

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD



OA/020/01194/2018
Date of CAV : 22.01.2020

HYDERABAD, this the 11th day of February, 2020.

THE HON'BLE MRS.NAINI JAYASEELAN: ADMINISTRATIVE MEMBER

R. V. L. Narayana Rao S/o late R. Janardhana Rao,
Aged about 75 years, Retired Deputy General Manager,
(Finance & Accounts) from the Office of the
General Manager, Telecom District, Vijayawada and
now resident of D.No.26-41-2/1,
Ramireddy Nagar, A.T.Agraharam, Guntur-4.

(By Advocate : Mr. K.VenkateswaraRao) ...Applicant

Vs.

1. The Principal Controller & Communication, Accounts, A. P. Telecom Circle, Kavadiguda Telephone Exchange, Bholakpur, Secunderabad – 500 080.
2. The General Manager, Telecom District, BSNL, Vijayawada.
3. The Chief General Manager, Telecom/BSNL, A.P. Circle, Hyderabad.
4. The Chief General Manager, Telecom, BSNL, A.P. Circle, Vijayawada.
5. The Chairman & Managing Director, BSNL Corporate Office, Bharat Sanchar Bhawan, 4th Floor, Janapath, New Delhi.
6. The Principal Controller of Communication, Accounts (Attached Office), A.P.Telcom Circle, 1st Floor, CTX Building, Kaleswara Rao Market, Vijayawada-520001.

OA/020/01194/2018

7. The Postmaster, Guntur Head Post Office, Guntur.



8. Union of India, represented by its Secretary,
Department of Telecommunication and I.T.,
20, Ashok Road, New Delhi-1.

(By Advocates : Mrs.K.Rajitha, Sr.CGSC for RR 1 & 8
And Mrs.K.Sridevi, SC for RR 2 to 7)Respondents

(Order per Hon'ble Mrs.Naini Jayaseelan, Administrative Member)

This application is filed under section 19 of the Administrative
Tribunal's Act, 1985, for the following relief :

"It is therefore prayed that this Hon'ble Tribunal may be pleased to
call for the records relating to

- (i) Lr.No.PPO.No.2670/TCAP/322, dated 22.4.2018 issued by the
first respondent and quash and set aside the same as illegal,
arbitrary, unjust and violative of Rules of commutation of
Pension, 1981;
- (ii) To call for records relating to corrigendum to PPO
No.2670/TCAP, dated 29.1.2018 issued by the Office of the first
respondent and declare the same as illegal to the extent of
commutation dates of restoration of the second and third
commutation as 28.7.2021, 28.2.2023 respectively and
consequently declare that the applicant is entitled for
restoration of his second and third commutation from
3.12.2017 with all consequential benefits;

And pass such other order or orders as this Hon'ble Tribunal
may deem fit and proper in the circumstances of the case.

2. The brief facts of the case are that the applicant was initially
appointed as Time Scale Clerk on 24.01.1963 in Guntur Telecom Division,
promoted as Junior Accountant on 26.12.1970 in Bihar Circle and as JAO

OA/020/01194/2018

from 19.04.1973. He was also promoted as Accounts Officer on 02.09.1980,
Chief Accounts Officer on 01.08.1991 and finally as Dy. General Manager
(Finance and Accounts) on 15.04.1996 and retired as such on 02.12.2002 on

voluntary.



3. Mr. K. Venkateswara Rao, learned Counsel for the Applicant submits that, in October, 2005 options were called for from Group "A" Officers for absorption in BSNL and the applicant opted for absorption in BSNL from 01.10.2000 (i.e the date on which BSNL was formed) and thereafter retired on 02.12.2002. At the time of his retirement on 02.12.2002 he was in DoT Service. In October, 2005, options were called for from Group "A" Officers for absorption in BSNL. Accordingly the applicant opted for absorption in BSNL from 01.10.2000, the date on which BSNL was formed. The applicant's pension in DoT Scale (CDA) was fixed as below :

Scale of D.G.M. Rs.12000-375-16500.

Original pension Rs.7,685/-

Commutation Rs.3,074/-

Residual Pension or Net pension Rs.4,611/-

On his absorption in BSNL from 01.10.2000, his pension was revised on getting the Industrial Dearness Allowance (IDA) Scale as follows :

OA/020/01194/2018

IDA scale applicable to the post of DGM Rs.16000-400-20800

Pension Rs.9,840/-

Commutation Rs.3,936/-

Net pension Rs.5,904/-



The applicant submits that there was some confusion in granting the annual increment on absorption in BSNL. On receipt of necessary clarification from DOT/BSNL, applicant's pension was refixed again as

Basic Pension	Rs.9,998/-
Commutation	Rs.3,999/-
Net pension or residual pension	Rs.5,999/-

4. Mr. K. Venkateswara Rao, learned counsel for the applicant further submits that, on revision of BSNL Scales with effect from 01.01.2007, the applicant's pension was refixed with effect from 01.01.2007 at Rs.21,941/- in the scale of Rs.32000-58000 vide PPO No.TAX/CCA/Pen/VR-2043/2002-03, dated 02.08.2011 and again refixed to Rs.23,163/-. Learned counsel for the applicant also submits that the commutation amount of Rs.3,999/- (3074+862+63) should be restored from 03.12.2017.

5. Thereafter the 7th Respondent herein addressed Letter No. Ac/Com-Pen/BS/RVLNR, dated 22.12.2017 to the 1st Respondent requesting to clarify whether the total commutation amount of Rs.3,999/- (Rs.3074+862+63) was to be restored from 03.12.2017 or Rs.3,074/- from

OA/020/01194/2018

03.12.2017, Rs.862/- from 28.07.2021 and Rs.63/- from 28.02.2023 ie on completion of 15 years from respective dates of payment of commutation

amount and copy of the said letter was also endorsed to the applicant.



The 1st Respondent issued corrigendum dated 29.01.2018 to PPO No. 2670/TC AP as per which the date of commutation restoration is 03.12.2017 for Rs.3,074/-, 28.07.2021 for Rs.862/- and for Rs.63/- is 28.02.2023.

6. Learned counsel for the applicant contends that Rule 6(2) of Commutation of Pension Rules, 1981 is not applicable in this case and the applicant was not paid commuted value in two or more stages and as such the question of restoration of commutation from respective dates does not arise, which reads as under :-

“ (2) In the case of an applicant referred to in Rule 9 or Rule 10, the commuted value is paid in two stages. The reduction in the amount of pension shall be made from the respective dates of the payments as laid down in clause (a) or clause (b) of the Proviso to sub-rule (1)”.

Counsel for the applicant further submits that, Government of India decision (3) below Rule 10 of CCS (Commutation of Pension) Rules, 1981, it was mentioned that it is not correct to reckon the period of 15 years of period for restoration from the date of retirement except in the cases where commutation of pension has been simultaneous with retirement.

OA/020/01194/2018

7. Mr. K. Venkateswara Rao, learned counsel for the applicant further submits that Rule-10A of CCS (Commutation of Pension) Rules, 1981 is not applicable in this case, which reads as under :-

“ [10-A. Restoration of commuted pension



The commuted amount of the pension shall be restored on completion of fifteen years from the date the reduction of pension on account of commutation becomes operative in accordance with Rule 6 :

Provided that when the commutation amount was paid on more than one occasion on account of upward revision of pension, the respective commuted amount of the pension shall be restored on completion of fifteen years from the respective date(s);]

It is thus clear that prior to 02.09.2008, the rules of commutation of pension, 1981 were in favour of the applicant. Hence this OA.

8. Separate reply statements have been filed by Respondents 1,6 & 8 and for Respondents 2 to 5 & 7 submitting that the commuted value of pension will be restored after fifteen years after the commuted value pension is paid. The difference of commuted portion will also be restored on completion of fifteen years. The Respondents further submits that as per Rule 6(2) of CCS (Commutation of Pension), when the commuted value is paid in two stages, reduction of amount of pension shall be made from the respective dates of payment of commuted value paid. The Respondents also submit that the applicant's pension was initially calculated on CDA scales and based on the exercise of option by the

OA/020/01194/2018

applicant, the same has been converted to IDA Scales and accordingly the difference of commutation value of pension was paid. Again due to revision of IDA scales, the difference of commutation value of pension was paid once again to the applicant.



9. Heard Mr. K. Venkateswara Rao, learned counsel for the applicant, Mrs. K. Rajitha, learned Senior Central Govt., Standing Counsel for Respondents 1, 6 & 8 and Mrs. K. Sridevi, learned Standing Counsel for BSNL.

10. The Counsel for the Respondents further state that the 2nd and 3rd Commuted Value of Pension paid on 28.07.2006 and 28.02.2008 respectively. Hence, the revised pension started from 28.07.2006 and 28.02.2008 and restoration of the commuted value will be on 28.07.2021 and 28.02.2023 respectively ie after 15 years of the receipt of the enhanced amount. Had the commuted value of pension paid in the second and third stages been recovered with retrospective effect from the first month of retirement, the restoration date could have been the same as that of the Commuted Value of Pension paid in the first stage. In this case, this is not so. Therefore, the three restoration dates mentioned in the PPO holds good as per Rule-6 and Rule-10 of the CCS (Commutation of Pension) Rules. In view of these submissions, the Respondents pray for dismissal of the OA.

OA/020/01194/2018

11. Learned Standing Counsel for the Respondents argued that while the commutation restoration dates have been revised as 05.12.2017, 28.07.2021 and 28.02.2023 since the amounts have been received by the applicant on 05.12.2002, 28.07.2006 and 28.02.2008, the case is hit by



limitation because nowhere did the applicant submit any representation or otherwise after the enhancement of commutation value of pension was received. However on a detailed scrutiny, it is noticed that the impugned order for changes in Commutation Restoration dates is dated 29.01.2018 and only then did the cause of action arise for the applicant. Therefore the present OA is not barred by limitation.

12. It is the contention of the learned Standing Counsels for Respondents that Rule-10A of CCS (Commutation of Pension) Rules is applicable since the applicant received the commuted portion in two/three instalments as the Govt of India, Deptt of P & PW Notification dated 09.11.2010 published as S.O.2806 in the Gazette of India, dated 09.11.2010 which was effective from 02.09.2008. However the counsel for the applicant contends that this notification cannot be applied in the present case retrospectively.

13. Learned Standing Counsels for Respondents then took the plea that the case is covered under Rule-6 of Commutation of Pension Rules and the same was existing at the time when the Commuted Value of Pension of was

OA/020/01194/2018

paid. Therefore the dates of restoration of commutation have been amended accordingly correctly amended. It is undisputed fact that the applicant is fully covered under Rule-6 of the Commutation of Pension Rules and not under Rule-10 of the said Rules. Although the applicant is clearly



covered under the said Rules, the delay in grant of Commutation of Pension etc., has been on account of the fact that options were called from the officials as late as 2005 vide circular No. BSNL/32-1/SR/2005/Vol.II, dated 05.10.2005, although the BSNL was formed on 01.10.2000. The delay in grant of IDA scales resulted in delayed grant of CVP and the dates of restoration of CVP (Commuted Value of Pension) were changed later on. The delay cannot be attributable in any way to the applicant but to the administration and other organizational issues after the formation of BSNL on 01.10.2000. Had the options been called earlier and the IDA scales been granted earlier and resultant CVP paid in time.

14. It is an undisputed fact that this case is covered under Rule-6 of Commutation of Pension Rules, 1981, which reads as under :

“6. Commutation of pension to become absolute –

(1) The commutation of pension shall become absolute in the case of an applicant referred to –

(i) in sub-rule (1) of Rule 13, on the date on which the application in Form 1 is received by the Head of Office ;

(i-a) in sub-rule (3) of Rule 13, on the date following the date of his retirement ;

(iii) in Chapter IV, on the date on which the medical authority signs the medical report in Part III of Form 4 ;

Provided that –

OA/020/01194/2018

(a) in the case of an applicant who is drawing his pension from a treasury or Accounts Officer, the reduction in the amount of pension on account of commutation shall be operative from the date of receipt of the commuted value of pension or at the end of three months after issue of authority by the Accounts Officer for the payment of commuted value of pension, whichever is earlier, and



(b) in the case of an applicant who is drawing pension from a branch of a nationalized bank, the reduction in the amount of pension on account of commutation shall be operative from the date on which the commuted value of pension is credited by the bank to the applicant's account to which pension is being credited.

(c) in the case of an applicant governed by sub-rule (3) of Rule 13 in whose case the commuted value of pension becomes payable on the day following the date of his retirement, the reduction in the amount of pension on account of commutation shall be operative from its inception. Where, however, payment of commuted value of pension could not be made within the first month after the date of retirement, the difference of monthly pension for the period between the day following the date of retirement and the date preceding the date on which the commuted value of pension is deemed to have been paid in terms of Rule 49 of the Central Government Accounts (Receipts and Payments) Rules, 1983, shall be authorized by the Accounts Officer.]

(2) In the case of an applicant referred to in Rule 9 or Rule 10, the commuted value is paid in two or more stages, the reduction in the amount of pension shall be made from the respective dates of the payments as laid down in Clause (a) or Clause (b) of the proviso to sub-rule (1).

(3) The date on which the payment of the commuted value of pension was made to the applicant or the commuted value was credited to the applicant's account shall be entered in both halves of the Pension Payment Order by the disbursing authority under intimation to the Accounts Officer who authorized the payment of commuted value of pension."

In view of the above position, the dates furnished in the impugned PPO.No.2670/TCAP/322, dated 22.4.2018 and impugned order dated 29.01.2018 need not be interfered with.

OA/020/01194/2018

15. In view of the forgoing discussion, the O.A. dismissed as devoid of merits. No order as to costs.



(NAINI JAYASEELAN)
ADMINISTRATIVE MEMBER