

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.T. ASHA
W.P. No.3021 of 2019

1 M.Jothisivam
2 M.Abdullakhan
3 M.Nagarajan
4 S.Sadasivam
5 K.Maha Gandhi
6 R.Elangovan
7 P.Thilakar
8 P.Ranganathan
9 V.Sadasivam
10 G.Rajendran
11 R.Subramanian
12 S.Thirumalai
13 Thiruvengkatta Vijayan
14 S.Thiyagarajan petitioners

Vs

- 1 The Chairman Telecom Commission
and Secretary (T) Department of
Telecommunications Sanchar Bhavan No.20
Ashoka Raod New Delhi 110 001.
- 2 The Chairman and Managing Director
Bharat Sanchar Nigam Ltd.
Corporate office Harichandra Mathur Lane
Janpath New Delhi 110 001.
- 3 The Principal Controller
of Communication Accounts Tamil Nadu Circle
7th Floor R.k.Nagar Telephone Exchange
Building No.238 R.K. Mutt Road Chennai
600 028.
- 4 The Chief General Manager
BSNL 7th Floor BSNL ADMN Building No.16
Greadms Road Chennai 600 006
- 5 The General Manager BSNL
O/o.Gneral Manager BSNL No.1
Seeranapalayam (West) Salem 636 007.

- 6 The Senior Accounts Officer
(Drawals) O/o.General Manager BSNL No.1
Seerangapalayam (West) Salem 636 007.
- 7 The Registrar
Central Administrative Tribunal High Court
Campus Chennai 600 104. ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 7th respondent relating to the order in Oa.310/00312/2017 dated 28/09/2018 and quash the same consequently direct the respondents to restore the basic pay of the petitioners w.e.f. 01/02/1996 (Rs.19 290/-) with all consequential benefits.

For petitioner : Mr.N.K.Srinivasan

For Respondents : Mr.A.Murugan,
for respondents 1 to 3
Mr.S.Udhayakumar,
for respondents 4 to 6
R7 : Tribunal

O R D E R
(made by K.K.SASIDHARAN, J.)

The basic pay of the writ petitioners was reduced from Rs.19,290/- to Rs.18300/- with effect from February 2016, without giving them notice, on the basis of a clarification issued by the Department of Telecom dated 17 December 2008. The original application filed by the petitioners was dismissed by the Tribunal by order dated 28 September 2018 on the ground that there was no challenge to the office memorandum dated 17 December 2008 which provides that the erstwhile telecom employees would not be entitled to claim the benefits under FR22(1)(a)(i) and as such, no refixation could be given on the next date of increment. The order is under challenge in this Writ Petition.

2. We have heard the learned counsel for the petitioners. We have also heard the learned counsel for the respondents.

3. The petitioners were appointed as regular Mazdoors in the Department of Telecommunications. After the successful completion of training, the petitioners were placed in Lineman cadre. The petitioners were permitted to exercise option for pay fixation in the promoted cadre either on the date of promotion or on the date of next increment. The petitioners opted for the date of next increment as the choice of pay fixation which would fall

after 1 October 2000. The pay was fixed under FR 22-1(a) (i).

4. The Government of India formed Bharat Sanchar Nigam Limited (hereinafter referred to as "the BSNL") on 1 October 2000. The employees of the erstwhile Department of Telecom were given an option for fixation of pay. The memorandum dated 17 December 2008 issued by the Ministry clarified the method of fixation of pay scale of BSNL absorbed officials who got promotion up to 30 September 2000. The BSNL maintained that the option for fixation of pay under FR-22-I(a)(i) would not be available to the employees of the Department of Telecom after the formation of BSNL. The pay scale of the petitioners were reduced based on the office memorandum dated 17 December 2008.

5. The petitioners submitted representations questioning the reduction in the pay scale unilaterally. The Principal General Manager, BSNL, sent a communication to the petitioners stating that the revision was made in accordance with the Office Memorandum dated 7 December 2008.

6. The petitioners challenged the communication received from the BSNL before the Tribunal. Besides a prayer to quash the communication and reduction of pay scale, the petitioners also sought a declaration that the Office Memorandum dated 17 December 2008 is not applicable to them. However, the Tribunal dismissed the original application.

7. There is no need for a factual adjudication in this Writ Petition for the simple reason that the BSNL now agreed to consider the case of the employees for pay fixation under FR 22(1) (a) (i).

8. We are informed that relief was granted to similarly situated employees in O.A.No.1282 of 2010. The order was challenged by BSNL before the Hon'ble Supreme Court in SLP No.19274 of 2018, etc. batch.

9. The Supreme Court dismissed the Special Leave Petition challenging the order dated 26 august 2010 in O.A.No.1282 of 2010. The BSNL therefore issued a circular dated 18 September 2018 resolving to extend the benefits of pay fixation under FR-22-I(a)(i) to all the officials who are at par with the officials for whom benefits of pay fixation under the very same Fundamental Rule had been granted in O.A.No.1282 of 2010. In view of the circular dated 18 September 2018, issued by the BSNL pursuant to the order dismissing the SLP, the case of the petitioners should also be considered as they are similarly situated.

10. We permit the petitioners to submit a comprehensive representation to the respondents. The respondents are directed to consider the representation for re-fixation of the pay scale on the basis of the circular dated 18 September 2018, fixing the pay scale under FR 22-I(a)(i). Such exercise shall be completed within a period of three months from the date of receipt of representation.

11. The adverse orders passed by the authorities and the Tribunal are set aside. The Writ Petition is partly allowed, as indicated above. No costs. Consequently, W.M.P.No.3293 of 2019 is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Chairman Telecom Commission
and Secretary (T) Department of
Telecommunications Sanchar Bhavan No.20
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- 6 The Senior Accounts Officer
(Drawals) O/o.General Manager BSNL No.1
Seerangapalayam (West) Salem 636 007.
- 7 The Registrar
CAT, High Court Campus Chennai 600 104.

+1cc to Mr.S.Udhayakumar , Advocate SR.No. 67641

+1cc to Mr.A.Murugan , Advocate SR.No. 67791

+3ccs to Mr.N.K.Srinivasan , Advocate SR.No.67349(10/10/19)

W.P. No.3021 of 2019

dv (CO)

A.SK(09/09/2019)