

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.01.2018

PRONOUNCED ON: 23.7.2018

CORAM

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

Writ Petition No.40809 of 2016

K.Sivaprakasam .. Petitioner

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
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, BSNL
Gandhiji Road
Erode 638 001.
 6. The Secretary
Department of Public Enterprises
Government of India
14, CGO Complex
Lodhi Road
New Delhi 110 003.
- .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records relating to the common order dated 31.3.2015 passed by the first respondent in O.A.No.995 of 2011 batch of cases, insofar as it relates to O.A.No.1271 of 2012 and quash the same insofar as it relates to dismissal of O.A.No.1271 of 2012 as ordered in Para No.19(ii)(a) of the said impugned common order dated 31.3.2015 and consequently, direct the respondents 2 to 6 to restore the earlier pay scale of the petitioner which prevailed prior to February 2012 and pay the due arrears of salary till he retired from service on 30.4.2013, including attendant benefits and also fix the due pension of the petitioner and pay the due arrears of pension from 01.5.2013 within a stipulated period.

For Petitioner : Mr.A.R.Gokulnath
For Respondents 2 & 6 : Mr.G.Baskaran
For Respondents 3 to 5 : Mr.D.Simon
R1- Tribunal

O R D E R

RMT.TEEKAA RAMAN, J

The petitioner joined the Department of Telecommunication as a Lineman and thereafter, promoted as Telecom Mechanic. Both the posts are Group 'C' posts. After the formation of Bharat Sanchar Nigam Limited (for brevity 'BSNL') on 01.10.2000, the petitioner was absorbed in BSNL on the option exercised by him. The said option was accepted and acted upon by the Government in 2002 and till then, his status as Government Servant was not changed. The terms and conditions of service of the employees, including the petitioner, were governed by the Central Government Rules and Supplementary Rules, even after the formation of BSNL. By Office Order dated 07.8.2002 issued by the third respondent, Industrial Dearness Allowance Pay Scales (IDA Pay Scales) was introduced in the place of Central Dearness Allowance Pay Scales (CDA Pay Scales).

2. During February 2012, the basic pay of the petitioner was reduced from Rs.19,050/- to Rs.17,630/-, without any prior intimation or opportunity as to why his basic pay should not be reduced. Hence, the petitioner made a representation on 16.3.2012 requesting to restore his earlier basic pay. The Accounts Officer (Drawal), by letter dated 24.4.2012, informed the petitioner that his pay was

revised as per the Office Memorandum of the Assistant Director General, DoT dated 17.12.2008, through Pr.CCA letter dated 29.9.2011. Therefore, the petitioner again sent a representation to the fifth respondent on 04.6.2012 requesting to furnish copy of the said Office Memorandum and letter and to restore his original pay. The Accounts Officer (Drawal) sent a reply on 09.7.2012 enclosing the Office Memorandum dated 17.12.2008 and the letter dated 29.9.2011. Aggrieved by the Office Memorandum dated 17.12.2008, the petitioner filed O.A.No.1271 of 2012 before the Tribunal seeking to quash the Office Memorandum dated 17.12.2008 and to direct respondents 2 to 6 to restore his earlier pay prevailed prior to February 2012 and to pay arrears of salary and other benefits. The Tribunal, by a common order dated 31.3.2015, dismissed the prayer relating to quashing of the Office Memorandum dated 17.12.2008, but directed the respondents to refund the recovered/withheld amount. Hence, the above writ petition.

3. Admittedly, the petitioner was transferred to BSNL on his exercising the option. At that time, basic pay was fixed in CDA Pay Scale, in the absence of any Standing Order. Thereafter, IDA Pay Scale was introduced and accordingly, the pay was revised by circular dated 07.8.2002, which has been given retrospective effect. In the meanwhile, the petitioner was promoted while he was drawing pay in CDA Pay Scale. Therefore, the pay of petitioner was revised as per the proceedings dated 17.12.2008 which had resulted in reduction of pay and recovery of amount paid in excess. However, subsequent to the order of the Tribunal dated 31.3.2015, the amount recovered from the petitioner has been refunded to him, though he retired from service on 30.4.2013.

4. It is the contention of the petitioner that in the absence of any Standing Order for several years, the fixation of pay in IDA Scale without allowing him to exercise his option under FR 22(I)(a)(i) is erroneous. In this regard, it is to be noted that the Department of Telecommunication, by Official Memorandum dated 17.12.2008, has clarified that exercising option under FR 22(I)(a)(i) is not applicable to the employees of BSNL and that the Fundamental Rules governing the services of Central Government employees have no automatic application to the employees of a public limited company. Therefore, BSNL being a public limited company and the petitioner having become the employee of BSNL, the petitioner cannot exercise his option under FR 22(I)(a)(i) and accordingly, the contention of the petitioner is not sustainable.

5. According to the respondents, the stand taken in the Official Memorandum dated 17.12.2008 is a policy decision of the Government and it was issued keeping in view the benefits to all the employees of BSNL. Though it is contended that the policy decision rendering change in conditions of service void ab initio as per the judgment in Lokmat Newspapers Pvt. Ltd. v. Shankarprasad [(1999) 6 SCC 275], we are of the view that it cannot be stated to be a policy decision, but rather it can be stated as an ad hoc arrangement made in the absence of any Standing Order or Rules being made during transition from Telecom Department to BSNL.

6. The learned counsel for the petitioner relied upon the decisions of the Apex Court in Lokmat Newspapers Pvt. Ltd. v. Shankarprasad [(1999) 6 SCC 275], Gurucharan Singh Grewal v. Punjab State Electricity Board [(2009) 3 SCC 94], and Oil and Natural Gas Corporation Ltd. v. Petroleum Coal Labour Union [(2015) 6 SCC 494] and the decisions of the Tribunal of the Kerala, in support of his contentions and also to substantiate his claim that there cannot be any recovery of amount after retirement.

7. Further, this Court, in a similar case in W.P.No.40807 of 2016 dated 09.01.2018, after satisfying that the Tribunal had taken note of the contentions raised by the petitioner and had dealt with the matter properly, held that there is no dispute with regard to the fact that there cannot be any recovery after retirement and that the Tribunal had rightly directed the respondents to refund the amount recovered/withheld from the petitioner and that the amount recovered from the petitioner was also refunded, dismissed the writ petition.

8. In the circumstances, we are of the view that the order of the Tribunal does not require any interference and accordingly, this writ petition is dismissed. However, there shall be no order as to costs.

Sd/--

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kpl
To

1. The Registrar
Central Administrative Tribunal
Chennai 600 104.

2. The Secretary
Department of Telecommunication
Sanchar Bhavan
New Delhi 110 001.
3. The Chairman and Managing Director
Bharat Sanchar Nigam Limited
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5. The Assistant General Manager (Administration)
O/o. Principal General Manager
BSNL, Trichy 620 001.
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7. The General Manager
Telecom, BSNL
Gandhiji Road
Erode 638 001.

+1cc to Mr.D.Simon , Advocate SR.No. 49021

+1cc to Mr.G.Baskaran , Advocate SR.No. 490205

+1cc to Mr.A.R.GOKULNATH , Advocate SR.No. 49096

Order in
W.P.No.40809 of 2016

SR(CO)
ASK(11/09/2018)

सत्यमेव जयते

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