

RESERVED**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH****Original Application No.21/362/2018****Hyderabad, this the 27th day of January, 2020*****Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

Khaja Naseeruddin Ahmed , S/o. K.M. Ahmed,
Aged about 52 years, Occ: Senior Telecom office Assistant (G),
(Under the orders of Compulsory Retirement),
O/o. General Manager Telecom District, Karimnagar,
R/o. H. No. 3-5-135, Azmathpura,
Karimnagar – 505 001.

... Applicant

(By Advocate Dr. A. Raghu Kumar)

Vs.

1. Union of India, Rep. by Secretary,
Department of Telecommunications,
20 Ashoka Road, New Delhi – 1.
2. The Bharat Sanchar Nigam Limited,
Rep. by its Chairman cum Managing Director,
BSNL Corporate Office, Barakumba Road,
Statesman House, New Delhi -1.
3. The Chief General Manager, Telecom,
Telangana Circle, Hyderabad – 1.
4. The General Manager Telecom District,
Karimnagar, Karimnagar District.
5. The Principal Controller of Communications Accounts,
Department of Telecommunications,
Kawadiguda Telephone Exchange,
Kawadiguda, Hyderabad.

... Respondents

(By Advocates: Mrs. K. Rajitha, Sr. CGSC &
Mrs. K. Sridevi, SC for BSNL)

ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. The OA is filed challenging the rejection of the claim made for pension and pensionary benefits vide letter dated 29.08.2017.



3. Brief facts are that the applicant joined the Dept. of Telecommunication (for short “**DOT**”) on 19.10.1984 as Sr. Telecom Assistant. A charge memo was issued on 29.8.2005 for unauthorised absence from 1.12.2004 onwards. Inquiry was conducted and based on the inquiry report, applicant was compulsorily retired from service on 4.03.2008. Applicant filed an appeal on 14.5.2008 and simultaneously filed the WP no.17732/2008 in the Hon’ble High Court. Thereafter, applicant reported to duty on 27.05.2008 and gave his joining report. Appeal was rejected on 20.06.2008 and hence the WP No.17732/2008 was withdrawn and WP No.20758/2008 was filed challenging the orders of the disciplinary authority and that of the appellate authority which was transferred to the Tribunal as TA No.85/2010. The TA was dismissed by the Tribunal on 30.05.2016. Consequent to formation of BSNL, options were called for absorption but the applicant continued with DOT. Respondents obtained the pension papers for processing on 16.12.2016 and later rejected the claim on 29.8.2017 on the ground that the entire past service of the applicant is forfeited. Applicant asserts that he has effectively put in 24 years of service from the date of joining till the date of the order of compulsory retirement. Aggrieved by the decision of the respondents, OA has been filed.

4. The contentions of the applicant are that the order of the disciplinary authority, as confirmed by the appellate authority, is only that of imposing compulsory retirement. These orders do not speak of forfeiture of past service. Rule 40 of CCS (CCA) Rules, 1965 need to be observed while imposing the penalty of compulsory retirement. Further, letter dated 02.06.1957 of G.O.I. clarifies that the authority competent to impose compulsory retirement may make reduction in the pensionary benefits within limits prescribed as is deemed appropriate. Service will be forfeited only when a Govt. Servant resigns under Rule 26 of CCS (Pension) Rules or by order under FR 17-A.



5. Respondent No.1 has not filed reply statement despite lapse of 1 ½ years after issue of notice. However, the matter has been taken up for adjudication based on the reply statement filed on behalf of the respondents 2 to 4 and also as the issue pertains to pension.

Respondents 2 to 4 in the reply statement confirm that the applicant is a DOT employee. While working as Sr. Telecom Assistant the DGM (A&C), BSNL, Karimnagar, vide letter dated 1.7.2004 treated the unauthorised absence of the applicant for the period 1.05.2001 to 10.12.2002 as 'break in service' and his basic pay was ordered to be brought down to the minimum of the scale i.e. Rs.4000 for a period of 8 years from the date of issue of the order. Besides, Director Staff (DOT) imposed the penalty of compulsory retirement on 4.03.2008 for another spell of unauthorised absence commencing from 1.12.2004 and it was upheld by the appellate authority. The order of compulsory retirement was

challenged before the Tribunal, which was finally dismissed on 30.5.2016.

The unauthorised absence for the period referred to by the DGM in his order dated 1.7.2004 on being treated as break in service resulted in the previous service rendered by the applicant being forfeited as per Rule 27 of



CCS (Pension) Rules, 1972 and OM dated 22.06.2010 of G.O.I. Further, when the pension papers were collected and sent to DOT, the same were returned to work out the eligibility for pension based on CCS (Pension)

Rules and G.O.I. decisions. Accordingly when done the qualifying service of the applicant has been re-computed as 1 year 11 months and 20 days i.e.

from 11.12.2002 to 30.11.2004. The applicant was on unauthorised absence from 1.12.2004 till the date of compulsory retirement ie 4.03.2008. As the

applicant did not have the qualifying service of 10 years to grant pension and 5 years in respect of gratuity, both the benefits could not be extended to

the applicant. Rule 37-A does not apply to the case of the applicant as he was not absorbed in BSNL. Rule 26 of CCS (Pension) Rules deals with

forfeiture of service on resignation from service whereas the case of the applicant is different treating the unauthorised absence as break in service.

6. Heard both the counsel and perused the pleadings on record.

7. I) It is not a disputed fact that the applicant is a DOT employee.

The applicant was proceeded for unauthorised absence while working as Sr.

Telecom Office Assistant (TOA) and the said period was treated as 'break in service' by the DGM as per his orders dated 1.07.2004 as under:

"I. K. Narender, DGM (A&C), % GMTD Karimnagar, do hereby order that the unauthorised absence of said Sri. Khaja Naseeruddin Ahmed, Sr. TOA(G), O/o. GMTD Karimnagar from 1.5.2001 to 10.12.2002 shall constitute "Break in Service" and that his basic pay should be brought to Minimum ie Rs.4000 in the time scale of Rs.4000-100-6000 (CDA scales)

for a period of 8 years with effect from the date of issue of this order. It is further directed that Sri Khaja Naseeruddin Ahmed will not earn increments of pay during the period of such reduction and on expiry of the period the reduction will have the effect of postponing the future increments of pay. ”

The applicant did raise an issue about the disciplinary authority as was adduced by the DGM vide his orders dated 1.7.2004 as under:



“A copy of the inquiry report was furnished to the charged official on 21.02.2003 for making a representation, if any. The charged official submitted his representation on 24.03.2003. The charged official objected to the ex-parte decision and raised the issues regarding disciplinary authority, objections for issuing charge sheet under rule 14 of CCS (CCA) Rules etc.”

It is an admitted fact that the applicant is a DOT employee and was not absorbed in BSNL. If this be so, the DGM, BSNL could not be the disciplinary authority. Therefore, an incompetent authority has imposed the penalty, which is invalid in the eyes of law.

II) In fact, on a later date for the unauthorised absence commencing from 1.12.2004, applicant has been proceeded under rule 14 of CCS (CCA) Rules by the Director (Staff) and the penalty of compulsory retirement was imposed, which was also upheld by the Dy. Director General (DDG) of DOT, who is the appellate authority. This further explains that it is DOT, which can take disciplinary action against the applicant and definitely not BSNL. It appears that without taking into consideration the objection raised by the applicant in regard to the competency of the disciplinary authority, break in service along with fixing the scale of the applicant in the minimum of the scale of Rs.4000, at the first instance, was imposed. Neither rules nor law permit an incompetent disciplinary authority to impose penalties. Ld. Counsel for the respondents tried to explain stating that the DGM of BSNL has ordered the break in

service on behalf of DOT. If this be so, the question that would then arise is that even on a later date the BSNL could have compulsorily retired the applicant on behalf of DOT which was not done. Therefore, the submission of the Ld. Counsel for the respondents is incorrect. Reason being that the respondents realizing that the disciplinary authority was DOT, they have referred the later unauthorized absence of the applicant commencing from 1.1.22004 to the competent disciplinary authority.



III) Besides, DOT has issued a letter F.No.318-12/2008-Pen(T), dt. 21.7.2009, wherein it was stated as under:

“As per sub rule 24 (c) of Rule 37-A of CCS (Pension) Rules, 1972, the absorbed employees of BSNL are entitled to retirement benefits for the service rendered under the Government even if they are dismissed /removed from the service after their absorption in BSNL, for any misconduct during service in BSNL. The retirement benefits in such cases shall be admissible from the day following the date of dismissal/removal from BSNL.”

In the instant case, the applicant was not even a BSNL employee, even according to the respondents. Therefore, all the more, the applicant has a right to seek pension for services rendered in DOT. A similar issue fell for consideration in OA 1062/2011 on 3.07.2012 before the Hon'ble Chandigarh Bench of this Tribunal, wherein at para 10 it was held as under:

“10. A perusal of the aforesaid rules makes it clear that even if there is dismissal or removal from the service of BSNL after absorption of an employee, for any subsequent misconduct it shall not amount to forfeiture of his retirement benefits for the service rendered in Central Government. Apparently, from the stand taken by the respondents it is apparent that the case of the applicant or benefit under this provision was never sent to the competent authority for consideration despite representation filed by the applicant in that regard. Even rule 37-A (24) of CCS (Pension) Rules, 1972 also talks of various benefits available to a person who is transferred and adjusted in a public sector undertaking or a autonomous body from a government department like provident fund, earned leave and HPL., and it is also provided therein that dismissal or removal from the service of the PSU 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. Thus the relevant period of service rendered by the applicant in DOT cannot be forfeited.”

The case of the applicant is fully covered by the above judgment and hence, applicant is eligible for pensionary benefits for the service rendered by the him in DOT from 1984 to 2000 as per rules and law.



IV) Lastly, before a final view is taken the objections raised by the Ld. Counsel for the respondents require to be responded to . Primary objection submitted is that the applicant was not a BSNL employee and that there is no Presidential order absorbing the applicant in BSNL. This is agreed to. If this be so, it is not properly explained by the Ld. counsel as to how the BSNL disciplinary authority can take disciplinary action against a DOT employee to impose the penalty of break in service and reducing the pay to the minimum of the scale of pay of Rs.4000 vide order dated 1.7.2004. Therefore, the contention of the Ld. counsel for the respondents that the punishment has attained finality does not hold good. Another, submission made was that the applicant does not have a minimum of 10 years of service to grant pension. When the order of the disciplinary authority imposing the break in service is invalid, the question of forfeiting of the previous service of the applicant prior to the break in service does not arise. Moreover, even in case of DOT employees absorbed in BSNL, who are dismissed/removed from service for any misconduct in BSNL they are eligible for retirement benefits for the service rendered in DOT as per memo date 21.7.2009 of DOT and the same benefit was extended by the Hon'ble Chandigarh Bench of this Tribunal in OA 1062/2011. In respect of

the applicant, he was not even a BSNL employee to effect the break in service by an incompetent authority from BSNL. Besides, Rule 27 of CCS (Pension) Rules, 1972, as referred to in the impugned order, is not applicable to the case of the applicant as the very break in service is invalid as per law. Ld. Counsel for the applicant has prayed for grant of pension and pensionary benefits for at least the service rendered in DOT.



V) Thus, in view of the aforesaid circumstances, applicant who joined DOT on 19.10.1984 and rendered service up to the year 2000 in the said organisation, is eligible for grant of pension as per DOT memo referred to and the judgment of the Hon'ble Chandigarh Bench of this Tribunal cited supra. Consequently, the impugned order dated 29.08.2017 is quashed.

VI) Resultantly, respondents are directed to consider grant of pension and pensionary benefits taking into consideration the service rendered by the applicant in DOT along with consequential benefits thereof. Time allowed to implement the order is 3 months from the date of receipt of a copy of this order.

VII) With the above direction the OA is allowed to the extent stated above, with no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

/evr/