

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**



O.A./350/00503/ 2015

Dated: 18.12.2019



**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

Sri Surjya Kumar Saha,
Son of Late Bihari Lal Saha,
Working as Telephone Mechanic (now retired),
In the office of Sub-Divisional Engineer,
BSNL, Kalindi,
Kolkata – 700 089,
Residing at 41/4, S.L. Chatterjee Street, Nimta,
P.O. & P.S. Nimta,
Kolkata – 700 049.

..... Applicant.

Versus

1. Union of India
Service through the Secretary,
Ministry of Communication &
Information Technology,
Department of Telecommunication,
Sanchar Bhavan, 20, Ashoka Road,
New Delhi – 110 001.
2. Director (H.R), BSNL,
Bharat Sanchar Bhawan, Janpath,
New Delhi – 110 001.
3. Chief General Manager, CTD,
Bharat Sanchar Nigam Limited,
34, B.B.D. Bag, Telephone Bhavan,
Kolkata – 700 001.
4. Deputy General Manager (NWO – Bidhan Nagar),
Block “DE” Salt Lake,
Kolkata – 700 064.
5. Sub-Division Engineer (Staff), BSNL,
Bidhan Nagar, Block – DE,
Kolkata – 700 064.
6. Senior Accounts Officer (Cash),

Bidhan Nagar,
Kolkata – 700 064.

7. Communication Accounts Officer,
8, Hare Street,
Kolkata – 700 001.

..... Respondents.



For the applicant : Mr. B.R. Das, Counsel

For the respondents : Ms. C. Mukherjee, Counsel

ORDER (Oral)

Per : Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:

"8.i) Rescind, recall, withdraw the Order A1 and/or modify/amend the said order in due consideration of Annexure-A5 fixing the pay of the applicant as Telephone Mechanic in scale of pay of Rs. 1320-2040 after promotion on OTBP as Telecom Mechanic w.e.f. 07.11.1990.

ii) Rescind, recall, withdraw and for amend/modify the order being Annexure-A-2 so as to hold the pays drawn as the pays due and quash the recovery as directed for.

iii) Pay all the Pensionary benefit on the basis of the existing LPC indicating the last pay drawn.

iv) Pay an interest on all the arrears and unpaid retiral dues @ 10% p.a. till payments are actually made.

v) Certify that transmit the entire records and papers pertaining to the applicant's case so that after the causes shown thereof conscientable justice may be done unto the applicant by way of grant of reliefs as prayed for in (i) to (iv), above.

vi) Pass such other order/orders and/or direction /directions as to your Lordships may seem fit and proper.

vii) Costs."

2. The facts in a nutshell go thus:

The applicant was appointed as a Wireman in 1974, in the then Indian P & T Department. In the scale of pay of Rs. 825 – 1200 as per 4th CPC and in the Sr. Grade Rs. 950 – 1400 and was allowed to work in an equivalent post as Cable Splicer (previously Cable Jointer) in scale Rs. 975 – 1540 w.e.f. 21.09.1990.

Such posts were in the same cadre with no higher responsibility and none a promotional post of the other.

He was allowed one time bound promotion w.e.f. (OTBP in short) 07.11.1990 as Telecom Mechanic in scale of pay of Rs. 1320 – 2040, revised by 5th CPC to Rs. 4000 – 6000.

He was absorbed in BSNL, a corporate body, w.e.f. 01.10.2000 and allowed IDA scale replacing the CDA scale.

He received second upgradation/promotion by way of BCR from 01.01.2001 in IDA scale of pay of Rs. 6550 – 9325.

The IDA scale was further revised w.e.f. 1.1.2007 and he was allowed a scale of pay of Rs. 7100 – 10,100.

He got his third upgradation/promotion w.e.f 07.11.2007 in scale of pay of Rs. 12,520 – 23,440.

He retired on superannuation w.e.f. 31.3.2012 in the same scale of pay.

After his retirement the authorities came out with an order dated 30.07.2013 purporting to undo his OTBP in pay scale Rs. 1320 – 2040 and instead treat him as promoted by way of OTBP in lower scale of Rs. 950 – 1400 though at the time the petitioner was at Rs. 975 – 1540 and another order revising the pay of the applicant and directing recovery of Rs. 2,64,875 from the retiral dues as pays overdrawn.

Hence the O.A.

3. To refute his claim, the respondents have averred as under:

That the petitioner was appointed a Wireman in 1974 in the scale of Rs. 825 – 1200/- He was promoted to the post of Cable Splicer in scale of Rs. 975 – 1540/- with effect from 21.09.1990.

He was wrongly granted time bound promotion with effect from 07.11.1990 as Telecom Mechanic in scale of Rs. 1320 – 2040/- instead of Rs. 950 – 1400/- vide DGM (Admn.), BSNL CTD letter No. SAP – 3000/- Combine/03/10 dated 1405.2004.

In support, xerox copy of the letter dated 14.05.2004 has been annexed and marked as Annexure R – 1.

The applicant was absorbed in BSNL, with effect from 01.10.2000 and was allowed IDA scale of Rs. 6550 – 9325/-.

This scale was revised with effect from 01.01.2007 to a scale Rs. 7100 – 10,000/- He got 3rd upgradation with effect from 07.11.2007 in scale of Rs. 12,520 – 23,440/-.

He retired on superannuation on 31.03.2012 in same pay scale.

That Com. A.O. (Pension) objected grant of OTBP on 07.11.1990 in the scale of Rs. 1320 – 2040/- instead of Rs. 950 – 1400/- vide letter No. CCA/CTD/P-14052 dated at Calcutta the 30.03.2012. Accordingly BSNL authority accepted the valid objection and issued revised order directing recovery of Rs. 2,64,875/- from retiral benefit which was over drawn.

In support, xerox copy of the letter dated 30.03.2012 was been annexed and marked as Annexed R-2.”

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As per record of the service book the official got OTBP in the scale of C/S i.e. 1320-30-1560-40-2040 on 07.11.1990, while was not in order because the basic cadre of the Ex-official was Wireman OTBP scale is 950 – 1400.

He was absorbed in BSNL as C/S with effect from 01.10.2000 vide No. 27-1/CTD/KOLKATA/01768/2001 dated 14.12.2001.

After being absorbed in BSNL, the IDA pay scale was allowed in Rs. 5700 – 160 – 8100 with effect from 01.10.2000 and 2nd PRC with effect from 01.01.2007 as per Service Book.

That BCR promotion of the petitioner was allowed on 07.11.2000 on the promotional cadre i.e. C/S vide order No. DOT/ND letter No. 27-11/2000-TE-II dated 26.09.2000 it also was not in order.

On 01.01.2007 the 2nd PRC (Pay Review Committee) 68.8% of the petitioner has been made under the scale of Rs. 6550 – 185 – 9325 to 12520 – 23440 and pay fixed Rs. 18840/-.

As per order No. SAP-3000/NEPP/DPC/Order/60 dated 12.07.2013 the 2nd up-gradation was allowed with effect from 07.11.2007 after 7 years from the BCR promotion as per NEPP norms.

As per Service Book the petitioner was appointed was Wireman with effect from 07.11.1974. He was eligible to get OTBP & BCR after 16 and 26 years of continuous service in the basic cadre but in the service book it is noted that he was got C/S promotion on 21.09.1990 and OTBP(C/S) on 07.11.1990 in the scale of Wireman 1320-301560-40-2040 instead of Rs. 950-20-115-EB-25-1400/- in contravention to, DOT HQ letter No. 27-II/2000-II dated 26.09.2000.

OTBP is allowed after 16 years continuous service in the basic cadre with effect from 07.11.1974 or after 16 years from the date of promotion of C/S with effect from 21.09.1990.

The Service Book of the official was sent to Respondent No. 7 to fix pension benefits but the respondent No. 7 gave an objection in the enforcement No. CCA/CTD/P-14052 30-03-12 obj. No. 22 at 2/C (Annexure R-5).

The Service Book of the petitioner has been sent back by the respondent No. 7 through Respondent No. 3 (SDE/St.III/H.Q.) to Respondent No. 5 (SDE/Staff/BDN) on 20.04.2012. After receiving of the same the revised fixation was made and sent to Respondent No. 6 (A.O./Cash/BDN) to take n/a.

Therefore, according to enforcement No. CCA/CTD/P-14052 dated 30.07.2012 the pay of the petitioner has been regulated vide BSNL/CTD memo No. DGM(NWO)/SDE-St-BN/Pension/12-13/72 dated 30.07.2013.

4. The applicant has, by way of rejoinder disputed the facts in the reply. He has averred as under:

"The contention in paragraph 6.2 to the effect that petitioner was wrongly granted promotion under OTBP scheme is vehemently denied. By the order RI issued as far back as in 2000 the petitioner as well as some others allowed such OTBP. The order was at no

point of time recalled till the petitioner retired on superannuation as Telecom Mechanic Gr. IV on 31.12.2012."

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"That the Respondent No. 7 has acted arbitrarily in objecting to grant of the next higher scale as per OTBP scheme framed under authority of DOT vide its order dated 26.09.2000 as referred to in Annexure-RI and admittedly prior to the creation of the BSNL w.e.f 01.10.2000."

"The pay of the petitioner was duly fixed vide Order dated 26.07.2004 issued by the competent authority under the overall authority of the Respondent No. 3 vide Annexure-A5 and RI."

The applicant has further alleged that,

The Order being Annexure-R2 leading to recovery of Rs. 2,64,875 after retirement and without prior notice having been served upon the petitioner is ipso facto bad and unsustainable in law.

He has claimed that,

"The benefits of OTBP allowed to the petitioner was in accordance with the orders of the appointing authority, i.e. DOT" and that "he did not get any undeserved benefit at any point of time and the corporate authority has acted in colourable exercise of jurisdiction to undo the order of his appointing government department allowing him the deserved benefit in accordance with the rules."

Further that, "the order of the DOT dated 26.09.2000 (Annexure-R4) is unequivocal to hold that the cadres of Lineman, Wireman, Sub-Inspector and Cable Splicer are de-facto in the same status for the purpose of their promotion in the next higher grade of Telecom Mechanic (Phone Mechanic) carrying the scale of pay of Rs. 4000 – 6000 according to 5th Central Pay Commission and the deponent is in error of facts as well as law in that the petitioner working in scale of Rs. 950 – 1400 as a cable Splicer could not have been given OTBP in the same scale of pay. It is reiterated that no mistake was committed by the department in allowing him promotion under OTBP vide order issued by the DOT as his appointing authority.

The applicant has contended he "was rightly allowed promotion under the OTBP after 16 years of completion of service in all equivalent posts of Wireman/Sr. Wireman, Cable Jointer/Cable Splicer, the facts remaining that none of the posts are promotional posts of the other and such all posts are infact in the same status albeit with slight variations in scales of pay."

"Reckoned from his OTBP on 07.11.1990 in the appropriate scale of pay of Rs. 1320 – 2040 in his capacity as a Telecom Mechanic the petitioner is entitled to BCR promotion after 16 years i.e., from 07.11.2006 which however was allowed w.e.f. 01.01.2006 under the corporate authority in conformity with the IDA pay scale at the material time and having been retrospectively introduced w.e.f. 01.10.2000."

Further, that "the Respondent No. 7 has not applied his mind and the points in objections raised cannot be taken as the law in this regard leading to an uncalled for recovery from the pensionary benefits in blatant violation of the laws laid down by the Apex Court in Shyam Babu Verma & Ors. –Vs- Union of India and Ors. (1994) 2 SCC P-221 and the State

of Punjab & Ors. -VS- Rafiq Masih (whitewasher) and reported in (2015) 2 SCC (L & S) P-33."

5. From the pleadings and records we infer as under:



(i) An order dated 24.01.2004 (Annexure - 4) records the following:

Sl. No.	Name, Previous & Present Desi & Unit Attached	Scale of pay and pay drawn & DNI (Rs. 975-1540)	Date of Appt. As TM (OTBP) Under FR-22-1-a(I)	Pay fixed in the scale of pay
	Sri Surya Kr. Saha T/M (E, C5) under SDE/LTR/CTD (Sl. No. 107852)	Rs. 1100/- wef 01-11-90 DNI - 01-11-91	07-11-90	Rs. 1320/- wef 7-11-91 Rs. 1350/- wef 1-11-91 Rs. 1380/- wef 1-11-91 Rs. 1410/- wef 1-11-91 Rs. 1440/- wef 1-11-91 Rs. 1470/- wef 1-11-91 Rs. 1500/- wef 1-11-91 wth CPC - 40% H.R.C.C.C. Rs. 1600/- wef 1-11-91 Rs. 1700/- wef 1-11-91 Rs. 1800/- wef 1-11-91 Rs. 1900/- wef 1-11-91 Rs. 2110/- (IDA pay wef 1-10-00) (700-160-8100) Rs. 7300/- wef 1-11-00 Rs. 7475/- wef 1-1-01 (BCR) Rs. 7660/- wef 1-1-02 Rs. 7845/- wef 1-1-03 Rs. 8030/- wef 1-1-04
	(BCR placement wef 01-01-01 and w/o w/o SAP-3000/combined 03/11 dt. 14-05-04)	Rs. 1500-160-8100 Rs. 7300/- wef 01-11-00 DNI - 01-11-01	(BCR) 01-01-01 (FR-22-1-a(I)) (Rs. 6550-185-9325)	

The order suggests that, when the applicant was in the scale of Rs. 975-1540/-, he was allowed OTBP in the scale of Rs. 1320-2040/- after completing 16 years of service from 7.11.74. The reason why the Accounts found him entitled to be granted OTBP in 950-1000/- is not comprehensible.

(ii) An order dated 27.07.2009 (Annexure b) records the following:

Bharat Sanchar Nigam Limited
(A Govt. of India Enterprise)
OFFICE OF THE AREA MANAGER (BIDHAN NAGAR) CTD
BLOCK-DE, SALT LAKE, CAL-64.

No:AM/BN/SMR-5002/Fixn/TM/GR-IV

Dated at Cal-64

the 22-07-2009

Sub: Fixation fo pay on placement to the cadre of Tele-Mechanic Gr-IV (10% bcr)

Consequent upon placement to the cadre of Tele-Mechanic (Gr-IV) vide order No.SAP-3000/TM/BCR/03/12 dt. 01-10-2008 the pay of the following officials are fixed as per order as follows:

Sl.	Name, Desig. & Unit attached	Scale of Pay and pay drawn & DNI (Rs.6550-185-9325/-)	Date of Appt. As Tele-Mech (GR-IV) (7100-200-10100/-) FR-I-a(I)	Pay fixed in the higher scale of pay Rs. 7100-200-10100/- Under GR-22-I-a(I)	DNI
XX	XXX	XXX	XX	XX	XX
XX	XX	XX	XX	XX	XX
3.	SURYA KUMAR SAHA T/M, Under SDE/LTR/CTD Sl. No. 107852	Rs. 8770/- wef 01-01-08 DNI-01-01-09	01-07-08	Rs. 9100/- wef 01-07-08 Rs. 9300/- wef 01.07.09	01-07-10

HR No. 197408504

SDE/Staff
 BSNL CTD
 XXXXX(not legible)"



It is not the contention of the respondents that OTBP was erroneously allowed to the applicant in 1990, as he was already promoted to Cable Slicer in the scale of 975 – 1540/- w.e.f. 21.9.90.

(iii) His PPO or Pension Calculation Sheet demonstrates that his last pay drawn was 20010/-

(iv) It is trite, axiomatic and settled law that the pension cannot be affected without proceedings in accordance with pension rules.

Rule 9 of Pension rules envisage –

9. Right of President to withhold or withdraw pension

1[(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of 2(Rupees Three thousand five hundred) per mensem.]

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

HR No. 197408504

SDE/Staff
 BSNL CTD
 XXXXX(not legible)"



It is not the contention of the respondents that OTBP was erroneously allowed to the applicant in 1990, as he was already promoted to Cable Slicer in the scale of 975 – 1540/- w.e.f. 21.9.90.

- (iii) His PPO or Pension Calculation Sheet demonstrates that his last pay drawn was 20010/-
- (iv) It is trite, axiomatic and settled law that the pension cannot be affected without proceedings in accordance with pension rules.

Rule 9 of Pension rules envisage –

"9. Right of President to withhold or withdraw pension

1[(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of 2(Rupees Three thousand five hundred) per mensem.]

- (2) (a) ***The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :***

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) *The departmental proceedings, if not instituted while the Government servant was in service; whether before his retirement, or during his re-employment, -*

(i) *shall not be instituted save with the sanction of the President,*

(ii) *shall not be in respect of any event which took place more than four years before such institution, and*

(iii) *shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.*

(3) *1 omitted*

(4) *In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned."*

(v) In State of Punjab and Ors-vs-Rafiq Masih (White Washer) etc., Civil Appeal No. 11527 of 2014(arising out of SLP(C) No.11684 of 2012) the Hon'ble Apex Court has summarized the following situations where recovery due to over payment would be impermissible, the situations being as under:

- "(i) *Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) *Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) *Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) *In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

6. In the aforesaid backdrop, the decision of the respondents to meddle with his pension, reducing his last pay, unilaterally, without notice or proceedings etc,

is bad in law. Having held as under we direct the respondents to pay the pension as per last pay already drawn and to refund the arrears with interest @ 8% p.a. within three months from the date of receipt of a copy of this order.

No costs.

(Dr. N. Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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