

**Central Administrative Tribunal
Madras Bench**

MA/310/00051/2019 (in)(&) OA/310/01829/2016

Dated the 4th day of September Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

P.Ramasamy,
S/o Perumal,
No.1, Aithreya Enclave,
Thindal, Erode 638 012.

.. Applicant

By Advocate **M/s.R.Malaichamy**

Vs.

1. Union of India, rep by the
Deputy Secretary to Govt. of India,
M/o Communications & IT,
(Department of Telecommunications),
Sanchar Bhawan, New Delhi 110 001.
2. The Chairman & Managing Director,
Bharat Sanchar Nigam Limited (BSNL),
Corporate Office,
Eastern Court Complex,
New Delhi 110 001.
3. The Deputy Manager (Pension),
Pension Section,
Bharat Sanchar Nigam Limited (BSNL),
Corporate Office,
5th Floor, Sanchar Bhawan,
New Delhi 110 001.
4. The Chief General Manager,
BSNL, Chennai Telephones,
No.78, Purasaiwalkam High Road,

5th Floor, Chennai 600 010.

5. The General Manager,
BSNL,
BSNL, Chennai Telephones,
No.78, Purasaiwalkam High Road,
5th Floor, Chennai 600 010.
6. Deputy General Manager (HR/A),
BSNL, Chennai Telephones,
No.78, Purasaiwalkam High Road,
5th Floor, Chennai 600 010.

.. Respondents

By Advocate **Mr.S.Udayakumar**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The applicant has filed this OA seeking the following relief:-

“To call for the records of the 6th respondent pertaining to his order made in No.LC/HO/CAT/OA-1100 of 2015/19 dated 30.6.2016 and set aside the same, consequent to

direct the respondents to pay the gratuity with interest at the rate of 24% per annum to the applicant with all other attendant benefits including arrears of gratuity; and,

To pass such further orders as this Tribunal may deem fit and proper.”

2. Learned counsel for the applicant submits that the applicant is a retired senior Section Supervisor (SSS) of BSNL. He was permitted to retire on 31.8.2003. The applicant was appointed in the Department as Time Scale Clerk in the year 1964 against ST quota vacancy on the basis of production of the community certificate issued by the Deputy Tahsildar, Thuraiyur on 19.4.1964 and the certificate issued by the Tahsildar, Musiri on 29.7.1964. Whiles, after 30 years of service, the community certificates produced by the applicant were forwarded to the District Collector, Trichy on 28.2.1995 for verification of its genuineness. After 6 years and 8 months, the District Collector forwarded his report to the 5th respondent stating that the said community certificate dated 19.4.1964 issued by the Deputy Tahsildar, Turaiyur was cancelled. It is submitted that the District Vigilance Committee (DVC) failed to make inquiry on the second community certificate dated 29.7.1964 issued by

the Tahsildar, Musiri and, therefore, the certificate dated 29.7.1964 is still alive. Since the District Collector took more than 6 years to verify the genuineness of the certificate, the applicant did not prefer any appeal to State Level Committee (SLC) as the SLC would also take much time to decide the genuineness. Hence, he approached the Court of Law for early redressal since he was on the verge of retirement. The Court proceedings regarding the community status of the applicant were completed only on 04.4.2004 and in the meantime the applicant retired from service on 31.8.03. As on the date of retirement, no disciplinary proceedings were pending against the applicant, it is submitted.

3. Whiles, the 2nd respondent accorded sanction by order dated 23.9.2006 to initiate departmental proceedings against the applicant in accordance with the procedure laid down in Rule 14 and 15 of CCS (CCA) Rules, 1965 by the competent authority invoking Rule 9 of CCS (Pension) Rules, 1972. A disciplinary action under Rule 9 of CCS (Pension) Rules, 1972 was initiated against the applicant by issuing a charge memo dated 25.2.2009. The applicant was imposed with the punishment of withholding of pension on permanent basis by an order dated 23.9.2014. Aggrieved by the said order, he has filed this OA seeking the aforesaid relief.

4. The contention of the applicant is that instead of initiating disciplinary action under Rule 9 of CCS (Pension) Rules, the charge memo and punishment was issued under BSNL CDS Rules, 2006. Further, as per sub-clause (ii) of clause (b) of sub-rule (2) of Rule 9 of CCS (Pension) Rules, 1972, no action should be initiated against the retired employee in respect of any event which took place more than 4 years

before institution of disciplinary proceeding. Therefore, the order dated 23.9.06 is null and void and the applicant is entitled for the full retirement service benefits including pension.

5. The respondents have filed a reply contesting the claim of the applicant stating that when the applicant was considered for 10% BCR promotion in 1993, the department wanted to verify the community of the applicant as required by the DPC. The District Vigilance Committee (DVC), Tiruchirappalli was requested to cause verification of genuineness of the certificate. As per the instructions of the Collector, the Revenue Divisional Officer (RDO), Musiri conducted the enquiry and submitted a report that the applicant and his family belonged to the 'Vedan' community which is classified as BC and they do not belong to the Kattunaicken, ST Community. The Village Administrative Officer (VAO), Sirunavallur village had also confirmed before the RDO that the applicant and his family belonged to 'Vedan' BC Community. Further, the punishment of withholding the pension on permanent basis awarded by the competent authority implies that the service rendered by the applicant has been forfeited consequent to conclusion of departmental proceedings and the gratuity which is also based on the qualifying service is not payable to the applicant. The Hon'ble High Court of Madras while disposing off the WP 28681/2003 dated 04.10.2004 held that “until the certificate of the petitioner produced for obtaining employment and continuing employment till retirement in one way or other decided by the competent authority, the petitioner is not entitled to get any of the retirement benefits. If the petitioner wants disposal immediately, he can very well approach the

competent authority and have the disposal at the earlier point of time. If the petitioner comes out successfully from the enquiry, he is entitled for the terminal benefits.” The applicant has neither challenged the above order of the Hon'ble High Court of Madras nor obeyed its directions. As regards to the averment that the charge memo and punishment was issued under BSNL CDS Rules, 2006, it is submitted that BSNL CDA Rules 2006 section 5(4) deals with misconduct which states that “furnishing false information regarding name, age, father's name, qualifications, ability to previous service or any other matter germane to the employment at the time of employment or during the course of employment” amounts to misconduct. As the applicant had submitted a false ST community certificate and obtained employment under the ST Quota depriving genuine persons belonging to the ST Community their right, the applicant was penalized after following all departmental formalities and procedures by giving enough opportunity to the applicant to present his side. Further, BSNL CDA Rules 2006, Rule 43 clearly states that the DOT employees on absorption in BSNL shall be governed by these rules from the date of their absorption in the company/date of issue of these rules. Therefore, the applicant is absorbed employee of BSNL at the time of retirement and hence is bound by BSNL CDA Rules 2006. Therefore, they pray for dismissal of the OA.

6. We had heard the counsels appearing for the applicant as well as the respondents. We had also gone through the documents filed as Annexures. This is a case where the Community Certificate produced by the applicant was found to be false and the DVC has recommended the certificate to be cancelled. The District

Collector cancelled the certificate and intimated the same to the respondents. The Vigilance Committee found that the applicant belongs to 'Vedan' Community which is only a BC Community. Though the DVC found the caste against the applicant, the applicant did not file an application before the SLSC for a decision on the dispute. Instead he filed cases before the Hon'ble Madras High Court from the year 2001 onwards which is clearly stated in the Tabular statement produced as Annexure R2. The Hon'ble Madras High Court disposed the pending matters by a common order dated 14.10.03 (Annexure R8) in the following lines:-

“By order dated 14.10.2003, this court granted interim stay. Now that the petitioner retired from service on 31.8.2003 on attaining the age of superannuation, he filed WPMP No.24148/2004 directing the second respondent to disburse his terminal benefits forthwith. Primarily, his appointment based on the community certificate produced by the petitioner is in question. The petitioner has successfully completed his entire service by moving various courts and obtaining interim orders. Now the petitioner retired from service and if the petition is ordered for disbursement of the entire retiral benefits, then there would not be any hold against the petitioner. Hence I am of the considered view that until the certificate of the petitioner produced for obtaining employment and continuing employment till retirement is one way or other decided by the competent authority, the petitioner is not entitled to get any of the retirement benefits. If the petitioner wants disposal immediately, he can very well approach the competent authority and have the disposal at the earlier point of time. If the petitioner comes out successfully from the enquiry, he is entitled for the terminal benefits.”

With the above decision, the WP 28681/03 was dismissed. The respondents

conducted enquiry and ordered to withhold pension and other benefits. The said order of the respondents was challenged in appeal and the Appellate Authority also found the act of submitting false certificate as a grave misconduct and the order of the DA was confirmed.

7. The delay in issuing charge memo had happened only because of the litigations filed by the applicant. Eventhough the Hon'ble High Court has directed him to approach the competent authority to prove his community status, he did not approach the SLC for the same. Eventhough he got an opportunity to prove his community status during enquiry, he failed to do so and the disciplinary proceedings ended in imposing punishment. The Hon'ble Supreme Court observed in ***R.Vishwanatha Pillai v. State of Kerala [reported in AIR 2004 SC 1469]*** that “...the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate.”

8. The Bench of three Judges in ***Chairman and Managing Director FCI v. Jagdish Balaram Bahira [reported in (2017) 5 MLJ 462]*** had held that “19....The rights to salary, pension and other service benefits are entirely statutory in nature in public service. Appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His

appointment to the post was void and non est in the eyes of law. The right to salary or pension after retirement flow from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for Scheduled Caste thus depriving the genuine Scheduled Caste of appointment to that post does not deserve any sympathy or indulgence of this Court. A person who, seeks equity must come with clean hands. He who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.”

9. In this case also the applicant had got appointed to the post on the basis of a certificate which shows that he belongs to ST Community. Later the DVC found that the applicant belongs to 'Veda' Community instead of 'Kattunaiken' mentioned in the certificate. He was appointed and enjoyed all the benefits of the SC/ST community. This is also a clear case where the appointment was *ab initio* void and since the applicant failed to prove his community status, the respondents had forfeited the

service and denied the gratuity and pension.

10. We do not find any reason to interfere with the order passed by the respondents dated 30.6.16 challenged in this case.

11. Hence the OA is devoid of merits and it will stand dismissed. Consequently MA 51/2019 stands disposed off. No costs.

(T.Jacob)
Member(A)

04.09.2019

(P.Madhavan)
Member(J)

/G/

Annexures referred to by the applicant in OA No.310/01829/2016:

Annexure A1: Order of ADG (Vig)-III Corporate Office, New Delhi dated 23.9.06.

Annexure A2: Charge Memo dated 25.2.09.

Annexure A3: Order of the 1st respondent dated 04.9.2014.

Annexure A4: Order of ADM, adhoc disciplinary authority dated 23.9.14.

Annexure A5: Representation to the 5th respondent dated 21.5.2015.

Annexure A6: Order of the 6th respondent dated 30.6.16.

Annexure A7: Representation to 5th respondent dated 22.7.2016.

Annexure A8: Representation to 2nd respondent dated 08.3.2016.

Annexures with reply statement:

Annexure R1: Proceedings of District Vigilance Committee, Tiruchirappalli dated 21.4.2001.

Annexure R2: Summary of cases filed by the applicant.

Annexure R3 to R8: Order of HC of Madras in WP & Misc. Petitions filed by the applicant.

Annexure R9: Sanction to conduct departmental proceedings against the applicant.

Annexure R10: Implementation of BSNL CDA Rules, 2006 with immediate effect.

Annexure R11: Rule-2 application of BSNL CDA Rules, 2006.

Annexure R12: Memo of Disc. Authority to hold inquiry against the applicant dated 25.2.09.

Annexure R13: Rule 61(4) of BSNL CDA Rules, 2006.

Annexure R14: Rule 5(4) of BSNL CDA Rules, 2006.

Annexure R15: Rule 4(1)(a)(b)(c) of BSNL CDA Rules, 2006.

Annexure R16: Ratification of proposed penalty of withholding of pension on permanent basis dated 04.9.2014.

Annexure R17: Memo of DOPT on implementation of directions of HC of Delhi on re-verification of cases of persons who have secured employment under strength of forged/fake certificates.

Annexure R18: Endorsement of DOPT memo on appointment on fake/false STS certificate by BSNL.

Annexure R19: Rule 43 of BSNL CDA Rules, 2006-Special Provision for DOT Staff on permanent absorption in BSNL.

Annexure R20: Forwarding of representation of the applicant addressed to CMD BSNL to CGM CHTD by BSNL CO dated 05.4.16.