

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 09th day of May, 2011

TRANSFER APPLICATION NO. 24/2009
IN
S.B. CIVIL WRIT PETITION NO.1115/2009

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Umesh Singh son of Shri Nathu Singh aged about 45 years, resident of 123/78, Agarwal Farm, Mansarovar, Jaipur.

.....Applicant

(By Advocate: Mr. Anand Sharma)

VERSUS

1. Bharat Sanchar Nigam Limited through its Chairman cum Managing Director, Statement House, 12, Khambaji Road, New Delhi.
2. Chief General Manager (Telecommuication), Bharat Sanchar Nigam Limited, Jaipur.
3. Principal General Manager (Telecommunication), Bharat Sanchar Nigam Limited, Jaipur.
4. Sub-Divisional Officer (Telecommunication), Bharat Sanchar Nigam Limited, Dausa.

.....Respondents

(By Advocate: Mr. Sudeep Mathur)

ORDER (ORAL)

The Hon'ble High Court vide its order 04.05.2009 held that BSNL has now covered under the notification issued by the Central Government relating to service dispute to be filed before the Central Administrative Tribunal.

2. The present OA has been preferred by the applicant seeking for the following reliefs:-



- (i) By issue of an appropriate writ, order or direction, the orders dated 29.09.2008 (Annexure 16 & 17) and reply to the representation dated 03.10.08 may kindly be declared arbitrary and illegal and same may kindly be quashed and set aside. The respondents may kindly be directed to release the salary of 17 months of the petitioner to the tune of Rs.1,85,276/- details of which have been given in Para 9 of the Writ Petition alongwith interest @ 12% per annum.
- (ii) The respondents may kindly be directed to regularize the period of dies non as mentioned in order dated 29.09.2008 (Annexure 16 & 17) and to count the same towards the pensionable service and other benefits admissible under the Rules.
- (iii) The respondents may also be directed to make payment of bonus declared in the year 2007 for the employees of BSNL and amount of staff liveries and CGEGI to the petitioner.
- (iv) Any other order which this Hon'ble Court deemed just and proper in the facts and circumstances of the case may also be passed in favour of the petitioner.

3. The Petitioners is seeking writ, order or direction to release the salary of 17 months to the tune of Rs.1,85,276/- and to regularize the period of dies non as mentioned in the order dated 29.09.2008. Earlier also, the petitioner preferred Civil Writ Petition No. 6785/2008 before the Hon'ble High Court regarding payment of due salary. The said writ petition was disposed of by the Hon'ble High Court vide order dated 23.07.2008 whereby the Hon'ble High court directed the petitioner to submit a representation before the competent authority in respect of his grievances and competent authority was directed to decide the same by a speaking order within two months thereafter and communicate its decision to the petitioner.

4. In compliance of the aforesaid order dated 23.07.2008, the petitioner submitted a representation dated 05.08.2008 to (i) the Chairman cum Managing Director, BSNL, New Delhi, (ii) Chief General



Manager (Telecommunication), BSNL, Jaipur and (iii) Principal General Manager (Telecommunication), BSNL, Jaipur and the same was decided vide order dated 03.10.2008 (Annexure 15). Aggrieved and dissatisfied with this order dated 03.10.2008, the applicant preferred this TA and the same is challenged on the ground that it is not the disposal of the representation but is the parawise reply to the representation, which has been given by the Divisional Engineer (Phones), Mansarovar, who is not at all concerned with the aforesaid matter and cannot be considered as competent authority for the purpose of deciding/dealing with the representation submitted by the petitioner. It is also challenged on the ground that it is wrongly mentioned in the letter dated 03.10.2008 that petitioner had remained absent from duty for 85 days from 16.11.2005 to 08.02.2006 and thereafter for 486 days from 16.02.2006 to 15.06.2007 whereas in contrary, the petitioner had regularly attended his duties and alleged that absence for the aforesaid period is patently incorrect as the respondents department had given him full salary for this period. Had the petitioner been absent during the aforesaid period, he would not have been paid salary for the aforesaid period.

5. In reply to Para No. 12 of the application, the respondents in their reply have submitted that contents of application are not admitted in the manner stated therein. It is further submitted in compliance of the order passed by the Hon'ble High Court, the representation of the applicant was duly decided by the answering respondents vide order dated 03.10.2008 and the applicant was also informed in this regard.



6. Having considered the material available on record and the documents filed by the applicant, it is not disputed that this is the third round of litigation. As per the order passed by the Hon'ble High Court dated 23.07.2008 in Writ Petition No. 6785/2008, the respondents were directed to decide the representation by a speaking order and of course the same was decided vide order dated 03.10.2008 by them but while deciding the representation, the respondents have committed factual error as in Para No. 12 of the application, the applicant has categorically stated that the period which has been shown by the respondents as absence from duty for 85 days from 16.11.2005 to 08.02.2006 and thereafter for 486 days from 16.02.2006 to 15.06.2007, for that period he has been paid due salary and to this fact, no specific reply has been given by the respondents and this aspect has not been dealt by the respondents while deciding the representation of the applicant dated 05.08.2008 vide their order dated 03.10.2008. Without discussing on merit, we observe that factual error had been committed by the respondents, which requires reconsideration. Accordingly, we deemed it proper to remit back the matter to the respondents for reconsideration of this aspect whether the absence from duty for 85 days from 16.11.2005 to 08.02.2006 and thereafter for 486 days from 16.02.2006 to 15.06.2007, as alleged by the respondents, the applicant has been paid salary for the aforesaid period. This is to be verified by the respondents and after verifying the fact whether the salary for the absence has been paid to the applicant or not, the respondents are directed to decide the representation of the applicant dated 05.08.2008 afresh in accordance with provisions of law and the relevant record.



7. With these observations, the TA stands disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

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