

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.02.2017

Delivered on: 02.03.2017

Coram

The Honourable **Mr.Justice K.K.SASIDHARAN**

and

The Honourable **Mr.Justice V.PARTHIBAN**

W.P.Nos.25303 & 28950 of 2013

Bharat Sanchar Nigam Limited,
rep. by its Chairman & Managing Director,
BSNL Corporate Office,
3rd Floor Bharat Sanchar Bhavan,
Janpath,
New Delhi-110 001.

.. Petitioner in
WP 25303 of 2013 and
1st Respondent in
WP 28950 of 2013

versus

S.Ganesh

.. Petitioner in
WP 28950 of 2013 and
1st Respondent in
WP 25303 of 2013

The Registrar,
General Administrative Tribunal,
High Court Buildings,
Chennai-600 104.

.. 2nd Respondents in
both the Writ Petitions

Prayer in W.P.No.25303 of 2013: This Writ Petition is filed under Article 227 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records of the 1st respondent in OA 441 of 2010 dated 23.02.2012 and quash the same.

For Petitioner : Mr. S.Udaya Kumar, SSC for BSNL

For Respondents: Mr.Karthik for R1

Prayer in W.P.No.28950 of 2013: This Writ Petition is filed under Article 227 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in OA 441 of 2010 dated 23.02.2012, quash the same and consequently direct the first respondent to grant first upgradation to the petitioner and other executives with effect from the date of completion of four years in the current IDA pay scale without precondition of reaching/crossing the minimum of the next IDA scale with all monetary and other benefits.

For Petitioner : Mr.Karthik Mukundan

For Respondent : Mr. S.Udaya Kumar, SSC for BSNL
for R1

COMMON ORDER

V.PARTHIBAN, J.

Both these Writ Petitions arise out of common order passed by the Central Administrative Tribunal (in short, 'the Tribunal'),

Madras Bench in O.A.No.441 of 2010, dated 23.2.2012.

2. For the sake of clarity, the parties are referred to as applicant and the respondent as they were arrayed before the Tribunal.

3. Both the applicant and the respondent appeared to have been aggrieved by the common order passed by the Tribunal and both of them are before this Court, by filing their respective writ petitions.

4. The applicant approached the Tribunal, seeking the following relief:

"To declare Clause 3.1 of the OM No:Order No.400/61-2004-Pers.I, dated 18.1.2007 issued by Joint Deputy Director General on behalf of the 1st respondent, insofar as it prescribed that THE FIRST UPGRADATION OF IDA Scale of individual Executive will be due for consideration on completion of 4 (Four) years of Service in the current IDA scale subject to the condition that the Executive's basic pay in the current IDA scale has crossed/touched the lowest of the higher IDA scale for which his/her upgradation is to be considered, as

unconstitutional, void, as it is violative of Articles 14 & 16 of the Constitution of India and consequently, direct the respondents to consider and grant the applicant the first upgradation w.e.f. the date of completion of 4 years in the current IDA pay scale with all monetary and other benefits flowing therefrom and pass such further or other orders as may be deemed fit and proper".

5. According to the applicant, Clause 3.1 of Official Memorandum No. No.400/61-2004-Pers.I, dated 18.1.2007 insofar as it deals with time bound promotion policy of Group B Officers, was violative of Articles 14 and 16 of the Constitution of India inasmuch as it introduced two stages of eligibility criteria for the purpose of grant of financial upgradation. The offending Clause as contained in the Office Memorandum dated 18.1.2007 is extracted herein below:

"3.1. First Upgradation: The FIRST UPGRADATION OF IDA Scale of individual Executive will be due for consideration on completion of 4 (Four) years of Service in the current IDA scale subject to the condition that the Executive's basic pay in the current IDA scale has

crossed/touched the lowest of the higher IDA scale for which his/her upgradation is to be considered OR he/she completed 6 (Six) years of service in the current IDA scale, whichever is earlier."

6. By the above Clause, the respondent is creating two sets of Officers in the matter of upgradation, viz., i) on completion of four years of service on the basis of pay scale and ii) on completion of six years of service regardless of pay scale.

7. According to the applicant, such a division between the same set of employees has given rise to anomaly in the matter of upgradation which is linked to touching the minimum pay scale in the next higher grades IDA scale and such prescription is opposed to the upgradation policy itself for the reason that the juniors may get upgradation earlier to the seniors. According to the applicant, all the persons who are stagnating in the lower position have to be treated equally and creating a sub-classification of the same class of employees into two different groups based on the pay scales, is *per se* arbitrary and it has no nexus to the object the Administration is seeking to achieve by

such classification. Fixation of four years or six years of service for determining eligibility for upgradation for Officers does not appear based on any intelligible differentia and therefore, the impugned Clause was in clear violation of Articles 14 and 16 of the Constitution of India.

8. On behalf of the respondent management, the claim of the petitioner was sought to resisted, saying that the policy was well founded on the basis of intelligible differentia in view of change of status of the employees from being an employee of DOT to the employee of BSNL and the policy as such was involved only to take care of stagnation among various clauses of persons and hence, the same cannot be faulted with.

9. Learned Tribunal after taking note of the submissions, allowed the Original Application by setting aside Clause 3.1 of Official Memorandum dated 18.1.2007 only on the ground that prescription of six years and four years based on the pay scale, was in clear violation of Articles 14 and 16 of the Constitution. The learned Tribunal appears to have not discussed several issues raised before it, but by oversight, has simply chosen to

come to a conclusion on a very simplistic note that the prescription of four or six years of service based on the pay scale, cannot stand the test of Constitutional parameters.

10. As against the order passed by the Tribunal, the respondent management has filed the Writ Petition in W.P.No.25303 of 2013. The applicant has also filed the Writ Petition in W.P.No.28950 of 2013, having been aggrieved by the fact that the Tribunal has set aside only a portion of the subject Clause 3.1 of the Office Memorandum, dated 18.1.2007, to the following extent:

"The grant of upgradation on completion of four years of service in the current IDA scale subject to the condition that the Executive's basic pay in the current IDA scale has crossed/touched the lowest of the higher IDA scale for his/her upgradation is to be considered."

11. Shri Uday Kumar, learned counsel appearing for the respondent management, assailed the order passed by the Tribunal by contending that the Tribunal has passed a non-speaking order without considering several core issues which

formed the basis of the policy as laid down in the Official Memorandum, dated 18.1.2007.

12. In fact, a detailed counter affidavit has been filed by the respondent management in the Writ Petition filed by the applicant in which, it has been clearly spelt out as to the basis of the evolution of the policy and the object and spirit behind the issuance of subject Office Memorandum.

13. For better appreciation of the case of the respondent management, the contents of para 8, 9 and 10 of the counter affidavit are extracted as under:

"8. There was a demand from executives to formulate a policy for their future promotional avenues in lieu of this ACP scheme being absorbed in BSNL. The BSNL management also firmly believes that their employees are to be motivated to achieve higher productivity by the way of giving them opportunity to take up higher responsibility and financial benefits. The post based promotion depends on sanctioned posts and the vacancy arising in a particular cadre. There is possibility of stagnation of pay for an executive absorbed from DoT to BSNL who has been fixed at higher stage than at minimum of a

pay scale. Even though in IDA pattern deployed in BSNL, the stagnation may arise after 15 yrs for those who have been fixed at minimum of the pay scale, a promoted/absorbed official who have been fixed at higher stage may stagnate much earlier. To motivate and to benefit majority of executives spread over the entire length and breadth of the country in different verticals, different pay scales, drawing different salary, different length of service, different age groups, BSNL has formulated a policy in 2007 and got approval of the controlling Govt.Department i.e. DoT.

9. As per the policy the post based vertical promotion with higher responsibility, change of cadre, higher scale will be given as per the seniority cum fitness method which is subjected to availability of vacancy and governed by the respective Recruitment Rules. There can't be a time frame for getting a vertical promotion. An additional promotion method called Financial upgradation without any change in substantive status, change of designation, duties and responsibilities, no impact on seniority for getting vertical promotion and purely personal to individual executive has been evolved.

"10. To avoid disharmony and disparity

among the same class of employees, to motivate the executives to achieve high production, balancing the pay scales between the employees, to bring parity of pay as far as possible, the introduction of clause 3.1 has been formulated after giving much deliberation by a high power committee. The impugned clause 1(b) 3.1 of the said OM is produced hereunder:

"First Up gradation: The First Up gradation of IDA Scale of individual Executive will be due for consideration on completion of 4 (Four) years of Service in the current IDA scale subject to the condition that the Executive's basic pay in the current IDA scale has crossed/touched the lowest of the higher IDA scale for which his/her upgradation is to be considered OR he/she has completed 6 (six) years of service in the current IDA scale, whichever is earlier."

14. From the above, it can be seen that the policy has been formulated after taking note of the peculiar circumstances and the service conditions of the employees employed by the respondent management. There seems to be a plausible explanation as to how different interests of the employees were taken care of by evolving the policy as laid down in the Office Memorandum dated 18.1.2007.

15. The learned counsel appearing for the respondent management has taken us through all the relevant materials and pleadings and impressed upon this Court that the Tribunal has completely misdirected itself by a very same simplistic conclusion without addressing any of the contentions that were raised in the original application. As rightly pointed out by the learned counsel appearing for the respondent management that the impugned order passed by the learned Tribunal is completely bereft of any reasons legally or otherwise acceptable and by no stretch of legal standards, the same can be sustained. This was more particularly so, when a policy of the Government is being struck down as has been offending the Articles 14 and 16 of the Constitution.

16. The learned counsel appearing for the respondent Management cited two decisions reported in 1989(2) SCC 290 (***State of Andhra Pradesh and others versus G.Sreenivasa Rao & others***) and 2015 (3) SCC 653 (***Union of India versus Muralidharan & another***). As far as the first decision is concerned, the Hon'ble Supreme Court has held that

classification based on intelligible criteria having reasonable relation with the object of the differentiation permissible. The learned counsel in order to substantiate his case that there was an intelligible criteria while fixing two methods of upgradation and such classification is very much permissible in terms of Articles 14 and 16 of the Constitution. As regards the other decision is concerned, the Hon'ble Supreme Court has held that in the matter of fixation of pay structure, the Tribunal cannot sit in appeal over the wisdom of the executive as it falls within the exclusive domain of executive unless the same is shown to be violative of Articles of 14 and 16 Constitution of India. There is some force in the contention of the learned counsel appearing for the respondent management, that unless the action of the Government is shown to be per se unconstitutional, the Court cannot substitute its wisdom in the place of executive authorities who alone are competent to take a proper policy decisions. However, the learned counsel appearing for the applicant has cited a decision of the Hon'ble Supreme Court reported in 1977(2) SCC 508 (***State of Orissa and another versus N.N.Swamy and others***). We find that the facts of the said decision are completely different and cannot be applied to the

factual matrix of the present case.

17. Per contra, Shri Karthik Rajan learned counsel appearing for the applicant took pains to emphasize the fact that the prescription of two methods of upgradation on the basis of attaining the minimum of the pay scale, has resulted in denial of upgradation to the seniors and grant of upgradation to the juniors which is nothing but anomaly in the policy. However, except stating so, the learned counsel is unable to come up with any plausible explanation as to how the policy evolved by the respondent management is unreasonable and arbitrary in order to strike it down as being unconstitutional. Even if it is a fact that any employee suffers hardships that may only give due fortuitous circumstances, as fallout of policy evolved by the respondent management and such stray hardship cannot be the reasoning for striking down the policy as such of the respondent management. In any event, it is admitted position that every employee regardless of attaining the minimum of the pay scale in the higher grade, will always be eligible on completion of six years service. The very policy itself is evolved only to take care of divergent interests of the employees and there is nothing

objectionable found in the policy as such.

18. We gave our anxious consideration to the materials and pleadings available on record and the submissions made by the learned counsel for either parties.

19. We are unable to persuade ourselves to accept the decision of the learned Tribunal which decision is far from satisfactory and at any event, it cannot be sustained in law. The conclusion of the learned Tribunal is without any legal basis and without any valid reasons and therefore, we are left with no option except to set aside. Accordingly, we hereby set aside the order passed by the learned Tribunal passed in O.A.No.441 of 2010 dated 23.2.2012. Consequently, the Original Application filed by the applicant is dismissed.

In the result, the Writ Petition in W.P.No.25303 of 2013 is allowed and the Writ Petition in W.P.No.28950 of 2013 is dismissed. No costs.

suk

(K.K.S.,J.) (V.P.N.,J.)

02-03-2017

Index: Yes/No
Internet: Yes/No
To

The Chairman & Managing Director,
Bharat Sanchar Nigam Limited,
BSNL Corporate Office,
3rd Floor Bharat Sanchar Bhavan,
Janpath,
New Delhi-110 001

K.K.SASIDHARAN, J.

AND

V.PARTHIBAN, J.

Pre Delivery order in
W.P.Nos.25303 &
28950 of 2013

02-03-2017