
(2012) 01 DEL CK 0003
In the Delhi High Court
Case No : Writ Petition (C) 243 of 2012

BSNL and Others

APPELLANT

Vs

BSNL Officers Association (Regd) and Another

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0003

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Sameer Agrawal, for the Appellant; Rani Chhabra, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.

CM 514/2012

Allowed subject to all just exceptions.

WP(C) 243/2012 & CM 513/2012

1. This writ petition is directed against the order dated 05.09.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in review application 125/2011 in OA 1282/2010. The review application was filed before the said Tribunal after liberty having been granted by this Court by virtue of its order dated 28.02.2011. We shall advert to that order shortly.

2. First of all, it has to be seen that in the first round, while disposing of the original application No. 1282/2010, by an order dated 26.08.2010, the said Tribunal had clearly observed that the present matter was covered in favour of the applicants therein and the respondents herein by the decision of the Ernakulam Bench of the Tribunal in the matter of M.V. Salilakumar & Others v. The Chairman and Managing Director and others: (TA No. 84/2008 and other connected TAs decided on 15.07.2009) and as such, there would be no need to

give the facts in detail. We may point out at this juncture itself that the order dated 26.08.2010 was an order which was dictated in open court and the counsel for both the sides were present. It does not appear at all from the order that the learned counsel for the petitioner herein had pointed out that the facts of the Ernakulam case were different from the present case. The Tribunal had proceeded on the basis that the position in both the cases was similar and, therefore, it observed in paragraph 4 as under:-

4. For parity of reasons, we allow present Original Application in terms of the decision of Ernakulam Bench of this Tribunal in the matter of M.V. Salilakumar & Ors. V/s. The Chairman & Managing Director & Ors. (supra). However, we make it absolutely clear that the fate of the applicants herein would be dependent upon the writs filed by the respondents in Kerala High Court. That being so, if the writs are allowed, the respondents may withdraw the benefits given to the applicants and, therefore, there will be no need for the respondents to file separate writ in this case.

3. It has now been contended by the learned counsel for the petitioner that it had been pointed out before the Tribunal that the facts of the Ernakulam case and the present case were different. However, as already pointed out above, this is not apparent from the order dated 26.08.2010. In any event, if such a position had arisen, it was open for the petitioner to have, first of all, filed a review application before the Tribunal itself in order to have this issue sorted out. Instead of doing so, the petitioner filed a writ petition being WP(C) 1339/2011 before this Court. A Division Bench of this Court took up the matter for hearing on 28.02.2011, when it was submitted by the learned counsel for the petitioner that the Tribunal had erroneously placed reliance on the decision in Ernakulam case, whereas the factual matrix was absolutely different and the said decision was not applicable to the case at hand. The Division Bench had observed that it did not perceive that this stand had been taken before the Tribunal. However, since the learned counsel for the petitioner submitted that the stand was taken but the same had not been adverted to in the order, the Division Bench granted liberty to the petitioner to file an application for review u/s 22(F) of the Administrative Tribunals Act, 1985. The writ petition was disposed of in that manner.

4. Thereafter, the petitioner filed the review application No. 125/2011, in which the impugned order dated 05.09.2011 has been passed. After hearing the counsel for the parties, the Tribunal has noted as under:-

It is only towards the end of para 2(i) at the bottom of page 7 that, for the first time, it is mentioned that as the applicants before the Principal Bench of the Tribunal did not satisfy the requirements stipulated under the JTO Recruitment Rules of 1996, their pay was rightly fixed under FR-35, and thus they would be on a completely different pedestal with no similarity whatsoever with the applicants before the Ernakulam Bench of the Tribunal. It is surprising to note that if it was the case of the review applicants that the facts leading to filing of

the TA culminating into decision by the Ernakulam Bench are entirely different, why at every stage, be it in the OA or the review application, it has been time and again mentioned that the respondents (review applicants) had not accepted the judgment of the Ernakulam Bench and had, therefore, filed a writ against the same. It could well be said that in the case before the Ernakulam Bench and the writ that has been filed in the Kerala High Court the facts are entirely different and the said judgment would have no relevance whatsoever in deciding the controversy in issue. Such was never the case of the respondents. In the order impugned in the OA which came to be passed pursuant to directions given by us on 11.11.2009 in OA No.3213/2009 it has been clearly mentioned in clause (v) that "BSNL has not accepted the judgment dated 15.07.2009 of Hon"ble CAT, Ernakulam and has initiated necessary action for challenging the said judgment before the Hon"ble High Court of Kerala". What really surprises us is that what was the need of saying so if the facts of the case in hand and the one subject matter of decision by the Ernakulam Bench were different. We are not making a mention of the reply filed on behalf of the respondents in the OA as the same would unnecessarily burden the judgment. We would rather prefer to annex with this judgment as Annexure-A copy of the reply filed on behalf of the respondents in the OA, which we order to be read as part of the judgment. There is not a single sentence mentioned therein that the facts of the case before the Ernakulam Bench and the one before us would be entirely different.

(underlining added)

5. Even before us, the learned counsel for the petitioner was asked to show us from his reply as to where he has pleaded that the facts of the present case are different from the Ernakulam case. He drew our attention to paragraph 4.14 of his reply to the OA before the Tribunal. Unfortunately, on going through the entire paragraph, we do not find a single statement to the effect that the facts of the Ernakulam case are different from the facts of the present case.

6. In view of the foregoing circumstances, we do not see any infirmity in the orders passed by the Tribunal and consequently this writ petition is dismissed.