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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00138/2016

Date of order: 27.2.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
 Hon'ble Dr. Nandita Chatterjee, Administrative Member

Arun Kumar Saha,
 Son of Late Phanindra Kumar Saha,
 Aged about 62 years,
 By faith Hindu,
 By occupation retired service-holder
 As Deputy General Manager (CFA),
 O/o the General Manager,
 Telecom,
 Kharagpur,
 Bharat Sanchar Nigam Ltd.,
 Residing at 141A/2A, South Sinthi Road,
 Calcutta - 700 050.

..... Applicant

- V E R S U S -

1. The Union of India,
 Service through the Secretary,
 Ministry of Communications and Information
 Technology,
 Department of Telecommunications,
 Government of India,
 Sanchar Bhavan,
 Ashoka Road,
 New Delhi - 110 001.
2. The Chairman & Managing Director,
 Bharat Sanchar Nigam Ltd.,
 BSNL Corporate Office,
 Bharat Sanchar Bhawan,
 Harish Chandra Mathur Lane,
 Janpath,
 New Delhi - 110 001.
3. The Director, HRD,
 Bharat Sanchar Nigam Ltd.,
 BSNL Corporate Office,
 Bharat Sanchar Bhawan,
 Harish Chandra Mathur Lane,
 New Delhi - 110 001.

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4. The Chief General Manager,
West Bengal Telecom Circle,
Bharat Sanchar Nigam Ltd.,
1, Council House Street (2nd Floor),
Calcutta - 700 001.
5. The Chief General Manager,
Calcutta Telephones District,
Bharat Sanchar Nigam Ltd.,
"Telephone Bhavan",
34, B.B.D. Bag (S),
Calcutta - 700 001.
6. The General Manager Telecom,
Kharagpur Telecom District,
Bharat Sanchar Nigam Ltd.,
India, Kharagpur,
Pin - 721 305.
7. The Controller of Communication Accounts,
West Bengal Circle,
Department of Telecommunications,
8, Esplanade East (2nd & 3rd Floor),
Calcutta - 700 069.

.... Respondents

For the Applicant : In person

For the Respondents : Mr. R. Mukherjee, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"(a) Direction do issue directing the respondent authorities to act in accordance with the calculation sheet dated 28.2.2013 being Annexure "A-3" hereto and disburse the difference of pensionary benefits withheld through the PPO dated 26.6.2013 being Annexure "A-4" hereto along with interest @ 18% per annum on all arrear accumulations upon quashing and setting aside the communication dated 27.1.2015 being Annexure "A-18" hereto;

(b) Injunction do issue restraining the respondent authorities from acting in any manner or any further manner on the basis of the PPO dated 26.6.2013 being Annexure "A-4" hereto and the communication dated 27.1.2015 being Annexure "A-18" hereto and thereupon a direction do issue directing them to release the pensionary benefits of the applicant in accordance with the calculation sheet dated 28.2.2013 being Annexure "A-3" hereto;

[Signature]

(c) Direction in the nature of certiorari do issue upon the respondent authorities directing them to produce and/or cause to be produced the entire records of the case and thereupon to pass necessary orders for rendering conscientable justice.

(d) Cost and costs incidental hereto;

(e) And/or to pass such other or further order or orders as to your Lordships may seem fit and proper."

2. The applicant appears in person and is heard. Ld. Counsel for the respondents is present and makes his submissions.

3. The applicant's submissions are that the applicant had rendered 38 years of service in the office of the GM, Telecom, BSNL, Kharagpur, and, thereafter, superannuated on 31.3.2013. Prior to his superannuation, the applicant received a calculation sheet indicating his pensionary benefits. Upon receipt of his PPO, however, it transpired that his pensionary benefits were reduced by about Rupees Four lakhs. The applicant accepted the said pensionary benefits without prejudice but preferred a representation, relying in particular, upon a decision of the Bombay Bench of this Tribunal in **O.A. No. 435 of 1994 (T.P. Shyamalan v. Union of India & ors.)**. The applicant was informed that his pay had been reduced to correct an anomaly arising out of incorrect stepping up of pay and his prayers were ultimately rejected by the respondent authorities vide their orders dated 27.1.2015 (Annexed at A-18 to the O.A.).

4. Ld. Counsel for the respondents would aver on behalf of Respondent Nos. 2-6 as follows:-

(a) On scrutiny of service book by the pension sanctioning authority for authorizing the pension of the applicant, it came to light that the applicant's last pay as shown as Rs. 51,200/- in the service book due to a result of irregular steping up of pay for the 2nd time with reference to the pay of a junior in violation of G.I.O. 24 below Rule 22 of

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FRSR Part - I as the said junior was not the same person with reference to whose pay, the applicant's pay was stepped up in the first instance.

(b) As per GI, DP and AR, OM No. F4/7/83-Estt. (P-1) dated 31.3.1984, the stepping up of pay for the 2nd time with reference to pay a junior (other than the junior, whose pay was referred to during first stepping up) is not admissible, so the applicant's last pay should have been Rs. 48,970/- and accordingly the DOT Cell being the pensioning authority rightly re-cast his last pay reducing the same from Rs. 51,200/- p.m. to Rs. 48,970/- p.m. and directed the GMT, Kharagpur to revise the pay in the service book of the applicant accordingly. So the applicant's pension was authorized on the basis of pay Rs. 48,970/- ignoring the second stepping up of pay.

5. To controvert the same, the applicant in person, would assiduously refer to the decisions of the Bombay Bench of this Tribunal in **T.P. Shyamalan (supra)** wherein it was held as follows:-

"Held: From the MHA, OM, dated 31-3-1984, it is seen that there was an earlier OM, dated 11-9-1968, according to which the benefit of stepping up should be allowed only once. But in this particular OM, the benefit of stepping up is allowed twice subject to fulfilment of certain conditions. These conditions are spelt out in the OM. What these conditions amount to is that, the case of any particular Government employee is considered for stepping up only in relation to another Government employee called the first junior. The second stepping up is permitted only with reference to the first junior in the case of Shri Kokil. The meaning of the memorandum in terms of the factual situation of this particular case would be that if the pay of Shri Kokil is further stepped up with reference to another employee, then in that case the senior employee, in this case the applicant, is entitled for second stepping up at par with Shri Kokil. But Kaimal not being junior to Kokil, such contingency does not arise. Coming to the facts and circumstances, it would mean that there was a junior to Shri Kokil who was drawing higher pay than that of Shri Kokil and if Shri Kokil's pay should be stepped up then the 'first senior', namely, the applicant would be entitled to get the stepping up. But this is unreasonable for the following reasons. First of all, even assuming that there is a junior with reference to whom Shri Kokil is entitled to step up his pay, Shri Kokil may not choose to represent for step up. Does it mean that because the first junior Shri Kaimal does not pursue his remedy, therefore, the first senior, namely, the applicant should suffer? This is a most unreasonable condition incorporating an arbitrary element into the OM. Secondly, the respondents themselves have admitted that there is no provision in the Government of India to circulate a seniority list along with pay scales drawn by them. If that is the situation, it is clear that there are limitations to the knowledge which would be available to any employee for making a representation. There is no doubt, that when the department itself does not take steps to promote a better knowledge of opportunities enjoyed by their colleagues working in other stations, an employee must take a chance of knowing about an anomaly from whatever source he can gather and in such a situation he should not be shut out merely

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on the ground that he came to know about the anomaly of stepping up with reference to which he would have been benefited more at a later date. From this point of view also, the conditions imposed in this OM, dated 31-3-1984, are unreasonable. It is not contended that these conditions are part of FR 22-C. Therefore, the OM, dated 31-3-1984, cannot be said to have a greater authority than FR 22-C. We are, therefore, of the view that so long as the applicant is able to show that he is fulfilling the conditions laid down in FR 22-C vis-a-vis an employee giving rise to an anomalous situation, he is entitled to have his pay stepped up for a second time irrespective of whatever is stated in O.M., dated 31.3.1984, so long as the three conditions set out in FR 22-C are fulfilled.

OA is allowed. The respondents are directed to step up the pay of the applicant vis-a-vis Shri Kaimal with effect from 23-4-1987 and give him arrears of pay minus any arrears that might have been drawn by him with reference to Shri Kokil earlier."

6. Accordingly, the respondents' speaking order which had concluded that the decision in ***Shyamalan (supra)*** was not applicable *in rem* but *in personem* does not stand to reason as because the ratio that was enunciated by the Tribunal in its Bombay Bench is that such unreasonable conditions incorporates arbitrary element into the O.M. dated 31.3.1984 in that second stepping up is permitted only with respect to the first junior. The Tribunal also observed that the O.M. dated 31.3.1984 cannot override FR 22-C and conditions contained therein.

We note that the respondents have also relied on the said O.M. of 31.3.1984 which was clarified adequately by the Bombay Bench of this Tribunal.

7. Accordingly, the speaking order dated 27.1.2015 is quashed and set aside.

We would, hereafter, direct the concerned respondent authority to reexamine the representations of the applicant in the light of the ratio propounded by the Bombay Bench of the Central Administrative Tribunal in ***Shyamalan (supra)*** and decide on the last pay payable to the applicant, in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

The decision should be communicated to the applicant in the form of a reasoned and speaking order.

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In the event, that the decision of the respondent authorities is in accordance with the claim preferred by the applicant, the respondent authorities shall take steps to revise the fixation of his pay and also to accord consequent benefits to the applicant within a further period of 12 weeks thereafter.

8. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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