

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.06.2019

CORAM

The Honourable Mr.JUSTICE K.K.SASIDHARAN

and

The Honourable Ms.JUSTICE P.T.ASHA

W.P.No.25682 of 2011

1. Union of India

Represented by Chairman Cum Managing Director,
Bharat Sanchar Nigam Ltd,
Sanchar Bhavan,
New Delhi-110 001.

2. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Central Telegraph Office, Anna Salai,
Chennai -600 002.

3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Chennai telephone,
78, Purasawalkam High Road,
Kilpauk, Chennai - 600 010.

4. The General Manager,
BSNL, Vellore Telecom District,
Vellore-632 001.

..Petitioners

Vs.

सत्यमेव जयते

1. Shir A.S.Raj (Died)

2. N. Selvaraj
Chief Telephone Supervisor (Retd)
No.2, Bajanai Koil Street,
89, Veppampattu,
Thiruvallur District -602 024.

3. The Central Administrative Tribunal
Chennai Bench
City Civil Court Building
Chennai -600 104

4. Mrs.P.Amirtham W/o.A.S.Raj

5. S.R.Premkumar S/o.A.S.Raj

6. S.R.Preethi, D/o.A.S.Raj .. Respondents
(R4 to R6 Impleaded as per order
dated 20.07.2017 by HGRJ & GJJ in
WMP.No.2394/17 in W.P.No.25682/11)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of writ of certiorari or order or orders more particularly in the nature of writ calling for the records relating to the order passed by the third respondent made in OA.No.482 of 2009 dated 01.09.2010 and quash the same.

For Petitioners : Mr. T. Ravikumar

For Respondents : R1- Died
R2- No appearance
R3- Tribunal
Mr. R. Ramesh for R4 o R6

O R D E R

(Order of the Court was delivered by P.T.ASHA, J)

The above Writ Petition is filed challenging the order passed by the Central Administrative Tribunal directing the respondents 1 to 4 to grant promotion to the appellant (who has since expired and whose legal heirs have been impleaded as respondents 2 to 6) with effect from 1.07.1993 on par with the 5th respondent with all consequential benefits within a period of three months from the date of receipt of copy of the order.

2. The parties are referred to in the same litigative status as before the Central Administrative Tribunal, Chennai.

3. The facts in brief that are necessary for disposing of the above writ petition are as follows:

The applicant had joined the service of the respondent in the basic cadre of Telephone Operator (Grade I) on 6.12.1971 and confirmed on 01.3.1975. The 5th respondent was also appointed to the same post on 25.06.1960 and confirmed on 01.03.1963. The applicant would submit that there were two avenues for promotion to the next higher grade namely Grade II. The first

avenue was to the post of Telephone Supervisor and the other was to the post of Observation Supervisor. These two posts were considered as Lower Selection Grade (Grade II). The Observation Supervisor post was one filled only through merit by way of competitive Examination and oral interview by the Departmental Promotion Committee whereas Telephone Supervisor post which are filled up by as follows:

- a) 1/3rd on merit through examination
- b) 2/3rd on seniority basis

4. The applicant had chosen the merit examination for the post of Observation Supervisor held in 1980 against the vacancy that arose in 1979. The applicant was selected in the first batch of recruitment and he joined the post on 28.01.1982. This post was equivalent to the post of Telephone Supervisor and the applicant was confirmed in the said post on 09.08.1984. The Department of Telecom thereafter abolished this cadre of Observation Supervisor by notification and merged the cadre en bloc with the main stream of Telephone Supervisor (Grade II), however protection of seniority of Observation Supervisor who got selected by merit in the year 1987 was provided. The Observation Supervisors who were en bloc merged were put in the seniority list from Sl No.51 to 68 B. The applicant was placed in serial number position 68A and the 5th respondent who had been promoted to the post of Telephone Supervisor (Grade II) on seniority basis was at serial No.102.

5. The applicant would submit that next promotion was to the post of Senior Telephone Supervisor. The Department had introduced a One Time Bound Promotion Scheme called the Biennial Cadre Review (BCR) in the year 1990. The Scheme was challenged right up to the Supreme Court on the ground that the beneficiaries of the Scheme were persons who were junior to the applicant and similarly placed persons and these juniors had been promoted to Grade III overlooking the applicants.

6. The Tribunal upheld the submissions of the applicants but however the alternative prayer for considering the representation of the applicants with scale of pay with all consequential benefits was not considered. The Bangalore Bench had also considered a similar issue and it was this order that was followed by the Madras Bench. The respondent had challenged the said decision before the Hon'ble Supreme Court in CA 5031-5041/1996. Ultimately by order dated 09.10.2002, the Hon'ble Supreme Court of India upheld the decision of the Chennai Bench of the Tribunal.

7. At this juncture, the applicant's seniority position in the Telephone District (SSA) gradation list was Sl.No.8A whereas the 5th respondent was Sl.No.9. Initially both of them were

considered for Grade IV promotion with effect from 01.07.94 in a common DPC held on 24.03.1995. However, the promotion should have been with effect from 1.7.1993 since the vacancy against the post which the applicant was promoted arose on 1.07.1993 and not 1.7.1994. The applicant had requested a reconsideration and his case was reconsidered for promotion with effect from 1.7.1993. However, the representation of the applicant was rejected by order dated 19.12.2008 by the second respondent on the erroneous assumption that the applicant was at seniority No.68 whereas the 5th respondent was at seniority No.8. Challenging the above order, the applicant had moved the Central Administrative Tribunal, Chennai in O.A.No.482 of 2009 and Tribunal was pleased to pass the following order:

" In the result, the impugned order dated 19.12.2008 is set aside and the OA is allowed with a direction to the official respondents to grant promotion to the applicant to Grade IV with effect from 1.7.1993 on par with respondent No.5, with all consequential benefits within a period of three months from the date of receipt of copy of this order".

8. In fact, the defense that was taken by the respondents was that there was no vacancy in 1993 and due to a change in seniority policy, applicant was promoted to Grade IV by creating a super numery post. It was their further case that the promotion to Grade IV was to be considered from the Grade seniority and therefore the applicant was not considered. Challenging the said order, the petitioner is before this Court.

9. Heard Mr. T. Ravikumar, learned counsel appearing for the petitioners in the Writ Petition. He would contend that the applicant case was not considered only on account of the fact that he was way below in seniority when compared to the 5th respondent and therefore his case cannot be considered.

10. Mr.R. Ramesh, learned counsel appearing for the respondents in the Writ Petition would contend that the applicant was at serial No.68 and the 5th respondent was at serial No.102. Thereafter, he was placed at Sl.No.8A and the 5th respondent was Sl.No.9 and both of them were promoted to Grade IV on 1.7.1994. It is also seen that the applicant had been promoted to Grade II under the merit quota whereas the 5th respondent had been promoted on the seniority basis. The contention of the respondent is that there was no vacancy in the year 1993 however there is no explanation for the reconsideration of the case of 5th respondent for promotion with effect from 1.7.1993. However, considering the fact that the benefit had been extended to the 5th respondent, we do not find

any infirmity in the order passed by the Tribunal. Accordingly, the Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar (Insp.cell)

//True copy//

Sub Assistant Registrar

mrn

To

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Represented by Chairman Cum Managing Director,
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+1cc to Mr.R. Ramesh, Advocate SR.No.51114

+1cc to Mr.T. Ravikumar, Advocate SR.No.49365

W.P.No.25682 of 2011

MR(CO)
GMY(12/07/2019)