



WEB COPY



W.P.No.28420 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.28420 of 2018

S.Wilson Sundararaj

... Petitioner

Vs.

1. Union of India,
Ministry of Communication & Information Technology,
Rep. by its Secretary, Department of Telecommunications,
Sanchar Bhavan, New Delhi 110 001.
2. Bharat Sanchar Nigam Limited,
Rep. by its Chairman & Managing Director,
Corporate Office, New Delhi 110 001.
3. Department of Telecommunications,
Rep. by its Director (Establishment),
Chennai Telephones, O/o the Deputy General Manager (NW),
No.52, EVK Sampath Salai, Chennai 600 007.
4. Bharat Sanchar Nigam Limited,
Rep. by its Chief General Manager,
Chennai Telephones, 19, Millers Road,
Chennai 600 010.



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5. Bharat Sanchar Nigam Limited,
Rep. by its General Manager (HR/Admin.)
Chennai Telephones, 19, Millers Road,
Chennai - 600 010.
6. Bharat Sanchar Nigam Limited,
Rep. by its Deputy General Manager (HR/Admin.)
Chennai Telephones, 19, Millers Road,
Chennai - 600 010.
7. Bharat Sanchar Nigam Limited,
Rep. by its Senior Accounts Officer (C& A II),
Chennai Telephones, Head Quarters,
Flower Bazaar Exchange/Amenity Block,
III Floor, Chennai 600 001.
8. Bharat Sanchar Nigam Limited,
Rep. by its Senior Accounts Officer (P & A), NP,
Chennai Telephones, North Peripheral
Anna Nagar East, Chennai - 600 102.
- 9 The Registrar, Central Administrative Tribunal,
Chennai Bench, High Court Compound,
Chennai 600 104.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, calling for the records from the files of the 9th respondent Tribunal in O.A.No.141/2013 and quash the order made therein dated 12.06.2018 and consequently direct the respondents 1 to 8 to treat the period of 31 days falling between 16.04.2011 to 05.06.2011 as the petitioner was on duty with all monetary benefits.



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For petitioner : Mr. K.M.Ramesh, Senior Counsel
For Respondents : No appearance for first respondent
Mr. K.R.Ramesh Kumar,
Standing Counsel for respondents 2 to 8.

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Writ Petition has been filed challenging the orders passed by the Tribunal in O.A.No.141/2013, dated 12.06.2018, in and by which, the prayer of the petitioner herein to declare the order passed by the BSNL, dated 16.06.2012, treating the period of 31 days falling between 16.4.2011 to 5.6.2011 as absence, as illegal, was declined by the Tribunal.

2. The brief facts leading to the filing of the writ petition is as follows:

The petitioner was selected to the post of Telegraph office clerk in Bangalore Division on 27.04.1979 and he had undergone training for a period of two months from 14.5.1979. Subsequently, he was appointed as temporary clerk at the Bangalore office, under physically handicapped



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category, vide order dated 22.08.1979. Thereafter, he was transferred to Chennai at Central Telegraph Office on 09.02.1981 and then he was promoted as Senior Section Supervisor w.e.f. 08.11.2005.

2.1. In the year 2000, BSNL was formed and the employees of Group C and D of Telecom Department were sent to BSNL w.e.f 01.10.2000. Subsequently, final option was given to the employees along with a list of provisional terms and conditions of BSNL either for absorption in BSNL or to revert back to government service for redeployment through 'surplus cell' of the government. Therefore, the petitioner had filed W.P.No.4504/2001 to issue a writ of prohibition, barring the BSNL and the Department of Telecom from insisting the petitioner to exercise final option with BSNL service, in the absence of framing of full-fledged rules and regulations with regard to the terms and conditions of service with BSNL. The said writ petition was dismissed, by recording the statement of the Standing Counsel for BSNL that the entire department of telecom has become BSNL and that there is no such surplus cell in existence.



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2.2. Thereafter, the petitioner had opted to revert back him to government service on 16.11.2007. The option form stipulates that, in case of option for government service, the petitioner would be redeployed through the surplus cell of the government, however, this was not done. As such, the petitioner had given a representation dated 13.01.2009 to redeploy him through the surplus cell. In reply to the same, the BSNL had sent a letter dated 30.04.2009 stating that the policy decision was still pending with the department. However, the petitioner had continued in BSNL till his retirement on 30.6.2012. In the meantime, the 6th respondent herein issued an order dated 23.02.2011, stating that the petitioner was relieved on the afternoon of 15.3.2011 from BSNL and asked him to report to the Director(Staff) DOT, New Delhi and the third respondent struck off the petitioner from the roll of BSNL, Chennai Telephones on the afternoon of 15.3.2011. However, when the petitioner had reported at DOT, he was not allowed to work, by orally informing that he could not be accommodated in DOT.

2.3. On 21.05.2011, the BSNL has passed an order that the pay and



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allowance of the petitioner will be drawn by BSNL since the official is redeployed at CCA by BSNL, until the receipt of regularization of redeployment of the non-optee/DOT optee for group C from DOT/BSNL. Nearly twice, the petitioner was directed by the 6th respondent to report for duty to be controller of communication Accounts of the office of the Principal Controller of communication accounts of the office of the Principal Controller of Communication Accounts. But, he was not accepted on both occasions, as a result, the petitioner was kept away from work since 16.3.2011 to 21.06.2011 for no fault on him. Though the petitioner had given various representations to the official respondents, he was not given work and also his request to consider his period of absence as on duty also not considered by the 6th respondent, vide order dated 22.06.2011 stating that the period of absence cannot be regularized due to non cooperation of the official and non communication of the difficulties faced by the petitioner in joining the unit, where he was posted in time. The petitioner was not accepted for work inspite of all possible efforts taken by him.



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2.4. The 6th respondent has issued an order 17.11.2011 asking the petitioner to submit leave application for the period from 16.03.2011 to 21.06.2011 in order to regularize the period. The petitioner had sent a telegram dated 23.11.2011 to treat the above said period as duty performed by him. Thereafter, the respondents asked the petitioner to apply for earned leave for the above said period, by order dated 16.06.2012, and the same was challenged before the Tribunal by filing O.A.No.141/2013. The Tribunal, vide order dated 12.06.2018, has dismissed the above said original application and the same is impugned herein.

3. The respondents/Department has filed a counter affidavit denying the statements made by the petitioner. It is the specific contention of the respondents that, based on the oral instructions that the petitioner could not be accommodated in DOT, he returned from DOT after a week and reported orally to DGM (Admn), Chennai Telephones that, DOT has asked him to report back to Chennai Telephones, as there are no vacancies. Further, it is stated that, the petitioner was expected to attend DGM (Admn.) office on all working days, till his posting is decided, however, he was not attending



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since 16.04.2011 and hence, telegram was sent to him on 02.05.2011 to report for duty. In reply to that, the petitioner had given a telegram dated 07.05.2007 intimating that he is in receipt of the telegram only that day and finally reported on 09.05.2011. Thereafter, to find a solution to regularize the absence period, a Committee was formed and the committee has given the report to treat the following three spells of leave as absence period.

16.04.2011 to 30.04.2011 - 15 days

02.05.2011 to 08.05.2011 - 7 days

28.05.2011 to 05.06.2011 - 9 days

Therefore, the respondents have passed the impugned order, rejecting the claim of the petitioner and the same was confirmed by the Tribunal. As such, the order passed by the Tribunal does not warrant any interference.

4. The learned Senior Counsel appearing for the petitioner submitted that, the petitioner has raised several grounds in the original application before the Tribunal, challenging the impugned rejection order dated 16.06.2012 passed by the sixth respondent and in reply to the above, the respondents/Department had filed counter affidavit. He further submitted



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that, the Tribunal has not considered the grounds raised by the petitioner and simply by relying upon the statements made by the respondents, has dismissed the original application, without making any observations and given findings on the grounds raised by the petitioner. Therefore, the order passed by the Tribunal is liable to be set aside.

5. The learned Standing Counsel appearing for the respondent has not disputed the fact that the Tribunal has not passed a detailed order. However, according to him, in reply to the grounds raised by the petitioner, they respondents have filed a counter affidavit before the Tribunal and considering the same the Tribunal has passed the order. Therefore, petitioner is not entitled for the relief, as prayed in the original application.

6. A perusal of the order passed by the Tribunal shows that, the details of the absence period, which was relied upon by the respondents in their reply statement, was mentioned therein. Further, the Tribunal has observed that the applicant has failed to point out the reason for his absence between 16.04.2011 to 30.04.2011; 02.05.2011 to 08.05.2011 and



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28.05.2011 to 05.06.2011 and he has failed to give suitable explanation with regard to his absence during the period. Except the above observation, nothing has been discussed in the order.

7. At this juncture, it is to be noted that, even though we are inclined to decide the issues involved in the present writ petition on its own merits, the learned Senior Counsel appearing for the petitioner seeks to remit back the matter to the Tribunal, to be decided on merits, in the light of the submissions made by the parties, within a time frame, as fixed by this Court.

8. The learned standing counsel has also no serious objection to remit the matter back to the Tribunal for considering the same afresh.

9. In view of the above said submission made by the learned counsel appearing on either side, we inclined to dispose the writ petition. Accordingly, it is ordered as follows.

i. The impugned order passed by the Tribunal in O.A.No.141/2013 dated 12.06.2018 is set aside.



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ii. The matter is remitted back to the Tribunal to consider the same afresh and to pass orders on its own merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

iii. Both the counsel have agreed to extend their cooperation for speedy disposal of the original application.

10. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

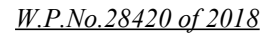
(D.K.K.J.) (P.D.B.J.)

15.11.2023

Internet: Yes/No
Index : Yes/No
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To

1 The Registrar, Central Administrative Tribunal,
Chennai Bench, High Court Compound,
Chennai 600 104.



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and

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