

**Central Administrative Tribunal
Madras Bench**

OA/310/00470/2014

Dated 5th Day of January Two Thousand Sixteen

P R E S E N T

**Hon'ble Mr.K.Elango, Member(J)
&
Hon'ble Mr.R.Ramanujam, Member(A)**

**U.R.Rajagopalan
Divisional Engineer (Rtd) BSNL RCES, Chennai,
No.23 Raniji Nagar,
Madanandapuram, Porur,
Chennai 600 116.**

.. Applicant

By Advocate M/s.L.Chandrakumar

Vs.

- 1. The Chief General Manager,
National Centre for Next Generation,
Net Work Circle, BSNL CTS Compound,
Nethaji Nagar, New Delhi 110 023.**
- 2. The Chief Accounts Officer,
O/o. the Chief General Manager,
National Centre for Next Generation,
Net Work Circle, BSNL CTS Compound,
Nethaji Nagar, New Delhi 110 023.**
- 3. The Additional General Manager,
Regional Centre for Electronic Switching,
4th Floor, Flower Bazar Telephone Exchange,
NSC Bose Road, Chennai 600 001.**

.. Respondents

By Advocate Mr.M.Govindarraj

ORDER
(Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

The applicant is a retired Divisional Engineer, BSNL, RCES, Chennai. Consequent on his acquiring an Engineering Degree, he had been granted two advance increments w.e.f. 1.5.1990. By impugned order dated 13.4.2009 (Annexure A/9) the two advance increments were withdrawn by an allegedly incorrect application of FR 35 and the pay of the applicant was refixed w.e.f. 1.5.90. The applicant states that the respondents ought to have taken note of the proceedings dated 11.7.90 (Annexure A/1) which provides for grant of two advance increments to those Junior Engineers, Junior Telecom Officers, Officers of TES Group 'B' and Officers of ITS in the Junior Time Scale and Senior Time Scale promoted from TES Group 'B' who acquired a degree in Engineering in any one of the disciplines from a recognised University or its equivalent qualification while in service. The applicant contends that his pay fixation had been done correctly in terms of the policy in vogue at the relevant time and it cannot be withdrawn retrospectively, that too after several years and close to the time of his retirement in 2009. He accordingly prays for revision of the refixation of his pay taking into account the two advance increments.

2. The respondents have filed their reply wherein it is stated that the policy regarding grant of advance increments was changed by OM dated 31.1.1995 of the Ministry of Personnel, Public Grievances and Pensions when it was decided to convert the existing increments based incentives into a one time lump sum

incentive. Accordingly, the applicant was granted a lump sum of Rs.4000/- in lieu of the two increments. The competent authority has rightly applied FR 35 after issuing a notice to the applicant on 13.4.2009. The salary of the applicant was refixed thereafter w.e.f. 01.5.1990. The policy change had been brought about with a view to avoiding anomalies in pay fixation between a senior and a junior employee.

3. The applicant has filed a rejoinder in which he has referred to the order passed by CAT, Bangalore Bench in OA 390/1994 dated 13.9.94 in a similar case.

4. Heard the learned counsel for the applicant and the respondents and perused the pleadings and material produced by the rival parties. Learned counsel for the applicant pointed out that the applicant had acquired the Engineering qualification before the coming into effect of the new policy and had been granted advance increments in terms of the policy for the time being in force. The incentive already granted could not be withdrawn retrospectively by a subsequent change in policy. The new policy would only be applicable to those who acquired the additional qualification after the relevant OM was issued. He also referred to G.I.,F.D.,No.752, C.S.R. dated the 6th July, 1919 issued under FR 27 which states as follows:-

“(1) Future increments after premature increment to be regulated in the ordinary course. - In the case of increments granted in advance, it is usually the intention that the officer should be entitled to increments in the same manner as if he had reached his position in the scale in the ordinary course and in the absence of special orders to the

contrary he should be placed on exactly the same footing, as regards future increments as an officer, who has so risen."

Further, the action of the respondents is not in accordance with Rule 59 of the CCS (Pension) Rules regarding the stages for the completion of the pension papers.

Rule 59(1)(b)(iii) on the calculation of the average emoluments states as follows:-

" (iii) Calculation of average emoluments. - For the purpose of calculation of average emoluments, the Head of Office shall verify from the Service Book the correctness of the emoluments drawn or to be drawn during the last ten months of service. In order to ensure that the emoluments during the last ten months of service, have been correctly shown in the Service Book, the Head of Office may verify the correctness of emoluments for the period of twenty four months only preceding the date of retirement of a Government servant, and not for any period prior to that date."

In terms of the aforesaid provision, the respondents are authorised to verify the correctness of emoluments for a period of 24 months only preceding the date of retirement of the Government servant and, therefore, the action of the respondents in withdrawing the advance increments granted in 1990 for the purpose of calculation of pension was violative of the CCS (Pension) Rules.

5. Learned counsel for the respondents on the other hand insisted that the respondents have acted strictly in accordance with the relevant DOP&T instructions contained in OM No.1/2/89-Estt(Pay-I) dated the 28th June, 1993 and 31st January, 1995 by which all ministries and departments were directed to convert the existing increment-based incentive already sanctioned to their employees into one-time lumpsum incentive with immediate effect.

6. We have carefully considered the submissions made by the learned counsel

for the parties and examined the material on record. It is not in dispute that the applicant had been granted two advance increments as long back as 1.5.1990. It is equally undisputed that the DOP&T had directed all the Ministries and Departments to convert the existing advance increment-based incentive already sanctioned to their employees into a one-time lumpsum incentive with immediate effect by orders dated 28.6.93 and 31.1.95. The applicant's contention that they could only have prospective effect cannot be accepted as the question of conversion of an existing advance increment into a lumpsum would not arise if the orders had only a prospective effect. Yet, the relevant OMs said precisely this while stating as follows:-

“All Ministries and Departments are requested to convert the existing increment-based incentive already sanctioned to their employees into one-time lumpsum incentive with immediate effect in phase-I”.

As these orders have not been challenged, it is to be held that in the normal course they would be applicable and binding on the applicant.

7. In view of the above, the action of the respondents to convert the existing advance increments to a lumpsum one time grant would have been in order had it taken place soon after the issue of the relevant orders in 1993/1995 itself. However, the respondents failed to act for no fault of the applicant. The only issue that needs to be determined now is, therefore, whether the respondents had the authority to revise the pay of the applicant after such a long interval especially on

the eve of the retirement of the applicant. We find force in the argument of the learned counsel for the applicant that the respondents can only look into the correctness of pay fixation for a period of 24 months preceding the date of retirement and not for any period prior to that date in terms of Rule 59 of the CCS (Pension) Rules.

8. In view of the fact that the respondents had failed to act for as long as 14 years since the date of change of policy and the relevant pension rules prohibit revisiting the correctness of pay fixation relating to periods two years before the date of retirement, the action of the respondents in this regard is clearly without authority. In revisiting the pay of the applicant from 1990, the respondents have gone into the correctness of the pay fixation done 19 years before retirement which is vexatious and not permissible. If there is any over payment on account of an administrative lapse arising out of negligence or otherwise, the respondents are at liberty to fix responsibility for it and take action against the errant official concerned. It cannot be made good at the expense of a retiring employee in violation of the rules governing the settlement of retirement claims.

9. In view of the above, the applicant is entitled to the relief sought by him. The impugned order of pay fixation dated 13.4.2009 (Annexure A/IX) is quashed and set aside. The respondents are directed to issue a fresh pay fixation order without withdrawing the benefit of two advance increments granted in 1990 and arrange to pay the balance retirement benefits to the applicant accordingly within a

period of two months from the date of receipt of a copy of this order.

10. The OA is allowed in the above terms. No order as to costs.
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