

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.P.No.4285 of 2018

Bernard Antony D'Sylva ... Petitioner

Vs

1.Union of India rep. by
The Chief General Manager,
BSNL, Tamil Nadu Telecom Circle,
16, Greams Road, Chennai - 6.

2.The Principal General Manager,
BSNL, CTO Building, 1st Floor,
No.1, Rangapillai Street,
Puducherry - 605 001.

3.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai - 104. ... Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certioraified mandamus to call for the records of the third respondent relating to O.A.No.503 of 2014 dated 02.11.2016 to quash the same and to issue consequential direction to respondents 1 and 2 for restoration of seniority in the post of Stenographer Grade II (P.A.) from the date of the first order of promotion, i.e., from 13.11.1998 with all consequential benefits, payment of interest on the delayed disbursement of 50% IDA merger arrears with basic pay i.e. from June 2008 to July 2010 and disbursement of pay arrears due to the petitioner with effect from 01.01.2010 with interest on the delayed payment.

For Petitioner .. Mr.K.Bakayaraj

For Respondents.. No appearance for R1 & R2
R3 - Tribunal

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

Challenging the order of the third respondent dated 02.11.2016 made in O.A.No.503 of 2014 dated 02.11.2016 to quash the same and to issue consequential direction to respondents 1 and 2 for restoration of seniority in the post of Stenographer Grade II (P.A.) from the date of the first order of promotion, i.e., from 13.11.1998 with all consequential benefits, payment of interest on the delayed disbursement of 50% IDA merger arrears with basic pay i.e. from June 2008 to July 2010 and disbursement of pay arrears due to the petitioner with effect from 01.01.2010 with interest on the delayed payment, the present writ petition has been filed.

2.The petitioner, though promoted from Grade III Stenographer to Grade 2 Stenographer way back in the month of November 1998, did not join the promotional post as he was insisting for posting to work under TDM, Pondicherry only. On his request, once again, he was posted as Grade III Stenographer vide order dated 19.04.1999. Even this order, he did not comply with. Once again, he was directed by the order dated 11.05.1999 to assume charge as Grade II Stenographer immediately. In the aforesaid order, the petitioner was specifically informed that on his failure to do so, it could be presumed that he was not willing to accept the same and accordingly, it would be intimated to Central Office. Despite several reminders pursuant to the aforesaid order, he did not join the office.

3.Once again, another communication was sent on 25.11.1999 on the same line. He did not join and accordingly an intimation was made on 06.07.1999. Not stopping with that, the Circle Office sent another communication dated 09.07.1999 asking him to accept the promotion. Mere silence was the reply of the petitioner. He made a representation to the office of the Honourable Prime Minister and others. This was again forwarded and finally the promotion order was cancelled and accordingly he was debarred from consideration for promotion for one year from 28.07.1999 by order dated 28.07.1999.

4.The restructuring of the cadre of Stenographers was done, pursuant to which, the petitioner was placed against the upgraded Grade II post and this was done subsequently by way of policy decision. After sleeping over the matter for so long and pursuant to a representation made, the petitioner approached the Tribunal, seeking restoration of seniority in Stenographer Grade 2 with effect from the date of the first order of promotion issued to him.

5.The request made was rejected by the Tribunal on two grounds viz., delay and laches and not challenging the earlier orders. Challenging the same, the present writ petition has been filed.

6.Learned counsel appearing for the petitioner has submitted that the petitioner has been making representation after representation. We are not inclined to accept the said contention. It is not as if the petitioner's representations were kept pending. In fact, they were considered and rejected. The promotion granted to him was cancelled, which order was not challenged. Even otherwise, a mere representation per se cannot be a ground to overcome the delay and laches and acquiescence. After a long delay, the petitioner wants restoration of his seniority. As narrated above, not once but on several occasions, he has been asked to join the promotional post. Being an employee, he cannot pick and choose the place of joining.

7.The petitioner has acquiescent himself by foregoing his promotion. Much water has flown under the bridge. Therefore, we do not find any error in the order passed by the Tribunal warranting interference. Incidental relief sought for disbursement of pay arrears also cannot be considered for the aforesaid reason. It is the petitioner who warranted the said situation. Therefore, on that ground also, we do not find any error in the order passed by the Tribunal, warranting interference.

8.With the above observation, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

mmi

To

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BSNL, Tamil Nadu Telecom Circle,
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2.The Principal General Manager,
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Madras Bench, Chennai - 104.

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