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WP Nos.38801 and 38802 of 2015

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 Nos.38801 and 38802 of 2015

- 1.Union of India,
Represented by Director,
Department of Telecom,
New Delhi.
- 2.The Assistant Director General (Per. and III)
BSNL, New Delhi.
- 3.The Chief General Manager,
Central Telegraph Office,
Chennai-600 001.
- 4.The Senior Superintendent Telegraph (Admn)
Central Telegraph Office,
Chennai-600001.
- 5.Senior Accounts Officer,
Central Telegraph Office,
Chennai-600 001.

... Petitioners in both WPs

versus

1/13



WP Nos.38801 and 38802 of 2015

1.The Registrar

Central Administrative Tribunal-Madras Bench
Chennai.

...First respondent in
Both WPs

2.S.Vedantham

...Second respondent in
in W.P.No.38801 of 2015

3.BSNL SC/ST Employees Welfare Association,
Reg No.47083/03,
Represented by its General Secretary,
S.Jeyaraj,
No.47, Balakrishnapuram,
4th Street, Adambakkam,
Chennai.

...Second respondent in
in W.P.No.38802 of 2015

PRAYER in WP Nos.38801 and 38802 of 2015: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari to call for the order passed by the first respondent in TA Nos.12 and 13 of 2009 dated 18.11.2010 and to quash the same as illegal.

For the Petitioners :Mr.MJeevanandam
for Mr.S.Udayakumar

For the Respondents :first respondent -Tribunal
Not ready notice-second respondent



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C?OMMON ORDER

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

W.P.No.38801 of 2015

This writ petition is filed for the issuance of a writ of Certiorari to call for the order passed by the first respondent in TA No.12 of 2009 dated 18.11.2010 and to quash the same as illegal.

2. Brief facts of the case:

2.1 The second respondent herein has joined the telegraph office as Telegraphist on 11.01.1986. He belongs to reserve category (SC & ST). In the year 1983, one time bound promotion Scheme was introduced (OTBP), 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



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belongs to schedule caste community, even though he has not completed 16 years of service, he was promoted to Grade 2 on 06.12.1996. 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 Scheme and accordingly based on the said concession, the petitioner on completion of 17 years of service, also got the second time promotion in the year 2003.

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 12.05.2000 was sent to the second respondent herein stating that the officials who were pre restructured cadre under short fall



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vacancies are not eligible for higher pay scales as prescribed in the order dated 20.04.1999 and therefore the placement of the second respondent in the higher pay scale of Rs.5000-150-8000 granted to the second respondent with effect from 28.06.1999, even before the completion of 16 years of total service, has been withdrawn and accordingly he will continue in the lower pay scale of Rs.4500-125-7000.

2.3. Challenging the same, the second respondent filed OA No.83 of 2001 which came to be allowed by order dated 11.01.2001. However, the department has been consistent in not granting the higher pay scale of Rs.5000-150-8000 to the second respondent. Therefore, the second respondent has filed W.P.No.32314 of 2003, which was transferred to the Central Administrative Tribunal and renumbered as transferred application No.12 of 2009. The Tribunal, by order dated 18.11.2010, has allowed the said application. Challenging this order of the Tribunal, the department has filed the instant writ petition.

3. Learned counsel appearing for the petitioners relying upon the



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undisputed facts would submit that in the year 1996 on completion of 10 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 2003. That being so, pursuant to the instructions dated 20.04.1999 issued on the pay restructure relating to short fall vacancies, the Department, has passed an order dated 16.03.2000, stating that officials who are promoted to OTBP/BCR of pre structured cadre under short fall vacancies are not eligible for the higher pay scales as prescribed in the order dated 20.04.1999 unless they have completed a total service of 16/26 years. In pursuance of the order dated 16.03.2000, the Department has passed an order dated 12.05.2000 stating that the second respondent placement in the higher pay scale is being revised and he will be placed in the OTPB scale of pre-structured cadre from the due date. Thereafter, the Department has passed an order dated 30.05.2000 stating that officials who were promoted to OTBP of pre restructured cadre against shortfall vacancies and subsequently placed in the higher pay scale of Rs.5000-150-8000 with effect from the dates before completion of 16 years of service are withdrawn



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from the higher pay scales and placed in the OTBP scale of Rs.4500-125-7000 in the pre structured cadre.

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 12.05.2000 and therefore, according to the petitioner Department, the order is perfectly valid and therefore, there is no warrant to for interference and allow the writ petition.

5. He further submits that the said order dated 12.05.2000 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.



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

7. The order dated 12.05.2000 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 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.

8. Now the issue to be decided in the present writ petition is whether the order dated 12.05.2000 passed based on the circular dated 20.04.1999 and 16.03.2000, by revising earlier order which granted benefit by relaxing the prescribed period of 26 years of service can be accepted.



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9. 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 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



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including that rendered in the pro-restructured feeder cadre shall be placed into the 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'.

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 para (1)(2) and (3) above with effect from 1st December 1998."

10. 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



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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 12.05.2000 and 30.05.2000 is totally unsustainable and without having authority such order has been passed. Therefore, we are of the view that the said circular dated 12.05.2000 followed by circular dated 30.05.2000 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.12 of 2009 dated 18.11.2010. There is no merit in the writ petition. Consequently, the writ petition stands dismissed. There shall be no order as to costs.

11. W.P.No.38801 of 2015.

11.1. This writ petition has filed by BSNL SC/ST Employees Welfare Association on the very same issue as in W.P.No.38801 of 2015.

11.2. Since the issue involved in both the writ petitions are similar, this writ petition is also dismissed on the same lines. Hence, we are not



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inclined to interfere with the order of the Tribunal in TA No.13 of 2009 dated 18.11.2010. There is no merit in the writ petition. Consequently, the writ petition stands dismissed. There shall be no order as to costs. MP No.1 of 2015 and MP No.1 of 2015 are closed.

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

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

To
1.The Registrar
Central Administrative Tribunal-Madras Bench,
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D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

(mrn)

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