

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF MARCH
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HONOURABLE SRI JUSTICE PULLA KARTHIK

WRIT PETITION NO: 17453 OF 2021

Between:

1. Union of India. Rep. by Secretary, Department of Telecommunications, 20 Ashoka Road, New Delhi 1.
2. The Principal Controller of Communications Accounts, Department of Telecommunications, Kawadiguda Telephone Exchange, Kawadiguda, Hyderabad

...PETITIONERS

AND

1. Khaja Naseeruddin Ahmed, S/o. K.M. Ahmed, Aged about 52 years, Occ. Senior Telecom office Assistant (G), (Under the orders of Compulsory Retirement), O/o. General Manager Telecom District, Karimnagar, R/o. H. No. 3-5-135, Azmathpura, Karimnagar 505 001.
2. The Bharat Sanchar Nigam Limited, Rep. by its Chairman cum Managing Director, BSNL Corporate Office, Barakumba Road, Statesman House, New Delhi -1.
3. The Chief General Manager, Telecom, Telangana Circle, Hyderabad 1
4. The General Manager, Telecom District, Karimnagar, Karimnagar District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an order or direction more particularly in the nature of Writ of Certiorari calling for the records pertaining to Order dated 27/1/2020 in O.A. No. 362 of 2018 on the file of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same as arbitrary, unjust and contrary to law.

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend operation of the orders dated 27/1/2020 in OA No.362 of 2018 passed by the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad, pending disposal of WP.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim stay order date 28-7-2021 in LA No. 1 of 2021 in WP No. 17453/2021 in the interest of justice.

**Counsel for the Petitioners: Ms. L. PRANATHI REDDY, SENIOR STANDING
COUNSEL FOR CENTRAL GOVERNMENT
REPRESENTING FOR SRI G. PRAVEEN
KUMAR, DEPUTY SOLICITOR GENERAL OF INDIA**

Counsel for the Respondent No.1: SRI A. RAGHU KUMAR

Counsel for the Respondent No.2 to 4: M/s. P. SARADA (SC FOR BSNL)

The Court made the following: ORDER

**HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HON'BLE SRI JUSTICE PULLA KARTHIK**

WRIT PETITION No.17453 OF 2021

ORDER: (per AKS,J)

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners aggrieved by the order, dated 27.01.2020, passed in O.A.No.21/362/2018 by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for short, 'the Tribunal').

2. Heard Ms. L. Pranathi Reddy, learned Senior Standing Counsel for Central Government, representing Sri G. Praveen Kumar, learned Deputy Solicitor General of India, appearing for the petitioners and Sri A. Raghu Kumar, learned counsel appearing for the respondent No.1.

3. Learned Senior Standing Counsel appearing for the petitioners had contended that the respondent No.1 was appointed as Senior Telecom Assistant in the Department of Telecommunication (DOT) on 19.10.1984. While in service, he remained absent to duty from 01.05.2001 to 10.12.2002

unauthorizedly and the petitioners have treated the same as misconduct and initiated disciplinary proceedings by issuing a charge memo. After conducting a detailed enquiry, proceedings, dated 01.07.2004, were issued imposing punishment for the proven unauthorized absence of the respondent No.1 i.e. the unauthorized absence period from 01.05.2001 to 10.12.2002 shall constitute 'break in service' and the basic pay shall be brought to minimum i.e. Rs.4,000/- in the time scale of Rs.4000-100-6000/- (CDA scale) for a period of eight years from the date of issuance of the order and it is further directed that the respondent No.1 will not earn increments of pay during the period of such reduction and on expiry of the period, the reduction will have the effect of postponing the future increments of pay. Thereafter, the respondent No.1 has joined duty and again remained absent unauthorizedly from 01.12.2004 onwards and the disciplinary authority has once again initiated disciplinary proceedings and imposed a major penalty of compulsory retirement from service on 04.03.2008. Aggrieved by the same, the respondent No.1 filed W.P.No.17732 of 2008 before this Court and also preferred an appeal before the appellate authority. The

appeal was rejected by the appellate authority on 20.06.2008 and therefore, the respondent No.1 has withdrawn W.P.No.17732 of 2008 and filed another Writ Petition i.e. W.P.No.20758 of 2008 before this Court challenging the orders of the disciplinary authority as well as the appellate authority and the said Writ Petition was transferred to the Tribunal and renumbered as T.A.No.85 of 2010 and the Tribunal was pleased to dismiss the same *vide* order, dated 30.05.2016, which would mean that the order of compulsory retirement had attained finality. Later, the respondent No.1 has submitted an application on 16.12.2016 requesting the petitioners to pay pension for the service rendered by him in DOT from the years 1984 to 2000 and the case of the respondent No.1 was examined and rejected by the petitioners *vide* order, dated 29.08.2017, contending that since there was a break in service and the entire past service of the respondent No.1 has been forfeited, he is not entitled for any pension in terms of Rule 27 of the CCS (Pension) Rules, 1972 (for short, 'Pension Rules'). Aggrieved by the said order, dated 29.08.2017, the respondent No.1 approached the Tribunal by filing the subject O.A. and the Tribunal, *vide* impugned order, dated 27.01.2020,

was pleased to allow the subject O.A. in favour of the respondent No.1 and directed the petitioners to pay pension and pensionary benefits to the respondent No.1 for the service rendered by him in DOT from 19.10.1984 to the year 2000, without appreciating any of the contentions raised by the petitioners.

4. Learned Senior Standing Counsel had further contended that Rule 27 of the Pension Rules makes it very clear that whenever there is interruption in service, the past service has to be treated as forfeited. As the past service of the respondent No.1 was forfeited, the question of paying pension to the respondent No.1 would not arise. Therefore, appropriate orders be passed in the Writ Petition by setting aside the impugned order and allow the Writ Petition.

5. On the other hand, learned counsel appearing for the respondent No.1 had contended that the petitioners have never invoked Rule 27 of the Pension Rules and passed orders forfeiting the past service of the respondent No.1. A perusal of the proceedings, dated 01.07.2004, would make it clear that the unauthorized absence period was construed as misconduct and

the disciplinary authority has initiated disciplinary proceedings and imposed punishment that the unauthorized absence period shall constitute break in service and basic pay should be brought to minimum i.e. Rs.4,000/- in the time scale of Rs.4000-100-6000 (CDA scales) for a period of 8 years with effect from the date of issuance of the order and that the respondent No.1 would not earn increments of pay during the period of such reduction and on expiry of the period, the reduction will have the effect of postponing the future increments of pay also. When the respondent No.1 was punished for the unauthorized absence period from 01.05.2001 to 10.12.2002 and when nowhere it is stated that the said period of break in service will constitute forfeiture of past service, the question of forfeiture of past service of the respondent No.1 would not arise. As admittedly, the disciplinary authority has imposed punishment of compulsory retirement, it would mean that the respondent No.1 is entitled for pension and pensionary benefits. Learned counsel for the respondent No.1 has further drawn our attention to Rule 28 of the Pension Rules, which deals with condonation of interruption of service. Admittedly, for unauthorized absence, disciplinary

authority has initiated disciplinary proceedings and imposed punishment of reduction of pay, which itself would be the punishment and the disciplinary authority has never invoked Rule 27 of the Pension Rules imposing the punishment of forfeiture of past service. Further, a perusal of Rule 27 of the Pension Rules would make it clear that interruption in service of Government servant entails forfeiture of his past service. Admittedly, no specific order of forfeiture of past service was passed by the petitioners against the respondent No.1. Therefore, the question of denying pension and pensionary benefits to the respondent No.1 would not arise. Therefore, the Tribunal was justified in allowing the subject O.A. by directing the petitioners to pay pension to the respondent No.1 for the service rendered by him in DOT.

6. This Court, having considering the rival submissions made by the learned counsel for the parties, is of the considered view that the Tribunal was justified in allowing the subject O.A. in favour of the respondent No.1, as admittedly, Rule 27 of the Pension Rules was never invoked by the petitioners and the

disciplinary authority never forfeited the past service of the respondent No.1, while imposing punishment against him *vide* proceedings, dated 01.07.2004. Therefore, the respondent No.1 is entitled for pension and pensionary benefits in pursuance of the punishment of 'compulsory retirement'. Further, a perusal of Rule 28 of the Pension Rules would make it very clear that there should be a specific order of treating the service as break in service. If there is no specific order, then the break in service has to be automatically condoned. This Rule also strengthens the case of the respondent No.1, as admittedly, the petitioners have not passed any order as to how the break in service has to be dealt with. Admittedly, the break in service of the respondent No.1 was considered by the disciplinary authority as misconduct and for the proven charge in the domestic enquiry, the disciplinary authority has imposed a punishment of reduction of basic pay for a period of eight years only, without there being any order of forfeiting the past service. Therefore, the Tribunal was justified in allowing the subject O.A. in favour of the respondent No.1. Hence, this Court is not inclined to interfere with the impugned order passed by the Tribunal.

7. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

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SD/-G.SIREESHA
ASSISTANT REGISTRAR
SECTION OFFICER

To,

1. One CC to SRI G. PRAVEEN KUMAR, DEPUTY SOLICITOR GENERAL OF INDIA, Advocate [OPUC]
2. One CC to SRI A. RAGHU KUMAR, Advocate [OPUC]
3. One CC to SRI P. SARADA, SC FOR BSNL [OPUC]
4. Two CD Copies

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HIGH COURT

DATED:02/03/2023

ORDER

WP.No.17453 of 2021



DISMISSING THE WRIT PETITION
WITHOUT COSTS

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17/04/23
