCC 566(cited supra).

10. From a cumulative reading of the decision mentioned supra, it is made clear that every entry made in ACR of a public servant should be communicated to him for the reasons culled out by the Honourable Supreme Court.

11. In the instant case, it is an admitted fact that "average entries" have been made in the ACR of the writ petitioner. But the same have not been communicated to her. The Central Administrative Tribunal without considering the clinching decision given by the Honourable Supreme Court has erroneously dismissed the Original Application. In view of the discussion made earlier, this Court has found considerable and acceptable force in the contentions put forth on the side of the petitioner and therefore, the present writ petition deserves to be allowed.

In fine, this writ petition is allowed without costs. The order passed in O.A.No.1203 of of 2012 dated 11-09-2015 by the Central Administrative Tribunal, Madras Bench is quashed and O.A.No.1203 of 2012 is allowed as prayed for. Consequently, connected W.M.P.No.12870 of 2016 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

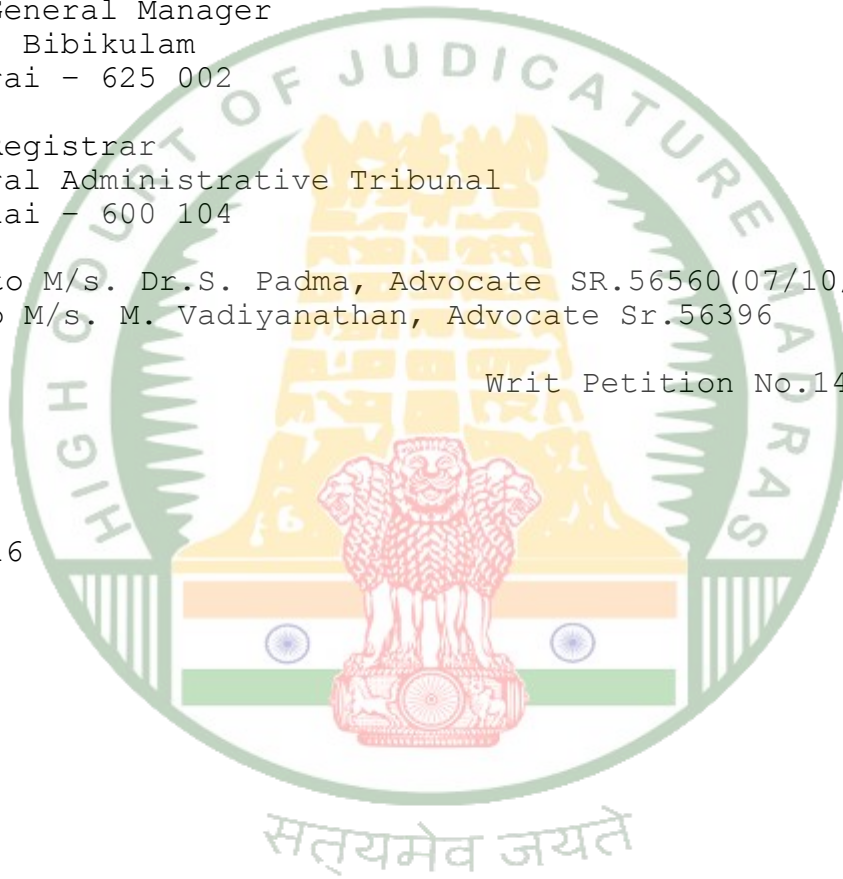
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To

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 3. The Registrar
Central Administrative Tribunal
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- + 2 ccs to M/s. Dr.S. Padma, Advocate SR.56560 (07/10/16)
+ 1 cc to M/s. M. Vadiyanathan, Advocate Sr.56396

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RP(CO)
EU 06.10.16



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