

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.040/00 375 of 2014

Date of Decision: This the 15th Day of June 2016

HON'BLE MRS.MANJULA DAS, JUDICIAL MEMBER**HON'BLE MOHD HALEEM KHAN, ADMINISTRATIVE MEMBER**

Sri Ashish Chandra Bhattacharjee

Retired Junior Telecom Officer

Arya Patty

P.O. Tezpur, Assam

Applicant

By Advocate Mr.S.K.Sikidar

-Versus-

1. The Chairman and Managing Director
Bharat Sanchar Nigam Limited
Janpath, New Delhi-110001

2. The Chief General Manager
Assam Telecom Circle, BSNL
Guwahati-781001

3. General Manager
Telecom District, BSNL
Tezpur Telecom Circle
Tezpur

Respondents

By Advocate Mr.M.R.Das, BSNL

ORDER

Per Mohd Haleem Khan, Member(A):

Sri Ashish Chandra Bhattacharjee, Retired Junior Telecom Officer, Arya Party, P.O.Tezpur, Assam, has filed the Original Application under Section 19 of the Administrative Tribunals Act 1985 seeking the following reliefs:-

- “8.1 That the Hon’ble Tribunal may be pleased to direct the respondents to disburse the leave encashment due on superannuation in the credit of applicant.
- 8.2 That the Hon’ble Tribunal may further be pleased to direct the respondents to pay the gratuity due on superannuation on the date of retirement.
- 8.3. That the Hon’ble Tribunal may also be pleased to direct the respondents to release full pension of the applicant since 31.01.2012.
- 8.4 That the Hon’ble Tribunal may further be pleased to grant any further or other relief that it deems fit in the interest of natural justice.”

The applicant also prayed for interim reliefs:-

“The respondent may be asked to release gratuity and leave encashment due till the period, the applicant had served under the Department of Telecommunication.”

- 2. Briefly, the applicant was appointed as Technician in the Department of Telecommunication which he joined on 10.01.1975. During the course of service he was promoted as Repeater Station Assistant since

10.08.1992. In due course of time, on passing departmental qualifying examination he was promoted to the post of Junior Telecom officer (in short JTO) which he joined at Nagaon on 11.05.1999 and subsequently transferred to Tezpur in the year 2001. In the meanwhile, from 01.10.2000 the Department of Telecommunication was converted into Bharat Sanchar Nigam Limited (in short BSNL). According to the applicant the Government of India, Department of Pension and Pensioners Welfare by Notification dated 30.09.2000 amended the Central Civil Services (Pension) Rules 1972 and inserted Rule 37(A) after Rule 37 of CCS (Pension) Rules 1972. The newly inserted Rule 37(A) provided that from the date of employee's option for absorption in Public Sector Undertakings or autonomous body being accepted by the Public Sector undertakings or autonomous body the employee will cease to be Government servant. Vide department of Telecommunication order dated 15.11.2003 the President of India sanction was issued with regard to the applicant's absorption in the BSNL w.e.f 1st October 2000. The applicant contention is that as per DOPT's O.M.No.11072/11/2007-Estt (A) dated 14.12.2007 vigilance clearance shall not be withheld unless, sanction for investigation or prosecution in any matter has been given by the Government. According to the applicant, in his case, in violation of the above order, vigilance clearance has been denied effecting his DCRG benefits.

3. According to the applicant, while he was working as Repeater Station Assistant at Tezpur in the year 1995-96, it has been alleged, that the applicant had forward 3/4 cases of casual labourers with recommendations for conferring temporary status to Sub-Divisional Engineer. The applicant also submitted that the CBI, Guwahati registered a case in the court of Special Judicial Magistrate, Guwahati under various sections of IPC and Prevention of corruption Act 1988 against Sri M.K.Gogoi & Ors where the applicant was made one of the accused. According to the applicant no Departmental Proceedings were initiated against him nor any prosecution sanction was issued by the department. According to the applicant Rule 39(2) (a) of CCS (Leave) Rules 1972 provides that in the case of a Government Servants retirement the competent authority to grant leave shall suo motu issue an order for granting cash equivalent of leave salary for earned leave if any, at the credit of the Govt Servant on the date of retirement subject to the maximum limit prescribed. The same authority may withheld the whole or part of cash equivalent of earned leave in the case of a Government employee who retires while under suspension or disciplinary proceedings pending or criminal prosecution is going on against him and the authority comes to a conclusion that the loss of Government money shall be recovered from him on conclusion of such proceedings. According to the applicant the

departmental proceedings are not pending against the applicant. In the Court case the possibility of recovery cannot be logically made out. According to the applicant he retired as Group B staff. The competent authority is respondent No.2. Decision to withhold leave encashment cannot be ordered at a lower level as per Schedule -1 of CCS (Leave) Rules 1972.

4. The applicant also submitted that Rule 9 and 69 of CCS (Pension) Rules 1972 gave the power to the President of India to withhold pension or gratuity. These rights are statutory right and could not be enforced by BSNL authority which is a company under Companies Act 1956. The applicant also submitted that the department had given promotion to Shri M.K.Gogoi as his vigilance clearance was not withheld by the department on the basis of the same guidelines of DOPT's O.M.No.11012/II/2007-Estt.(A) dated 14.12.2007.

5. The applicant also begs to state that right to receive pension was recognized as right to property by the constitutional Bench Judgment of Hon'ble Supreme Court in Deokinandan Prasad Vs. State of Bihar, (1971) 2 SCC 330. The Hon'ble Supreme Court, in State of West Bengal Vs. Haresh C. Banerjee and others (2006) 7 SCC 651, recognized that even after the repeal of Article 19 (1) (f) and Article 31 (1) of the Constitution, the right to property no longer remain a fundamental right, it was still a constitutional

right as provided in Article 300 A of the Constitution. Article 300 A of the Constitution of India reads. No person shall be deprived of his property save by authority of law. The BSNL authority i.e respondents are not having power or authority to deprive the applicant.

6. The respondent have filed written statement. According to the respondents the applicant has tried to conceal the fact before this Tribunal that the Criminal proceedings are going on against him. Respondents also pointed out that while the applicant retired on 31st January 2012 he has filed this application before this Tribunal on October 2014 and therefore, the application is not maintainable being barred by limitation under Section 21 (1) (a) of the Administrative Tribunal Act, 1985. The respondents controverted the submission made by the applicant in para 4.4. of the application and clarified legal position as follows:-

“The answering respondents state that the Government of India incorporated a specific rule vide Rule 37-A by way of amendments of the Central Civil Services (Pension) Rules, 1972 (referred to as the CCS (Pension) Rules, 1972). By the said amended Rules, certain specific provisions were made relating to various terms and conditions of absorption of Central Government Employees upon conversion of a Government Department into a Central Autonomous Body or Public Sector Undertaking. While such Government employee were considered to be deemed to have retired from Government service on such absorption as accepted by the Government and to be

considered as an employee of such Autonomous Body or Undertaking; they were to be guided by the other as enumerated under the said Rule 37-A of the CCS (Pension) Rules, 1972. The provisions of Sub-Rule 1 to 11 and Sub-Rule 21 to 26 on the said Rule 37-A are applicable to the employees of BSNL so absorbed from the erstwhile DOT. The Sub-Rule 24 of the Rule 37-A of the CCS (Pension) Rules, 1972 read with the provisions of OM No.22011/4/91-Estt(A) dated 14.9.1992, Circular No.1/1/99-VIG.I dated 7.9.1999 issued by the Government of India, Ministry of Communications, Department of Telecommunications, Vigilance Circular No.001/06 issued by the BSNL vide No.CVO/BSNL/001/06 dated 12.9.2006 and office Memorandum No.11012/11/2007-Estt(A) dated 14.12.2007 issued by the government of India are applicable in this case.”

7. Respondents also clarified that the CBI authority vide their letter No.DPGWH2012/2367RC7 (A)/2001-SHG dated 27.4.2012 advised BSNL that no prosecution sanction is required by CBI for charge-sheet against the accused persons for the offence under Section 120-B read with Section 420, 468 and 471 IPC. The respondents also referred the letter No./7 (A)01-SHG/7663 dated 18.12.2007 of the CBI whereby it has been intimated that the applicant's name appears at Sl.No.12 amongst the 41 numbers of employees of BSNL as accused. The respondents further clarified that the applicant is getting provisional pension and all other dues pertaining to DCRG and leave encashment will remain withhold till the conclusion of the trial as per CCS (Leave) Rules 1972. The respondents also contended that

the DCRG includes leave encashment after retirement. According to the respondents all the contention of the applicant are denied unless specifically admitted in the written statement or supported by documents. The applicant shall get all the DCRG dues presently withhold only after conclusion of the CBI case. The respondents emphasised that they have acted as per law and submitted that the application be dismissed, as being devoid of merits.

8. The applicant filed rejoinder. In the rejoinder the applicant specially controverted the contention made by the respondents on the ground of limitation and relied on the observations of the Hon'ble Apex Court' in State of Bihar V.Kameshwar Prasad Singh 2000 (4) SLR 8 whereby on technical ground of limitation case cannot be dismissed. The applicant also quoted the case of Shiv Dass V.Union of India 2007 (3) SLR 444, in his support. The applicant contended that the O.M.No.11012/11/2007-Estt.(A) dated 14.12.2007 has not been properly implemented in his case.

9. In Para 6 of the rejoinder the applicant reiterated that no since prosecution sanction has been granted in his case, the DCRG benefits cannot be denied as per O.M. dated 14.12.2007. The applicant further submitted that the alleged offence for which applicant was not accorded vigilance clearance, is of 1996 when the applicant was working in the Department of Telecommunication. Therefore, the prosecution sanction

was must as per Section 197 the Criminal Procedure Code 1973. The applicant also vehemently opposed the withholding of leave encashment as according to him, it is different from DCRG and CVP. In any case according to the applicant the order to withhold the leave encashment has been passed by the authority not competent as per CCS (Leave) Rules 1972. The applicant submitted that the BSNL cannot take away the benefits which he has earned while serving in the Department of Telecommunication. According to the applicant the BSNL has committed illegality by withholding the leave encashment and DCRG of the applicant and prayed for intervention of the Hon'ble Tribunal.

10. Pleadings being complete. The case was heard on 05.05.2016.

The learned counsel for the applicant submitted that the applicant was employee of the Department of Telecommunication which got converted into a Public Sector Undertaking in the year 2000. The learned counsel also brought to the notice of the Court the amendment to the Central Civil Services (Leave) Rules 1972 whereby Rule 37(A) was inserted as per the clause IV of the same. The permanent absorption of the Government servant as employee of the Public Sector Undertaking shall take effect from the date of their options being accepted by the Government. From the date of such acceptance, such employees ceased to be government servant and they shall be deemed to have retired from

Government service. The Notification dated 30.09.2000 have been annexed.

The learned counsel brought to the notice of the Clause 24 of the same which is reproduced below:-

“Upon conversion of a Government department into a public sector undertaking or autonomous body:-

- a). The balance of provident fund standing at the credit of the absorbed employees on the date of their absorption in the public sector undertaking or autonomous body shall, with the consent of such undertaking or body, be transferred to the new provident fund Account of the employees in such undertaking or body, as the case may be;
- b) earned leave and half pay leave at the credit of the employees on the date of absorption shall stand transferred to such undertaking or body as the case may be;
- c) The dismissal or removal from service of the public sector undertaking or autonomous body of any employee after his absorption in such undertaking or body for any subsequent misconduct shall not amount to forfeiture of the retirement benefits for the service rendered under the Government and in the event of his dismissal or removal or retirement the decisions of the undertaking or body shall be subject to review by the Ministry administratively concerned with the undertaking or body.”

11. Learned counsel reiterated his reliance of the citations quoted in para 4.3. of the O.A. Learned counsel also reiterated his submission in 4.15

of the O.A. it has been emphasised that the main offender Shri M.K.Gogoi has not suffered because of the on going CBI case as he has since been promoted. The DOPT's O.M. dated 14.9.1992 with regard to vigilance clearance cannot be arbitrarily invoked.

12. Learned counsel for the respondents argued on the lines of his submissions in the written statement and specifically highlighted the technical error in the representation dated 20.2.2014, the applicant has not raised the issue of leave encashment, hence it cannot be agitated in the O.A. as one of the relief sought.

13. Learned counsel also emphasised that the provisional pension is being paid to the applicant, since the applicant has retired on 31st January 2012. According to the learned counsel for the respondents the applicant approached this Court on 21st November 2014. Therefore, it has become a time barred case.

14. The learned counsel for the respondents also justified the withholding of leave encashment on being prosecuted as according to him the same is provided for in the CCS (Leave) Rules 1972. The requirement of vigilance clearance for the payment of DCRG benefits, according to the learned counsel for the respondents, is as per Rules and the guidelines of O.M.No.1/1/99-VIG.I dated 07.09.1999 and DOPT's Circular No.CVO/BSNL/001/06 dated 12.9.2006 of BSNL.

15. In view of the submissions made by the rival parties, the pleadings and material on record, it is not disputed that (1) the CBI case is pending against the applicant. (2) The provisional pension is being paid since the retirement of the applicant.

16. In view of the above, this Court is not going into details of various citations quoted by the applicant in favour of DCRG benefits. The only problem in the payment of DCRG benefits is non issue of vigilance clearance which is required as per O.M.No.CVO/BSNL/001/06 dated 12.09.2006 of BSNL. However, the learned counsel for the respondents could not clarify as to how the main accused in the pending CBI case Shri M.K.Gogoi got not only promotion but also vigilance clearance issued in his case.

17. In view of the above observations the respondents are directed to examine the case of the applicant vis-a-vis that of Shri M.K.Gogoi. In case the applicant is similarly situated, the applicant also be given similar benefits with regards to issue of vigilance clearance and consequential benefits with regard to disbursement of leave encashment and DCRG benefits.

18. The CBI case may remain under trial and lot of time may lapse before the panel proceedings are concluded. The Court would like to make

observations to save the applicant for further litigation. In case the applicant is honourably acquitted and on conclusion of criminal proceedings becomes eligible for disbursement of DCRG benefit which happened to be withheld because of the non grant of vigilance clearance pending criminal proceedings the same as and when disbursed will attract interest @ 8% per annum. The interest will be paid to the applicant alongwith the withheld DCRG benefits as and when they are disbursed on conclusion of CBI case.

19. Accordingly, application is disposed of. No order as to costs.

(MOHD HALEEM KHAN)
ADMINISTRATIVE MEMBER

(MRS MANJULA DAS)
JUDICIAL MEMBER

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