

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO. 21431 OF 2018

Union of India & Anr. ...Petitioners
Versus
Shri. Ramnath Rameshwas Yadhav & Ors. ...Respondents

Mr. Pranil Sonawane, Advocate for Petitioners.
Mr. Govind B. Kamdi, Advocate for Respondent No.1.
Mrs. Martina Sapkal I/b M/s. Arun Sapkal & Co., Advocate for
Respondent Nos. 2 and 3-BSNL.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

Date : 30th July, 2018

ORAL JUDGMENT :

- 1] Heard the learned counsel for the parties.
- 2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgment and order dated 28th November, 2017 made by the Central Administrative Tribunal (CAT), Mumbai, allowing Original Application No. 516 of 2017 instituted by respondent No. 1 - Shri. R.R. Yadhav seeking pension and interest on delayed

pension and retiral benefits like gratuity etc.

4] Mr. Pranil Sonawane, learned Counsel for the petitioner's - Union of India, which had been impleaded as respondent No. 3 in OA No. 516 of 2017 submits that, there was no delay whatsoever on the part of the petitioner's - Union of India in settling the pensionery and retiral benefits of Shri. Yadhav. He submits that, the delay was entirely attributable to respondent Nos. 2 and 3 i.e. Bharat Sanchar Nigam Ltd. (BSNL). He submits that, there are serious issues as regards entitlement of Mr. Yadhav to pension and retiral benefits. He submits that, merely because the Union of India failed to file reply or remain present before the CAT to defend the matter, it should not be made to suffer since, issues of public money are involved in the matter. He submits that, the impugned judgment and order made by the CAT may open the flood gates of litigation in similar circumstances. For all these reasons, Mr. Sonawane, submits that the impugned judgment and order made by the CAT warrants interference.

5] Mr. Govind Kamdi, learned Counsel for the respondent

No. 1 – Yadhav points out that, at no stage had any of the respondents before the CAT even remotely raised any objections to the entitlement of Yadhav to pensionary and other retiral benefits. He states that, the BSNL authorities in fact conceded that there was delay in settling respondent No. 1's pension and retiral benefits, but sought to blame the Union of India for such delay. He states that, the petitioner's – Union of India now seeks to blame the BSNL for the delay. Mr. Kamdi submits that, there is no dispute that the delay in settlement of Mr. Yadhav's pension and other retiral benefits is attributable to BSNL and/or the Union of India jointly and severally. Merely because there may be some dispute between these two entities as to who is responsible for such delay, there is no reason to prolong Mr. Yadhav's agony any further. He submits that this petition may therefore be dismissed with costs.

6] Ms. Martina Sapkal, the learned counsel for the BSNL submits that there was no delay on the part of BSNL and therefore, there is no ground to interfere with the impugned judgment and order at the behest of Union of India.

7] The rival contentions now fall for our determination.

8] Mr. Kamdi is quite right in his submission that, at no stage before the CAT were any serious disputes raised by any of the respondents as to the entitlement of Mr. Yadhav's pension and retiral benefits. The petitioner's - Union of India had been made a party before the CAT and was duly served. There is no explanation as to why the Union of India failed to file any reply or appear before the CAT to oppose the Original Application instituted by Mr. Yadhav, if the Union of India was genuinely worried about the opening of flood gates and protection of public moneys. To our query, as to whether any action has been taken for fixing responsibility upon the officers who were duty bound to attend the proceedings before CAT. Mr. Sonawane, despite the presence of certain officials in the Court, was unable to make any statement or give any answer.

9] Mr. Sonawane, however emphasized that there was no delay on the part of the Union of India in the matter of payment of pension or other retiral benefits to Mr. Yadhav. He submitted that, BSNL is an independent agency which

was alone responsible for settlement of pension and other retiral dues payable to Mr. Yadhav. In such circumstances Mr. Sonawane, urged that operative portion of the impugned judgment and order (paragraph 6) warrants interference.

10] Paragraph 6 of the impugned judgment and order has to be read in conjunction with paragraph 5 and they read as follows :-

"5. Although the respondents 1 and 2 have conceded that the case of the applicant in respect of payment of pensionary benefits and have admitted the delay attributing the same to R-4 and not the other respondents, they are not willing to consider payment of interest on delayed payment of gratuity, etc. even after the said admission regarding delay.

6. Hence on the issue of payment of interest on delayed payment of gratuity, the applicant is directed to submit within two weeks his representation to R-2, who shall fix responsibility for delay, and submit the same to competent authority for approval. R-2 shall also comply with the DOPT instructions as per Rule 68 of the Pension Rules and GOI decisions thereon as also rulings of the Courts/Tribunals, while fixing responsibility and obtain orders of final competent authority. A reasoned and speaking order shall be passed by the said competent authority, as laid down under Rules. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of certified copy of this order. The applicant is at liberty to seek appropriate judicial remedy in case his grievance still persists."

11] From the aforesaid, it is clear that the CAT has not itself determined or fixed the liability of delay in the matter of settlement of Mr. Yadhav's pension and other retiral benefits. Rather Mr. Yadhav has been directed to submit representation to respondent No. 2 i.e. the Chief General Manager of BSNL, who is required to fix the responsibility for delay and submit the matter to the competent authority for its approval. The Chief General Manager of BSNL is also directed to comply with DOPT instructions in terms of Rule 68 of the Pension Rules and the decisions of the Union of India and rulings of Courts and Tribunals, while fixing the responsibility and thereafter obtain final orders from the competent authority. The Chief General Manager has been directed to make a reasoned and speaking order as laid down under the rules. There is really no case made out by the Union of India to warrant interference against the impugned judgment and order.

12] However, taking into consideration the submissions made by Mr. Sonawane that it is BSNL which was alone responsible for the delay, we grant liberty to the Union of India to also put forth its version in writing before the Chief

General Manager of BSNL. The Chief General Manager to consider such version, in addition to other matters which the impugned judgment and order directs him to take into consideration.

13] Save and except the aforesaid modification, this petition is dismissed and Rule is discharged. There shall however, be no order as to costs.

14] Since, this is a matter involving pension and retiral benefits, we direct the petitioner's as well as the BSNL authorities to comply with the directions issued in the impugned judgment and order, as modified by us, as expeditiously as possible, and in any case within a period of six weeks from today.

15] All concerned to act on basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)