



CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT SITTINGS : INDORE

Original Application No.201/01036/2017

Indore, this Thursday, the 19th day of March, 2020

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Vijay Kumar Gupta
S/o Late Sri Ram Gopal Gupta
Age 50 years Occupation Service
(Asstt. General Manager O/o CGMT BSNL
MP Circle Bhopal) R/o 108, New Minal
J.K. Road, Bhopal 462023 (M.P.)

-Applicant

(By Advocate –**Shri Prashant Upadhyay**)

V e r s u s

1. The Chief General Manager,
Bharat Sanchar Nigam Limited,
MP Telecom Circle M.P. Nagar
Bhopal (M.P.) 462001

2. The General Manager (Admin/HR)
(BSNL) MP Telecom Circle M.P. Nagar,
Bhopal 462023 (MP)

3. The Zonal General Manager (BSNL)
Meghdoot Park Indore 452001 (M.P.)

4. The T.D.M. Shajapur (BSNL) Dupada Road
Shajapur 465001 (M.P.)
(By Advocate –**Shri V.P. Khare**)

- Respondents

ORDER (ORAL)**By Navin Tandon, AM:-**

The applicant is aggrieved by the recovery for an amount of Rs.443109/- vide order dated 19.07.2014 (Annexure A/7).

2. The applicant has made the following submissions:-

2.1 He joined in the Department of Telecommunication (DoT) on 20.11.1989 on the post of Junior Telecom officer (for short '**JTO**').

2.2 Vide order dated 19.09.2000 (Annexure A/1) Bharat Sanchar Nigam Limited (for brevity '**BSNL**') was formed w.e.f. 01.10.2000.

2.3 He was promoted from JTO to TES (Group B) vide BSNL order dated 09.01.2002 (Annexure A/2).

2.4 He was absorbed into BSNL we.f. 01.10.2000 vide Presidential Order dated 08.01.2004 (Annexure A/3).

2.5 Para 5 of the Presidential order dated 08.01.2004 (Annexure A/3) states that the pay on absorption would be regulated in terms of Para 4 of DOP PW OM No.4/18/87-P&PW (D) dated 05.07.1989 (Annexure A/4).

2.6 He was granted time bound financial upgradation to the next higher IDA pay scale from E3 to E4 vide order dated 18.01.2012 (Annexure A/5).

2.7 He was informed in the month of June 2014 that his basic salary of E4 scale was going to be reduced from Rs.44580/- to Rs.41440/- on account of



non exercise of option in the year 2004. He immediately submitted a representation dated 24.06.2014 (Annexure A/6). However, the applicant received a letter from the respondents on 19.07.2014 (Annexure A/7) stating that the error in his pay has been cured by refixing it and he was directed to pay a sum of Rs.443109/- in one installment otherwise it shall be deducted from his salary.

2.8 He submitted several representations after that. On 15.12.2015 (Annexure A/13) Senior General Manager (HR & A) wrote to the General Manager (P), Corporate Office wherein it was stated that the applicant could not give an option for choosing IDA pay scale in time as he was posted in a small SSA and perhaps he could not get notice in time. Had he given the option, he would have been fixed at the pay scale of Rs.13075/- as regular SDE on 09.01.2002, but because of lack of option form, which was discovered in 2014, the recovery has been ordered by Accounts wing of Circle office for excess payment of increments w.e.f. 09.01.2002 to June 2014 for amount Rs.443109/-.

2.9 The applicant submits that Shajapur where he was posted at the relevant time never received the copy of communication dated 30.06.2004 (Annexure A/16).

3. Applicant has sought the following reliefs:-



"8.1 To allow this original application by issuing appropriate direction or order and to quash the recovery proceedings initiated against the applicant; and

8.2 To direct the respondents to grant the applicant the same pay scale that was given to him prior to the recovery proceedings and which is being given to the other similarly situated employees; and

8.3 To direct respondent authority to pay the applicant all the amount of recovery received thus far from the applicant along with interest; and

8.4 To grant the applicant all the consequential benefit and

8.5 To grant the applicant cost of this petition; and

8.6 Any other relief is this court may deemed fit in favour of the applicant in the interest of justice."

4. Respondents have filed their reply in which it has been stated that while reviewing the service book of official it came to the notice that the basic pay of officer was fixed at Rs.13075/- instead of Rs.12175/- w.e.f. 09.01.2002 i.e. three increments in excess.

4.1 It has also been stated:-

"This case is not related to the option but the actual case is that the pay is fixed at Rs.12175/- whereas actual drawl at stage of Rs.13075/-. Hence the over payment is calculated which legal, operative and within the jurisdiction of payment authority to recover the over payment with prior intimation to officer concern with full proof of acknowledgment."

4.2 It has also been stated that the communication of BSNL dated 30.06.2004 was infact received at Shajapur at the relevant time and this has been communicated to the applicant on 27.02.2018 (Annexure D).



5. The applicant has filed rejoinder in which he has submitted that the impugned recovery is not a result of 'wrong pay fixation' but a result of non exercise of option to come to IDA (Industrial) pay scale instead of CDA pay scale since the date of his promotion dated 09.01.2002. Further he has given the list of 16 similarly placed persons, who are his batchmates and who were promoted on the same date i.e. on 09.01.2002 and their IDA basic pay has been fixed as on Rs.13075/-

6. The respondents have filed their additional reply in which it has been stated that *"the applicant was the Senior Most and responsible officer holding the post of SDE and was well aware about the FR-SR applicable to the respondents Department as well as terms and conditions of entitlement of pay scale from E3 to E4 and as such in these circumstances, it was in the knowledge of the applicant that he is getting more salary for which he is not entitled because he had not submitted any option for adopting and absorbing into BSNL at the time which was given for the same. The applicant availed the more salary in place of his entitlement despite his knowledge that he is availing more salary. Therefore, the recovery order for recovery of more*

amount is just and proper and the action of the respondents-Department-BSNL is in accordance with the law”.



6.1 It has also been submitted that other names which have been mentioned by the applicant in the rejoinder had exercised the option of CDA and IDA pay scales whereas the applicant had not exercised option within the time frame, therefore pay has correctly been fixed.

7. Heard the learned counsel for both the parties and perused the pleadings and documents placed on record. Arguments were on the lines of pleadings available.

8. Learned counsel for the applicant stated that the dispute between the basic pay of Rs.12175/- and Rs.13075/- is regarding type of DA admissible. Rs.12175/- is pay scale with CDA whereas Rs.13075/- is with IDA pay scale on 09.01.2002, when the applicant was promoted to Group 'B'.

FINDINGS

9. The undisputed facts of the applicant are as under:-

9.1 He was appointed with the Department of Telecommunication.

9.2 He was absorbed in BSNL w.e.f. 01.10.2000.

9.3 He was promoted to TES (Group B) on 09.01.2002.

10. Para 5 of the Presidential Order (Annexure A/3) reads as under:-

“5. Regulation of Pay on absorption:- To be regulated in terms of Para 4 of DOP PW OM No.4/18/87-P&PW (D) dated 5-7-1989.”



- 11.** Para 4 of Office Memorandum dated 05.07.1989 (Annexure A/4) issued by Department of Pension & Pensioners' Welfare reads as under:-

“4. The Public Sector Undertaking/Autonomous Body will formulate the terms and conditions of service in the new body at the earliest possible date. The employees will however have an option to retain Government pay scales till their promotion or retirement (whichever is earlier) or to come over to the service conditions of the PSU/Autonomous Body. However, until the exercise of this option, they will continue to be governed by the pay scales, leave entitlements and terminal benefits under the Government.”

- 12.** The contents of BSNL communication dated 30.06.2004 (Annexure A/16) is as under:-

“In continuation of this office order of even number dated 18-03-2004 on the above subject, it is stated that an option is available to the employees to come over to the service condition of the PSU from the date of their promotion or retirement (whichever is earlier) and until then they will continue to be governed by the pay scales, leave entitlements and terminal benefits under the government as per Para 4 of DOP&PW OM No.4/18/87 P&PW (D) dated 05-07-1989.”

This option is admissible to those employees, who are regularly promoted in the higher grade, fixation of their pay in IDA pay scale of the promoted post.”

- 13.** From the perusal of the entire pleadings, it is very clear that the recovery have been made because the applicant had not submitted the required option in the year 2004. A careful reading of Para 4 of the O.M. dated 05.07.1989 (Annexure A/4) it very clearly indicates that the employee can



retain the pay scales of Central Government only till their promotion or retirement (whichever is earlier) or to come over to the service conditions of the PSU/Autonomous Body.

14. Comparing para 4 of Annexure A/4 and contents of Annexure A/16 it is clear that word '*till*' in O.M. have been replaced by word '*from*' in BSNL's communication.

15. It is clear that BSNL cannot modify the terms of Presidential order through their own office order as deliberated above. In the instant case, even without filling any option form, the applicant has compulsorily come into pay scale of concerned PSU i.e. BSNL after the first promotion on 09.01.2002.

16. As far as the period 01.10.2000 (date of absorption) to 09.01.2002 (date of first promotion) is concerned, the applicant has offered to pay the difference amount between CDA and IDA in his representation dated 24.06.2014 (Annexure A/6). However, we feel it is not fair on the part of the respondent to raise this issued after 12 years of the even in the year 2014.

17. In view of the above, the stand of the respondent-department to make recovery of Rs.443109/- due to non filling of option form in 2004 does not hold merit. Accordingly, the order dated 19.07.2014 (Annexure A/7) is quashed and set aside qua the applicant.

18. Learned counsel for the applicant also submits that consequential benefits also need to be given to him because his pay after July 2014 have been reduced.



19. From the above deliberations, it has been held that the basic pay of the applicant should be fixed as Rs.13075/- (IDA) w.e.f. 09.01.2002. The applicant is also eligible for consequential benefits.

20. Accordingly O.A. is allowed. Recoveries which have been made may be refunded to the applicant within 60 days from the date of receipt of certified copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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