

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2018

DELIVERED ON : 01.11.2018

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
and
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.Nos.40906 to 40910 of 2015

V.B.Ganesavelu Petitioner in W.P.No.40906/2015
L.Shanmugavel Petitioner in W.P.No.40907/2015
S.Thangasamy Petitioner in W.P.No.40908/2015
S.Ashraf Ali Petitioner in W.P.No.40909/2015
K.M.Natarajan Petitioner in W.P.No.40910/2015

... Vs ...

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 600 104.
2. Union of India,
Rep. by its Secretary,
Department of Telecommunication,
Sanchar Bhavan,
New Delhi - 110 001.
3. Bharat Sanchar Nigam Limited,
(A Government of India Enterprise),
Rep. by its Chairman and Managing Director,
Corporate Office, Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpath, New Delhi - 110 001.
4. The Chief General Manager,
BSNL, Tamil Nadu Circle,
Anna Salai,
Chennai - 600 002.

5. The General Manager,
Telecom, Bharat Sanchar Nigam Limited,
Madurai - 625 002. .. RR1 to 5 in WP Nos.40906 to 40909/2015

The General Manager,
Bharat Sanchar Nigam Limited,
No.1, Swerangapalayam West,
Salem. ... 5th Respondent in W.P.No.40910/2015

6. The Assistant General Manager (Pers-III),
Bharat Sanchar Nigam Limited,
Harish Chadra Mathur Lane,
Janpath, New Delhi - 110 001. ..6th Respondents in all W.Ps.

Prayer in all W.Ps. Writ Petitions under Article 226 of The Constitution of India praying for the issuance of a writ of Certiorarified Mandamus as stated therein.

The prayer in W.P.No.40906 of 2015 is for a writ of Certiorarified Mandamus to call for the records pertaining to the impugned Common Order dated 31.03.2015 of the first respondent/Central Administrative Tribunal, Madras Bench, Chennai - 600 104 insofar as it relates to Original Application No.1243 of 2011 and quash the said Common Order insofar as it relates to the petitioner, who is the 1st Applicant in O.A.No.1243 of 2011 and consequently, direct the respondents 2 to 6 to step up the pay of the petitioner so as to bring it on par with his Junior V.Rajaram from 01.10.2000 and accordingly pay him the arrears of salary from the said date upto date within a period to be fixed by this Court and also keep paying the petitioner his monthly salary accordingly every month thereafter.

The Prayer in W.P.No.40907 of 2015 is for a writ of Certiorarified Mandamus to call for the records pertaining to the impugned Common Order dated 31.03.2015 of the first respondent/Central Administrative Tribunal, Madras Bench, Chennai - 600 104 insofar as it relates to Original Application No.1243 of 2011 and quash the said Common Order insofar as it relates to the petitioner, who is the 2nd Applicant in O.A.No.1243 of 2011 and consequently, direct the respondents 2 to 6 to step up the pay of the petitioner so as to bring it on par with his Junior V.Rajaram from 01.10.2000 and accordingly pay him the arrears of salary from the said month till his retirement on 30.05.2014 within a period to be fixed by this Court and also consequentially fix appropriate pension and pay arrears of pension from 01.06.2014 upto date within a period to be fixed by this Court and keep paying such appropriate pension

every month thereafter.

The Prayer in W.P.No.40908 of 2015 is for a writ of Certiorarified Mandamus to call for the records pertaining to the impugned Common Order dated 31.03.2015 of the first respondent/Central Administrative Tribunal, Madras Bench, Chennai - 600 104 passed in Original Application No.1179 of 2011 and quash the said impugned Common Order dated 31.03.2015 as far as it relates to the petitioner who is the 1st Applicant in O.A.No.1179 of 2011 and consequently, direct the respondents 2 to 6 to step up the pay of the petitioner so as to bring it on par with that of his Junior A.Arulammal from August 2011 and accordingly pay him the arrears of salary from the said month till his retirement in 2011 within a period to be fixed by this Court ignoring the order/decision bearing No.F.No.250-5/2005-Pers.III (Pt.) dated 30.08.2010 of the 6th respondent herein issued with the approval of the Competent Authority and also consequentially fix appropriate pension and pay arrears of pension from the date of retirement till payment upto date within a period to be fixed by this Court and keep paying such appropriate pension every month thereafter.

The Prayer in W.P.No.40909 of 2015 is for a writ of Certiorarified Mandamus to call for the records pertaining to the impugned Common Order dated 31.03.2015 of the first respondent/Central Administrative Tribunal, Madras Bench, Chennai - 600 104 passed in Original Application No.1179 of 2011 and quash the said impugned Common Order as far as it relates to the petitioner, who is the 2nd Applicant in O.A.No.1179 of 2011 and consequently, direct the respondents 2 to 6 to step up the pay of the petitioner so as to bring it on par with that of his Junior A.Arulammal from August 2011 and accordingly pay him the arrears of salary from the said month upto date within a period to be fixed by this Court and keep paying the petitioner's monthly salary in consonance thereof ignoring the order/decision bearing No.F.No.250-5/2005-Pers.III (Pt.) dated 30.08.2010 of the 6th respondent herein issued with the approval of the Competent Authority.
Prayer in all W.Ps.

For Petitioners : Mr.A.R.Gokulnath(in all PS)
For Respondent No.1 : Tribunal(in all WPS)
For Respondents 2 : Mrs.S.Meenakumari
For Respondents 3 to 5 : Mr.D.Simon

COMMON ORDER

RMT. TEEKAA RAMAN,J.

Since in all these writ petitions the relief sought for is almost the same, all the writ petitions are taken up together and disposed of by way of this common order.

2. The prayer in W.P.No.40906 of 2015 is for a writ of Certiorarified Mandamus to call for the records pertaining to the impugned Common Order dated 31.03.2015 of the first respondent/Central Administrative Tribunal, Madras Bench, Chennai - 600 104 insofar as it relates to Original Application No.1243 of 2011 and quash the said Common Order insofar as it relates to the petitioner, who is the 1st Applicant in O.A.No.1243 of 2011 and consequently, direct the respondents 2 to 6 to step up the pay of the petitioner so as to bring it on par with his Junior V.Rajaram from 01.10.2000 and accordingly pay him the arrears of salary from the said date upto date within a period to be fixed by this Court and also keep paying the petitioner his monthly salary accordingly every month thereafter.

3. The Prayer in W.P.No.40907 of 2015 is for a writ of Certiorarified Mandamus to call for the records pertaining to the impugned Common Order dated 31.03.2015 of the first respondent/Central Administrative Tribunal, Madras Bench, Chennai - 600 104 insofar as it relates to Original Application No.1243 of 2011 and quash the said Common Order insofar as it relates to the petitioner, who is the 2nd Applicant in O.A.No.1243 of 2011 and consequently, direct the respondents 2 to 6 to step up the pay of the petitioner so as to bring it on par with his Junior V.Rajaram from 01.10.2000 and accordingly pay him the arrears of salary from the said month till his retirement on 30.05.2014 within a period to be fixed by this Court and also consequentially fix appropriate pension and pay arrears of pension from 01.06.2014 upto date within a period to be fixed by this Court and keep paying such appropriate pension every month thereafter.

4. The Prayer in W.P.No.40908 of 2015 is for a writ of Certiorarified Mandamus to call for the records pertaining to the impugned Common Order dated 31.03.2015 of the first respondent/Central Administrative Tribunal, Madras Bench, Chennai - 600 104 passed in Original Application No.1179 of 2011 and quash the said impugned Common Order dated 31.03.2015 as far as it relates to the petitioner who is the 1st Applicant in O.A.No.1179 of 2011 and consequently, direct the respondents 2 to 6 to step up the pay of the petitioner so as to bring it on

par with that of his Junior A.Arulammal from August 2011 and accordingly pay him the arrears of salary from the said month till his retirement in 2011 within a period to be fixed by this Court ignoring the order/decision bearing No.F.No.250-5/2005-Pers.III (Pt.) dated 30.08.2010 of the 6th respondent herein issued with the approval of the Competent Authority and also consequentially fix appropriate pension and pay arrears of pension from the date of retirement till payment upto date within a period to be fixed by this Court and keep paying such appropriate pension every month thereafter.

5. The Prayer in W.P.No.40909 of 2015 is for a writ of Certiorarified Mandamus to call for the records pertaining to the impugned Common Order dated 31.03.2015 of the first respondent/Central Administrative Tribunal, Madras Bench, Chennai - 600 104 passed in Original Application No.1179 of 2011 and quash the said impugned Common Order as far as it relates to the petitioner, who is the 2nd Applicant in O.A.No.1179 of 2011 and consequently, direct the respondents 2 to 6 to step up the pay of the petitioner so as to bring it on par with that of his Junior A.Arulammal from August 2011 and accordingly pay him the arrears of salary from the said month upto date within a period to be fixed by this Court and keep paying the petitioner's monthly salary in consonance thereof ignoring the order/decision bearing No.F.No.250-5/2005-Pers.III (Pt.) dated 30.08.2010 of the 6th respondent herein issued with the approval of the Competent Authority.

6. The Prayer in W.P.No.40910 of 2015 is for a writ of Certiorarified Mandamus to call for the records pertaining to the impugned Common Order dated 31.03.2015 of the first respondent/Central Administrative Tribunal, Madras Bench, Chennai - 600 104 insofar as it relates to Original Application No.1009 of 2011 and quash the said impugned Common Order insofar as it relates to O.A.No.1009 of 2011 and consequently, direct the respondents 2 to 6 to step up the pay of the petitioner so as to bring it on par with that of his Junior M.Pachamuthu from 01.10.2000 and pay due arrears in consonance thereof upto date within a period to be fixed by this Court and also keep paying the petitioner's monthly salary accordingly ignoring the order/decision bearing No.F.No.250-5/2005-Pers.III (Pt.) dated 30.08.2010 of the 6th respondent herein issued with the approval of the Competent Authority.

7. Challenging the correctness of the common order dated 31.03.2015 passed by the Central Administrative Tribunal, Madras Bench, in O.A.Nos.1243, 1243, 1179, 1179 and 1009 of 2011 respectively, the above five writ petitions have been filed.

8. The Central Administrative Tribunal, passed a common

order dated 31.03.2015 in Para No.19 (i) dismissing the first set of Original Applications and in Para No.19 (ii) ordering the second set of Original Applications. The present writ petitions are relating to the original applications as mentioned above which are covered under the decision of the Central Administrative Tribunal in Para No.19(i) of the said impugned common order.

9. The writ petitioners herein have preferred the aforesaid original applications before the Central Administrative Tribunal praying to call for the records relating to the impugned order/decision bearing No.F.250-5/2005 Pers III (pt) dated 30.08.2010 of the 5th respondent in the original applications with the approval of the competent authority and quash the same and consequently direct the respondents therein to step up the pay of the applicants so as to bring it on par with that of the petitioners' respective juniors as enumerated in Annex. A-5 and accordingly pay them their arrears of salary and their respective monthly salaries in consonance thereof.

10. The petitioners joined the Department of Telecommunication as Linemen and thereafter, promoted as Telecom Mechanics. Both the posts are Group 'C' Posts. After the formation of Bharat Sanchar Nigam Limited (hereinafter referred to as 'BSNL') on 01.10.2000, the petitioners were absorbed in BSNL on the option exercised by them. The said option was accepted and acted upon by the Government in 2002 and till then, their status as Government Servants was not changed. After the formation of BSNL, several junior employees were also promoted as Telecom Mechanics and those juniors however, started drawing higher pay than the writ petitioners and hence, the writ petitioners made representations to step up their pay in order to bring it on par with that of their juniors and the same did not bear fruit. Now, an order dated 30.08.2010 has been passed to grant "Personnel Allowance" which is not permanent and which has come with a rider that it would not be taken into account for the purpose of pension and D.A. etc. Aggrieved by the said order, the applicants/petitioners herein have preferred the aforesaid Original Applications before the Central Administrative Tribunal for having their pay stepped up to bring it on par with that of their juniors.

11. The respondent-BSNL has filed counter affidavit before the Central Administrative Tribunal contending that originally there was an aberration existed on 01.10.2000 as the second applicant in O.A.No.995 of 2011 was getting less pay than his junior as on 01.10.2000 and such aberration had occurred on account of the fact that the junior had opted to get his pay fixed from the date of next increment in his IDA scales of pay as above. After consideration of the entire anomaly in pay, the

BSNL has issued an Order No.BSNL/26y/SR/2002 dated 07.08.2002 (Annex. A.4). The said order dated 07.08.2002 had been issued in pursuance of the agreement signed by BSNL with the recognised unions and after getting approval of Telecommunications (Administrative Ministry). In the counter affidavit, it is further contended that initially, the Department of Telecommunications, by Official Memorandum dated 17.12.2008, had issued instructions regarding method of pay fixation in IDA pay scale in respect of absorbed officials of BSNL who were promoted prior to 01.10.2000 but opted under Fundamental Rule 22 (I) (a) (i) for fixation of their pay in the promoted scale on the date of their next increment in the lower grade which falls after 01.10.2000. The BSNL Head quarters by Circular No.32 dated 27.09.2012, had ordered for re-fixation of pay in respect of employees such as the junior namely, A.Venkatachalam. In the counter affidavit, BSNL has also elaborately discussed that the option exercised by some of the employees under Fundamental Rules 22 (I) (a) (i) for fixation of their pay in the promoted scale after 01.10.2000 has resulted in some aberration and however, the same was rectified based upon the instructions given by the Department of Telecommunications dated 17.12.2008. A Tabular Column was given to demonstrate that the pay of the petitioners has become more than the juniors during the period from 01.10.2000 to 31.03.2012. It is further stated in the counter affidavit that in view of the above corrections already been carried on, the prayer of the petitioners to quash the impugned common order is not maintainable, since anomaly itself no longer exists in this case by virtue of facts as well as on the Rules.

12. It appears that the Central Administrative Tribunal, on consideration of the above said pleadings, has gone in detail and observed that in view of the communication issued by the Controller of Communication Accounts, Ministry of Communication & IT, Department of Telecom, by Office Memorandum dated 17.12.2008, wherein it is clarified that option under Fundamental Rules 22 (I) (a) (i) would not be available to the employees of BSNL as the status had changed as on 01.10.2000 and accordingly, directed that their pay will have to be refixed on the date of their promotion as per the then existing rules prior to 01.10.2000 and no refixation can be permitted on the next increment date which is falling after 01.10.2000. The Central Administrative Tribunal, by virtue of the BSNL Circular No.32 dated 27.09.2012, held that the present status of the juniors cited in these writ petitions (Corresponding Original Applications) are found to be drawing less pay in the IDA scale right from 01.10.2000 as per their counter and accordingly, accepted the case and held that on the factual matrix of the case, the 1st set of Original Applications no longer exist and dismissed the claim of the writ petitioners.

13. Assailing that order, the learned counsel appearing for the petitioners/applicants contended that the petitioners' pay has to be revised and stepped up as that of the juniors.

14. We have given our anxious consideration to the said contention. However, to the dismay, it is seen that originally, in view of the clarification issued by the BSNL, option can be exercised by the BSNL employees under the Fundamental Rules 22 (I) (a) (i) which has let in certain discrepancy. It appears that the BSNL has issued a Circular on the Official Memorandum dated 17.12.2008, whereby a clarification has been issued that the option under the above said Fundamental Rules 22 (I) (a) (i) could not be available to the employees of BSNL and also issued a subsequent Circular No.32 dated 27.09.2012 whereby the status of the juniors cited by the petitioners is found to be drawing less pay in the IDA scale right from 01.10.2000 as per the Tabular Column given by the Central Administrative Tribunal and thus, we find that on the factual matrix and on the above factual position and in view of the two Circulars issued by the BSNL and in conformity with the law laid down in this regard, the claim of the petitioners no longer exists and in view of the above said two Circulars, pay of the writ petitioners was stepped up on par with that of the juniors. On this score, the batch of writ petitions, no longer exist and does not suffer from any irregularity or illegality warranting interference by us.

15. In this view of the matter, there are no merits in these writ petitions, and hence, all the writ petitions are dismissed.

Sd/-

Assistant Registrar (CS-VII)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

Jr1

To

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 600 104.

2. The Secretary,

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Union of India,
Department of Telecommunication,
Sanchar Bhavan,
New Delhi - 110 001.

3. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
(A Government of India Enterprise),
Corporate Office, Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpath, New Delhi - 110 001.
4. The Chief General Manager,
BSNL, Tamil Nadu Circle,
Anna Salai,
Chennai - 600 002.
5. The General Manager,
Telecom, Bharat Sanchar Nigam Limited,
Madurai - 625 002.
6. The Assistant General Manager (Pers-III),
Bharat Sanchar Nigam Limited,
Harish Chadra Mathur Lane,
Janpath, New Delhi - 110 001.
7. The General Manager,
Bharat Sanchar Nigam Limited,
No.1, Swerangapalayam West,
Salem.

+5cc to Mr.A.R.Gokulnath, Advocate SR.No.75519 to 75523

+5cc to Dr.D.Simon, Advocate SR.No.75500 to 75504

+1cc to Mrs.S.Meenakumari, Advocate SR.No.75491

W.P.Nos.40906 to 40910 of 2015

EV (CO)

GMV (03/12/2018)

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