

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

T.A. No.1/2014

Reserved on:14.07.2021
Pronounced on:19.07.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Smt. Radharani wife of Late Shri K.C.Verma S/o Shri Ram Chandra Verma, aged about 67 years, R/o 2/182, Shikari Pada, Munshi Bazar, Alwar (Rajasthan).

...Applicant.

(By Advocate: Shri Anupam Agarwal)

Versus

1. Union of India through its Secretary, Ministry of Telecommunication, Government of India, Sanchar Bhawan, New Delhi.
2. B.S.N.L. through its Chairman-cum-Managing Director, Sanchar Bhawan, New Delhi.
3. General Manager Telecom District, O/o General Manager Telecom District, BSNL, Door Sanchar Bhawan, Moti Doongari, Alwar.
4. Controller of Communication Accounts, Department of Telecommunication, BSNL, Government of India, Jhalana Institutional Area, Jaipur.

...Respondents.

(By Advocate: Shri Anand Sharma for R-1 & R-4 and
Shri T.P.Sharma for R-2 & R-3)

ORDER

Per: Dinesh Sharma, Member (A):

In this case, the applicant (now represented by his legal representatives after his death in the year 2011) had prayed, in a case (SB Civil W.P. No. 648/2005) filed before

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the Hon'ble Rajasthan High Court at Jaipur, for quashing the impugned orders(dated 27.11.2003 (Annexure-13) and 17.08.2004 (Annexure-18) and for consequential benefits. By these impugned orders, an earlier order dated 03.06.2003 (Annexure-7) of the respondents, stepping up the applicant's pay, to bring it at par with his junior, one Shri Mohan Lal Sharma, was set aside. The amount allegedly paid in excess was adjusted while releasing the retiral benefits of the applicant. The applicant has prayed for refund of this difference in amount (Rs.18,940) along with interest @ 24%.The applicant has also prayed for re-fixing his pay and pension as per the earlier order dated 03.06.2003 stating that the stepping up was in accordance with rules. A downward revision of pay and pension, which is not supported by rules and which has been done without giving the applicant any opportunity to represent against such revision, is illegal and hence the prayer.

2. In the reply filed before the Hon'ble Rajasthan High Court, the respondents denied the claim of the applicant. It is stated that the due to instructions from DOT Cell N.RDOT/8-2/KCV-875/03-04/28 dated 15.10.2003, the case of the petitioner was rechecked and it was found that the case was not related to stepping up of pay but it is related to anomaly of pay due to conversion of pay from CDA to IDA

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pay scale. The order dated 03.06.2003 (stepping up his pay) was, therefore, cancelled and overpayments already made adjusted.

3. The applicant, in the rejoinder filed before the Hon'ble Rajasthan High Court, stated that the anomaly and stepping up are "twin sisters" (meaning may be two sides of the same coin). When anomaly arises stepping up is necessary.

4. The applicant died in the year 2011 and the request of his legal representatives, to be brought on record in his place, was accepted by the Hon'ble Rajasthan High Court by their order dated 28.08.2012.

5. Since the respondent BSNL came under the purview of this Tribunal by Notification dated 31.01.2008, the case came to be transferred to this Tribunal, by orders of the Hon'ble Rajasthan High Court dated 06.02.2014, and was titled TA 291/00001/2014.

6. Another reply to the TA has been filed by Respondents No 1 and 4 (the DoT, GoI). It denies the claim of the applicant. Annexing the relevant Rule (Annexure R/9), it states that the applicant and the junior Shri Mohan Lal Sharma were drawing pays in different IDA pay scales

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(8570-245-12245 and 7800-225-11175 respectively) from 01.01.2000. Since the pay scales of these officials were not identical, the conditions relating to the rule of stepping up (FR 22(I) (a) (i)) were not fulfilled. The reply also states that Shri K.C.Verma was BSNL absorbed employee and the seniority/promotion and personal matters of him are under the domain and authority of BSNL alone.

7. The matter was heard through video conferencing on 14.07.2021. The learned counsel for the applicant argued that there was denial of natural justice in revising the pay of the applicant downwards without hearing him. Besides this, there was substantive merit in the applicant's case. Shri Mohan Lal Sharma was Junior to the applicant. He was recruited later, promoted later, was also drawing lower salary in the lower scale till the year 2000. Both the applicant and Shri Mohan Lal Sharma were absorbed in the BSNL and were working as CTS. Hence, when it was discovered that Shri Mohan Lal Sharma's pay was fixed higher, the respondent BSNL corrected it by their stepping up order dated 03.06.2003. The respondents have not denied any of these facts. The purpose of the stepping up rule is precisely to correct an anomaly of this type, whatever may have been the reason. The learned counsel also pointed out the incongruence in the reply to the TA filed by the GoI

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in which they have accepted having directed the BSNL to correct the pay fixation but have disowned any responsibility for any action stating that the matters of absorbed employees of BSNL are entirely within the domain of the BSNL.

8. The learned counsels of the BSNL and the GoI repeated the assertions made in their respective replies.

9. After going through the pleadings and hearing the arguments, it is clear that the decision in this case depends on interpretation of the rule regarding stepping up. This rule, produced by the applicant at Annexure-8 of the OA is reproduced here:-

"3. Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior. In order to remove the anomaly of a Government servant promoted or appointed to a higher post drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

(a) Both the junior and senior officers should belong to the same cadre and the post in which they have been promoted or appointed should be identical and in the same cadre;

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- (b) The scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of the rule. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.”

10. The respondents have cited GIO 18 FR 22(I) (a) (i) (Annexure R/9) to support their contention denying the applicant's claim. To avoid clutter, we are not reproducing that Annexure (R-9) here since it is, more or less, a repetition of what is quoted above, mutatis mutandis, w.r.t to pays fixed as per later pay revision.

11. The fact that both the applicant and shri Mohan Lal Sharma were drawing salaries in different pay scales, is not denied by either party. The rules regarding pay and allowances and other financial benefit to be paid out of the exchequer (or for that matter, from the coffers of a public enterprise) have to be read and interpreted strictly. If the rules restrict a benefit and make it subject to some conditions, we cannot ignore these and give our own meaning to these conditions. The rule quoted by the

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applicant and also by the respondents clearly states that the scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical. For whatever reason, these are not identical in the present case. Neither the applicant, nor the respondents have been able to explain why it is so. Here we have a rule requiring strict interpretation. It clearly provides for its application only when some conditions are fulfilled. We know that that one of those conditions is not fulfilled. In such a situation, we cannot direct applying that rule only because the reason behind non-fulfilment of that condition is not explained.

12. The argument regarding denial of natural justice has some weight of judicial pronouncements (not specifically cited) in its favour. We find that the order stepping up the pay and correcting that stepping up were all issued within the same year (year 2003, within six months of each other). Though the applicant was not heard before the downward revision, he had sufficient opportunity since then to object and represent against it. He had accepted the revised retiral benefits, though under protest. Since we do not find the impugned orders (orders cancelling the earlier stepping up order and the communication following his representation) against the rules, such correction, even though done without

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prior hearing the applicant, cannot be struck down on ground of it being violative of rules of natural justice.

13. For the reasons mentioned in the above paragraphs, the T.A. is not allowed. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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