



WP Nos.3662 and 4229 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

WP Nos.3662 and 4229 of 2024

The Principal General Manager
Bharat Sanchar Nigam Limited,
O/o. The General Manager-BSNL,
Bibikulam, Madurai-625002.

: Petitioner in
WP Nos.3662 and 4229 of 2024

versus

1.P.S.Jailani

2.The Union of India,
Represented by its Secretary,
Department of Communication,
No.20, Sanchar Bhawan, Ashok Road,
New Delhi-110 001.

3.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
High Court Buildings,
Chennai-600 104.

: Respondents in



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PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari to call for the records of the third respondent/Central Administrative Tribunal in impugned proceedings made in OA Nos.1073 and 1074 of 2019 dated 05.01.2023 and quash the same.

For the Petitioner : Mr.S.Udaya Kumar in
WP Nos.3662 and 4229 of 2024

For the Respondents : Mr.K.Krishnamoorthy
for first respondent

Mr.V.Ashok Kumar,
Central Government Standing Counsel
for second respondent
in WP Nos.3662 and 4229 of 2024

Third respondent-Tribunal

COMMON ORDER

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

This writ petitions are filed challenging the orders passed by the Tribunal in OA Nos.1073 and 1074 of 2019 dated 05.01.2023.



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2. Brief facts of the case:

2.1. The husband of the first respondent, S.Asalam Basha while working as Sr.TOA at SDE(G) at Melur, Madurai District before the petitioner BSNL was found missing on 08.12.2014 and thereafter, he was declared as "Dies Non" w.e.f 08.12.2014. FIR in Crime No.210/2017 dated 23.03.2017 was registered under Man Missing at Nagamalai Pudukottai Police Station. According to the first respondent, as per DoP&PWOM in F.No.1/17/2011-P&PW(E) dated 14.09.2011, she is entitled to receive family pension and compassionate appointment. Hence, she made representations but the same were not considered by the petitioner Department.

2.2. Subsequently, by order dated 19.03.2018, the petitioner Department has informed that no report has been received so far from the Sub Inspector of Police, Nagamalai Pudukottai Police Station and hence no action has been taken on her representation. After receipt of the said intimation, the first respondent again submitted her representation dated



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09.01.2019 and the same has been rejected by communication dated 23.02.2019 stating that her husband was imposed with the penalty of Removal from service by the competent authority with effect from 12.12.2018 and it was further stated that the question of claiming family pension and appointment under compassionate ground does not arise and the request of the first respondent cannot be acceded to. Aggrieved by the same, the first respondent filed the instant original applications. The Tribunal, by order dated 05.01.2023, disposed of the said original applications and directed the petitioner BSNL to consider the claim of the first respondent for compassionate appointment, within a period of three months and the claim of the first respondent with regard to family pension on submission of the certificate from the police authority and in the light of the judgment of the Hon'ble High Court of Andhra Pradesh in the matter of ***UOI vs Polimetla Mary Sarojini*** in ***WP No.34859 of 2016***, within a period of four months from the date of receipt of such certificate. Aggrieved by the said orders, the petitioner BSNL has filed the present writ petitions.

3. Learned counsel for the petitioner Department submitted that the



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deceased husband of the first respondent was already removed from service and therefore, the respondent herein is not eligible for being considered for appointment under the compassionate ground. The said punishment order of removal from service has not been challenged by the respondent herein and therefore, she is not eligible to be considered for compassionate appointment or any other family pension unless the said order has been challenged and set aside. Since the said order has not been challenged before the appropriate forum and the same still exists, direction passed by the Tribunal is unsustainable and the same is liable to be set aside.

4. Learned counsel for the first respondent has strongly opposed the said contention of the petitioner on the ground that the punishment order imposed against the deceased husband, Aslam Basha, has not been communicated to the respondent herein and therefore, the petitioner Department cannot claim that without challenging the said punishment order, the prayer as sought by the first respondent is unsustainable. Therefore, he seeks for confirmation of the order of the Tribunal.



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

6. The contention of the petitioner BSNL is that the respondent herein has not brought to the notice of this court that the petitioner BSNL has imposed punishment of removal from service with effect from 12.12.2018 against the deceased employee, particularly when the same is also informed by its proceedings dated 23.02.2019. But, according to the respondent herein, the petitioner BSNL has not served a copy of the said punishment order imposed by the petitioner to the respondent herein and therefore, the order passed by the Tribunal is well founded. We are of the view that when the aforesaid impugned order dated 23.02.2019 has specifically held that the deceased Aslam Basha was imposed with the punishment of removal from service by the competent authority with effect from 12.12.2018, the same ought to have been challenged in the present original applications. Therefore, we accept the contention of the learned counsel for petitioner Department that without challenging the punishment order of removal from service, the respondent herein is not entitled for the consequential relief of



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providing appointment on compassionate ground by the Department.

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7. Learned counsel for the respondent would submit that the copy of the punishment order has not been communicated to the respondent herein and therefore, she may be permitted to challenge the said punishment order imposed by the petitioner department before the Tribunal.

8. In view of the above, considering the submissions of the parties, we are of the opinion that without challenging the punishment order of removal from service, the grant of relief by the Tribunal to the respondent herein is totally unsustainable and therefore, we are inclined to pass orders as follows:

i) The impugned orders in OA Nos 1073 and 1074 of 2019 dated 05.01.2023 passed by the Tribunal are hereby set aside.

ii) It is open to the first respondent herein to file appropriate application before the Tribunal seeking her remedy by challenging the aforesaid punishment order, imposed by the appellant Department as against the deceased employee namely Aslam Basha, within a period of one month from the date of receipt of a copy of this common order.



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iii) If any such original application is filed by the respondent herein within a period of one month, the Tribunal has to consider the same and if it is in order, the same has to be numbered and thereafter proceeded in accordance with law.

9. With the above, the writ petition stands allowed. We make it clear that in case the respondent succeeds in obtaining an order setting aside the punishment order imposed against the deceased employee/respondent's husband, her case for compassionate appointment may be considered by the Tribunal as per law. There shall be no order as to costs.

[D.K.K., J.] [K.B., J.]
14.06.2024

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



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To

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and
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