



2016:KER:30974

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 12TH DAY OF JULY 2016/21ST ASHADHA, 1938

OP (CAT) .No. 189 of 2016 (Z)

AGAINST THE ORDER IN OA 405/2012 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 10.10.2012

PETITIONER/APPLICANT:

SARALA B.
AGED 59 YEARS, D/O. BHARGAVI, MAPOTTIL KIZHAKKETHIL,
MUTTOM P.O., HARIPAD, ALAPPUZHA - WORKED IN THE POST OF
SR.TOA, OFFICE OF THE SDEP, BSNL, MANNAR.

BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH
SRI.RAAJESH S.SUBRAHMANIAN

RESPONDENTS/RESPONDENTS:

1. THE CHIEF GENERAL MANAGER
TELECOMMUNICATION, BSNL, THIRUVANANTHAPURAM-695 001.
2. THE DEPUTY GENERAL MANAGER (ADMN.)
OFFICE OF THE GENERAL MANAGER, TELECOMMUNICATION,
BSNL, ALAPPUZHA-688 001.
3. THE DIVISIONAL ENGINEER
TELECOM, BSNL, MAVELIKKARA, ALAPPUZHA-690 101.
4. THE SUB DIVISIONAL ENGINEER
PHONES, BSNL, MANNAR, ALAPPUZHA-689 622.

R1-R4 BY ADV. SRI.T.SANJAY, SC, BSNL
BY SRI.MATHEWS K.PHILIP,SC, BSNL

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 12-07-2016, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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APPENDIX

PETITIONER(S) ' EXHIBITS

- P1 COPY OF THE OA NO.405/2012 FILED BY THE PETITIONER,
DATED 3.5.2012.
- P2 COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS,
DATED 4.7.2012.
- P3 COPY OF REJOINDER TO THE REPLY STATEMENT, DATED
3.9.2012.
- P4 COPY OF THE ORDER OF THE TRIBUNAL IN OA NO.405/2012,
DATED 10.10.2012.
- P5 COPY OF THE INFORMATION PROVIDED BY THE DEPUTY GENERAL
MANAGER (P & A) & CPIO, ALAPPUZHA, DATED 9.3.2015.

RESPONDENT(S) ' EXHIBITS

/true copy/

P.S. TO JUDGE.



**P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRAN, JJ.**

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O.P(CAT)No.189 OF 2016
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Dated this the 12th July, 2016

JUDGMENT

Anil K. Narendran, J.

The petitioner, the applicant in O.A.No.405/2002, has filed this Original Petition under Article 226 of the Constitution of India, challenging Ext.P4 order passed by the Tribunal dated 10.10.2012 in that O.A., by which the Tribunal repelled the challenge made by her against Annexures-A4 and A9 orders.

2. The applicant, who was working in the post of Sr.Telecom Office Assistant in the office of the 4th respondent at Mannar, submitted Annexure-A1 representation before the 1st respondent complaining about the harassment meted out by her at the workplace from the 2nd and 3rd respondents. By Annexure-A2 order in O.A.No.539/2011, the Tribunal directed the 1st respondent to consider the grievance of the applicant and intimate the nature of action, if any, within a time limit. The applicant was also directed to submit a complaint to the Chairperson of the Committee for Prevention of Sexual



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harassment at workplace. The first respondent by Annexure-A4 order dated 04.01.2012 rejected Annexure-A1 representation as devoid of merit. In Annexure-A4 order, it has also been stated that by an order dated 10.05.2011 of the 3rd respondent, the applicant has been placed under suspension with immediate effect. Relying on Annexures-A5 to A8, the applicant contended that the findings in para 5 of Annexure-A4 order are legally unsustainable and that she was illegally placed under suspension by Annexure-A4 order dated 10.05.2011, which was later revoked by Annexure-A15 order dated 05.12.2011. Relying on Annexures-A11 to A14 and A16 series, the applicant contended further that the findings in paras 6 to 8 of Annexure-A4 order are legally unsustainable. It is mainly aggrieved by Annexures A4 and A9 orders, the applicant has filed O.A.No.405/2002 before the Tribunal seeking an order to set aside Annexures-A4 and A9 and for an order directing the 1st respondent to consider Annexure-A1 complaint afresh, after affording an opportunity of hearing. The applicant has also sought for an order directing the 1st respondent to regularise her period of suspension from

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10.05.2011 to 18.12.2011 and to provide her salary and other consequential benefits.

3. Before the Tribunal, the prayer sought for in the O.A. was opposed by the respondents by filing Ext.P2 reply and the petitioner filed Ext.P3 rejoinder as well. After considering the rival contentions, the Tribunal rejected the O.A. by Ext.P4 order dated 10.10.2012. Paragraph 5 of the said order is extracted below:

“5. The applicant's grievances about denial of promotion and transfer on allotment of quarters etc., have been the subject matter of O.A.No.593 of 2011. The same cannot be raised again in this O.A.. As regards the impugned order there was no specific mention in the direction given by this Tribunal to give the applicant a hearing. If at all she wanted an opportunity of being heard she could have very well approached the respondents. There is no merit in the contention of the applicant that the Divisional Engineer was not empowered to place her under suspension. Regularization of the period of suspension with effect from 10.05.2011 to 18.01.2011 and payment of salary and the other consequential benefits to the applicant would arise only after completion of the departmental proceedings against her. The applicant has not controverted the submission of the respondents that Annexures A7, A11 and A12 are fabricated. We do not find any merit in the contentions of the applicant. Accordingly, the Original Application is dismissed. Taking a lenient view no cost



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is imposed on the applicant.”

4. Feeling aggrieved by Ext.P4 order, the petitioner is before this Court in this Original Petition.

5. We notice that though Ext.P4 order of the Tribunal is one dated 10.10.2012, the present Original Petition is filed only on 04.08.2015. The reasons stated in para 14 of the Original Petition as to the delay in approaching this Court, reads as follows:

“14. The petitioner immediately after passing of Exhibit P4 tried to get the necessary documents from the custody of the respondents to establish the falsity of the stand of the respondents. The information provided by the Dy. General Manager (P&A) & CPIO, Alappuzha dated 09.03.2015 is produced herewith and marked as Exhibit P5. Because of the hostile attitude of the respondents petitioner found difficult to get the necessary documents and on that reasons there occurred some delay in filing the above writ and the petitioner may be pardoned for that delay as she is not at all responsible to occur that delay.”

6. As discernible from Ext.P5 communication issued by the Dy. General Manager,(P&A)&CPIO, Office of the General Manager, Telecom District, Alappuzha, the applicant made an application under the Right to Information Act, 2005 on 18.02.2015, based on which the information contained in Ext.P5 has been made



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available to her on 9.03.2015. As discernible from Ext.P5, in the disciplinary proceedings initiated against the applicant, she was imposed with the penalty of compulsory retirement vide order dated 31.10.2012 with full pensionary benefits. The aforesaid document will not in any manner explain the inordinate delay of nearly 3 years on the part of the applicant in challenging Ext.P4 order dated 10.10.2012 before this Court. In that view of the matter, the challenge made in this Original Petition against Ext.P4 order passed by the Tribunal is highly belated, which cannot be entertained. In the result, this Original Petition fails and the same is accordingly dismissed.

**P.R. RAMACHANDRA MENON,
JUDGE**

**ANIL K. NARENDRAN,
JUDGE**

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