(2015) 11 KAR CK 0246

In the Karnataka High Court

Case No : Writ Petition No. 35226/2014 (S-CAT)

Bharat Sanchar Nigam Limited and Others — APPELLANT

Vs

G.P. Biradar — RESPONDENT

Date of Decision : 04-11-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 120-B, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2015) 11 KAR CK 0246

Hon'ble Judges : Mohan M. Shantana Goudar and B. Veerappa, JJ.

Bench : Division Bench

Advocate : Narasimha Holla V., Advocate, for the Appellant; A.R. Holla, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mohan M. Shantana Goudar, J.—The order dated 29.11.2013 passed by Central Administrative Tribunal (''CAT'' for short), Bangalore, in O.A. No. 72/2013 is called in question in this writ petition.

By the said order, the Tribunal has held that the respondent herein is entitled to the benefit of financial upgradation claimed by him from 31.3.2006.

2. The respondent was working as a Divisional Engineer in Bharath Sanchar Nigam Limited (''BSNL'' for short). While he was so working, his name was considered for time-bound upgradation with effect from 1.10.2004, as envisaged in the Office Memorandum dated 18.1.2007. However, the respondent''s case was not cleared by the Departmental Promotion Committee (''DPC'' for short) on account of the fact that the respondent had undergone the punishment of "reduction in pay scale" from Rs. 16,600-16250 in the scale of Rs. 14,500-350-18700 from 1.4.2005 to 31.3.2006. That apart, the respondent herein was charged in a criminal case initiated by the Central Bureau of Investigation (''CBI'' for short) vide FIR dated 31.8.2005. After investigation, chargesheet was filed before the Special Judge, Sessions Court, Dharwad on

28.12.2007 for the offences punishable under Section 120-B read with Sections 420, 468, 471 of IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The case of the CBI pertains to passing of fraudulent bills amounting to a sum of Rs. 48,00,000/- (Rupees Forty Eight Lakhs only) and in the said matter, the respondent herein is arrayed as accused No. 2.

Since the respondent''s case was not cleared by the DPC for time-bound upgradation, he approached the CAT in O.A. No. 72/2013, which came to be allowed by the impugned order. Bare perusal of the impugned order clearly reveals that the CAT has not assigned any valid reason and it is an unreasoned order.

3. Sri. Narasimha Holla, learned Advocate appearing on behalf of BSNL taking us through the entire material on record submits that the respondent is not entitled to the benefits flowing from the Office Memorandum dated 18.1.2007 relating to time-bound upgradation inasmuch as the disciplinary/vigilance clearance was not given to him since he was facing Disciplinary Enquiry and a criminal trial is also initiated against him by the CBI. He relies upon the Office Memorandum dated 18.1.2007 issued by the BSNL. The said Office Memorandum deals with policy of time-bound upgradation of pay scale. It explains the eligibility criteria as well as the upgradation criteria. The relevant upgradation criteria relied upon by the BSNL on the matter on hand reads thus:

"c. Upgradation criteria:

1. xxx

2. The fitness for IDA pay scale upgradation to the next higher IDA scale of the eligible executives will be judged by prescribed Screening Committee on the basis of performance rating of ACRs, as per details given in sub Para 3 below, subject to necessary disciplinary/vigilance clearance and no punishment is current."

(emphasis supplied)

Per contra, Sri. A.R. Holla, learned Advocate appearing on behalf of respondent relying upon the letter dated 20.9.2012 issued by the BSNL to all the Heads of Telecom Circles, Metro Districts/Maintenance Regions/Projects/Stores/BRBRAITT/ALTTC and all other Administrative Units of BSNL, contends that the disciplinary cases of minor penalty, emanating beyond the due date of time-bound upgradation, may not affect the grant of time-bound upgradation.

4. There cannot be any dispute that the Office Memorandum relied upon by the learned Advocate for the petitioners dated 18.1.2007 and the letter dated 20.9.2012 issued by the BSNL to all the Heads of Telecom Circles are binding on the parties and they are to be read and construed homogeneously. One document cannot exclude the other. Therefore, both the documents will have to be perused and considered together homogeneously.

5. The Upgradation Criteria fixed in the Office Memorandum dated 18.1.2007 vide Annexure-A2 mentioned supra clearly discloses that the fitness for upgradation of pay scale to the next higher scale of the eligible executives will be judged by the prescribed Screening Committee on the basis of performance rating of Annual Confidential Record (ACRs) subject to disciplinary/vigilance clearance. Thus, it is amply clear from the said Memorandum that disciplinary/ vigilance clearance is must for considering the eligible executives for upgradation of pay scale. However, the letter dated 20.9.2012 issued by the BSNL to all the Heads of the Telecom Circles further makes clear that the disciplinary cases of minor penalty, emanating beyond the due date of time-bound upgradation, may not affect the grant of time-bound upgradation. Since the respondent was facing Disciplinary Enquiry in the year 2004 (punishment ended on 31.3.2006), the Tribunal has concluded that the respondent is not entitled for the benefit upto 31.3.2006, inasmuch as the Disciplinary Authority has reduced the pay of the respondent to certain stage from 1.4.2004 to 31.3.2006 without cumulative effect. This finding of the Tribunal that the respondent''s case cannot be considered upto 31.3.2006 is not assailed by the respondent. However, the Tribunal while concluding so, has ignored the fact that the complaint was lodged against the respondent by CBI, which came to be registered in accordance with law for the offences punishable under Section 120-B read with Sections 420, 468, 471 of IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, on 31.8.2005.

6. CBI after completion of investigation has laid the chargesheet on 28.12.2007. Since FIR was registered against the respondent on 31.8.2005 itself, i.e., during the pendency of the first disciplinary proceedings, the disciplinary/vigilance clearance was not accorded by the department for considering the candidature for upgradation of pay scale. Section 120-B of IPC discloses the punishment for the offence of Criminal Conspiracy. Whoever is punished for the offence punishable under Section 420 of IPC may be sentenced to undergo imprisonment upto seven years and fine. Even for the offences punishable under Sections 468 and 471 of IPC, the punishment may extend to seven years and payment of fine. If a person is convicted for the offence punishable under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, he may be sentenced to undergo imprisonment for a minimum term of four years but which may extend to ten years and fine.

From the aforementioned, it is amply clear that the offences with which the petitioner is charged before the Criminal Court, if proved would lead to serious consequences of imprisonment and consequently, it may lead to major penalty by the Disciplinary Authority. Since the disciplinary/vigilance clearance is must for upgradation of pay scale, the vigilance clearance is rightly not granted, inasmuch as the trial is pending against the respondent for serious offences of alleged misappropriation of amount to the tune of Rs. 48,00,000/-. Therefore, the contents of the letter dated 20.9.2012 issued by the BSNL to all Heads of the Telecom Circles relied upon by the learned Advocate for the respondent will be of no help to him, inasmuch as the aforementioned crime was registered against the respondent even prior to 31.3.2006. A detailed order is passed by the BSNL on 8.11.2012 to the aforementioned effect.

7. Since, we find that the respondent is not eligible for being considered for upgradation of pay scale in view of the registration of crime against him by CBI, under which the respondent is facing serious charges as on the date of DPC, the impugned order passed by the Tribunal needs to be set-aside.

Accordingly, the impugned order dated 29.11.2013 passed by the CAT in O.A. No. 72/2013 stands quashed. The petition is allowed.

