

IN THE HIGH COURT OF JUDICATUE AT MADRAS

Order Reserved on : 14.02.2019
Order Pronounced on : 27.02.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

W.P.No.608 of 2018
and
W.M.P.No.742 of 2018

G.S.Panchatcharam

... Petitioner

Vs.

1. Union of India Rep.by
The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
New Delhi 110 001.
2. The Chief General Manager
Bharat Sanchar Nigam Limited
Chennai Telephones
No.89, Millers Road,
Chennai 600 010.
3. The Assistant General Manager (Admn)
Bharat Sanchar Nigam Limited
Chennai Telephones
Chennai 600 010.
4. The Registrar,
Central Administrative Tribunal
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relevant to the order in O.A.No.586/2012 dated 03.12.2013 passed by the fourth respondent by confirming the order bearing No.AST/TM/GSP/2011-2012/36 dated 24.12.2011 of the third respondent and to quash the same as illegal, improper, unreasonable, arbitrary and against the principles of natural justice and thereby direct the respondents to pay the scale of pay of Rs.3200/85-4900 (CDA) Rs.4720-150-6970 (IDA) from the period of the notional appointment i.e., 01.10.1999.

For Petitioner : Mr.A.Rajesh Kanna
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For R1 to R3 : Mr.S.Gopinath
For R4 : Tribunal

O R D E R

P.RAJAMANICKAM.J.,

This writ petition has been filed to issue a writ of certiorarified mandamus or any other writ or order or direction in the nature of writ, call for the record relevant to the order in O.A.No.586/2012 dated 03.12.2013 passed by the fourth respondent by confirming the order bearing No.AST/TM/GSP/2011-2012/36 dated 24.12.2011 of the third respondent and quash the same as illegal, improper, unreasonable, arbitrary and against the principles of natural justice and thereby direct the respondents to pay in the scale of pay of Rs.3200-85-4900 (CDA) Rs.4720-150-6970 (IDA) from the period of the notional appointment i.e., 01.10.1999.

2. The case of the petitioner is in brief as follows:

(a) The petitioner was appointed as Group 'D' Staff on 01.05.1992 for which the next avenue of promotion is the post of Telephone Mechanic. The petitioner was selected by the Screening Committee for promotion to the cadre of Telecom Mechanic and he was given training for Telecom Mechanic cadre vide order dated 21.09.1998. However, the petitioner was not given promotion on the ground that he was undergoing punishment of pay reduction by three stages for a period for three years with effect from 01.10.1997 without cumulative effect. While so, he was placed under suspension on 26.09.2000 which was subsequently revoked on 01.09.2003. Although, the three years period of penalty came to an end on 01.10.2000, the petitioner was falsely implicated in a criminal case in C.C.No.6707 of 2002 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai, and in the said case, he was acquitted from all the criminal charges on 20.02.2007. During the pendency of the criminal case, the petitioner was denied promotion as Telephone Mechanic. On 21.05.2007, the petitioner gave a representation to the authority concerned to promote him as Telephone Mechanic with effect from 21.09.1998.

(b) In the reply sent by the AGM(Admin) Chennai Telephones dated 23.06.2007, it was stated that the petitioner will be considered for promotion to the cadre of the Telecom Mechanic after clearance obtained from the vigilance. Subsequently, the Sub Divisional Engineer, Transmission Planning, O/o. DGM, Transmission Planning, Chennai, has issued an order dated 30.06.2007 treating the period of suspension as on duty with

full pay and allowance on reinstatement for the entire period of absence including the period of suspension and the entire period as duty for all purposes. On 20.08.2007, the AGM Admin, O/o. CGM, Chennai Telephones issued an order promoting the petitioner as Telephone Mechanic. Subsequently, the petitioner sent a representation dated 14.10.2007 to the respondents 1 to 3 and sought promotion with effect from the date of his eligibility (retrospectively) and also requested for grant of all pay and allowances which is admissible to the post of Telephone Mechanic. Subsequently, through order dated 05.11.2007, the petitioner was permanently absorbed from the Department of telecommunication as Telephone Mechanic in BSNL with effect from 01.10.2000, whereas, the appointment of Telephone Mechanic was given effect only from 10.09.2007. Through the order dated 15.11.2007, it was informed to the petitioner that the pay can be fixed under F.R.22(1)(a)(i) notionally with effect from 01.10.1999 without arrears of pay and allowances for the intervening period from 01.10.1999. The petitioner had sent several representations including his last representation dated 16.11.2011 and the respondents 1 to 3 had rejected the petitioner's request through the order bearing No.AST/TM/GSP/2011-2012/36 dated 24.12.2011. Aggrieved by the said order, the petitioner had filed an application in O.A.No.586 of 2012 on the file of the Central Administrative Tribunal, Madras Bench/fourth respondent(herein after referred to as 'Tribunal').

3. The respondents 1 to 3 contested the said Original Application by filing reply statement. According to them, the petitioner was awarded punishment of pay reduction by three stages for a period of three years with effect from 01.10.1997 without cumulative effect. The said punishment ended only on 01.10.2000 and in the meanwhile, the petitioner was implicated in a criminal case in C.C.No.6707 of 2002 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai. Due to the punishment and pendency of criminal case, promotion of the petitioner to the cadre of Telecom Mechanic was deferred. On 20.02.2007, the petitioner was acquitted from all the criminal charges and hence, he was given notional promotion as Telecom Mechanic with effect from 01.10.1999 and actually promoted with effect from 01.10.2007. Even though the promotion has been given notionally with effect from 01.10.1999, the petitioner is not entitled for arrears and he will get the monetary benefits from the date when he actually joined as Telecom Mechanic and hence, they prayed to dismiss the Original Application.

4. The petitioner had filed a rejoinder reiterating the submissions made in the Original Application.

5. The Tribunal, after considering the materials placed before it, dismissed the said Original Application. Feeling

aggrieved, the petitioner has filed the present writ petition. In the present writ petition also, the petitioner has reiterated his submissions made in the Original Application. The respondents 1 to 3 also filed a counter affidavit reiterating their contentions made in the reply statement filed in the Original Application.

6. Heard, Mr.A.Rajesh Kanna, the learned counsel for the writ petitioner and Mr.S.Gopinath, the learned counsel for the respondents 1 to 3.

7. The petitioner was appointed as Group 'D' Staff on 01.05.1992 for which the next avenue of promotion is the post of Telephone Mechanic. Even though the petitioner was selected by the Screening Committee for promotion vide order dated 21.09.1998, since the petitioner was awarded punishment of pay reduction by three stages for a period of three years with effect from 01.10.1997 without cumulative effect during the aforesaid period, he was not considered for promotion. The period of punishment ended on 01.10.2000, but the petitioner was implicated in a criminal case in C.C.No.6707 of 2002 on the ifle of the XI Metropolitan Magistrate, Saidapet, Chennai, for the alleged offence under Sections 420, r/w 34 IPC (two counts) 419, 465 r/w 109, 468 r/w 109 IPC and 471 IPC and hence, he was placed under suspension on 26.09.2000 which was subsequently revoked on 01.09.2003. Since a criminal case was pending against the petitioner, the promotion of the petitioner was deferred. The petitioner was acquitted in the criminal case on 20.02.2007. Thereafter, the second respondent had issued an order vide AST/TM/GSP/078-08/29 dated 15.11.2007 appointing the petitioner as temporary Telecom Mechanic in the pay scale of Rs.3200-85-4900 (CDA)/Rs.4720-150-6970 (IDA) as applicable with other allowances admissible from time to time with effect from 10.09.2007.

8. In the aforesaid order, the second respondent had mentioned the following as one of the terms and conditions:

"01. The pay of the official on appointment as Telecom Mechanic will be fixed under F.R.22 (1)(a) (i) (FR 22C Old) notionally w.e.f. 01/10/1999, but he is not eligible for drawl of arrears of pay for the period preceding to 10.09.2007. The official should exercise his option for fixation of pay under the provisions of Govt. of India, Dept. of Personnel and Training order No.112/87 Estt (Pay-I) dated 09.11.87 within one month from the date of issue of this order. The option once exercised shall be final."

9. A plain reading of the aforesaid condition would show that the petitioner's pay will be fixed in the post of Telecom

Mechanic under FR 22 (1) (a) (i) notionally with effect from 01.10.1999, but he is not eligible for drawl of arrears of pay for the period preceding 10.09.2007. The petitioner has not challenged the said order immediately, on the contrary, he had sent representations to the respondents requesting them to pay arrears and allowances with effect from 01.10.1999. Finally, on 24.12.2011 the third respondent had issued the impugned order which reads as follows:-

" With reference to your representation on the above subject, the case has been studied in depth by the competent authority and it is hereby informed that the order issued by this office under reference (1) above is in order. Hence, the representation is disposed off."

10. Challenging the said order, the petitioner had filed O.A.No.586 of 2012 before the Tribunal.

11. Relying on F.R.17(1), the learned Standing Counsel for the respondents 1 to 3 has submitted that the petitioner is entitled to draw the pay and allowances in the cadre of promotion post (Telecom Mechanic) only from the date, actually he assumes the duty of the said post and not from the date of notional promotion. F.R.17(1) reads as follows:-

"F.R.17(1). Subject to any exceptions specifically made in these rules and to the provision of sub-rule(2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties."

12. From the aforesaid provision, it is clear that an officer is entitled to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of the post. In this case, though the promotion was given to the petitioner notionally with effect from 01.10.1999, he assumed duty in the promotion post as Telephone Mechanic only on 10.09.2007. Therefore, in view of F.R.17(1), the petitioner is entitled to draw the pay and allowances in the promotion post only from 10.09.2007.

13. At this juncture, it would be relevant to refer to the decision in Paluru Ramkrishnaiah Vs. Union of India, AIR 1990 SC 160 wherein, the Hon'ble Supreme Court in paragraph Nos19 to 21 observed as follows:-

"19. The grievance of the petitioners, however, is that this promotion tantamounts to implementation of the order of this Court dated 2nd February, 1981 only on paper

inasmuch as they have not been granted the difference of back wages and promotion to higher posts on the basis of their back date promotion as Chargeman I I. As already noticed earlier certain writ petitions filed in Madhya Pradesh High Court were allowed by that Court on 4th April, 1983 relying on the judgment of this Court dated 2nd February, 1981 in Civil Appeal No. 441 of 1981. Against the aforesaid judgment of the Madhya Pradesh High Court dated 4th April, 1983 Special Leave Petitions (Civil) Nos. 5987- 92 of 1986 were filed in this Court by the Union of India and were dismissed on 28th July, 1986. The findings of the Madhya Pradesh High Court in its judgment dated 4th April, 1983 thus stand approved by this Court. In this view of the matter to put them at par it would be appropriate that the appellants in Civil Appeal No. 441 of 1981 may also be granted the same relief which was granted to the petitioners in the writ petitions before the Madhya Pradesh High Court. As regards back wages the Madhya Pradesh High Court held:--

"It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the petitioners are not entitled to claim any financial benefit retrospectively. At the most they would be entitled to refixation of their present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them."

20. In so far as Supervisors 'A' who claimed promotion as Chargeman II the following direction was accordingly given by the Madhya Pradesh High Court in its judgment dated 4th April, 1983 aforesaid:--

"All these petitioners are also entitled to be treated as Chargeman Grade II on completion of two years satisfactory service as Supervisor Grade-A. Consequently, notional seniority of these persons have to be refixed in Supervisor Grade A, Chargeman Grade-II, Grade-I and Assistant Foreman in cases of

those who are holding that post The petitioners are also entitled to get their present salary re-fixed after giving them notional seniority so that the same is not lower than those who are immediately below them."

21. In our opinion, therefore, the appellants in Civil Appeal No. 441 of 1981 deserve to be granted the same limited relief. "

14. From the aforesaid decision, it is clear that a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted.

15. In this case, though the petitioner was selected by the Screening Committee for promotion to the cadre of Telecom Mechanic vide order dated 21.09.1998, since already the petitioner was undergoing the punishment of pay reduction for three stages for a period of three years with effect from 01.10.1997 without cumulative effect and subsequently he was implicated in the criminal case, promotion of the petitioner was deferred. Only after disposal of the criminal case, and the petitioner was acquitted from the criminal charges, he was considered for the promotion and posting was issued vide order dated 20.08.2007 and accordingly, he joined in the promotion post on 10.09.2007. The third respondent by the proceedings dated 15.11.2007 had stated that promotion to the petitioner has been given notionally with effect from 01.10.1999, but he is eligible to draw the pay and allowances from 10.09.2007 in the cadre of Telecom Mechanic. So, it is clear that only for the purpose of seniority, the petitioner was promoted notionally with effect from 01.10.1999 but actually he joined in the promotion post only on 10.09.2007. Therefore, in view of the aforesaid decision of the Hon'ble Supreme Court, the petitioner is not entitled to claim pay and allowances from 01.10.1999 and he can claim pay and allowances only from 10.09.2007 because only on that date, he joined in the promotion post.

16. In State of Haryana and others Vs. O.P.Gupta and others, (1996) 7 SC 533 = AIR 1993 6 SC 2936, the Hon'ble Supreme Court had an occasion to deal with a claim for arrears, in a case wherein adjudicating a dispute relating to seniority, the Hon'ble Supreme Court directed the department concerned to prepare a fresh seniority list strictly in accordance with rule ignoring inconsistent administrative instructions and in compliance thereof a fresh seniority list came to be prepared

and eligible persons were given notional promotion by the department from a deemed date. When such promotees claimed for payment of arrears of salary, the Hon'ble Supreme Court rejected the claim applying principle of 'No work, No pay' and set aside the order of the High Court, countenancing such claims to be illegal for the reason that the promotees did not work for the period in the promoted capacities. In coming to such conclusions, the Hon'ble Supreme Court followed the earlier decision reported in Paluru Ramkrishnaiah Vs. Union of India, (cited supra).

17. Therefore, the petitioner is not entitled to claim pay and arrears from the date of notional promotion i.e., 01.10.1999. We do not find any infirmity in the order passed by the respondents 2 and 3 and also in the order passed by the Tribunal in O.A.No.586 of 2012 and hence, this Writ Petition deserves to be dismissed.

18. In the result, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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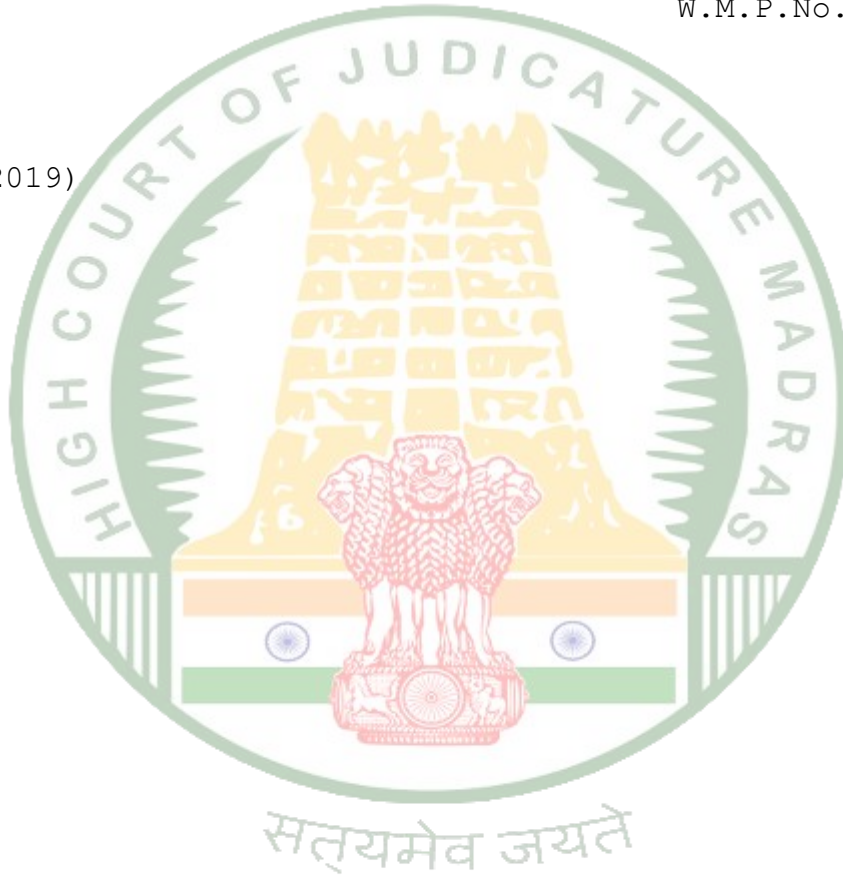
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+1 CC to Mr.A.Rajesh Kannan, Advocate sr 10354.
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and
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