
(2013) 09 DEL CK 0528

In the Delhi High Court

Case No : Writ Petition (C) 8122 of 2011

Bharat Sanchar Nigam Ltd.

APPELLANT

Vs

Shri S.N. Paracer and Others

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2013) 09 DEL CK 0528

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : Sameer Agrawal, for the Appellant; Naresh Kaushik, Advocate for Resp. No. 1, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—Bharat Sanchar Nigam Limited (BSNL) claims to be aggrieved by an order of the Central Administrative Tribunal (CAT) dated 05.04.2011 where the respondent's application was allowed. The brief facts are that the respondent, an employee of BSNL, at the relevant time was working as Superintending Engineer (Electrical) [hereafter referred to as SE (E)]; by the order dated 30.04.2003, he was asked to "look-after" the post of Chief Engineer (Electrical) [hereafter referred to as CE(E)] and functioned as such. It is not in dispute that eventually the respondent retired from the service without being regularly promoted as CE(E). Claiming that he had been arbitrarily denied the pay prescribed for the higher post of CE(E), and also claiming entitlement to pensionary benefits on the basis of such fixation, the respondent approached the Court by filing a Writ Petition which was later transferred to the CAT. By the impugned order, relying upon certain rulings of the Supreme Court, the CAT allowed the respondent's claim, to the extent of the respondent's entitlement to the differential salary, for the period he functioned as CE(E).

2. BSNL argues in these proceedings that the CAT's findings are untenable and relies upon the judgments reported as State of Haryana Vs. R.K. Aggarwal, . It was argued that the CAT wrongly held that the respondent had discharged

statutory functions for the duration he held the higher post. Learned counsel emphasized the fact that the respondent never really discharged any statutory functions as an "appointing authority" or "disciplinary authority", designated under the rules. In these circumstances, his tenure being tenuous, the claim for salary could not have been entertained, especially in view of express terms of the orders which conferred "looking-after" responsibility. Learned counsel stressed upon the fact that in terms of the order, the respondent was not entitled to higher salary attached to the post. This Court has carefully considered the submissions as well as the records. The CAT was considerably influenced by the rulings of the Supreme Court in three judgments, i.e. Selvaraj Vs. Lt. Governor of Island, Port Blair and Others, ; Judhistir Mohanty Vs. State of Orissa and Others, and a decision of the Division Bench judgment of this Court in Govt. of NCT of Delhi and Ors. v. Shri S.C. Gupta and Ors. [W.P. (C) 724/2010 (decided on 06.09.2010)]. In the latter decision, the Court took note of other decisions of the Supreme Court and also took note of Fundamental Rule 49 which regulates the pay of an individual asked to officiate on a temporary basis on independent basis or of higher responsibility. The rule clearly mandates that in addition to ordinary pay, he shall be allowed the pay admissible to him if he is appointed to officiate in the higher post. In S.C. Gupta (supra), the Court relied upon the decision in Balbir Singh Dalal and Ors. v. State of Haryana and Anr. 2002 (4) SCT 422. In all these cases, relied upon by the CAT-Selvaraj (supra); Judhistir Mohanty (supra) and S.C. Gupta (supra), the official was held entitled on the ground that he discharged duties, functions and responsibilities attached to a higher post. The Court was in no way concerned with whether such official did or did not discharge statutory functions-a point of distinction which is sought to be urged by the BSNL. Even otherwise, the discharge of a particular kind of statutory function, upon which much emphasis is laid, cannot be decisive of the person's entitlement under FR 49 because the principle behind it is that as long as the individual is discharging or asked to discharge functions or powers attached to higher post, he should be paid the salary prescribed for such post. The CAT noted, in our view rightly, that the facts in R.K. Aggarwal (supra) were somewhat different; the vacancy was on account of pending litigation and the petitioner there had demanded that he be given pay scale which was denied by the State. Such is not the case in the present instance. The respondent and the others were in fact appointed on "look-after" arrangement. He would be entitled to the pay prescribed for the post in which he officiated and eventually superannuated while so officiating. In the light of the above discussion, the Court finds no infirmity with the reasoning or finding of the CAT. The writ petition is accordingly dismissed.