

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

O.A. No. 260/00719 OF 2015

CORAM:

THE HON'BLE MR. A.MUKHOPADHAYA, MEMBER(ADMN.)
THE HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)

Shri Pradipta Kumar Mohanty, aged about 67 years, S/o. Late Chaturbhuj Mohanty, retired SDE (Trunks), Telephone Bhawan, under GMTD, Bhubaneswar and presently residing at A/18 (Shop cum residence), Ruchika Market, Baramunda, Bhubaneswar-751003.

SUBSTITUTED VIDE ORDER DATED 17/07/2019

1. Smt. Jyotsna Mohanty, wife of late Pradipta Kumar Mohanty,
2. Sudipta Mohanty, Son of Late Pradipta Kumar Mohanty.
3. Smt. Shivani Mohanty, daughter of Late Pradipta Kumar Mohanty.

At-H-98, Dharma Vihar Housing Board Colony,
Jagamara, Bhubaneswar-751 030.

.....Applicant
Through Legal practitioner :M/s. S.K.Ojha, S.K.Nayak, Counsel

-Versus-

1. Union of India represented through Secretary, Government of India, Ministry of Communications & Information Technology, Department of Telecommunications, 421, Sanchar Bhawan, 20-Ashoka Road, New Delhi-110 001.
2. The Member (Services) Telecom Commission, Department of Telecommunications, West Block, No.1, Wing No.2, Ground Floor, R.K.Puram, New Delhi-110 066.
3. Chief General Manager, Eastern Telecom Project, Bharat Sanchar Nigam Limited, Kolkata-700 027.
4. Director (VA), Govt. of India, Ministry of Communications & Information Technology, Department of Telecommunications, (Vigilance Wing), 112, Sanchar Bhawan, 20-Ashoka Road, New Delhi-110 001.
5. Deputy General Manager, Telecom Microwave Project, Plot No.82, Sahid Nagar, Bhubaneswar-751 007.
6. Addl. General Manager, Microwave Project, IIIrd Floor, CPMG Building, PMG Square, Bhubaneswar-751 001.

.....Respondents
Through Legal practitioner :Mr.S.B.Das, Counsel

Order pronounced on : 08.04.2021

O R D E R

(Oral)

MR.SWARUP KUMAR MISHRA, MEMJBER (JUDL.)

Impugning and challenging the order No. 9-75/99-VIG-I dated 26/03/2015 in which prayer for grant of pay and allowances for the suspension period from 09/12/1999 to 31/10/2003 was rejected, Applicant, Pradipta Kumar Mohanty retired SDE (Trunks), BSNL has filed this Original Application under section 19 of the A.T. Act, 1985 seeking the following reliefs:

- “(i) To admit this OA and call for the records;
- (ii) To quash office order under Annexure-A/7 series holding that the same is illegal and arbitrary and due to non application of mind;
- (iii) To direct the Respondents to extend the benefits of pay and allowances for the period from 09.12.1999 to 30.10.2003 of the applicant by treating the period as duty for all purpose.
- (iv) To direct the Respondents to revise the pension/provisional pension and pay him retrospectively;
- (v) And/or pass any other order/orders as deemed fit and proper.”

2. Respondents filed their counter in which it has been stated that on the allegation of possession of disproportion criminal case bearing No. RC 18(A)/99 was registered by CBI and consequent upon the applicant, Pradipta Kumar Mohanty, was arrested and kept under judicial custody for more than 48 hours. As such, he was placed under deemed suspension with effect from 09.09.1999. The order of suspension was revoked from 18.09.2003 and he was resumed to duty from 27.11.2003. Since his deemed suspension was due to institution and pendency of CBI case, his request for release of pay and allowances from 09.12.1999 to 30.10.2003 was considered and rejected which cannot be faulted with.

3. During the pendency this OA, the Applicant Pradipta Kumar Mohanty died on 14.09.2018 and his widow, son and daughter were allowed to be substituted vide order dated 17/07/2019.

4. Heard Mr. S.K.Ojha, Learned Counsel for the Applicants, Ms.S.B.Das, Learned Counsel appearing for the Government of India and Mr. S.B.Jena, learned Counsel appearing for BSNL and perused the records.

5. Learned Counsel appearing for the Respondents has submitted that the Applicants who are the legal heirs of the deceased government servant are not entitled to claim any benefit as the employee concerned died in the meantime. It is seen that after hearing the learned counsel for both sides the substitution petition was allowed vide order dated 17.7.2019. There is also no material to show that there was intentional and deliberate delay on the part of the legal heirs to approach this Bench claiming outstanding dues of the deceased employee. Thus, the legal representatives cannot be put to any disadvantage position to claim the relief in question.

6. Learned Counsel for the Applicants submitted that the employee concerned was arrested and on 09.09.1999 and on 26.11.1999 he was released on bail. He was placed under deemed suspension with effect from 09.09.1999. As per extant rules the order of suspension should have been reviewed by the authority concerned within three months from the date the employee concerned was placed under suspension/deemed suspension which has not done by the Respondent-BSNL. His order of order of suspension was revoked after eight months i.e. on 18.09.2003 (Annexure-A/2). The employee concerned retired from service in the year 2008. It has been contended that consequent upon death of the employee concerned, the CBI case instituted against him has been abated

on 07.08.2019. It has been contended that since nonpayment of the pay and allowance during the period from 09.12.1999 to 30.10.2003 was due to pendency of CBI case and CBI case having been closed after the death of the employee concerned, his legal heirs are entitled to the pay and allowance for the period from 09.12.1999 to 30.10.2003 which otherwise entitled to by the employee concerned, after the closure of the CBI case., had he been survived. Learned Counsel for the Applicant has fairly submitted that pay and allowance to the extent of 50% had been paid to the deceased employee towards Subsistence Allowance during the period of his suspension and, therefore, the legal heirs are entitled to the rest pay and allowances for the aforesaid period after deduction of 50% amount already paid to the employee concerned towards subsistence allowance.

7. From the impugned order as also stand in the counter it is clear that suspension was due to arrest of the death employee consequent upon institution of CBI case against him and after his reinstatement he could not be paid the pay and allowance for the period of suspension due to pendency of CBI case. As in the meantime the CBI case was abated due to the death of the employee concerned, the order of suspension has become invalid. The suspension of the deceased having not been reviewed within a period of three months as per extant rules, he was entitled to full salary after completion of 3 months from the date of his suspension/deemed suspension. It is ascertained that deceased employee has already been 50% pay allowance towards subsistence allowance with effect from 16.06.2000. Thus, the deceased employee was entitled to balance amount after deduction of the amount already paid towards SA. Hence the impugned order of rejection dated 26/03/2015 under Annexure-A/7 is quashed. The Respondents/Competent Authority are directed to take step for disbursement of

the pay and allowance of the deceased employee for the period of suspension commencing after completion of three months from 09.09.1999 (after deducting the amount already paid towards Subsistence Allowance to the deceased employee) to the legal heirs within a period of three months from the date of receipt of a copy of this order and communicate the detailed breakup of the payment to the legal heirs of the deceased employee within the said period.

8. With the aforesaid observation and direction this O.A. stands disposed of.
No costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDICAL)

(A.MUKHOPADHAYA)
MEMBER (ADMN.)

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