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WP No.20469 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

WP No.20469 of 2010

- 1.Union of India,
Represented by Director (MPP),
Department of Telecom,
Sanchar Bhavan,
New Delhi -110 001.
- 2.General Manager
Department of Telecom (BSNL)
Dharmapuri-636 701.
- 3.Divisional Engineer (Admn)
O/o.General Manager Telecom (BSNL)
Dharmapuri -637 701.
- 4.Secretary
Ministry of Personnel and Pension,
Public Grievances and Public Admn.
(PPG and P)
New Delhi-110 002.

... Petitioners

versus

1/12



WP No.20469 of 2010

1. The Registrar
Central Administrative Tribunal
High Court Campus,
Chennai-600104.

2. K.C. Pappu

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari to call for the records relating to the order in T.A.No.15/2009 dated 15.03.2009 on the file of the first respondent, quash the same and pass orders.

For the Petitioners : Mr. M. Jeevanandam
for Mr. S. Udayakumar

For the Respondents : first respondent - Tribunal

M. S. Ramaswamy
for second respondent.

ORDER

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

This Writ Petition is filed challenging the order in T.A.No.15/2009 dated 15.03.2009 on the file of the first respondent, Central Administrative Tribunal, High Court Campus, Chennai.



WP No.20469 of 2010

2. Brief facts of the case:

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2.1. The second respondent herein has joined as the Telephone Operator on 22.03.1977. He belongs to S.T. Community. In the year 1983, one time bound promotion Scheme (OTBP) was introduced, under which employees who have completed 16 years of service will be given financial upgradation by promotion from Grade 1 to Grade 2. Subsequently, as per DOT No.11-14/83-NCG dated 04.08.1989, the requirement of completion of 16 years was reduced to 10 years in the case of SC/ST candidates against short fall vacancies. As the second respondent belongs to schedule caste community, even though he has not completed 16 years of service, he was promoted to Grade 2 with effect from 07.11.1989. In the meantime, a biennial cadre review (BCR) Scheme was introduced by the Government in the year 1991, as per which, employees who have completed 26 years of service would become eligible for promotion from Grade 2 to Grade 3. Subsequently, in this Scheme also, a concession was given to the members of the SC/ST candidates as per Letter No.1-62/85-NCG (Vol II) dated 13.02.1992 to the extent that in the place of 26 years, if they had completed 17 years of service, they would be considered eligible for the aforesaid



WP No.20469 of 2010

Scheme and accordingly based on the said concession, the petitioner on completion of 17 years of service, also got the second time promotion on the basis of B.C.R. with effect from 01.07.1994.

2.2. On 20.04.1999 instructions were issued by the Government on the pay scales of OTBP/BCR officials inducted into the restructured cadres on completion of 16-26 years of service. Subsequent to this, a communication dated 15.12.2000 was sent to the second respondent herein stating that the officials who were promoted under the BCR Scheme against short fall vacancies are not eligible for the new pay scale of BCR Rs.5500-175-9000 and therefore reduced the scale of pay of the second respondent to Rs.5000-150-8000/-, for the reason that officials who have been promoted under the BCR Scheme against short fall vacancy are not eligible for the new pay scale of Rs.5500-175-9000/-

2.3. Challenging the same, the second respondent filed W.P.No.33367 of 2003 and the same was transferred to Central Administrative Tribunal and renumbered as transferred application No.15 of 2009. The Tribunal, by



WP No.20469 of 2010

order dated 15.03.2010, has allowed the said application. Challenging this order of the Tribunal, the department has filed the instant writ petition.

3. Learned Standing Counsel appearing for the petitioners relying upon the undisputed facts would submit that in the year 1989 on completion of 12 years of service, the second respondent herein has availed the benefit under OTBP Scheme, that is one time bound promotion, and again as per the BCR Scheme, on completion of 17 years of service in the Department availed the benefit in the year 1994. That being so, pursuant to the instructions dated 20.04.1999 issued on the pay restructure relating to short fall vacancies, the impugned order dated 29.03.2000 was passed stating that the petitioner is not entitled for revised scale of pay unless he has completed total 26 years of service in the Department including the pre structure cadre. Subsequently, by order dated 15.12.2000, reduced the scale of pay of the second respondent to Rs.5000-150-8000/-. Thereafter, the petitioner made a representation dated 14.05.2001 regarding higher scale pay of Rs.5000-175-9000 and the same was rejected vide order dated 29.01.2002 since the respondent has not completed 26 years of service.



WP No.20469 of 2010

4. Learned Standing Counsel for the petitioner Department drew the attention of this Court stating that based on the instructions dated 20.04.1999 relating to restructure of pay scale relating to short fall vacancies, the clarification order was issued by the Department of Telecommunication on 16.03.2000, which was forwarded to all concerned by communication dated 29.03.2000. He further admitted that a mistake has been committed in fixing the scale of pay, which has been modified as per order dated 15.12.2000 and therefore, according to the petitioner Department, the order is perfectly valid and therefore, there is no warrant for interference and allow the writ petition.

5. He further submits that the said order dated 15.12.2000 has been passed only for revised scale of pay with prospective effect and not for recovery of the amount, which has already been paid to the respondent herein.



WP No.20469 of 2010

6. Learned counsel for the second respondent by relying upon the proceedings dated 20.04.1999, submitted that in the said proceeding, there is no reference regarding the earlier circular issued by the Department dated 13.02.1992. Further, the said order dated 20.04.1999 has been issued giving retrospective effect from 01.12.1998. The department, by relying upon Letter No.1-38/MPP-98 dated 16.03.2000 of DOT, revising the scale of pay of the second respondent as per proceedings dated 15.12.2000 followed by proceedings dated 29.01.2002 is totally unsustainable and without having authority such order has been passed. Therefore, there is no warrants to interfere with the order of the Tribunal and seeks to dismiss the writ petition.

7. Heard the parties and perused the materials available on record.

8. The impugned order dated 15.12.2000 has been passed only for the revised scale of pay with prospective effect and not for recovery of the amount, which has already been paid to the respondent herein. Therefore, based on the submission made by the learned counsel for the petitioner



WP No.20469 of 2010

Department, the contention of the petitioner Department that recovery order has been passed against the second respondent herein cannot be accepted.

Therefore, we will not discuss on the issue whether recovery order has been passed to recover the amount, which has availed by the respondent.

9. Now the issue to be decided in the present writ petition is whether the impugned order dated 15.12.2000 passed by revising earlier order which granted benefit by relaxing the prescribed period of 26 years of service can be accepted.

10. We have carefully perused the circular dated 20.04.1999 and the same reads as under:

"2.The matter has been examined in details and the following decision have been taken.

i) The officials who after getting qualified and training enter the restructure cadre before completion of 16 years of service in the pre-restructured cadre shall be placed in the pay scales indicated below or completion of 16 years of total services including that considered in other pre-restructured cadre provided that he/she has put into minimum of 4 years of service (including officiating spell) int the restructured



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WP No.20469 of 2010

log.

Phone Mechanic Rs.4000-100-6000

Sr.TOA & TTA Rs.5000-150-8000

2.The officials who after fretting qualified and trained enter the restructured cadre after appointment in the OTBP of the pre-restructured cadre shall be placed in the following pay scales:-

Phone Mechanic Rs.4000-100-6000

Sr.TOA & TTA Rs.5000-150-8000

2. Similarly, the officials after getting qualified and trained, enter the restructured cadre after appointment in the BCR of the pre-restructured cadre, shall be placed in the following pay scales.

Phone Mechanic Rs.4000-125-7000

Sr.TOA & TTA Rs.5500-175-9000

3.The officials who after qualified and trained enter the restructured cadre after appointment in the OTEP of the pre-restructured cadre as well as the officials who enter the restructured cadre before completion of 16 years i.e.as per para (1) above, on completion of 26 years of total service including that rendered in the pro-restructured feeder cadre shall be placed int eh following pay scales.

Phone Mechanic Rs.4500-120-7000

Sr.TOA & TTA Rs.5500-175-9000

4.The eligibility conditions for placement in the scales indicated at para(1),(2) and (3) above, shall not be applicable to those Phone Mechanic who are indicated from the cadres of Regular-Mazdoor, Temporary Status, Mazdoors and other Group 'D'.



WEB COPY



WP No.20469 of 2010

*5.Placement of Officials in the higher pay scale mentioned in para (1)(2) and (3) above shall be with pay fixation under FR 22(1)(a)(2),
6.The officials shall be placed in the respective pay scales in accordance with par (1)(2) and (3) above with effect from 1st December 1998."*

11. It is seen that the aforesaid order has been implemented with effect from 01.12.1998 retrospectively. We have carefully perused the proceedings dated 20.04.1999. The second respondent has availed the benefit under the earlier circular in Letter No.1-62-85-9CG (Vol II) dated 13.02.1992 issued by the Department to the effect that under the BCR Scheme, the SC/ST candidates would be given promotion even on completion of 17 years of service. In the proceedings dated 20.04.1999, there is no reference regarding the earlier circular issued by the Department dated 13.02.1992. Further, the said order dated 20.04.1999 has been issued giving retrospective effect from 01.12.1998. Hence, by relying upon Letter No.1-38/MPP-98 dated 16.03.2000 of DOT, revising the scale of pay of the second respondent vide proceedings dated 15.12.2000 followed by proceedings dated 29.01.2002 is totally unsustainable and without having authority such order has been passed. Therefore, we are of the view that the



WP No.20469 of 2010

said circular dated 15.12.2000 followed by circular dated 29.01.2002 will not apply to the facts of this case. In such circumstances, we are not inclined to interfere with the order of the Tribunal in TA No.15 of 2009 dated 15.03.2009. There is no merit in the writ petition. Consequently, the writ petition stands dismissed. There shall be no order as to costs.

[D.K.K., J.] [K.B., J.]
12.07.2024

Index : Yes/No
Neutral Citation : Yes/No
mrn

To
The Registrar
Central Administrative Tribunal
High Court Campus,
Chennai-600104.



WEB COPY



WP No.20469 of 2010

D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

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WP No.20469 of 2010

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