

विभाग A
Legal Cell

कार्यालय मु.प्र.भा.स.न.लि.
O/o CGM BSNL
टी.एन.परिमेंडल, चेन्नै - 600 002.
T.N. Circle, Chennai - 600 002.

No. 80
दिनांक / Date 16/8/11

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2011

CORAM

THE HONOURABLE MR. JUSTICE ELIPE DHARMA RAO
and
THE HONOURABLE MR. JUSTICE M. VENUGOPAL

Writ Petition No. 10559 of 2011

**1. All India Graduate Engineer, Telecom Officers
Association through its Circle Secretary,
Tamil Nadu, Mr. S.S. Karthikeyan,
No. 7, Anna Street, Dr. R.K. Nagar,
Kathirkamam, Pondicherry-605 009.**

2. K. Senthil Kumar

... Petitioners.

vs

**1. Bharat Sanchar Nigam Limited
through Chairman-cum-Managing Director,
Bharat Sanchar Bhawan, Janpath,
New Delhi-110 001.**

**2. Bharat Sanchar Nigam Limited,
General Manager-Corporate Accounts,
Bharat Sanchar Bhawan, Janpath,
New Delhi-110 001.**

**3. Bharat Sanchar Nigam Limited
Chief General Manager,
Chennai Telephone District,
Purasawalkam, Chennai-600 010.**

**4. Bharat Sanchar Nigam Limited
Chief General Manager,
Tamil Nadu Circle,
80, Anna Salai, Chennai-600 002.**

**5. Employees' Provident Fund Organisation
rep. by Addl. Central Provident Fund
Commissioner (Compliance),
Bhavishya Nidhi Bhawan,
14, Bhikaiji Cama Place,
New Delhi-110 066.**

6. The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Compound,
Chennai-600 104.

Respondents,

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for records from the Central Administrative Tribunal, Madras Bench in O.A.No.33 of 2010 dated 03.09.2010 quash the same and consequently directing the respondents BSNL to implement the orders of the Employees Provident Fund Organization, New Delhi, dated 13.03.2009 bearing Ref.No.C.IV/7(6)08/HR/NZ/105541 read with the order dated 17.07.2009 bearing Ref.No.C.IV/7(6)08/HR/NZ/27144 to refund the contribution already recovered from the petitioners for the past period to the petitioners whose names are reflected in the typed set of papers with interest at 12% per annum.

For Petitioner : Mr.S.Vaidyanathan

For Respondents : Mr.K.R.Ramesh Kumar
for R1 to R4.
R-6 - Tribunal.

ORDER

(Order of the Court was made by ELIPE DHARMA RAO, J.)

Challenging the order passed by the Central Administrative Tribunal, dated 03.09.2010, made in O.A.No.33 of 2010, rejecting the direction sought for by the petitioners to comply with the order of the Employees Provident Fund Organization, dated 13.03.2009, and directing the respondents 1 to 4 to dispose of the representation, dated 20.07.2009 made by them, this writ petition has been filed by the petitioners, seeking a direction to the respondents 1 to 4 to implement the aforesaid order dated 13.03.2009 directing refund of the contribution already recovered from them for the past period to them, whose names are reflected in the typed set of papers, with interest at 12% per annum.

2. It is the case of the petitioners that the first petitioner Association is a service association of Bharat Sanchar Nigam Limited (in brevity "BSNL") duly registered under the Societies Registration Act and acting through its Circle Secretary Tamil Nadu and all the members of the said Association are BSNL recruited employees and have been posted in different offices of the first respondent including its branch offices and the second petitioner is also a recruited employee of BSNL.

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3. It is the further case of the petitioners that based on the letter of the Employees Provident Fund Organization (in short "EPFO"), dated 13.03.2009, directing the authorities to refund the contribution already recovered for the past period to the concerned employees and report compliance, on the ground that BSNL has recovered the said contribution from the current wages of BSNL employees, which is against the provisions of paragraph No.32 of the Scheme, they have made a representation dated 20.07.2009 to the respondents 1 to 4. As there is no action taken by the respondents 1 to 4, the petitioners have filed O.A.No.33 of 2010 before the Central Administrative Tribunal, seeking a direction to the respondents therein to comply with the order dated 13.03.2009.

4. The Tribunal, on consideration of the facts and circumstances of the case, rejected the claim made by the petitioners, but disposed of the original application with a direction to the respondents 1 to 4 to dispose of the representation made by the petitioners dated 20.07.2009 within a period of six weeks. Aggrieved by the said order, the present writ petition has been filed by the petitioners.

5. Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents 1 to 4.

6. We have gone through the entire materials placed on record.

7. A perusal of the records shows that based on the letter addressed by the Provident Fund Office, dated 13.03.2009, without adjudicating the issue about the refund of the amount, which is alleged to be collected from the employees of the BSNL, who were directly recruited after the partition of the BSNL, a reply, dated 14.05.2009, was given by the second respondent to the fifth respondent. Aggrieved by the above said action, the petitioners have filed O.A.No.33 of 2010 before the Central Administrative Tribunal seeking a direction to the respondents 1 to 4 to comply with the aforesaid order dated 13.03.2009. The Tribunal, after going through the facts and circumstances of the case, passed an order directing the respondents 1 to 4 to dispose of the representation made by the petitioners dated 20.07.2009 within a period of six weeks. Not satisfied with the above said direction given by the Tribunal, the present writ petition has been filed by the petitioners by raising so many issues.

8. The learned counsel for the respondents 1 to 4 submitted that the a decision was taken by BSNL on 20.06.2003 to contribute 12% of basic pay and IDA of the employees to the Full limit and the concerned employees would also pay matching contribution at the same rate and this scheme was extended to the employees, who were directly recruited by the BSNL. It is also submitted that while

implementing the above decision of the BSNL. It was brought to the notice of the BSNL Management by officials and their representative associations that some of the units of the BSNL had not followed the decision taken on 20.06.2003 in letter and spirit towards the implementation of the Employees Provident Fund facility to the directly recruited staff of BSNL due to some communication gap and the said units paid employer's contribution @ 12% of basic pay and IDA limiting the same to Rs.6500/- as per the provision of Employees Provident Fund Act, 1952 and the concerned employees also paid their contribution up to the limit of Rs.6500/- and therefore, a mistake occurred in making the above said contribution, which was brought to the notice of the BSNL authorities, who took the registration unit wise and Employees Provident Fund code has also been allotted accordingly to the various units. It is also stated that to remove the communication gap and the consequent impact in respect of the employees as mentioned above, the BSNL Board reconsidered the matter in its 61st Meeting held on July 11, 2005 and clearly laid down the policies that BSNL would contribute @ 12% of full basic pay and IDA of the employees without limiting the same to Rs.6500/- and taken the decision to deposit the difference between the contribution already paid @ 12% of Rs.6500/- and the contribution payable at 12% of full basic pay and IDA in respect of the employees.

9. It is also stated that the Regional Provident Fund Commissioner, New Delhi, has also confirmed, as per letter dated 09.07.2006, that the arrears of Employees Provident Fund Contribution both in respect of the employer and the employees can be deposited to the EPFO with retrospective effect in response to the office letter dated 24.04.2006. It is further stated that for settlement of past anomalies, both employer and employees would have to pay the difference between the contribution already paid and actually payable for the past period in one instalment.

10. When the employees were not able to pay the lump sum difference of the Provident Fund contribution, in order to mitigate the hardship of employees, the Board has taken a decision to pay the arrears of contribution towards employees' share in one instalment to EPFO and thereafter, the said amount would be recovered from their salary in six monthly installments without charging any interest for such advance and further, while making payment of arrears towards employees share of contribution, the Accode 118099 will be debited and the recovery from the salary shall be credited to the said Accode and in this regard an undertaking should be obtained from the employees concerned to secure the payment made by BSNL on their behalf and accordingly, the undertakings were given.

11. But, we do not know under what circumstances, the employer have approached the Provident Fund Authority and got the letter dated 13.03.2009, based on which, the petitioners have filed the above original application for refund of the amount collected by

BSNL. As per the policy decision of the BSNL, while extending the provident fund policy to the directly recruited employees of the BSNL, mistake has been committed by the officers of the BSNL in deducting the contribution from the employees, and also payment by the employer. When it was brought to their notice, they realized the gap in official communication, and hence, a decision was taken to pay the differential amount as lump sum. When the employees have expressed their inability to pay the above said amount in one lump sum, the Board has come forward to arrange payment on condition of deducting the same in six monthly installments without interest. Therefore, it is nothing but a mistake in payment of provident fund contribution by the employer in deduction from the contribution by the employee as well the payment made by the Board. It was also rectified later on the basis of the undertaking given by the petitioners. Hence, the attempt made by the petitioners in seeking a direction to refund the amount by filing the original application as well as the writ petition is illegal in the teeth of the undertaking given by the employees.

12. In the result, the writ petition is dismissed. However, there will be no order as to costs.

bs/

Sd/-
Asst. Registrar

//True Copy//

[Signature]
Sub Asst. Registrar

To

1. Bharat Sanchar Nigam Limited
through Chairman-cum-Managing Director,
Bharat Sanchar Bhawan, Janpath,
New Delhi-110 001.

2. Bharat Sanchar Nigam Limited,
General Manager-Corporate Accounts,
Bharat Sanchar Bhawan, Janpath,
New Delhi-110 001.

3. Bharat Sanchar Nigam Limited
Chief General Manager,
Chennai Telephone District,
Purasawalkam, Chennai-600 010.

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4. **Bharat Senchar Nigam Limited**
Chief General Manager,
Tamil Nadu Circle,
80, Anna Salai, Chennai-600 002.

5. **Employees' Provident Fund Organisation**
rep. by Addl. Central Provident Fund
Commissioner (Compliance),
Bhavishya Nidhi Bhawan,
14, Bhikaiji Cama Place,
New Delhi-110 066.

6. **The Registrar,**
Central Administrative Tribunal,
Madras Bench, High Court Compound,
Chennai-600 104.

+ 1 cc to M/s. C.B. Manica, Advocate SR No.43323

+ 1 cc to M/s. K.R. Ramash Kumar, Advocate SR No.43039

MG (CO)
SR/29.7.2011

W.P.No.10659 of 2011

bc 00399

DATE

RECEIVED

WP 10659 / 11

HIGH COURT OF JUDICATURE
MADRAS

S.R. No. 43089
Carbon Copy application

made 19/7/2001

Application Returned 200

Application Represented 200

Copy made ready 11/8/2001 200

Copy Delivered 12/8/2001 200

Section Officer
C. S. S. S. S.

12/8/11