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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

O.A.No.685 of 2005

Thursday, this the 22nd day of November, 2007

CORAM:

**HON'BLE DR K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR TARSEM LAL, ADMINISTRATIVE MEMBER**

Pradipta Kumar Mohanty,
Aged about 57 years,
S/o late Chatrubhuja Mohanty,
Sub Divisional Engineer, Telecom,
Microwave Project,
Bhubaneswar. : Applicant

(By Advocate M/s Ganeshwar Rath, S Mishra, T.K.Prahraj, S.Rath, S.N.Mishra)

v.

1. Union of India represented by
the Secretary,
Department of Telecommunication,
Sanchar Bhavan,
New Delhi-110 001.
2. Member (Services),
Department of Telecommunication,
Government of India,
Sanhar Bhavan, Ashoka Road,
New Delhi-1. : Respondents

(By Advocate Mr Shashi Bhusan Jena, ACGSC)

ORDER
HON'BLE DR K.B.S.RAJAN, JUDICIAL MEMBER

The applicant was appointed as Engineering Supervisor Telegraphs (EST)

(renamed as Junior Telecom Officer(JTO)) in the department of
Telecommunication with effect from May 1973 and was promoted as Assistant

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Engineer on ad hoc basis with effect from September 1990. He was promoted on regular basis as Assistant Engineer (now Sub Divisional Engineer) with effect from January 1991. The applicant was placed under deemed suspension with effect from 9.9.1999 vide DOT order dated 4.11.1999. The Department of Telecom Operations (DTO) and the Department of Telecom Services (DTS) were corporatised with effect from 1.10.2000 as Bharat Sanchar Nigam Limited (BSNL). The employees of DTS and DOT were transferred to BSNL on deemed deputation without any deputation allowance. Options were called for vide Annexure A-1 from amongst the deemed deputationists of Sub Divisional Engineers working in BSNL for permanent absorption and the applicant submitted his option for absorption in BSNL vide Annexure-A2. The applicant was not absorbed in BSNL inspite of the applicant ^{having} ~~having~~ exercised option. It is deemed that his case was rejected by the DOT because of pendency of criminal case as well as disciplinary proceeding against him. The DOT vide their Annexure-A4 letter dated 8.4.2004 clarified that "*the employees who have been awarded the punishment of removal/dismissal/compulsory retirement from service, there is no question of issue of P.O.s (presidential orders of transfer to BSNL). The officers who have been awarded punishment other than that of punishment of removal / dismissal/compulsory retirement from service will be absorbed in BSNL w.e.f. 1.10.2000. However these officers will have to undergo punishment awarded to them while functioning in BSNL.*" The applicant citing this reference of the DOT submitted a representation on 25.10.2004. From Annexure-A4 it is evident that pendency of any disciplinary proceeding against the Government employee is no bar for absorption in BSNL. The BSNL revised the pay of its employees from CDA pattern (Government scale of pay) to IDA pattern and the pay scale of SDEs was revised from Rs.7450-225-115-- (CDA pattern scale) to Rs.11875-17250 (IDA Pattern scale of pay for the SDEs) retrospectively with effect

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from 1.10.2000 onwards. The Government of India without inviting any option from the applicant ordered for his deemed deputation to BSNL without any deputation allowance for which the applicant has no grievance. But without giving deputation allowance in the post where he is working and the post where BSNL employees are working there is non parity in the scale of pay of the applicant with that of the BSNL employees even though they are having same ^{vide} qualification and performing same work. ^{vide} Rule 4.1 of Appendix 5 to the FRs and SRs a government employee appointed on deputation/foreign service may elect to draw either the pay in the scale of deputation/foreign service post or his basic pay in his parent cadre plus deputation allowance thereon. When the BSNL revised the scale of pay of its employees the Government of India, Department of Telecom should have issued instructions to BSNL for regulating the pay of deputationists as per the FRs. The applicant in his representation dated 15.10.2004 (Annexure A6) submitted that, he being a DOT employee, is working in BSNL on deemed deputation and a person on deputation (even on deemed deputation) is entitled for salary either at his pay in the parent department or in the scale of pay applicable in the organisation where he is working on deputation basis. Disciplinary proceeding was initiated against the applicant ^{vide} CGM, ETP Circle Calcutta ^{vide} Memo dated 10.12.2002. After completion of this disciplinary proceeding another proceeding was initiated ^{vide} order dated 23.10.2003 and is under investigation. He, therefore, prays that a direction may be issued to the respondents to issue presidential orders of transfer for permanent absorption in BSNL with effect from 1.10.2000 onwards as per the policy of the DOT and to allow the applicant to draw IDA pattern scale of pay from 27.10.2003 onwards.

2. The respondents have filed a counter. According to them, the applicant

was arrested by CBI and detained for a period exceeding 48 hours on serious charge of corruption and moral turpitude. BSNL vide letter dated 2.9.2003 called option for absorption of the Group B officers in BSNL. The last date was 20.10.2003 i.e. after the last date of submission of option. Further, the departmental proceeding and the criminal case filed by the CBI have not been finalised. Hence the BSNL cannot absorb any officer accused of serious charges of corruption and moral turpitude. The applicant has misinterpreted the clarification given by the DOT, New Delhi vide order dated 8.4.2004. The clarification given is with regard to such officers in respect of whom disciplinary/criminal cases are over and punishment is awarded. In the case of the applicant, neither the criminal case filed by CBI nor the departmental proceedings are over and punishment awarded. The suspension of the applicant had been revoked pending finalisation of the criminal case. The clarification given is not relevant to the case in hand. Respondents submit that in case of deemed deputation, no deputation allowance is admissible. Applicant's pay and allowances are as per CDA scales as he has not been absorbed in the BSL. Group B officers who have been absorbed in the BSNL are given IDA pay scales and those whose options have not been accepted are continuing in the CDA scale. The applicant has not got a case for getting IDA pattern of pay and allowances. In a disciplinary proceeding vide memo dated 10.12.2002 the proceeding has been completed and the applicant has been awarded the penalty of reduction of one stage increment for six months without cumulative effect. Being devoid of merit, the Original Application is liable to be dismissed, contend the respondents.

3. Counsel for the applicants submitted that when initially there was no difference in pay scale between those serving in DOT and those on deputation in

BSNL, there was justification in maintaining the same pay scale. However, when the BSNL revised its pay scale and afforded the said revised pay scale to those who are absorbed therein but deny the said revised pay scale to the deputationists, the same is a clear discrimination and is violative of Art. 14 and 16 of the Constitution of India. It has also been argued that the subject matter was the main issue in the case of *Mrs. Jayanthi Kannan and others vs Union of India and others* (OA No. 181/05 of the Madras Bench). In the said OA the claim of the applicants therein, as reflected in the first para of order dated 01-12-2005 is as under:-

"To direct the respondents to permit the applicants herein to exercise their option for fixation of their pay in the post of JAO in BSNL as per the provisions contained in Appendix V of the FRST and upon such exercise of option, refix the pay of the applicants in the IDA scales of pay as introduced by BSNL for its post of Junior Accounts Officer with effect from 1.10.2000 and also revise other benefits payable to the applicants such as Productivity Linked Bonus etc., and further disburse to the applicants the consequential arrears of pay and allowances and other benefits such as Productivity Linked Bonus etc, upon such refixation and pass such further or other orders as may be deemed fit and proper."

The Tribunal set out as one of the points for consideration, "whether the applicants being deputationists are eligible to draw IDA pay scale which according to the respondents is applicable only to their own viz. BSNL employees who have become employees on the basis of exercising their option for absorption or who have joined the BSNL on direct recruitment".

4. Dealing with the above, the Tribunal has held, vide para 9 and 10 of the order, "Appendix V of the FR deals with deputation of Central Government employees to ex-cadre posts in Central/State Governments and on fo-reign service terms. Clause v of the OM issued by the DOP&T on 5.1.1994 deals with

pay fixation. Sub Clause 5(1)(ii)(b) of the FR stipulates the procedure to be followed when appointment is made to the post whose pay structure and DA pattern is dissimilar to that in the parent organization. Sub clause 5(1)(iii) of the FR stipulates that the pay fixed under normal Rules shall neither be less than the minimum of the scale of the ex cadre post nor shall it exceed the maximum of that scale. From the above, it is clear that where the pay structure and DA pattern is dissimilar, the pay fixation has to be regulated in terms of sub clause 5 (1)(ii)(b) subject to the condition that the pay so fixed is not less than the minimum of the scale of ex-cadre posts nor he/she had exceeded the maximum of the pay scale. When the IDA scale introduced with effect from 1.10.2000 became the scale for JAOs in the BSNL, the pay of the officials who were on deputation whether deemed or otherwise, will have to be regulated in terms of instructions contained in clause (v) of Appendix V. In our considered view, the stand taken by the Department is not sustainable and the IDA scale being introduced due to a decision of the Department retrospectively from the date of creation of the said organization, instruction in FR allowing the benefits of option to the employees, the same will have to be considered and allowed to the applicants in the OA."

5. The above decision was taken up before the High Court by the Respondents and the Hon'ble High Court in para 15 as under:-

Besides, when the pay structure and the DA pattern are dissimilar to that of the parent organization and the pay fixation has to be regulated in terms of Sub Clause V(1)(ii)(b) of the FR subject to the condition that the pay fixed under normal Rules shall neither be less than the minimum of the scale of the ex cadre post nor shall it exceed the maximum of that scale. When the IDA scale introduced with effect from 01-10-2000, for the post of JAO in the BSNL, the pay of the Deputation whether deemed or otherwise will have to be regulated in terms of instructions contained in clause (v) of the Appendix V.

6. The above being the decision of the Coordinate Bench, as upheld by the Hon'ble High Court, we are in respectful agreement with the same. As such, so far as a deputationist, the applicant is entitled to the IDA pattern pay scale during the period of deputation from the date others who have been absorbed in BSNL have been granted such IDA pattern scale.

7. Next is about the entitlement of the applicant to be absorbed in BSNL. True, there has been some delay in the applicant's exercising the option, which, according to us, was beyond his control. But if the BSNL feels that the applicant who is facing criminal proceedings be not absorbed till finalization of the case, the decision cannot be held as unjustified. Thus, for a valid reason, the applicant's absorption in BSNL has not been considered. It is only when the criminal case is over and the applicant is not subjected to any conviction, the BSNL could consider his application for absorption. Till then, the applicant would only continue as deputationist. Of course, in pay parity, there being no difference, the applicant cannot have any grievance on the score of his non absorption.

8. The OA, thus, is allowed to the extent that it is declared that the applicant is entitled to IDA pay scale during the period of his deemed deputation from the dates others who have been absorbed have been granted the IDA pattern pay scale and it is for the BSNL to arrive at a decision about the applicant's absorption at an appropriate time. Respondents are directed to cause instructions issued to the authorities concerned to pass suitable orders relating the fixation of pay of the applicant on the IDA pattern as indicated above. This drill shall be performed within a period of three months from the date of receipt of this order. If for any reason the time calendared be not

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adhered to, before the expiry of the time prescribed, the respondents may file misc. Application seeking extension of time, giving the details of action till then taken and the action yet to be taken and time limit for completion of action in complying with the orders.

9. No costs.

(Dated, the 22nd of November, 2007)

Tarsem Lal
TARSEM LAL
ADMINISTRATIVE MEMBER

DR K.B.S.Rajan
DR K.B.S.RAJAN
JUDICIAL MEMBER