

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 257 of 2012

Shri S.A. Krishna, Grade 'B', Sr. Sub-Divisional Engineer under GMTD, Panaji-Goa, resident of F-2, Quality Residence, B.B. Road, Alto Porvorim, Bardez, Goa – 403 521.

... PETITIONER

Versus

1. Chairman & Managing Director, BSNL Corporate Office, Bharat Sanchar Bhawan, Harishchandra Mathur Lane, Janpath, New Delhi – 110 001.
2. Chief General Manager, Maharashtra Telecom Circle, 6th Floor, 'A' Wing, Juhu Danda, Administrative Building, Santacruz (W), Mumbai – 400 054.
3. General Manager, Goa Telecom District, Goa Sanchar Bhawan, EDC Plot No. 3, Patto Plaza, Panaji, Goa – 403 001.
4. Assistant General Manager (Admn), BSNL, Panaji-Goa, Goa Sanchar Bhawan, Patto, o/o GMTD, Panaji, Goa.

... RESPONDENTS

Mr. Parikshit Sawant, Advocate for the Petitioner.

Mr. Jose F. Melo, Advocate for Respondent No. 4.

CORAM:

**PRAKASH D. NAIK &
BHARAT P. DESHPANDE, JJ.**

RESERVED ON:

6th OCTOBER 2023

PRONOUNCED ON:

13th OCTOBER 2023

JUDGMENT: (per Bharat P. Deshpande, J.)

1. The Petitioner is basically challenging the order passed by the Central Administrative Tribunal (CAT) in Original Application No.

517 of 2009 dated 15.03.2011 together with the impugned order of reversion dated 12.09.2008, by which, the Petitioner was reverted to the original post.

2. Heard Mr. Parikshit Sawant for the Petitioner and Mr. Jose F. Melo for Respondent No. 4.

3. Though this Petition was admitted, while issuing Rule on 30.04.2012, however, during the pendency of the present Petition, the Petitioner demitted his office on superannuation. Accordingly, on 30.10.2018, the coordinate Bench of this Court observed that since the Petitioner has superannuated, if the Petitioner desires to prosecute the Petition, the only relief that could be considered would be with regard to the monetary benefits i.e. the salary of post of which he was reverted.

4. Mr. Sawant appearing for the Petitioner though admitted that the Petitioner has retired on superannuation, he claims that the impugned order of reversion is bad in law as the same was passed by the Authority which was not competent to do so. According to Mr. Sawant, the order of reversion is therefore bad in law and needs to be quashed and set aside. He submitted that the Appeal filed by the Petitioner was rejected. Subsequently, the Petitioner approached the CAT, however, his contention was rejected without considering the above aspects and therefore, he is challenging such order of CAT

as well as the reversion order which was passed by the Authority which did not have the competence of passing such orders.

5. Mr. Sawant would submit that the Petitioner was working as Senior SDE (Plg), Panaji when he was promoted purely on a temporary and officiating basis to the post of AGM (Trans), Panaji for a period of six months with effect from 30.06.2008 till 26.12.2008 by the Assistant General Manager from the office of General Manager Telecom. However, Mr. Sawant would submit that the reversion order dated 12.09.2008 was passed by the Deputy General Manager, who was not a competent Officer to pass such a reversion order. He placed on record, the BSNL Conduct, Discipline and Appeal Rules 2006 to buttress his submission that the appointing and/or the disciplinary Authority for the post of Senior SDE was General Manager and therefore, only the General Manager was competent enough to pass the reversion order.

6. Mr. Sawant would then further submit that when the Petitioner filed a representation against the reversion order specifically claiming that such order was passed by an Authority without competence to do so, he was informed vide letter dated 06.06.2009 that such reversion order was passed with the approval of the competent Authority. He submits that there is no such mention of approval of the competent Authority in the impugned

reversion order dated 12.09.2008 and that such an explanation is only an afterthought. Similarly, he claimed that the explanation dated 06.06.2009 further shows that reversion was ordered as the disciplinary action against the Petitioner was contemplated. According to him, it shows that even the disciplinary proceedings were not initiated when the reversion order was passed and thus, it amounts to punitive action without giving any opportunity to the Petitioner. He would submit that the Petitioner challenged the suspension order before the CAT in Original Application No. 517 of 2009 and while deciding the said Application, the learned CAT has observed that the suspension order has been issued by the Authority lower than the disciplinary Authority and therefore, such suspension was revoked. He submits that the same analogy applies to the order of reversion. However, the learned CAT in Original Application No. 517 of 2009, took a contrary view and therefore, this Court in its extraordinary jurisdiction under Article 226 of the Constitution of India needs to consider these aspects.

7. Mr. Sawant would then submit that there are no specific findings given by the CAT while rejecting the Application challenging the reversal of the Petitioner. He invited our attention to the said order and on that basis claimed that the observations of the CAT are based on surmises and conjectures.

8. Mr. Sawant on this basis claimed that the Petitioner though now superannuated, would only claim the benefit of salary of the promoted post for which he was deprived by the order of reversion.

9. Per contra, learned Counsel Mr. Melo strongly contended that the appointment of the Petitioner, at the initial stage, was in the year 1983 as Junior Engineer in the Department of Telecommunication, which was subsequently taken over by Bharat Sanchar Nigam Limited (BSNL). The appointment of the Petitioner in the Department of Telecommunication was made by the Deputy General Manager Telecom from the office of the General Manager Telecommunications, Maharashtra Circle. He would then submit that first of all the promotion of the Petitioner vide order dated 09.07.2008 was on purely temporary and local officiating basis with effect from 30.06.2008 till 26.12.2008 and therefore, the Petitioner did not have any right to hold the said post. He further submitted that in the promotion order dated 09.07.2008, it was clearly mentioned that the concerned Officer on completion of the officiating period will stand reverted to their basic cadre on 26.12.2008 unless and otherwise reverted earlier due to any other reason.

10. Learned Counsel Mr. Melo would then submit that the promotion order dated 09.07.2008 was issued from the office of the

General Manager Telecom, though it was signed by the Assistant General Manager. Similarly, the order of reversion of the Petitioner dated 12.09.2008 was also issued from the office of General Manager Telecom, though it was signed by the Deputy General Manager. According to Mr. Melo, the reversion order dated 12.09.2008 as produced by the Petitioner is only a communication signed by the Deputy General Manager on the approval of the General Manager Telecom. He, therefore, submits that such a ground which is now tried to be canvassed is of no substance.

11. Mr. Melo would then submit that the contention of the Petitioner regarding the reversion order passed by the Authority below the rank of the appointing Authority cannot be looked into in this Petition for the simple reason that though such grounds were raised before the CAT in Original Application No. 517 of 2009, it was never argued or canvassed by the Petitioner. He, therefore, claimed that the Petition is devoid of merits and deserves to be rejected.

12. The rival contentions fall for determination as under:-

13. The Petitioner was admittedly appointed as Telephone Operator on 01.08.1976. Admittedly, at that time, BSNL was not in existence. He was appointed by the Department of Telecommunication. Thereafter, the Petitioner was promoted from time to time and posted in Goa. As on 13.06.1995, the Department

of Telecommunication, Government of India issued an order of promotion that too from approval of the General Manager Telecom, by which, the Petitioner was appointed as SDE with effect from 06.04.1994. This order produced at Annexure-B is also signed by the Deputy General Manager Telecom. Subsequently, after the formation of BSNL, the officiating promotions were issued on 09.07.2008. By this order produced at Annexure-C, the Petitioner along with others who were at the relevant time working as Senior SDE were promoted to different posts with effect from 30.06.2008 to 26.12.2008 on purely temporary and local officiating basis. The Petitioner was promoted and posted as AGM (Trans) Panaji. This order also is signed by the Assistant General Manager. However, it clearly shows that such an order was issued in accordance with the approval of the General Manager Telecom, Mumbai vide their letter dated 28.06.2008. Admittedly, the promotional order was not issued and signed by the General Manager Telecom but was issued from the office of the General Manager Telecom with his approval and signed by the Assistant General Manager.

14. The main contention of Mr. Sawant with regard to the impugned order dated 12.09.2008 (Annexure-D) is that the order was issued by the Deputy General Manager thereby reverting the Petitioner from the post of Assistant General Manager (Trans) to Senior SDE with effect from 12.09.2008. The main contention of

Mr. Sawant is that the Deputy General Manager was not appointing or disciplinary Authority and therefore, he was not competent enough to issue such orders.

15. First of all and as rightly pointed out by Advocate Melo appearing for Respondent No. 4 that this order dated 12.09.2008 issued from the office of General Manager Telecom, Goa District, though signed by the Deputy General Manager, it has been clarified subsequently vide letter dated 06.06.2009 that the reversion of the Petitioner was with the approval of the competent Authority. No doubt the letter dated 12.09.2008 nowhere reflects the approval of the competent Authority, however, the same has been clarified vide letter dated 06.06.2009.

16. Be that as it may, the main aspect which has been highlighted by the learned Counsel for Respondent No. 4 is the fact that though this ground was raised by the Petitioner in Original Application No. 517 of 2009 before the CAT, it was not pressed. This fact is clear from paragraph 8 of the order of CAT dated 15.03.2011, which reads thus:

“8. Before we may part with this order, we may mention that the applicant has also, in support of the Application, taken a ground that the appointing and disciplinary authorities for STS are Director and Chief General Manager and, therefore, no authority below the grade of appointing, disciplinary or reviewing

authorities can review the order passed, and in case of the applicant the order of reversion has been passed by a subordinate authority, which would be bad in law and also against service rules. The applicant was given temporary promotion by the Chief General Manager. The order which was signed by AGM /Staff) stated that the same was issued with the approval of the competent authority i.e. CGMT. The order of reversion may also have been issued by AGM (Staff), but that was again on behalf of the CGMT. AGM (Staff) in his communication dated 6.6.2009 to GMTD has mentioned as follows:

“Kindly refer to the above cited letter. In this regard covering approval of competent authority is hereby conveyed for reversion of Shri S.A. Krishna from DE (Offg.) to the cadre of Sr. SDE w.e.f. 12/09/2008 as the disciplinary action against the officer is contemplated.”

Once, the order of reversion was passed having been approved by the competent authority, no exception can be had to the same, and we may mention that even though, this point has been taken in the OA, but the same was not pressed during the course of arguments.”

17. It has been specifically observed by the CAT that though such a point was raised, the same was not pressed during the course of arguments. Therefore, one thing is clear that the contention of Mr. Sawant that the impugned order passed by the learned CAT is required to be interfered with cannot be accepted for the simple reason that such a point was not pressed and therefore, there was no

need for the CAT even to discuss, deliberate or decide it during the course of deciding such an Application. Once the issue regarding the reversion order being passed by the Authority lower than the competent Authority was given up before the CAT, the same cannot be permitted to be agitated before this Court and that too under Article 226 of the Constitution of India.

18. The Petitioner is challenging the order of reversion as well as the order passed by the CAT dated 15.03.2011. Thus, the first opportunity of the Petitioner to raise this ground was before the CAT. Even though such ground was pleaded in the Application, it was not pressed when the matter came up for arguments. There are specific findings and observations of the learned CAT in this respect as quoted above. Therefore, now it does not lie in the mouth of the Petitioner that the order of reversion was bad in law. Once such ground was given up before the competent Authority, the same cannot be agitated in this Petition. Therefore, we agree with the submissions advanced by the learned Counsel for Respondent No. 4 that such ground is not available to the Petitioner once he has given up, though raised before the CAT.

19. Apart from the above submissions, it is clear that the order of promotion dated 09.07.2008 was on a purely temporary and officiating basis. Therefore, the Petitioner did not have any right to

the promotional post. Though he was reverted before the completion of the said officiating period, it was considered by the CAT and the contentions of the Petitioner were rejected.

20. It is an admitted fact that on the basis of the order of promotion dated 09.07.2008, the Petitioner worked as AGM (Trans), Panaji from 30.06.2008 till he was reverted back on 12.09.2008. The original period as mentioned in the order of promotion dated 09.07.2008 was up to 26.12.2008. Thus, the Petitioner could not perform the work of AGM (Trans) from 13.09.2008 till 26.12.2008. As per the order dated 09.07.2008, the Petitioner was supposed to be reverted back to the post of Senior SDE on 26.12.2008. This is a clear case to show that such a promotional order was on officiating post. Since the Petitioner though had an opportunity to argue this ground before the CAT, he failed to do so and in fact gave up the said ground and therefore, he cannot be allowed to raise such a ground in this Petition. Had this ground been argued before the CAT, the same would have been decided even in favour of the Petitioner. Be that as it may, considering the stand that the Petitioner has superannuated and the promotional order was admittedly on temporary and officiating post, we are of the considered opinion that the Petitioner is not entitled to the reliefs claimed in this Petition for the reasons disclosed above. Accordingly, we pass the following order:

O R D E R

- (a) The Petition stands dismissed.
- (b) Rule stands discharged.
- (c) No costs.

21. The Petition stands disposed of accordingly.

BHARAT P. DESHPANDE, J.

PRAKASH D. NAIK, J.

VAIGANKAR
ESHA SAINATH

Digitally signed by
VAIGANKAR ESHA SAINATH
Date: 2023.10.13 16:15:23
+05'30'