
(2014) 06 MP CK 0194
In the Madhya Pradesh High Court
Case No : WP 2389/2010 (s)

Bharat Sanchar Nigam Ltd.	Vs	APPELLANT
Yaduvansh Tripathi		RESPONDENT

Date of Decision : 25-06-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2014) 06 MP CK 0194

Hon'ble Judges : S.K. Palo, J;S.K. Gangele, J

Bench : Division Bench

Advocate : Rajendra Bhargava, Advocate for the Appellant

Final Decision : Dismissed

Judgement

1. Heard counsel.
2. Petitioner has filed this writ petition against the order dated 30/4/2009 passed by the Central Administrative Tribunal, Circuit Camp, Gwalior in TA No. 08 of 2009.
3. The Tribunal allowed the TA filed by the respondent employee with the following observation:

..... We, therefore, hold that the objections raised by the respondents are based on administrative considerations and nor on substantive legal grounds. The benefits of one more option as sought for by the applicants should be given immediately to them, so that, they can claim the benefit of pay fixation under the IDA scales. This direction is unlikely to have any adverse repercussions on a continuing basis as we understand that the need for drawing the official on deputation would have already ceased with enough number of officials getting recruited/absorbed in the BSNL. Further the applicants who were on deputation have contributed to raise the efficiency and productivity of BSNL and in recognition of the same, they have been given productivity linked incentive earlier. There has been no change that has taken since this decision was made to

warrant a reversal. Therefore, the applicants are eligible for the Productivity linked incentives in terms of the new IDA scales also on the same basis provided they duly fulfil all other conditions for sanction. The respondents shall comply with the above directions within a period of three months from the date of receipt of a copy of this order.

The OA is allowed as above with no order as to costs.

Aforesaid findings had been duly upheld by Hon''ble High Court vide order dated 16.2.2007. On the other hand judgment of Single Bench of MP High Court in Om Prakash Verma Vs. BSNL in our considered view had not considered the issue decided by Madras High Court prior to said date. We may note that Single Bench judgment is dated 18/4/2007 while Madras High Court judgment is dated 16/2/2007. Moreover, the entire issue raised had been examined at length and with detailed discussion, which is not the case as far as judgment of learned Single Bench. In our considered opinion the judgment of Hon''ble High Court of Madras upholding co-ordinate Bench judgment is not only clinches the issue raised in the present case but also mutatis mutandis applicable to the facts of present case and binding upon this Tribunal as a judicial precedent. In the light of the above, we are of the view that present TA is liable to be allowed.

In the result, TA is allowed. Impugned order dated 4/12/2004 and 24/12/2004 being Annexure P-1 & P-2 respectively are quashed and set aside. Consequently, the respondents are directed to grant benefits of IDA scale to the applicant. Recovery, if any, made pursuant to impugned orders, may be refunded as expeditiously as possible and not later than within a period of two months from the date of receipt of this order No costs.

4. We are in agreement with the order passed by the Tribunal. The Tribunal had considered the matter in detail and it is not necessary to consider again the questions raised in this writ petition in exercise of jurisdiction under Article 227 of the Constitution of India because we are in agreement with the findings recorded by the Tribunal. The Tribunal has not exceeded its jurisdiction. Hence, there is no error in the impugned order passed by the Tribunal.

5. Counsel for the petitioner has relied upon a judgment of Hon''ble the Supreme Court passed in the case of Chandi Prasad Uniyal Vs. State of Uttrakhand, Civil Appeal No. 5899/2012, decided on 17/8/2012. However, the aforesaid judgment is not applicable in the present case because this is not a case where the employee has been paid salary on account of wrong fixation of pay.

6. In this view of the matter, in our opinion, there is no merit in this writ petition. It is hereby dismissed.