

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18893 of 2015

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1. Bharat Sanchar Nigam Limited (In-short-BSNL), through Chairman-cum-Managing Director, Statesman House Building, Barakhamba Road, Cannaught Place, New Delhi.
 2. The Chief General Manager, Bharat Sanchar Nigam Limited, Sanchar Bhavan, Patna.
 3. The Deputy General Manager (Finance), Bharat Sanchar Nigam Limited, Bihar Circle, Patna.
 4. The General Manager, Bharat Sanchar Nigam Limited, Telephone District, Gaya.

.... Petitioners

Versus

1. Manoranjan Prasad Singh, Son of Late Baij Nath Singh, Ex- Divisional Engineer (Phones), Gaya O/o of the General Manager, Telecom District, Gaya (Bihar), resident of Mohalla- Mainpura, Urmila Bhawan, P.S.- Patliputra, District- Patna (Bihar).
2. The General Manager, DOT Cell, CTO, Campus, Patna.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Harendra Prasad Singh, Advocate Mr. Santosh Kumar, Advocate
For private Respondent	:	Mr. M.P. Dixit, Advocate Mr. S.K. Dixit, Advocate Mr. Sanjay Kumar Choubey, Advocate
For Union of India	:	Mr. Rajesh Kumar, Advocate Mr. Sunil Kumar Verma, CGC

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 16-03-2017

Vide order dated 4th of August, 2015 passed by the
Central Administrative Tribunal, Patna Bench, Patna in OA No. 904
of 2011 a direction has been issued upon the authorities of Bharat
Sanchar Nigam Ltd. (hereinafter referred to as the BSNL) to release



and pay the gratuity in favour of private respondent No. 1 as also pay interest @ 8% from October, 2006 till date of payment. It is this decision which is subject matter of challenge in the present writ application filed on behalf of the BSNL.

The sole question for consideration before this Bench is whether the Central Administrative Tribunal has committed a patent error of law by misinterpreting Rule 58 of BSNL (Conduct, Discipline and Appeal) Rules, 2006 to mean that it has repealed all Rules including CCS(Pension) Rules, 1972.

Learned counsel representing BSNL submits that the private respondent was a Divisional Engineer (Phones) posted at Gaya at the relevant time. He came to be investigated by the Central Bureau of Investigation for disproportionate assets and after investigation a charge-sheet has been filed before the CBI Court and the trial is pending. He superannuated on 30th of June, 2005 and initiated the proceeding before the Tribunal for release of his gratuity, which the BSNL authorities decided to withhold due to pendency of the criminal case. The power in this regard, according to the counsel, flows from a reading of Rule 69(1)(c) of the CCS (Pension) Rules, which reads as under :

“69.(1)(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.”



Prior to framing of Rules by the BSNL and its enforcement on 10.10.2006, all the Rules relating to Central Government employees were also applicable when BSNL was created on 1st of October, 2000. The central Rules still occupy the field, however, for internal day-to-day business as well as to have a Rule in place with regard to conduct, discipline and appeal, 2006 Rule was put into place. There is no provision in the Rule which talks in terms of withholding of anybody's pension. Withholding of pension is still governed by the CCS (Pension) Rules, 1972.

To re-enforce his argument, counsel for the BSNL submits that since the private respondent superannuated on 30th of June, 2005 the proclamation or notification of the BSNL Rules on 10.10.2006 will have no applicability to him because it will be prospective in nature and not retrospective.

Counsel representing the private respondent submits that a long time has gone past since the superannuation of the private respondent and he is suffering every day because of the pendency of the criminal case. He also brings to the attention of the Court a Division Bench judgment rendered in C.W.J.C. No. 15137 of 2012 where the Division Bench took cognizance of pendency of certain matter for long and the fall out thereof, based on the observation of Hon'ble Apex Court in the case of ***Kusheshwar Prasad Singh Vs.***



State of Bihar reported in (2007) 11 SCC 447.

The Court is examining the correctness or otherwise of the decision of the Tribunal. The Tribunal has interpreted the Rules and their interplay wrongly. In the given facts, since the private respondent superannuated on 30th of June, 2005 and the Tribunal itself has held in paragraph 10 that the CCS (Pension) Rules was applicable to the private respondent, therefore, the interpretation, which the Tribunal thereafter tried to give on the basis of repeal and saving provision, especially Rule 58, is a misplaced kind of interpretation of law and facts.

In the present case, the writ application succeeds. The impugned order dated 4th of August, 2015 is quashed. The private respondent would not be entitled to release of his gratuity at this stage till the proceeding in the CBI Court comes to an end. Writ application is allowed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.03.2017
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