



**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

O.A. 350/01470/2016



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

Anupam Biswas,
son of Late Gurubar Biswas,
aged about 70 years,
Ex-Executive Engineer,
Indian Telephone Industries Ltd.,
residing at Gowrinilay, Badra (Ghosh Bagan),
P.O Italgacha, P.S-Dum Dum,
Kolkata – 700079.

..... Applicant.

Versus

1. Union of India, through the Secretary to the Government of India, Ministry of Communications & IT, Department of Telecommunications, Sanchar Bhawan, 20 Ashoka Road, New Delhi – 110001.
2. The Secretary to the Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners' Welfare, 3rd Floor, Lok Nayak Bhavan, Khan Market, New Delhi – 110003.
3. The Secretary to the Govt. of India, Department of Personnel & Training, North Block, New Delhi-110001.
4. The Deputy Director General (PG), Department of Telecommunications, Ministry of Communications & IT, Room No. 1210, Sanchar Bhawan, 20 Ashoka Road, New Delhi – 110001.
5. The Managing Director, TATA Communication Ltd. LVSB 13, Kashinath Thurumarg, Prabhadebi, Mumbai – 400028 (erstwhile Overseas Communication Service).
6. The Chief General Manager, Calcutta Telephones, Telephone Bhawan, Kolkata – 700001.
7. The Principal Controller of Communication Accounts, 3rd Floor, 'C' Wing, Juhu Danda, BSNL Admn. Building, Maharashtra Circle, Santacruz (West), Mumbai – 400054.
8. The Accounts Officer, Central Pension Accounts Office, Thirkoot II, Bhikaji Cama Place, New Delhi – 110066.
9. The Chief General Manager, ETR, BSNL, 8th Floor, New Telephone Bhavan, P-10, New CIT Road, Kolkata.

The Principal Controller of Communication Accounts & CPAO,
Calcutta Telephones, Telephone House, 3rd Floor, 8, Hare
Street, Kolkata – 700001.

..... Respondents.



For the applicant : In Person

For the respondents : Ms. P. Goswami, Counsel
Mr. R.N. Pal, Counsel

Reserved on : 04.11.2019

Date of Order : 27.1.2020

ORDER

Per : Bidisha Banerjee, Judicial Member

The applicant has preferred this O.A. to seek the following reliefs:

"8.a) An order holding that the withdrawal of sanction of Pro-rata pension of the applicant is bad in law, arbitrary and cannot be sustained.

b) An order holding that the applicant is entitled to Pro-rata Pension after leaving the job on permanent absorption in ITI Ltd. taking into consideration his initial appointment in Calcutta Telephones, his service under OCS on deputation as well as till the date of absorption in/under ITI Ltd. with arrears of such Pro-rata Pension with interest at the rate as to this Hon'ble Tribunal may seem fit and proper within a period as to this Hon'ble Tribunal may seem fit and proper.

c) An order quashing and/or setting aside the withdrawal of sanction as communicated vide Annexure-A-31 and Annexure A-34 to the original application and further directing the respondents to act in accordance with the earlier decisions vide Annexures A-25, A-26 and A-27 to this Original application.

d) An order directing the respondents to produce/cause production of all relevant records.

e) An order directing the respondents to settle all deposits- GPF CD/Additional Wages & DA, arrear of six advance increments & encashment of leave with interest.

f) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. The admitted facts that emanate from the pleadings are as under:



The applicant was offered temporary post of Engineering Supervisor in Calcutta Telephones (CTD) vide Memo dated 27th November, 1967. He was appointed in Quasi Permanent Capacity in the Grade of Junior Engineer with effect from 18.12.1971. He was relieved from CTD to join Overseas Communication Services (OCS) as Assistant Engineer. He was permitted to retain lien for two years i.e upto 19.08.1977. He joined OCS as temporary Assistant Engineer on 25.08.1975. On his selection as Apprentice Assistant Executive Engineer in ITI Limited, OCS relieved him without mentioning above retention of lien. The applicant then joined ITI as Apprentice AEE. The manner in which the intervening period after his release from OCS (i.e 14.02.1977) till his joining as Apprentice AEE in ITI (ie 28.02.1977) is disputed. He resigned from P&T department by his application dated 06.01.1978 without extension of lien by Calcutta Telephones with whom he had Quasi-Permanent Status. On completion of training, he was appointed as AEE in ITI Limited on regular basis w.e.f 30.03.1978. He resigned from OCS vide application dated 09.08.1978 and on 31.10.1984 he resigned from ITI Limited. He preferred a representation to Department of Telecommunication on 28.12.1999 that of page 29 (R-8).

His representation was duly responded to by DoT by letter dated 03.08.2009 that his lien in OCS was kept for 2 years in lieu of the lien that was kept in Calcutta Telephones. The applicant resigned from the services of the government on his own and for better prospects elsewhere. In these circumstances, it was not feasible to take him back in the services of the Government and to accord him any service related benefits. He preferred further representation dated 12.12.2003 to the DoP&T. An O.M Dated 27.02.2004 was issued by DoP&T. thereafter, a Letter No. 67-Pen(T)/2008 was issued by DoT, directing CCA, C/o. CCA, Mumbai for taking necessary action in that regard. PFP section of DoT in letter, directed to CCA, C/o CCA, Mumbai, depicted the incompleteness of the service period from 15.02.1977 to 31.03.1978 regarding details of payment of leave salary and pension contribution for the period. DoT by its letter, dated 10.05.2010, after re-examination of the case in consultation with Department of Pension and Pensioners Welfare addressed to Principal, o/o CCA, Mumbai revealed that since the lien was not extended by competent authority i.e Calcutta Telephones with whom the officer had quasi permanent status, his lien has to be treated as terminated on 19.08.1977 and as such, the service rendered by the applicant in the Government of India fell short of ten years by three months and thus as per rule he will not be eligible to receive pro-rata pension but he was eligible to receive terminal benefits terminal benefits in terms of (5)(b)(1) of Appendix 7 and G.I.D (3) below rule 2 Swamy Pension Compilation (corrected up to 2007). Further, the leave salary and pension contribution for the period from 14.02.1977 to 19.08.1977 has also not been paid either by the employee or the employer (ITI Ltd.). Therefore, the applicant may be paid terminal benefits as per rule. In case he deposits the leave salary and pension contribution, the terminal benefits may be paid for the period of service rendered upto 19.08.1977 and in case he fails to deposit the same the terminal benefits may be restricted upto 13.02.1977.



Aggrieved, the applicant preferred O.A No. 1351 of 2013, that was disposed of by this Tribunal on 20.11.2015 directing the Respondent No. 6 to reconsider the case of the applicant in the light of its discussions and to communicate the result to the applicant by issuing a speaking order within three months from the date of receipt of copy of its order. Accordingly, the Chief General Manager, Calcutta Telephones passed a speaking order vide No. SLC/5000/765/2014 DATED 22nd February, 2016 rejecting the claim of the applicant. Further aggrieved, the applicant has once again preferred this Original Application No. 350/01470 of 2016.

3. From the admitted facts we further infer as under:

(i) The entire service period of the applicant is under Calcutta Telephones (CTD), Overseas Communication Services (OCS) and Indian Telephone Industry (ITI).

(ii) Admittedly, as per letter dated 6.5.2008 of the ADG(SU-III), DOT,

"He served Calcutta Telephones District (CTD) from 18.12.1967 to 20.08.1975 and to Overseas Communication Services (OCS) from 25.08.1975 to 14.02.1977, finally he switched over to ITI on deputation on his own volition w.e.f. 28-02-1977 due to his R&D interest and where from he severed all the ties/ relations with the Govt. w.e.f. 14.02.1979 (ie. Govt. accepted the resignation of Sh. Biswas w.e.f. 14.02.1979) to take absorption in ITI. Thus combination of deputation period to PSU (ie. ITI) and the period of services in the Govt. Department has exceeded 10 years in respect of Sh. Biswas."

It was found that "Sh. Biswas qualifies for all the retirement benefits as per his entitlement".

Yet he was deprived of his due retirement benefits which constrained him to file O.A. 1351 of 2013.

(iii) The speaking order issued on 22.2.2016 records that,

"he tendered his resignation from OCS after getting absorbed in I.T.I. as Apprentice Asstt. Executive Engineer on his own volition and he was released from OCS w.e.f. 14-02-1977 without any mentioned regarding retention of lien by the officer."

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Services rendered by Sri Biswas in different Govt. units are as follows:

- i) 18-12-1967 to 20-08-1975 - worked in CTD
- ii) 25-8-1975 to 14-02-1977 - worked in OCS
- iii) + remaining part of 2 years lien period w.e.f 20.08.1975 up to 19-08-1977..

So in total his effective days in Govt. service was from 18-12-1967 to 19-08-1977 i.e. 9 years and 8 months which is 120 days short of 10 years the minimum period of service required for Pension.

The date of resignation from Govt. Service of Sri Biswas would not be correct to take as 14.02.1979 as erroneously mentioned by ADG(SU-III)/DOT vide his letter no 67-Pen(T)/2008 dt. 06.05.08 which was

subsequently withdrawn and corrected to 19-08-1977 by DOT vide its order no. 31-4/2002-OC dated 10.05.2010.

So the date of resignation be taken as 20/08/1977 forenoon as per his letter no. Nil dated 6th January, 1979 addressed to Chief General Manager, Calcutta Telephones."



He was according to the respondents paid "paid terminal benefits as per rule" with a rider "In case Sri Anupam Biswas deposits the leave salary & pension contribution for the period from 14/02/77 to 19/08/77, terminal benefit may be paid for the period of service rendered up to 19/08/77 and in case he fails to deposit the same, the terminal benefit may be restricted to period up to 13/02/77 as ordered by Under Secretary/SR vide his letter no. 31-4/2002-OC dtd. 10/5/2010".

(iv) The respondents have failed to show that the letter dated 6.5.2008 (supra) was ever withdrawn as alleged in the speaking order.

(v) A letter dated 8.9.78 records the following:

" INDIAN POSTS AND TELEGRAPHS DEPARTMENT

From:
C/o. The General Manager,
Calcutta Telephones,
8, Bentinck Street,
Taher Mansion (3rd floor),
Calcutta - 700001.

To
Shri Anupam Biswas,
Assistant Executive Engineer,
R&D Transmission (Power Group)
M/S. I.T.I., Bangalore,
P.O. Dooravani Nagar
Bangalore -560016.

No. SPE-2948 Dated at Calcutta - 700001, the 8.9.78

Sub:-Resignation.

Ref:-Your letter dated 12-8-78.

With reference to your above-quoted letter, you are hereby intimated that payment of your outstanding dues from the Govt. will be processed only after your resignation is accepted by this department. Your resignation cannot be accepted until Leave salary and pension contribution for the period from 15-277 F/N to 19-8-77 (A/N) is paid either by your New employer, or by yourself under the instructions contained in Ministry of Home Affairs office Memo No. 70/62/62 Est (A) dt. 22-1-66. In this connection it may be pointed out that M/S. I.T.I Ltd. under their letter No. ASP.322R(43) dt. 16-8-78 has intimated that it would not be possible for them to pay these contributions in respect of you. The Said contribution is, therefore, payable by you.

The amount of the contribution payable by you will be intimated by the AD(TA), Calcutta Telephones, direct to you.

In order to facilitate early acceptance of your resignation and settlement of your dues, you are requested to make payment of the Leave salary and pension contribution as soon as the same is intimated to you.

In reply to para 4 of your above-quoted letter, you are intimated that you were a Q.P official of this department and not yet confirmed.

Sd/-
(A.N. Ukil)
For General Manager,

Calcutta Telephones."

The letter reveals that the applicant was not treated as resigned even until 8.9.1978.



4. Rule 88 of CCS (Pension) Rules enjoin the "Power to relax". It lays down –

"88. Power to relax

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, the Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:

Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms."

5. We note that the total period of service of the applicant rendered in CTD and OCS is not yet decided as the date of resignation from OCS has also not been fixed as yet. Further Rule 49(3) of CCS Pension Rule stipulates that –

"(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service."

The Swamy's Handbook 46th Edition, 2020 clarifies the entitlement as under:

"8. Rounding off. – Qualifying service for pension/ gratuity is calculated and expressed in completed half-years. Fractions equal to three months and above shall be treated as one half-year. Fraction of less than 3 months will be ignored, 3.g. –

Period of Service			Six-monthly periods	Period of Service			Six-monthly periods
Years	Months	Days		Years	Months	Days	
9	8	29	19	9	9	00	20
19	8	20	39	19	9	00	40
24	7	15	49	24	10	00	50
32	5	25	65	32	9	00	66

Rule 49 (3)"

In view of the above the entitlement to pension occurs upon completion of 9 years 9 months service and not necessarily on completion of 10 years only.

In the present case we note that the applicant completed 9 years 8 months and therefore the short fall was 1 month only. Rule 88, ibid may straightway come to his aid to relax any of the condition to remove hardship to the employee.



Under such circumstances it would not be proper to hold that his Govt. service continued only upto 19.8.77 and he failed to complete 10 years to earn pension. The applicant ought not to be deprived of pension merely because of an alleged shortfall of 30 days to complete qualifying service reckonable for pension which makes him ineligible to earn pension despite petting in service of more than 9 years 8 months.

6. The respondents should therefore reconsider his case for grant of pension and other retirement benefits and issue appropriate order within 3 months, relaxing any condition that is required and can be relaxed in accordance with the rules, particularly with reference to Rule 88 (supra).

O.A. accordingly stands disposed of. No costs.

(Dr. N. Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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