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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on: 23rd July, 2021

% *Judgement pronounced on: 6th August, 2021*

\+ **W.P.(C) 3247/2020**

RAJIV SHIVRAM KHANDARE ..... Petitioner
Through: Mr. Apoorv Tripathi and Mr. Umang Kapoor Advocates.

versus

BHARAT SANCHAR NIGAM LIMITED ..... Respondent
Through: Mr. Sameer Aggarwal, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE TALWANT SINGH

JUDGMENT

TALWANT SINGH, J.:

[Court hearing convened via video-conferencing on account of COVID-19]

1. The present writ petition has been filed against an order dated 24.02.2020 in Contempt Petition no.79/2020, which was filed by the present petitioner against the respondent/BSNL on the ground that the respondent had not complied with the order of the Central Administrative Tribunal ('CAT') dated 14.10.2019 passed in O.A. No.1481/2018.

2. In brief, the case of the petitioner is that on 17.10.2012 the respondent advertised for the post of Deputy General Manager (Telecom Operations) and in response thereto, he had applied for the said post.

2.1 The criteria regarding the eligibility/work experience provided that in case of private sector employees, the annual gross salary should be approximately Rs.7.0 lacs and same was further clarified vide interview letter dated 21.08.2015 to be a sum total of income mentioned in Form 16 and a non-taxable component of the salary.

3. During the interview itself, the petitioner submitted letters clarifying that cost to the company (CTC) towards petitioner's salary was more than Rs.7.0 lacs for the three years in question, *i.e.*, 2009-10, 2010-11 and 2011-12. The results of the examination and interview were declared around May-June 2017, wherein the petitioner was shown as qualified for the post.

3.1 On 11.07.2017, a letter was received by the petitioner directing him to submit Form 16 along with experience certificate and he duly submitted the said documents including letters certifying cost to the company (CTC).

3.2 On 02.11.2017, he received a letter to the effect that his gross salary did not meet the eligibility criteria and he was directed to submit further documents. The petitioner responded to the said letter on 27.11.2017 and submitted the required documents again.

3.3 However, on 27.02.2018, he received a letter dated 20.02.2018 from respondent, cancelling his candidature.

4. The petitioner on 20.03.2018 requested the officials of respondent for reconsidering the decision of cancellation of his candidature communicated vide letter dated 20.02.2018.

4.1 Thereafter, the petitioner filed a writ petition bearing W.P.(C) No.3571/2018, which was dismissed on 11.04.2018 on the ground that the petitioner should approach the CAT and hence, he filed O.A. No.1481/2018 before the CAT. The said O.A. was disposed of vide order dated 14.10.2019 and the operative portion of the said order is reproduced here under:

> *"6. After considering the rival contentions, this Tribunal is of the view that the total income of the applicant should be taken as Rs.6,80,560/- as the non-taxable component also heeds to be added. This amount is also shown to be his income chargeable under the Head Salaries. The recruitment notice specified vide clause 3.3 (ii) (b) that equivalent gross salary should be approximately Rs.7 lacs. This Rule does not mandate exact or minimum Rs.7 lacs. The word used is approximately. This denotes around Rs.7 lacs and not exactly minimum seven lacs. The applicant case is, thus, covered under plain interpretation of the said Rule. The non-taxable component therefore, should also be considered as part of gross salary because it is given in lieu of the wages. If same is taken into account, then salary of the applicant comes to Rs.6,80,560/- which falls under the definition approximately being very close to Rs.7.0 lac.*
>
> *7. Therefore, we are of the view that the department should consider the case of the applicant once again after taking into account the non-taxable component towards the salary of the applicant and also take into account the gross salary as approximately Rs.7 lacs and pass a reasoned and speaking order within a period of 90 days from the date of receipt of a certified copy of this order. If found eligible, he should be considered for appointment. The order of the Tribunal is final. No further petition shall be entertained for clarification etc. This OA is disposed of with above directions.*
> *Pending MA is also disposed of."*

5. This issue was considered by the BSNL and vide letter dated 02.01.2020 the petitioner was informed that even after considering the judgement of the CAT, the BSNL was of the view that the petitioner did

not fulfill the prescribed eligibility criteria, so accordingly BSNL was constrained not to consider his appointment as Deputy General Manager in BSNL. The relevant portion of the letter dated 02.01.2020 is reproduced here under:

"BHARAT SANCHAR NIGAM LIMITED
(A Government of India Enterprise)
CORPORATE OFFCE
PERSONNEL-I BRANCH
4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-110001

No. 404-06/2018-Pers (Legal) Dated: 2nd January, 2020

Subject: **OA No. 1481/2018 filed by Shri Rajiv Shivram Khandre before Hon'ble CAT, Principal Bench, Delhi in the matter of recruitment of DR-DGM in BSNL.**

Reference is invited to the Hon'ble CAT, Principal Bench Delhi order dated 14th October, 2019 in O.A. No. 1481/2018 filed by Shri Rajiv Shivram Khandare, (one of the Dr-DGM candidates participating in the recruitment process of Deputy General Manager (JAG equivalent post and finally not selected due to lack of prescribed eligibility) vs. BSNL wherein Hobble Tribunal has directed as under-

"After considering the rival contentions, this Tribunal is of the view that the total income of the applicant should be taken as Rs. 6,80,560/- as the non-taxable component also' needs to be added. This amount is also shown to be his income chargeable under the head Salaries.

The recruitment notice specified vide clause 3.3 (ii) (b) that equivalent gross salary should be approximately Rs.7 lacs. This rule does not mandate exact or minimum Rs.7 lacs. The word used is approximately. This denotes *around Rs.7 lacs and not exactly minimum seven lacs. The applicant case is, thus covered under plain interpretation of the said rule. The non-taxable component therefore, should also be considered as part of gross salary because it is given in lieu of the wages. If same is taken into account, then salary of the applicant comes to Rs. 6,80,560/- which falls under the definition approximately being very close to Rs.7.0 lacs.*

Therefore, we are of the view that the department should consider the case of the applicant once again after taking into account the non-taxable component towards the salary of the applicant and also take into account the gross salary as approximately Rs.7 lacs and pass a reasoned and speaking order within a period of 90 days from the date of receipt of a certified copy of this order. If found eligible, he should be considered for appointment. The order of the. Tribunal is final. No further petition shall be entertained for clarification etc. This OA is disposed of with above directions. Pending MA is also disposed."

2. The OA including the grievances of the applicant and the averments of the Hon'ble Tribunal, Delhi have been gone through in detail. The main issues at the root of the instant grievance of the applicant relate to the following:-

The applicant endeavours to seek the appointment to the grade of DGM in BSNL despite his knowledge that he is short of prescribed eligibility criteria.

3. Keeping in view the grievance of the applicant as well as the averments of the Hon'ble Tribunal, the issues affecting the case have been re-examined and the position is clarified as under:-

3.1. ……….

3.6 You are aware that 'Form-16' prescribed under IT Act remains the sole and credible document to reflect and determine the annual gross salary of an employee for the relevant period. It is an admitted version that in the 'form 16' submitted by you for the concerned period at the time of initiation of recruitment process, you were clearly lacking the prescribed eligibility criteria in terms of annual gross salary, and thereby unarguably renders you ineligible for recruitment as DGM in BSNL in view of not meeting the prescribed eligibility.

3.7 It is a matter of record that as of now BSNL have successfully conducted two rounds of recruitment since promulgation of 'Recruitment Rules of DR-DGM' in 2009 to appoint DR-DGM from open market and in none of the cases, not' a single candidate had ever been selected/appointed with annual gross salary less than that of Rs. seven lacs prescribed for the relevant periods. In none of the cases, the annual gross salary, had been approximated given that the DGM grade is a sufficiently higher mid-level management JAG equivalent post in BSNL. For such open recruitment for posts like DGM and even sufficiently higher grades than of DGM level in BSNL, the determination of annual gross salary is based on income reflected in form 16 under IT Act; which means, the annual gross salary means the gross salary reflected in the Form-16 of IT Act. As stated earlier also, you clearly lacked the prescribed eligibility for the relevant period as per gross salary reflected under form 16 submitted by you at the time initiation of recruitment process. Although, the word approximately is there with seven lacs annual gross salary, however its intent is not to select the candidate with annual salary less than that of Rs. seven lacs. Annual gross salary of seven lacs with deficit up to rupees ten may only be permissible to be rounded off to Rs. seven lacs under the rules of Income Tax/ DPE, Govt. of India that are applicable and followed in BSNL as fully owned Gol Central Public Sector Enterprise.

3.8 As has been elaborated above, BSNL being fully owned Govt, of India Central Public Sector Enterprise is bound to follow GoI/DPE rules/norms in the matters related to rounding off income/salary for the purpose of deciding approximate annual gross salary. BSNL is following provisions of IT Act for determination of annual gross salary through gross salary reflected in 'Form 16 of IT Act'. Further, the applicable section (i.e. Section 288A) under IT Act prescribes that the total income computed as per various section of IT Act shall be rounded, off to the nearest multiple of ten rupees only. Also, Department of Public Enterprises (DPE) is the nodal Govt. Department for all central PSEs (like BSNL) whose rules and guidelines in the matter of pay/salary are to be mandatorily abided by all CPSEs including BSNL. The DPE guidelines precisely and clearly prescribe and endorse the same rounding off method allowing rounding off pay to the nearest multiple of ten rupees only for this purpose in the matters related to pay.

3.9 It is a well settled legal position that a person who does- not possess the requisite eligibility cannot even apply for recruitment for the particular post for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking prescribed eligibility for the post cannot be cured at any stage and appointing you would amount to serious illegality and not mere irregularity.

3.10 Further, it may also be noted that like you there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the relevant date notified in the recruitment notification. Granting any benefit by way of any relaxation in the criteria of annual gross income in your case would be violative of the doctrine of equality. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the rules and the terms of the advertisement for recruitment of DGM in BSNL.

3.11 Accordingly, in view of foregoing, it is evident that you did not fulfill the prescribed eligibility criteria on the relevant date and thereby this office is constrained not to consider you for appointment as Dy. General Manager in BSNL.

This is issued with the approval of the competent authority.

[Thakur Singh]
Astt. General Manager (Pers. Policy)"

6. The petitioner filed CP No. 79/2020 before the CAT on 12.02.2020, which was dismissed by the CAT vide order dated 24.02.2020 on the ground that substantial compliance was made by BSNL vide letter dated 02.01.2020. The said disposal order is under challenge before this Court in the present writ petition.

6.1 The matter was taken up for hearing on 26.05.2020. Notice was issued and it was directed that if the respondent makes any appointment for the post of DGM (Telecom Operation/Telecom Finance), the same shall be subject to the outcome of the present proceedings. This interim order was made absolute on 06.08.2020.

6.2 Counter affidavit was filed by the respondent, to which no rejoinder was filed by the petitioner.

6.3 Brief written synopsis were filed by both the parties.

7. We have heard both the counsel for the parties and we have gone through the written submissions, citations along with complete record of the present writ petition and our considered view is as under:

7.1 It is an undisputed fact that the order dated 14.10.2019 of the CAT in OA No.1481/2018 was not challenged by any of the parties till date and accordingly, the said order has attained finality. The only issue before the CAT in the said O.A. was that as to whether the petitioner's gross income for the year 2010-11 was "approximately" Rs.7.0 lacs or not. The learned CAT, after hearing both the parties and after going through the entire record of the O.A., had reached to a reasoned conclusion that the gross income of the petitioner for the year 2010-11 was approximately Rs.7.0 lacs and the same was accordingly held in para 6 and 7 of the order dated 14.10.2019. Para 7, which was re-produced above, makes it clear that the CAT has specifically held that the gross salary of the petitioner was to be taken as approximately Rs.7.0 lacs, and therefore, the respondent/BSNL was expected to pass a reasoned and speaking order within 90 days from the date of receipt of a certified copy of the order and if found eligible, he was to be considered for appointment. The Tribunal was very categorical and made a specific direction that the order of the Tribunal was final and no further petition would be entertained for clarification, etc.

8. A prudent person who reads the order dated 14.10.2019 will come to a conclusion that as far as the question regarding gross income of the petitioner for the year in question is concerned, the CAT has given a final finding for which there was no scope even for asking for a clarification. Hence, the net effect is that the gross income of the petitioner is to be taken at approximately Rs.7.0 lacs per annum.

9. Now, the only scope that the BSNL had, was to consider other aspects because even if a candidate has fulfilled the criteria of having annual income of approximately Rs.7.0 lacs, this will not automatically result in his appointment as the Deputy General Manager because there may be certain other formalities to be completed like his performance in the interview, medical examination and obtaining higher rank among all the candidates, and only then he may be selected against the vacancies available for the said year, keeping in view the reservations for certain classes, etc.

10. However, if one reads the communication of the BSNL dated 02.01.2020, which has been reproduced herein above, the tone and tenor of the same is that as if BSNL was sitting in appeal against the order of the learned CAT dated 14.10.2019. The officials of the BSNL cannot feign ignorance of the order of the CAT because the opening lines of the said communication dated 02.01.2020 takes note of the order of the learned CAT dated 14.10.2019 passed in O.A. no. 1481/2018.

11. The grounds, reiterated by BSNL in its order dated 02.01.2020 to cancel candidature of the Petitioner, were duly considered by the CAT while passing the order dated 14.10.2019 in O.A. no. 1481/2018. In brief, the grounds on which the order dated 02.01.2020 rests are that Form 16 is the only relevant document to determine the annual gross salary of an employee; the BSNL had not appointed any other candidate from the private sector whose gross salary was less than Rs.7.0 lacs; DGM grade is sufficiently higher mid-level management post and for the said purpose the annual gross salary is to be based only on Form 16 issued as per Income Tax Act; the word 'approximately' does not give a right to a candidate with annual salary less than Rs.7.0 lacs to qualify for the post of DGM; the only concession which can be given is to round off, as provided under the rules of the Income Tax; BSNL being fully owned Government of India enterprise is bound to follow the rules/norms relating to rounding off of income/salary as per the provisions of the Income Tax Act; the Department of Public Enterprises guidelines also prescribe and endorse the same rounding off method; there can be a large number of candidates who did not possess the required eligibility and if any benefit is granted by

relaxation in the criteria of annual gross income to Petitioner, it would violate the doctrine of equality.

11.1 If we consider the counter affidavit/ reply filed by the present respondent before the CAT, it had taken almost the same grounds in response to relevant paras of the O.A. mentioning therein that the petitioner had not met the criteria of having Rs.7.0 lacs annual gross salary during the last three years preceding 01.08.2012 as his gross salary for the year 2010-11 remains less than the prescribed payment of Rs.7.0 lacs. The definition of salary was taken as per Section 17(1) and 17(2) read with Sections 15 and 16 of the Income Tax Act and after considering the same, the BSNL came to a conclusion that the salary of the petitioner remained less than Rs. 7.0 lacs and hence, his candidature was rejected.

11.2 In response to para 5(G) to (K) of the grounds of O.A., again it is reiterated that definitions given in Section 17 of the Income Tax Act regarding 'salary', 'perquisite' and 'profits in *lieu* of salary' were taken into consideration as well as the details given in Form 16 of the applicant for the relevant financial years.

11.3 In response to para 5(L) of O.A., it was mentioned that the applicant was offered many opportunities but he failed to establish before the committee that his gross salary for the year 2010-11 was Rs.7.0 lacs as per the prescribed eligibility condition.

12. Along with the reply filed by the respondent/BSNL in O.A. 1481/2018, relevant documents were also annexed including the provisions of the Income Tax Act on which reliance was placed by the respondent/ BSNL.

13. While arguing the matter before the CAT, learned counsel for the respondent had drawn attention of the CAT to the fact that the actual income of the applicant was only Rs.6,53,896/- for the assessment year 2010-11, and the Selection Committee after considering the same, had rejected the case of the Applicant on the ground that his gross salary was less than the prescribed annual salary of Rs.7.0 lacs.

13.1 The learned CAT had gone to the extent of reproducing the salary tables for the relevant three years showing that for the year 2010-11, the sum total of the salary was Rs.6,53,896/-.

13.2 However, learned counsel for the Applicant/Petitioner had drawn the attention of the learned CAT to the fact that in the income tax return filed by him, his gross income was shown at Rs.7,21,086/-.

14. The CAT considered the rival contentions as reproduced in para 6 of the order dated 14.10.2019 and came to the reasoned conclusion that the total income of the applicant should be taken as Rs.6,80,560/- because the non-taxable component was also to be added to the taxable component of the salary.

14.1 The CAT also took notice of the fact that in the recruitment notice, it is prescribed that the gross annual salary should be approximately Rs.7.0 lacs, and there is no specific mandate that the salary should be Rs.7.0 lacs and more and the word used is 'approximately' and in the view of the learned CAT, the plain interpretation of the condition of annual gross salary being Rs.7.0 lacs is applicable to the Applicant for the year 2010-11 and the non-taxable component given to an employee in *lieu* of the wages is to be added, so the salary of the applicant comes to Rs.6,80,560/-, which as per definition of "approximately" being very close to Rs.7.0 lacs. This finding of learned CAT is final that salary of Applicant was approximately Rs.7.0 lacs for the 2010-11 as the same was not challenged by any party.

15. While implementing the judgment dated 14.10.2019 of the learned CAT, the officials of the respondent/BSNL came up with new excuses like in the last two recruitments they had not appointed any other candidate whose annual gross income was less than Rs.7.0 lacs and the concept of rounding off was resorted to. These two grounds on which the officials of the respondent/BSNL have reviewed the judgement/order dated 14.10.2019 of the learned CAT and on which, in our considered view, they sat in appeal, were neither envisaged nor were they part of the recruitment notice. The recruitment notice clearly mentions as under:

> **"3.3 Eligibility Criteria/Work Experience**
>
> *Candidates from Public Sector, Private Sector and Government are eligible to apply. All candidates, however, must fulfill all three criteria mentioned in Recruitment Rules 2008 of Direct Recruitment DGMs of BSNL Management Services issued vide No. 314-36/2008-Pers.1(Pt) dated 25.6.2009 as listed below:*
>
> *(i) Twelve (12) years of post qualification working experience, as on 01.08.2012*
>
> *(ii) Minimum 3 years experience as on 01.08.2012 in*
>
> *a) E-4 grade as defined in DPE guidelines (IDA pre-revised scale Rs. 14500-350-18700/Revised IDA Scale of Rs. 29100-54500) in case of PSU experience or*
>
> *b) Equivalent annual gross salary which comes to approximately Rs. Seven lacs gross, in case of private sector or*

c) CDA scale of Rs. 1000-325-15200 (pre-revised scale in case of government posts/Revised scale PB-3 (15600-39100) + Grade Pay 6600

(iii) Minimum work experience of 5 years, as on 01.08.2012, in a company with an annual turnover more than Rs. 100 Cr. (in case of PSU, Private companies)"

16. Although, in the recruitment notice, the word approximately Rs.7.0 lacs gross was used, but it was duly clarified in the interview letter dated 21.08.2015 wherein the following terminology was used:

"viii) Requisite Certificate of minimum 3 years of experience as on 01.08.2012 in

a) E-4 grade as defined in DPE guidelines (IDA pre-revised scale Rs. 14500-350-18700/Revised IDA Scale of Rs.29100-54500) in case of PSU experience

or

b) Equivalent annual gross salary, which comes to approximately Rs. Seven lacs gross, in case of private sector as mentioned in their form-16 and document in support of his/her claim in r/o non-taxable component of the salary

or

c) CDA scale of Rs. 10000 325-15200 (pre-revised scale in case of government post)/Revised scale PB-3 (15600-39100) + Grade Pay 6600"

17. It is quite clear from the wording mentioned in interview letter that the gross salary in case of employee of private sector shall be the sum total of the income mentioned in Form 16 and the non-taxable component of the salary. Neither the recruitment advertisement nor the interview letter mentions that "only the annual salary component as mentioned in Form 16 is to be taken into account" and it has been also nowhere mentioned that the term 'approximately' used in recruitment advertisement as well as in

the interview letter means that the rounding of only up to Rs. 10/- will be done for arriving at the final figure of gross annual salary.

18. A new fiction has been introduced by the letter dated 02.01.2020 that a person whose gross annual salary is Rs.6,99,990/- or above will only be eligible as his salary, if rounded off, will be equal to Rs.7.0 lakhs. This amounts to willful and deliberate disobedience of the judgement of the learned CAT dated 14.10.2019, which had left no scope for the BSNL to recalculate the gross annual income of the petitioner for the year 2010-11.

19. Learned counsel for the respondent had insisted that his stand given in para 3 to para 6 of his written submissions be specifically taken note of, while passing the present order. The said paragraphs of the written submissions of the respondent are reproduced herein below:

> "3. The Ld. Tribunal in the directive para of the order dated 24.02.2020 has ordered the department should (1) consider the case of the applicant once again after (2) taking into account the non-taxable component towards the salary of the applicant and also (3) take into account the gross salary as approximately Rs. 7 lacs and (4) pass a reasoned and speaking order (5) if found eligible, he should (6) be considered for appointment.
>
> 4. The BSNL has fully complied with all these 6 directions/components of the order, refer to supra, by/as (1) the BSNL reconsidered the case of the applicant once again in its Office Order dated 02.01.2020. (2) BSNL has taken into account the Non Taxable component and rightly opined, in the office order, 'that as per the government rules and regulations also governing the BSNL.' The annual gross salary means the gross salary reflected in Form-16 of IT Act and since the Form-16 submitted by the petitioner, at the time of recruitment process, the gross salary of the applicant did not reflect the non taxable component the same cannot be legally taken as forming a part of

his gross salary. (3) The gross salary of the applicant cannot be taken as approximately Rs. 7 lacs as even if the non taxable components are added yet the salary of the petitioner comes to only Rs. 6,80,000/-. This figure of 6,80,000 cannot be rounded off to 7,00,000/- i.e., by a huge amount of 20,000/- logically or legally. Section 288A of the IT Act categorically provides for rounding off the salary by only a maximum of Rs. 10/- only. This is true/right approach of the Govt. of India as in a country like ours 90% of the population is not even able to earn Rs. 20,000/- as gross salary per month. (4) After taking into account all the directions of the Ld. Tribunal and submissions of the applicant the BSNL passed a fully reasoned and detailed speaking office order dated 02.01.2020 (5) The petitioner was not found eligible as required in terms of notification for Recruitment of DGMs in BSNL. (6) Applicant was considered for appointment but he could not be selected as he was undoubtedly lacking the prescribed eligibility criteria, in terms of annual gross salary, for recruitment as DGM, which is sufficiently higher mid level management JAG equivalent post in BSNL. (7) Although, the word approximately is there with seven lacs annual gross salary, however its intent is not to select any candidate with annual salary less than that of Rs. Seven lacs, as the post of DGM (which is equivalent to JAG) in BSNL is a middle level management position.

5. The order impugned before this Hon'ble High Court is an order passed by the Ld. Tribunal while exercising Contempt Jurisdiction and not while exercising its Original Jurisdiction. The Ld. CAT after considering the submissions has come to a conclusion that 'Tribunal's direction has substantially been complied with by the respondents, which is clearly evident from perusal of the order dated 02.01.2020.' This is a finding of fact. A three judge bench of Hon'ble Supreme Court in Radhey Shyam Vs Chhabi Nath (2015) 5 SCC 423 has held that though the jurisdiction of Hon'ble High Courts under Article 226 and 227 is vast but it has to be exercised sparingly only to correct errors of jurisdiction and not to upset pure findings of facts.

> 6. Similarly while laying down law relating to Contempt Cases, in the case of The Workmen through the Convener FCI Labour Federation Vs Ravuthar Dawood Naseem, 2020 SCC Online SC 641, the Hon'ble Apex Court held that undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities."

20. It is to be noted that contentions raised in para 5 and 6 of the written submissions are not part of the counter affidavit filed by the respondents. In para 4, it has been submitted by the learned counsel for the respondent that there were six directions given by the learned CAT and the BSNL has complied with all of them. The so-called directions mentioned in para 3 of the written submissions of the learned counsel for the respondent are to be read as a whole and the sentence, which is part of the order dated 14.10.2019 of the learned CAT in the O.A. in question, cannot be bifurcated and its parts cannot be taken up independently for discussion. The combined, cumulative and continuous reading of this sentence makes it abundantly clear that the gross salary of the petitioner is to be taken at Rs.7.0 lakhs, and therefore, the respondent's officials have to pass a reasoned and speaking order keeping this in view and if the petitioner is found eligible (on other grounds like being there in the merit list and being medically fit and his documents being found genuine, etc.) he should be considered for appointment.

21. In our considered view, prima-facie, the officials of BSNL seem to have transgressed in the area of contempt of the Tribunal as the order dated 02.01.2020 passed by them is directly in the teeth of the order dated 14.10.2019 passed by the learned CAT.

21.1 The cryptic order of the learned CAT passed in contempt petition bearing CP No.79/2020 dated 24.02.2020, which has been challenged by filing the present writ petition, is reproduced here under:

> "The Tribunal has passed certain directions on 14.10.2019. The operative part reads as under:
>
> > *"6. After considering the rival contentions, this Tribunal is of the view that the total income of the applicant should be taken as Rs. 6,80,560/- as the non-taxable component also' needs to be added. This amount is also shown to be his income chargeable under the head Salaries. The recruitment notice specified vide clause 3.3 (ii) (b) that equivalent gross salary should be approximately Rs.7 lacs. This rule does not mandate exact or minimum Rs.7 lacs. The word used is approximately. This denotes around Rs.7 lacs and not exactly minimum seven lacs. The applicant case is, thus covered under plain interpretation of the said rule. The non-taxable component therefore, should also be considered as part of gross salary because it is given in lieu of the wages. If same is taken into account, then salary of the applicant comes to Rs. 6,80,560/- which falls under the definition approximately being very close to Rs.7.0 lacs.*
>
> *7. Therefore, we are of the view that the department should consider the case of the applicant once again after taking into account the non-taxable component towards the salary of the applicant and also take into account the gross salary as approximately Rs.7 lacs and pass a reasoned and speaking order within a period of 90 days from the date of receipt of a certified copy of this order. If found eligible, he should be considered for appointment. The order of the. Tribunal is final. No further petition shall be entertained for clarification etc.*

This OA is disposed of with above directions. Pending MA is also disposed."

2. The respondents have since passed detailed order on 02.01.2020 and did not consider the applicant as eligible and accordingly, he has been denied for the appointment in the BSNL.

3. The applicant pleads that order by the Tribunal has not been complied with and accordingly, he preferred the CP.

4. Matter has been heard. Learned counsel Sh. Dheeresh Kumar Dwivedi represents the applicant.

5. Since the Tribunal's direction has substantially been complied with by the respondents, which is clearly evident from a perusal of the order dated 02.01.2020, Contempt Petition is not made out. Hence, the CP is dismissed at admission stage."

22. It has to be noticed that the said order was passed on the very first date without there being any representation on behalf of the respondent/ BSNL. The original order in O.A. 1481/2018 was passed by Mr. Justice Ashish Kalia, Member (J) of the CAT, when he was sharing bench with Mr. Pradeep Kumar, Member (A) but the order on contempt petition was passed by Ms. Justice Vijay Lakshmi, Member (J), while sharing bench with Mr. Pradeep Kumar, Member (A).

23. Para 5 of the cryptic order of the CAT is the only discussion about the merits of the contempt and it simply says that the directions of the CAT have been substantially complied with by the respondent after perusing the order dated 02.01.2020.

23.1. It appears that the attention of learned CAT was not drawn to its own detailed order dated 14.10.2019, and even the quoted para, *i.e.,* para no. 6 of the said order containing the directions was not duly pressed upon before learned CAT. The observation of learned CAT that the order dated 14.10.2019 was substantially complied with by BSNL while passing the order dated 02.01.2020, wherein a new concept of rounding off replaced the earlier used word 'approximately', clearly reflects that learned CAT has failed to exercise the jurisdiction vested in it to enforce its own orders and it has resulted in inflicting injustice on the Petitioner. There is no discussion as to how learned CAT has arrived at its conclusion of "substantial compliance" and no consideration has been given to the terminology used in the interview letter which talks about the taxable component, as mentioned in Form 16 and the non-taxable component of the salary, which was specifically taken care of by the learned CAT while passing the order dated 14.10.2019 in OA.

23.2 Moreover, the final direction of the CAT to consider the gross annual salary of the petitioner as approximately Rs.7.0 lacs, fulfilling the requisite criteria mentioned in the recruitment notice and interview letter, has not even been adverted to by the learned CAT at the time of deciding the contempt petition in *limine.*

23.3 A prudent person, if reads the quoted paragraphs, i.e., para no. 6 and 7 of the order dated 14.10.2019 and compares the same with the so-called detailed order dated 02.01.2020 passed by BSNL, can easily make out that this is not only a case of committing contempt of the final and binding order of learned CAT but it is also a clear cut case of overreaching the judgment of the learned CAT dated 14.10.2019 and a blatant act on the part of the adamant officials of BSNL of replacing their own opinion regarding the approximate annual income of the petitioner in place of the reasoned opinion expressed by the learned CAT regarding annual income of petitioner vide order dated 14.10.2019.

24. Learned Counsel for Respondent has referred to the judgment of Hon'ble Supreme Court in ***Radhey Shyam vs. Chhabi Nath (2015) 5 SCC 423*** wherein it was held that jurisdiction of the High Court is to be exercised sparingly only to correct errors of jurisdiction and not to upset finding of facts. In our view, learned CAT had failed to exercise jurisdiction vested in it while deciding the contempt petition, hence this Court can exercise its jurisdiction. Another judgment relied upon by the Respondent is ***The Workmen through the Convener FCI Labour Federation vs. Ravuthar Dawood Naseem 2020 SCC Online SC 641***, where it was held that the contempt jurisdiction is to be exercised cautiously. We hereby reiterate that we have exercised our jurisdiction very cautiously after considering all angles.

25. In case the officials of respondent/BSNL were not satisfied with the final order in OA passed by the learned CAT, they always had the option of approaching this Court but in the present case, the said officials of BSNL have taken upon themselves to sit as an appellate authority and pass an order dated 02.01.2020, nullifying the effect of the judgement dated 14.10.2019 of the learned CAT passed in O.A. 1481/2018.

26. However, if this Court wastes its precious time in putting those officials of BSNL to terms, the same will not in any way benefit the Petitioner, who is unable to reap any benefit of the order dated 14.10.2019 passed by learned CAT in his favour for the last more than one and a half

years. After all, it is an act of civil contempt on the part of the officials of BSNL and they can always purge themselves of the contempt. Accordingly, the following directions are passed:

(i) The order dated 24.02.2020 in CP no.79/2020 in O.A. 1481/2018 passed by learned CAT is hereby set aside as also the letter dated 02.01.2020, issued by the respondent.

(ii) The respondent/BSNL is directed to comply with order dated 14.10.2019 of learned CAT and take the gross annual income of the petitioner approximately equivalent to Rs.7.0 lacs and accordingly the petitioner fulfills the income criteria for the year 2010-11 and pursuant thereto, the respondent BSNL is directed to appoint the petitioner as DGM (Telecom Operations), if he otherwise qualifies for the said post (excluding the income criteria).

(iii) The above directions be complied within 4 weeks from the date of this order.

27. The writ petition is allowed and disposed of in these terms.

(TALWANT SINGH)
JUDGE

(RAJIV SHAKDHER)
JUDGE

AUGUST 6, 2021
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Click here to check corrigendum, if any