

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.07.2017

PRONOUNCED ON: 26.07.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.16817 of 2014

K.Asokan

... Petitioner

Vs

1.Union of India,
Represented by Secretary to
Government of India,
Ministry of Telecommunications,
New Delhi.

2.Bharat Sanchar Nigam Limited,
Represented by its Chairman &
Managing Director,
Corporate Office, B-148,
Barakhamba Road,
Cannaught Place,
New Delhi - 110 001.

3.The Chief General Manager,
Bharat Sanchar Nigam Limited,
Tamil Nadu Circle,
Anna Salai,
Chennai - 600 002.
Now at 16, Greams Road,
Chennai - 600 006.

4.Principal Chief Engineer (Civil),
Bharat Sanchar Nigam Limited,
T.N.Civil Zone, Chennai 600 015.
Now at 16, Greams Road,
Chennai - 600 006.

5.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai.

... Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the 5th respondent in its order dated 05.02.2014 in O.A.No.1030 of 2011, quash the same and direct the respondent to consider the petitioner as a holder of a Group B post in the first respondent and on that basis absorb him in the Executive Cadre in Bharat Sanchar Nigam Limited with effect from 01.10.2000 with all consequential benefits including monetary benefits flowing there from.

For Petitioner : Mr.Karthik Rajan for
M/s.Menon

For R1 : Mr.M.Arvind Kumar, SCGPC

For RR2 to 4 : Mr.A.S.Chakravarthy,
Senior Counsel

For R.5 : Tribunal

JUDGMENT

(Order of the Court was made by G.Jayachandran.J.,)

Writ petition seeking certiorarified mandamus to quash the order dated 05.02.2014 in O.A.No.1030 of 2011 and direct the respondent to consider the petitioner as a holder of a Group 'B' post in the first respondent/Department of Telecommunications and on that basis absorb him in the Executive Cadre in Bharat Sanchar Nigam Limited with effect from 01.10.2000, with all consequential benefits including monetary benefits flowing there from, the petitioner is before this Court with this writ petition.

2.Heard the learned counsel for the petitioner; learned Senior Central Government Panel Counsel and the learned Senior Counsel appearing for the respondents 2 to 4. The fifth respondent herein is the Tribunal.

3.The writ petitioner herein was an erstwhile employee of the Department of Telecommunications. He was initially appointed as Draughtsman Grade - II on 12.11.1982. He was promoted on regular basis as Draughtsman Grade - I, by order dated 04.04.1990, in the pay scale of Rs.1400-2300. After implementation of 5th pay commission recommendations, the pay scale for the petitioner was revised to Rs.5000-150-8000 with effect from 01.01.1996. The Department of Personnel and Training vide its order dated 20.04.1998, classified the posts in the

Central Civil Service into Group A, B, C & D based on the pay scale. According to the said order, the Central Civil Post carrying a pay or a scale of pay with a maximum of not less than Rs.9,000/- but less than Rs.13,500/- to be classified as Group -B.

4.The contention of the writ petitioner is that he was holding Draughtsman Grade - I in the pay scale of Rs.5500-9000 substantially and therefore, he must be considered as Group - B. Whiles, when the Bharat Sanchar Nijam Limited (hereinafter referred to as 'the BSNL') was established and employees of Department of Telecommunications were asked to exercise the option for absorption in the BSNL, the writ petitioner herein has exercised the option to be absorbed in the BSNL as Group - 'C' Officer. It is now contended by the writ petitioner that, he should not have been issued the option form for permanent absorption along with Group - 'C' and 'D' employees, since, he was issued the option form, he was compelled to exercise the option along with Group - 'C' and 'D' employees. Whereas, his counter parts working in electrical units were absorbed along with Group - 'B' Officers. So with this contention, on 24.03.2004, he has made a representation to the Chief General Manager, Tamil Nadu Circle, Chennai. This was not considered favourably. Therefore, he moved the High Court in W.P.No.9785 of 2006 along with five others. The same was transferred to the file of the Central Administrative Tribunal and re-numbered as T.A.No.75 of 2009. In the said Application, this petitioner has not produced enough material to substantiate his claim that he was promoted to Draughtsman Grade - I in the scale of pay of Rs.5500 - 175 - 9000 on the date of absorption. Therefore, liberty was given by the Tribunal to the petitioner to make his claim to the respondents citing all the relevant grounds and necessary evidence and scheme for remedy.

5.Based on the liberty given by the Tribunal, the writ petitioner has made a subsequent representation to the respondents which was not, considered favourably and his request to absorb him in Group 'B' cadre was rejected since, it was found to be devoid of merits. The said order dated 21.01.2011 was duly communicated to the writ petitioner through the Chief Engineer (Civil), BSNL, Tamil Nadu Civil Zone, Chennai.

6.Aggrieved by that, the writ petitioner has preferred an Original Application in O.A.No.1070 of 2011 before the Central Administrative Tribunal. The Tribunal after considering the rival submissions has held as under:-

".....Admittedly, at the time of absorption into BSNL, the applicant working as Draughtsman was categorised as Group C employe and as per the absorption policy

decided in consultation with the stakeholders, it was decided that all such Group C & D employees of erstwhile DOT would be absorbed in the non-executive cadre of the newly formed BSNL. From the Recruitment Rules produced, it is also evident that there is no normal promotional avenue for the category of Draughtsman to the JTO grade which is the feeder category for Group B posts. Nevertheless, based on the internal agreement with the trade unions, one time opportunity was given to such officials to take limited departmental competitive examination for promotion to the cadre of JTO. Such being the background, the representation of the applicant for absorption in the Group B category relying on the DOP & T OM dated 22.06.1998 does not have any basic merit, as even at the time of absorption into BSNL, the applicant was only categorised as Group C official in erstwhile DOT. After having been absorbed in BSNL non-executive cadre and having been granted the IDA pay scale, now the attempt on the part of the applicant to draw the benefit of DOP & T OM dated 22.06.1998, applicable to the Central Government Civilian posts, is not tenable....."

7. The present writ petition is directed against the dismissal of the said Original Application. The main contention raised by the writ petitioner is that the first respondent vide his communication dated 28.08.2002, has clarified that the employees who are in pay scale of Rs.5500 - 9000 on regular basis except those who are in the above scale due to officiating arrangements such as OTBP/BCR etc., are to be absorbed in B.S.N.L., along with other Group B employees.

8. After the said clarification and pursuant to the orders of the Tribunal, fresh letter calling for options for absorption from Group B Officers was issued on 02.09.2003. While Draughtsman working in the Electrical Wing of B.S.N.L., were considered for absorption Group B Draughtsmen working in Civil wing of B.S.N.L., like the writ petitioners were not considered for absorption in Group - 'B'.

9. The learned counsel for the writ petitioner emphasising the plea that the petitioner having been promoted as Draughtsman Grade - I on 05.04.1990, on regular basis, in the pay scale of Rs.5500-9000, he has to be considered for absorption in Group

'B' post as per the clarification given by the BSNL and there is no rhyme or reason to reject his request.

10.The fallacy of the submission made by the learned counsel for the petitioner could be seen from the official memorandum promoting the petitioner to Senior Draughtsman Grade - I from Junior Draughtsman Grade - II. This official memorandum is dated 04.04.1990. It reads as under:-

"Shri K.Asokan, D'man Gr.II (designated now as Junior D'man), Telecom Civil Dn., Madras is hereby promoted as Senior D'man Civil in the pay scale of Rs.1400-40-1800-EB-50-2300 and posted against the vacancy in the O/o the DGM (D&P) Civil, Madras on regular basis with immediate effect."

11.On completion of 5 years in the said scale of pay, the writ petitioner was drawing Rs.1600 as basic pay, after accumulating yearly increments. So when 5th pay commission was implemented with effect from 01.01.1996, the revised pay scale for him was fixed at 5000-150-8000. Later, on reaching Rs.1640 as basic pay, his pay scale was upgraded and revised to Rs.5500-175-9000 vide order dated 15.12.1997. Therefore, on the date of absorption into B.S.N.L., with effect from 01.10.2000, though it appears that his pay scale was Rs.5500-175-9000, the said pay scale was pursuant to the upgradation and it was not the regular pay scale at the time of his promotion as Draughtsman Grade - I. As we see in the communication dated 14.01.2002 of the B.S.N.L., regarding calling upon for Group 'B' Officer. Clauses 4, 5 & 7 of the said communication make the fact position more clear

"4.The option exercised by the officers shall be final and should be acknowledged by an officer not below the rank of Sr.Time Scale as designated by the SSA head/CGM as the case may be.

5.As per the classification of posts, a grade whose maximum is Rs.9000 and above but less than Rs.13500 is considered Group B. However, those officials who are placed in the grade of Rs.5500-9000 or higher due to OTBP/BCR/Grade IV/ACP/Ad-hoc promotion/time bound advancement schemes etc., are not considered Group 'B'

6.....

7.BSNL would absorb optees subject to the availability of posts from 01.10.2000.

In case the number of optees is more than the number of posts the senior most optees in their cadre/grade would be given preference for absorption. Therefore, for circle cadres CGM will decide and finalize the list of optees based upon the seniority criteria. For all India cadres, CGMs will forward the list of optees and the number of available posts in the cadre/grade to the respective cadre controlling authorities."

12.Only Subsequent to upgradation, in view of his 6 years service in the pay scale of 1400-40-1600, his pay was upgraded at pay scale of Rs.1640 and the corresponding revised pay scale under 5th pay commission was fixed as Rs.5500-9000. His representation that he was promoted as Draughtsman Grade - I on 05.04.1990 on regular basis in CDA pay scale of Rs.1600 - 125-1660 is a false representation.

13.As found from the records, on the date of his promotion, as Draughtsman Grade - I on 05.04.1990, his pay scale was fixed only at Rs.1400 - 40 - 1800-50-2,300 and the equivalent revised pay scale as per the 5th pay commission was Rs.5000-150-8000 and not Rs.5500-175-9000. Considering this, both the authorities as well as the Tribunal have pointed out that the writ petitioner is not entitled to be absorbed as Group 'B' at the given point of time and his pay scale has been revised under IDA pay scale subsequently. On the date of consideration, the writ petitioner does not fall within the category of the persons drawing pay scale of maximum of Rs.9,000/- and above but less than Rs.13500/-.

14.Since, the writ petitioner has been continuously harping the plea that on the date of his regular promotion, he was drawing Rs.5500 - 9000, the Tribunal has gone to the extent of reprimanding him pointing that he is raking up the same issue in different form though, quietus was given to the said issue much earlier and he is trying to gain entering into Group 'B' cadre by relying upon the communication of the BSNL dated 28.01.2011 which was not applicable to the employees of B.S.N.L.

15.When the writ petitioner was promoted as Draughtsman Grade - I on 04.04.1990, his pay scale was not equivalent to the post revised pay scale of Rs.5500-175-9000. His maximum pay at the time of his promotion as Grade I was only Rs.8000. Therefore, he does not fall with the classification of Group 'B' officer as agreed by the Department and the Trade Union while finalising the scheme for absorption. After formation of B.S.N.L., a separate scheme and procedure has been adopted after taking into consideration the views of the trade union. The

terms and conditions as arrived at between B.S.N.L., and the Trade Union governs the policy of absorption. The scheme in B.S.N.L., as it now prevails classify the employees as Executives and non executives. Erstwhile Group A & B employees are Executive Group and Group C & D employees are non executives. Group C & D employees were absorbed by the B.S.N.L., from the department of Telecommunications as it were it basis. They are now covered under IDA pay scale and not CDA pay scale.

16.The writ petitioner has exercised his option for Group 'C' as early as January 2001. Option to be considered for Group 'B' post is subject to Clause 5 of the letter dated 14.01.2002 which clearly says that only officers who are in the pay scale of maximum Rs.9000 and above but less than Rs.13500 alone can be considered for Group 'B' post.

17.As pointed out earlier, the revised pay under the 5th pay commission for the writ petitioner was only Rs.5000-150-8000 which does not satisfy the requirement of clause 5 of the Department communication dated 28.08.2002. As seen from the record, the pay scale of the writ petitioner was upgraded to Rs.5500-9000 due to time bound increment. The petitioner cannot take advantage of that and claim Group 'B' post on the premise that on the date of his promotion to Draughtsman Grade - I his pay scale was Rs.5500 - 175 - 9000 which is found to be factually wrong.

18.For the aforesaid reasons, we find no merit in the writ petition. Hence, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

jbm

To

1.The Secretary to
Government of India,
Union of India,
Ministry of Telecommunications,
New Delhi.

WEB COPY

2.The Chairman &
Managing Director,
Bharat Sanchar Nigam Limited,
Corporate Office, B-148,
Barakhamba Road,
Cannaught Place,
New Delhi - 110 001.

3.The Chief General Manager,
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Chennai - 600 006.

5.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai.

+1cc to M/s.Menon, Advocate, S.R.No.52944

+1cc to Mr.A.S.Chakravarthy, Advocate, S.R.No.53726

W.P.No.16817 of 2014

CS IV
CA(21/08/2017)

सत्यमेव जयते

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