

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. No.440 of 2018
 O.A.No.485 of 2018
 O.A.No.486 of 2018
 O.A.No.611 of 2018
 O.A.No.612 of 2018
 O.A.No.613 of 2018

Present: **Hon'ble Mr.Gokul Chandra Pati, Member (A)**
Hon'ble Mr.Swarup Kumar Mishra, Member(J)

O.A.No.440 of 2018

Sri Braja Mohan Jena, aged about 70 years, S/o. late Jogendra Nath jena, Retired Sr.Sub Divisional Engineer, BSNL, Eastern Telecom Region (Maintenance) Balasore at present residing at Azimabad, post-Balasore-756 001, Dist-Balasore.

...Applicant
VERSUS

1. The Chief General Manager, Bharat Sanchar Nigam ltd., Eastern Telecom Region, Telephone Bhawan, 34 B B D Bag, Kolkata-700 01.
2. The Asst.General Manager (Admn.), Office of the C.G.M.(ETR), Telephone Kendra 8th Floor), P-10, New C.I.T. Road, Kolkata-700 073.
3. Controller of Communication Accounts, Department of Telecommunications, West Bengal, Cirle-8, Esplanade East, Kolkata-700 069.

...Respondents

For the Applicant: Mr.A.K.Mohanty, Counsel
 For the Respondents: Mr.S.B.Jena, Counsel

O.A.No.485 of 2018

Sri Ananda Chandra Panda, aged about 66 years, S/o. late Mitra Bhanu Panda, Retired Divisional Engineer, BSNL, Eastern Telecom Region (Maintenance), at present residing at SRI RAM LANE, GOPALMAL, PO-BUDHARAJA, DIST-SAMBALPUR, ODISHA,PIN768 004, District-Sambalpur.

...Applicant
VERSUS

1. The Chief General Manager, Bharat Sanchar Nigam ltd., Eastern Telecom Region, Telephone Bhawan, 34 B B D Bag, Kolkata-700 01.
2. The Asst.General Manager (Admn.), Office of the C.G.M.(ETR), Telephone Kendra 8th Floor), P-10, New C.I.T. Road, Kolkata-700 073.
3. Controller of Communication Accounts, Department of Telecommunications, West Bengal, Cirle-8, Esplanade East, Kolkata-700 069.

...Respondents

For the Applicant: Mr.A.K.Mohanty, Counsel

For the Respondents: Mr.S.B.Jena, Counsel

O.A.No.486 of 2018

Sri Srimati Snigdha Rani Pradhan, aged about 59 years, W/o. Sri Purna Chandra Mandal, presently working as Dy.General Manager (City), BSNL, Office of the General Manager Telecom District, Cuttack and at present residing at Plot No.D/241, Sector-7, Cuttack Development Authority, Cuttack-753 014.

...Applicant
VERSUS

1. The Chief General Manager, Bharat Sanchar Nigam ltd., Eastern Telecom Region, Telephone Bhawan, 34 B B D Bag, Kolkata-700 01.
2. The Asst.General Manager (Admn.), Office of the C.G.M.(ETR), Telephone Kendra 8th Floor), P-10, New C.I.T. Road, Kolkata-700 073.
3. Controller of Communication Accounts, Department of Telecommunications, West Bengal, Cirle-8, Esplanade East, Kolkata-700 069.

...Respondents

For the Applicant: Mr.A.K.Mohanty, Counsel

For the Respondents: Mr.S.B.Jena, Counsel

O.A.No.611 of 2018

Sri Rajendra Prasad Pattanayak, aged about 64 years, S/o. late Sribachha Patnaik, Retired Divisional Engineer, BSNL, Eastern Telecom Region (Maintenance), Berhampur at present residing at MIG-56, Stage-2, Housing Board, Neelkantha Nagar, Berhampur (Gm)-760 002.

...Applicant
VERSUS

1. The Chief General Manager, Bharat Sanchar Nigam ltd., Eastern Telecom Region, Telephone Bhawan, 34 B B D Bag, Kolkata-700 01.
2. The Asst.General Manager (Admn.), Office of the C.G.M.(ETR), Telephone Kendra 8th Floor), P-10, New C.I.T. Road, Kolkata-700 073.
3. Controller of Communication Accounts, Department of Telecommunications, West Bengal, Cirle-8, Esplanade East, Kolkata-700 069.

...Respondents

For the Applicant: Mr.A.K.Mohanty, Counsel

For the Respondents: Mr.S.B.Jena, Counsel

O.A.No.612 of 2018

Sri Bhabani Kanta Choudhury, aged about 59 years, S/o. late Raghunath Choudhury, presently working as Dy.General Manager (mtce), BSNL, Eastern Telecom Region, Old Microwave Campus, Unit-8, Nayapali, Bhubaneswar-751 012, at present residing at Plot No.16/2542, Gayatri Vihar, Barmunda Housing Board Colony, BhubanewAr-751 003. District-khurda.

...Applicant
VERSUS

1. The Chief General Manager, Bharat Sanchar Nigam ltd., Eastern Telecom Region, Telephone Bhawan, 34 B B D Bag, Kolkata-700 01.

2. The Asst.General Manager (Admn.), Office of the C.G.M.(ETR), Telephone Kendra 8th Floor), P-10, New C.I.T. Road, Kolkata-700 073.
3. Controller of Communication Accounts, Department of Telecommunications, West Bengal, Circle-8, Esplanade East, Kolkata-700 069.

...Respondents

For the Applicant: Mr.A.K.Mohanty, Counsel
 For the Respondents: Mr.S.B.Jena, Counsel

O.A.No.613 of 2018

Sri Benudhara Patra, aged about 59 years, S/o. late Sadasiba Patra, presently working as Dy.General Manager (Cm), BSNL, Office of the General Manager Telecom District, Berhampur (Gm).

...Applicant

VERSUS

1. The Chief General Manager, Bharat Sanchar Nigam ltd., Eastern Telecom Region, Telephone Bhawan, 34 B B D Bag, Kolkata-700 01.
2. The Asst.General Manager (Admn.), Office of the C.G.M.(ETR), Telephone Kendra 8th Floor), P-10, New C.I.T. Road, Kolkata-700 073.
3. Controller of Communication Accounts, Department of Telecommunications, West Bengal, Circle-8, Esplanade East, Kolkata-700 069.

...Respondents

For the Applicant: Mr.A.K.Mohanty, Counsel
 For the Respondents: Mr.S.B.Jena, Counsel

Heard & Reserved on:20.02.2020

Order on:26.05.2020

ORDER

Per Mr.Gokul Chandra Pati, Member(A):

All the OAs in this batch are directed against the order passed by the respondent-BSNL cancelling the benefit of stepping up of pay allowed to the applicants after more than 10 years on the ground that such stepping up of pay was not admissible. The stepping up of pay was allowed by BSNL vide order dated 7.2.2002 (Annexure-A/2). By the time the order to cancel the benefit was issued, the applicants in all the OAs except O.A.Nos.612 and 613 of 2018 had retired from service. Since the grounds taken and the reliefs sought for against the decision are same or similar and the OAs involve the same point of law, these OAs were heard together and none of the parties objected to such analogous hearing. All the OAs in this batch are being disposed of by this common order, taking the facts and circumstances of the OA No. 440/2018 as the leading OA for the purpose of this order.

OA No. 440/2018 & MA No. 33/2019

2. The reliefs sought for by the applicant in OA No. 440/2018 are as under:-

“(A) to quash the order of cancellation dated 31.3.2016 as per Annexure A/3 for being arbitrary, discriminatory and not sustainable in law, **AND**
 (B) to direct the Respondents not to effect any recovery from the person of the applicant towards the excess payments or wrong payments if any made to him due to wrong pay fixation order dated 7.2.2002, **AND**
 (C) to allow the applicant to continue to draw the pension presently drawn by him without any reduction, **AND**
 (D) to pass such order order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice.”

3. The applicant had filed the MA No. 33/2019 for condoning the delay in filing the OA No.440 of 2018, which was also considered along with the OA. The interim prayer made in the OA was considered and vide order dated 7.12.2018, the respondents were directed by this Tribunal not to recover any amount from the pension of the applicant. The impugned order dated 31.3.2016 (Annexure-A/3), by which the benefit of stepping up pay allowed to the applicant by order dated 7.2.2002 (A/2) has been cancelled, is a common order for all the applicants in the six OAs in this batch.

4. The applicant was initially appointed as JE/Junior Telecom Officer on 23.11.1982. His pay was stepped up in comparison to one of his junior Sri Biranchi Narayan Khuntia in 1988. He was promoted to the post of Sub-Divisional Engineer (in short SDE) w.e.f. 30.9.1994. His pay was stepped up for the second time in comparison to the his junior Sri A. Billung vide order dated 7.2.2002 (Annexure-A/2), which was effective from 30.10.1998. After creation of BSNL, the applicant was permanently absorbed in BSNL w.e.f. 1.10.2000.

5. Another retired officer of the BSNL filed an OA No. 591/2015 claiming similar benefit of stepping up of his pay in comparison to another junior officer who was getting higher salary than him. The OA was disposed of with direction to the respondents to dispose of the representation. While considering the said representation, the respondent no. 2 cancelled the order dated 7.2.2002 vide the impugned order dated 31.3.2016 (A/3). It is stated in the OA that the applicant had retired on 31.7.2009 and after more than 6 years of his retirement, the benefit of stepping up of pay allowed to him as per the order dated 7.2.2002 was cancelled, for which the applicant had submitted a representation dated 2.2.2018 (Annexure-A/5) to the authorities. It is also stated in the OA that as per the law laid down by Hon’ble Apex Court in the case of State of Punjab & others vs. Rafiq Masih (2014) 8 SCC 883, in case of hardships to the employees, there will not be any recovery from the employee on account of excess payment wrongfully made if the employee concerned is

not guilty of misrepresentation or fraud. The applicant has also referred to the OM dated 2.3.2016 of the Department of Personnel and Training (in short DOPT), copy of which is at Annexure-A/6 of the OA on the issue of recovery on account of excess payment to an employee for which he not responsible. The applicant has urged that if the excess payment is effected from him, it will cause "serious financial hardship" to him.

6. The applicant has also averred in the OA that the impugned order has been issued in violation of the principles of natural justice without giving reasonable opportunity of hearing. And that cancellation of the benefit after such a long time is bad in law. The applicant has referred to the rule 70 of the CCS (Pension) Rules, 1972 to submit that his pension could not have been modified to his disadvantage unless it was due to clerical error. In this case, the impugned order cannot be said to have arisen due to a clerical error.

7. Through the Counter, the respondents have urged the following points to oppose the OA:

- (i) The OA is barred by limitation as the order dated 31.3.2018 has been challenged after a gap of two years from the date of order. As per law as laid down by Hon'ble Apex Court in C. Jacob's case, successive representations will not be counted towards limitation.
- (ii) The OA is barred under section 20 of the Administrative Tribunals Act, 1985 since the applicant has filed the OA without waiting for disposal of his representation dated 2.2.2018 (Annexure-A/5) referred in para 4.12 of the OA.
- (iii) The order dated 31.3.2016 was passed as per the direction of the Tribunal in OA No. 591/2015 in the case of Damodar Bhoi and the applicant's case is similar to Sri Bhoi.
- (iv) No order of recovery has been issued and hence, the OA is not maintainable.
- (v) The applicant is liable to refund the excess payment made to him in view of the judgment in the case of Chandi Prasad Uniyal.

8. Rejoinder has been filed by the applicant denying the averments in Counter and stating that no show cause notice was issued to the applicant before issuing the order dated 31.3.2016. It is claimed that the order dated 31.3.2016 was not communicated to him and he came to know about the cancellation of the benefit in January, 2018. It is also stated that the cause of action is a continuing cause of action as it involved his pension which is payable every month and hence, there is no issue of delay. But the applicant has filed an application for condoning the delay after giving a copy to the respondents. It is further stated that the Tribunal did not direct in OA No. 591/2015 to cancel the order dated 7.2.2002. It is also stated in Rejoinder that the averments

relating to the rule 70 of the CCS (Pension) Rules, 1972 have not been refuted by the respondents.

9. Heard learned counsel for the applicant, who reiterated the points mentioned in the pleadings of the applicant. Besides, he filed a short note of argument. The grounds urged in the note are violation of the principle of natural justice and non-adherence to the rule 70 of the CCS (Pension) Rules, 1972. The judgment in the case of Rafiq Maish (*supra*) has been referred to against the decision to recover the excess payment made to the applicant. The judgment of Hon'ble Apex Court in the case of M.R. Gupta vs. Union of India has been relied on to submit that the cause of action in this case arises every month since the applicant's pension will be reduced by the impugned order. A copy of the order dated 14.9.2015 of this Tribunal in OA No. 591/2015 has been filed to show that there is direction in that order to cancel the stepping up benefit allowed to the applicant.

10. Heard learned counsel for the respondents, who submitted that the order dated 31.3.2016 was passed in pursuance to the order of the Tribunal in OA No. 591/2015. He also pointed out that the OA was filed after a delay for which it is barred by limitation. He also submitted that no recovery order has been issued by the respondents.

11. The pleadings on record as well as the submissions by both the parties have been considered by us. Before proceeding further, we consider the MA No. 33/2019 for condoning delay in filing the OA. It is stated in the MA that the order dated 31.3.2016 was not communicated to the applicant and he came to know about the said order in January, 2018 after which he submitted the representation dated 2.2.2018 (Annexure-A/5). Such contention of the applicant has not been denied by the respondents in their Counter. Further, the order dated 31.3.2016 has the implication of reducing the pension of the applicant, which is payable every month and we agree with the contentions of the applicant in the Rejoinder that the cause of action arising out of the order dated 31.3.2016 is a continuing cause of action so far as the applicant is concerned. Hence, we allow the MA No. 33/2019 and condone the delay in filing the OA No. 440/2018.

12. The impugned order dated 31.3.2016 was passed in pursuance to the order dated 14.9.2015 of the Tribunal passed in OA No. 591/2015 directing disposal of the representation of the applicant in OA No. 591/2015 (Sri D. Bhoi). It is noted therein that as per the GOI order No. 20 under FR-22, the benefit of stepping up of pay for the second time is permissible in comparison to the same junior with reference to whom the benefit of first stepping up of

pay was allowed, which implies that the second stepping up of a senior's pay cannot be allowed with reference to a different junior, who was not referred to while allowing the first stepping up of pay. Thus, the representation of Sri D. Bhoi was rejected as per direction of the Tribunal vide order dated 14.9.2015. In addition, the impugned order also noted the following :-

"Based on aforesaid order, the second stepping up of pay allowed in respect of(4) Braja Mohan Jena, SDE..... which is not in Order and therefore, the stepping up ordr issued vide CGM, ETR, Kolkata letter No. ETR-CA-Admn-320/Step up/Others/49 dated 07.02.2002 stands cancelled with immediate effect. Necessary action may be taken for correction of their pay/pension."

13. It is further noticed that no action has been taken by the concerned authorities for correction of pay/pension of the applicant as per the decision in the order dated 31.3.2016, since no such averment has been made by the applicant. It is seen from the order dated 31.3.2016 (A/3) that copy has been endorsed to the AO, ETR Division, Kolkata for necessary corrections in pay/pension in respect of the applicant. Clearly, there is no order for correction of the applicant's pay/pension in pursuance of the impugned order and there is no order of recovery that has been passed by the competent authority. Further, the order dated 31.3.2016 cannot be quashed since by this order, the respondents have disposed of the representation of Sri D. Bhoi as per the order dated 14.9.2015 of the Tribunal in OA No. 591/2015. It is also seen from the order dated 14.9.2015 that there is no direction for cancellation of any stepping up benefit allowed by the respondents. There was no direction for cancellation of the order dated 7.2.2002 in respect of the applicant.

14. It is seen that the benefit allowed to the applicant long back by the order dated 7.2.2002 has been cancelled without giving any opportunity of hearing to the applicant who will be adversely affected by the said order. Hence, the said order in respect of cancellation of the benefit of stepping up of the applicant's pay vide order dated 7.2.2002 is arbitrary.

15. In view of the discussions above, the respondent no. 1 is directed to review the order dated 31.3.2016 in respect of the applicant and pass a speaking and reasoned order after such review in accordance with the provisions of law, taking into consideration the averments/submissions of the applicant in this OA. The applicant will be at liberty to send a copy of this order with copy of the paper book of the OA, Rejoinder and the rules as well as the judgments relied on by applicant in this OA, to the respondent no. 1 within one month, which will be duly considered by the respondent no. 1 while passing his order as per the above directions. Till the order is passed by the respondent no. 1 as above,

the present status quo vis-a-vis the order dated 31.3.2016 (Annexure-A/3 of the OA) in respect of the applicant will be maintained by the respondents.

16. The MA No. 33/19 in OA No. 440/2018 is allowed as discussed in paragraph 11 of this order and the OA No. 440/20-18 stands disposed of in terms of the paragraph 15 of this order. There will be no order as to costs.

OA Nos. 485, 486, 611, 612 and 613 of 2018

17. The reliefs sought for in these OAs are identical to the reliefs as mentioned in paragraph 2 of this order. The facts in OA Nos. 612 and 613 of 2018 are similar to the OA No. 440/18 except for the fact that the applicants in these two OAs were not retired when the impugned order dated 31.3.2016 (Annexure-A/3 of the OA) was passed by the respondents. So for the applicants in OA Nos. 612 and 613 of 2018, the implication of the order dated 31.3.2016 would be possible reduction of his salary, while implication of the order in case of the applicant in OA No. 440/18 was reduction of pension, although in none of the OAs in this batch, the authorities have passed the order affecting the salary or pension of the applicants.

18. In all others OAs, the applicants were retired by the time the impugned order was passed with same facts and circumstances in OA No. 440/2018.

19. The grounds taken by the parties in all the OAs are same except that the rule 70 of the CCS (Pension) Rules, 1972 relied upon by the applicant in OA No. 440/2018 has not been referred to in OA Nos. 612 and 613 of 2018 as the applicant were not retired. Further, in all the OAs, the MAs for condoning the delay in filing the OAs have been filed urging the same grounds as in the MA filed in OA No. 440/18. As discussed in paragraph 11 of this order, the MAs filed to condone the delay in the OAs in the batch of cases are allowed and delay condoned.

20. In the circumstances, all the OAs are disposed of in terms of the directions in paragraph 15 of this order in respect of the OA No. 440/18. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)