

**Central Administrative Tribunal
Madras Bench**

OA/310/01100/2015

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 Bhavan,
New Delhi 110 001.
2. The Assistant Director General (Vig.)-III,
Corporate Office,
Bharat Sanchar Nigam Limited (BSNL),
2nd Floor, 'B' Wing Statesman House,
B-148, Barakhamba Road,
New Delhi 110 001.
3. The Chief General Manager,
BSNL,
Chennai Telephones,
No.78, Pursawalkam High Road,
5th Floor, Chennai 600 010.
4. The General Manager,
BSNL,

Chennai Telephones,
No.78, Pursawalkam High Road,
5th Floor, Chennai 600 010.

5. Deputy General Manager (Marketing)
& Disciplinary Authority,
O/o the General Manager (Marketing),
BSNL, Chennai Telephones,
No.10, Dams Road,
Chennai 600 002.
6. Additional General Manager – NWA-CM
& Adhoc Disciplinary Authority,
O/o the Chief General Manager,
BSNL, Chennai Telephones,
Vigilance Cell,
No.78, Pursawalkam High Road,
5th Floor, Chennai 600 010.

.. Respondents

By Advocate **Mr.G.Dhamodaran**

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 2nd respondent pertaining to his order made in No.235-4/05-O&M/Vig.III dated 23.9.2006, the charge memo issued by the 5th respondent vide No.DGM (MKG)/Con/Inquiry/PR/I dated 25.2.2009, the order of 1st respondent made in No.68-70/2014/Vig.II dated 04.9.2014, the order of 6th respondent made in No.AVO/NVC/CC/PR/Proceedings/2014-15 dated 23.9.2014 and the order of 3rd respondent made in No.AVO/NVC/CC/PR/Proceedings/2014-15 dated 02.5.2015 and set aside the same, consequent to

direct the respondents to pay the pension to the applicant with all other attendant benefits including arrears of pension; and,

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

2. The applicant is a retired senior Section Supervisor (SSS) of BSNL. He retired on 31.8.2003.
3. He was 1st appointed in the department as a Time Scale Clerk on 01.12.64 in the vacancy reserved for ST. He was appointed to the post on the basis of a Community Certificate issued by Deputy Tahsildar, Turaiyur dated 19.4.1964. Another certificate was also submitted on 29.7.64 from Tahsildar, Musiri. Only after filing the second certificate he was appointed on 01.12.64.
4. After 30 years, his certificate was forwarded to District Collector (Chair person District Vigilance Committee) for verification and after 6 years the Collector

reported cancellation of Community Certificate dated 19.4.1964. According to him, the certificate in the prescribed form dated 29.7.64 is properly issued. But respondent did not send it for verification. He has not preferred any appeal to the State Level Committee (SLC) since he thought that SLC may also take much time to decide the issue. He is on the verge of retirement and hence approached the court of law and the said proceedings ended on 04.4.2004. In the meantime, he was retired. On 31.8.2003, the 2nd respondent issued an order sanctioning disciplinary proceedings under Rule 9 of CCS (Pension) Rules, 1972. But no immediate action initiated and on 25.2.09 they issued a charge memo. The Rule 9 (2) (b) (ii) of the CCS (Pension) Rules states that no action can be initiated against a retired employee after 4 years of retirement. So, the order of the 2nd respondent to conduct inquiry as per procedure dated 23.9.06 is void. So, the applicant is entitled to get full retirement benefit.

5. The order to withhold pension on permanent basis is illegal. The 6th respondent was nominated to act as adhoc disciplinary authority to the applicant and the order passed by him was ratified by the 1st respondent by order dated 23.9.14. The said punishment was imposed referring BSNL CDA Rules, 2006.

6. The applicant preferred an appeal on 17.11.2014 to the 4th respondent. But since no order was passed, he filed OA 677/15 before this Tribunal. This Tribunal directed the respondent to dispose of appeal within four weeks on 01.6.15. The 3rd respondent in the meanwhile rejected the appeal on 02.5.15. Hence, this OA.

7. The applicant had cited the *Raiwad Manojkumar Nivruttirao v. State of*

Maharashtra & Another [(2011) 9 SCC 798], Kavita Solunke v. State of Maharashtra & Others [CDJ 2012 SC 540], H.L.Gulati v. Union of India & Others [CDJ 2015 SC 339] in support of his claim.

8. The respondents filed a reply stating that the applicant had obtained appointment stating that he belongs to “Kattunaicken” (ST) Community. He had enjoyed the benefits of ST Community candidates throughout his service. When the name of the applicant came for 10% BCR promotion in 1993, the department verified the community of the applicant for giving to DPC. The District Vigilance Committee (DVC) conducted verification and found that the applicant and family belongs to “Vedan” Community which is only a backward community (BC). The community certificate was therefore, cancelled by Collector on 21.4.2001. The applicant did not file an appeal to the Chairman, State Level Scrutiny Committee (SLSC). The applicant filed WP 12023/2001 against any action. The orders passed by the Hon'ble High Court is produced as Annexure R3 to R8). On 04.10.04 the Hon'ble Madras High Court ordered as follows:-

“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.”

9. The applicant retired from service on 31.8.2003. The Assistant Director General (Vigilance) III BSNL Corporate Office as per letter dated 23.9.06 informed that sanction of the Chairman, BSNL is granted for departmental proceedings as per Rule 14 and 15 of the CCS (CCA) Rules, 1965. There was no separate rule at that time for BSNL. The BSNL CDA Rules came into force on 10.10.2006 (Annexure R10) and it was directed that it shall replace existing CCS (Conduct) Rules and CCS (CCA) Rules, 1965 for employees mentioned in Rule 2 of BSNL CDA Rules, 2006 (Annexure R11). The disciplinary authority issued memo dated 25.2.09 (Annexure R12) for initiating disciplinary action as laid down under R 36 of BSNL CDA Rules for furnishing false information regarding name, age, fathers name, qualifications at the time of joining and during the course of employment and for acting in an unbecoming manner of a public servant contravening Rule 4(1)(a)(b)&(c) of BSNL CDA Rules, 2006. The DOT had also ratified the action taken i.e. withholding pension dated 23.9.14. The communal status of the applicant is declared by the

competent officer and existence of a second certificate issued is not a ground to cancel the action.

10. The applicant has suppressed earlier orders passed by the Hon'ble Madras High Court. Till this date the applicant has not approached the competent authority to show his entitlement as ST. So, the OA is devoid of merit.

11. We have heard the applicant counsel and the counsel appearing for the respondents. We had also perused the pleadings. The main dispute raised is that the respondents had issued an order sanctioning the initiation of disciplinary proceedings under Rule 9 of CCS (Pension) Rules, 1972 on 23.9.06 (Annexure A1). Thereafter, they had issued a charge memo as Annexure A2 under Rule 4 (1)(a)(b)&(c) of BSNL CDA Rules, 2006 and conducted an inquiry. So, according to the applicant, the disciplinary action sanctioned as per Annexure A1 has to be presumed as dropped and the charge memo issued is abnatio void. It was also contended that there has taken place undue delay in initiating action and hence the charge memo is liable to be quashed.

12. We have anxiously perused the documents filed from either side. On going through the table produced as Annexure R2, it can be seen that the respondents were not able to initiate any proceedings due to pendency of Writ Petitions in the Hon'ble Madras High Court from 2001 onwards. So, the delay has mainly occurred due to court cases filed by the applicant himself. So, we do not find any merit in the argument that the disciplinary action was delayed more than 4 years after the date of

retirement. The Writ Petition was finally disposed off against the applicant only on 04.10.04 i.e. after 1 year after his retirement. As per the High Court order, the applicant was ordered to approach the competent authority (SLC) for establishment and for showing that he belongs to ST Community. Even after the said order, the applicant never approached the competent authority for getting a final order. We accordingly hold that the delay occurred was mainly due to the court cases filed by the applicant and non-filing of appeal before the competent authority even after the order of the Hon'ble Madras High Court. The only inference that can be drawn is that the certificate produced was false.

13. The next contention is that exhibit A1 sanction was issued quoting Rule 9 of CCS (Pension) Rules and the charge memo was issued under BSNL CDA Rules, 2006. On a perusal of exhibit R10, it can be seen that BSNL (CDA) Rules, 2006 came into force only on 10.10.2006 i.e. after the issue of sanction (A1). Whether any prejudice has occurred to the applicant has to be looked into. There is no difference in the facts and circumstances alleged except the rules quoted in A1. The reason for this is well explained and it is beyond the control of the respondents. There is no case even for the applicant that he was prejudiced in his defence in any manner. There is also no allegation that the respondents had violated any procedure or principles of natural justice during inquiry. The decision cited by the counsel for the applicant supra has no direct application to the facts and circumstances of this case. So, we find that there is no scope for interference with the order of withholding

pension permanently in this case. The applicant has also not obeyed the order of the Hon'ble Madras High Court in WP No.28681/03 dated 04.10.03.

14. In view of the above, the OA lacks merits and it is dismissed herewith.

(T.Jacob)
Member(A)

04.09.2019

(P.Madhavan)
Member(J)

/G/

Annexures referred to by the applicant in OA No.310/01100/2015:

Annexure A1: Order of the 2nd respondent dated 23.9.2006.

Annexure A2: Charge Memo dated 25.2.2009 issued by the 5th respondent.

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

Annexure A4: Order of the 6th respondent dated 23.9.2014.

Annexure A5: Appeal to the 4th respondent dated 17.11.2014.

Annexure A6: Order of the 3rd respondent dated 02.5.2015.

Annexure A7: Order in OA No.677/2015 dated 01.6.2015.

Annexures with reply statement:

Annexure R1: Proceedings of DVC Tiruchirappalli dated 21.4.2001.

Annexure R2: List of cases filed by the applicant.

Annexure R3: HC Madras Order in MP 17573/2001 in WP No.12023/2001 dated 29.6.2001.

Annexure R4: HC Madras Order in MP 17573/2001 & WVMP 603 & 1123/2002 in EP 12023/2001 dated 12.8.2003.

Annexure R5: HC Madras order in MP 35007/2003 in WP 28681/2003 dated 14.10.2003.

Annexure R6: HC Madras order in WPMP 35493/2003 in WP 12023/2001 dated 27.10.2003.

Annexure R7: HC Madras order in WP 12023/2001 & WPMP Nos.17573/2001, 2685/2004 & WVMP 1123/2002 dated 15.6.2004.

Annexure R8: HC Madras order in WP No.28681/2003 & WPMP Nos.35007/2003 & 24148/2004 dated 04.10.2004.

Annexure R9: Sanction of CMD BSNL to initiate departmental proceedings dated

23.9.2006.

Annexure R10: BSNL CDA Rules, 2006 date of effect dated 10.10.2006.

Annexure R11: Rule-2 Application – BSNL CDA Rules, 2006.

Annexure R12: Memo of Disciplinary authority for instituting disciplinary proceedings dated 25.2.2009.

Annexure R13: Rule 5(4) of BSNL CDA Rules, 2006.

Annexure R14: Rule 4(1)(a)(b)&(c) of BSNL CDA Rules, 2006.

Annexure R15: Ratification of penalty of withholding of pension on permanent basis dated 04.9.2014.

Annexure R16: DOPT Memo on implementation of directions of Hon'ble HC Delhi reg. Reverification of cases of persons secured employment under forged/fake ST certificates dated 25.5.2005.

Annexure R17: Endt. Of DOT of DOPT memo dated 25.5.2005 dated 07.6.2005.

Annexure R18: Rule-43, BSNL CDA Rules, 2006-Special provision to DOT Staff on permanent absorption in BSNL.