

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.181/2015_
this the 6th day of Dec. , 2016

CORAM

HON'BLE SHRI R.C.MISRA, MEMBER(A)
HON'BLE SHRI S.K.PATTNAIK, MEMBER (J)

Niranjan Jena aged about 58 years S/o Late Shri Padma Lochan Jena, Ex.Sr. Section Supervisor, Office of the SDO (Phones), Bhadrak, BSNL, Sub Division Bhadrak and resident of Kalyan Nagar, Balasore, PO/Dist. – Balasore-01. ...Applicant

By the Advocate : Mr.S.Barik

-VERSUS-

1-Union of India represented by the Secretary, Department of Telecommunication, Ministry of Communication & IT, Sanchar Bhawan, 20, Ashoka Road, New Delhi- 110001.

2-The Controller of Communication Accounts, Orissa Telecom Circle, CPMG Building, At/PO – PMG Square, Bhubaneswar.

3-The Chief General Manager, Bharat Sanchar Nigam Limited, Orissa Circle, CPMG Building, Bhubaneswar – 01.

4-The General Manager Telecom District, Bharat Sanchar Nigam Limited, Balasore – 01. ...Respondents

By the Advocates :Mr.A.Pradhan & Mr.K.C.Kanungo

O R D E R

PER R.C.MISRA, MEMBER(A) :

The applicant was working as Senior Section Supervisor in the office of SDO (Phones), Bhadrak, BSNL Sub division in the State of Odisha. He has approached the Tribunal, seeking the following reliefs :

“(i)To direct the Respondent No. 2 to issue authority for payment of pension and other pensionary benefits to the applicant w.e.f. 11.02.2009 onwards in accordance with law i.e. as per Department of Telecom O.M. No. 318-12/2008-Pen(T) dated 21.07.2009 (Annexure A/5) read with Rule 43 of BSNL CDA Rules, 2006 as well as sub-rule 24(C) of Rule 37-A of Pension Rules and extant guidelines.

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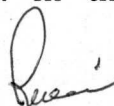
(ii) To quash letter dated 06.12.2012 under Annexure-A/11 and rejection order dated 23.10.2013 under Annexure - A/14 of the Respondent No. 2 being bad in law.

(iii) To direct the Respondent No. 2 to make payment of consequential arrears of pension and other retiral benefits including leave encashment of the applicant along with interest @9% per annum from the date of retirement of the applicant till the actual date of payment.


(iv) To issue any other order or orders, direction or directions as it deems fit and proper in the interest of justice, equity and fair play for the benefits of the applicant.

(v) To order and direct that the cost of litigation be paid to the applicant by the Respondent No. 2 for unnecessarily dragging the applicant into this unwarranted, unnecessary and avoidable litigation in spite of specific orders, extant rules and guidelines."

2. The brief facts of this O.A. are that applicant was working as Senior Section Supervisor in the Department of Telecom. After the Corporatisation² of telecom services and telecom operations, and formation of BSNL on 01.10.2000, the applicant was permanently absorbed in BSNL by virtue of a Presidential Order dated 01.02.2002 in accordance with the provision of Rule 37-A of the CCS (Pension) Rules w. e. f. 01.10.2000. The applicant was implicated in a trap laid by the CBI and was taken into custody on 23.03.2003. He was charge-sheeted under Section 7 of the Prevention of Corruption Act, and since he was taken into custody, he was under deemed suspension from 23.03.2003. After adjudication of the Criminal Case, i. e. T.R. No. 11 of 2003 against the applicant in the Court of the Special Judge, CBI, Bhubaneswar, he was convicted in a judgment dated 14.07.2008. The Court found him guilty of the charges under Section 7 of the Prevention of Corruption Act, and sentenced him to undergo RI for two years with a Fine of Rs. 1,000/-. This order of the Special Judge was appealed against in the Hon'ble High Court of Odisha, who suspended the punishment and admitted the criminal appeal for adjudication. In the meantime, based upon the



conviction by the Special Judge, CBI, the applicant was removed from service w.e.f. 10.02.2009. A copy of the order of removal dated 10.02.2009 is appended to this O.A. at Annexure A/4. In this context, it is urged by the applicant that according to provision of Sub Rule 24 (c) under Rule 37-A of the CCS(Pension) Rules, 1972, the dismissal or removal of an employee of a Public Sector Undertaking after his absorption, and for any subsequent misconduct, will not amount to forfeiture of retirement benefits for the service rendered under the Government. The decision of removal or dismissal by the public sector undertaking shall be subject to review by the concerned Administrative Ministry. The Department of Telecom by a letter dated 21.07.2009 addressed to the Chairman & Managing Director (CMD), BSNL communicated that if an absorbed employee of BSNL is dismissed or removed from service for any misconduct during service in BSNL, he will be entitled to receive pensionary benefits for the service rendered under the Government, which will be admissible from the day following the date of dismissal or removal from BSNL. Accordingly, the BSNL sent a proposal to the Ministry of Communications and the Ministry vide an order dated 14.01.2009 accepted the proposed penalty of removal, thus completing the review prescribed under Sub Rule 24 (c) of Rule 37-A of CCS (Pension) Rules, 1972. The order of ratification of penalty issued by the Ministry on 14.01.2009 is annexed to the O.A. at Annex. A/6. After several representations, applicant was given the blank pension papers to fill-up and submit, while confirming that he was entitled to receive pension for his service under the Government vide letter dated 12.10.2011. It is alleged that respondent No. 4 did not forward pension papers to respondent No. 2 who is the pension sanctioning authority, and



applicant also approached the National Commission for Scheduled Castes for redressal of his grievance. Later, respondent No. 4 forwarded the pension papers to respondent No. 2 by a letter dated 07.11.2012. However, respondent No. 2 instead of sanctioning pension, sent the papers back to office of respondent No. 4 stating that pension case of applicant is subject to review by the Ministry, and the matter may be resubmitted after receipt of advice from the Department of Telecom (DOT).


3. The applicant thereafter sent a representation to respondent No. 1 on 10.12.2012 submitting that the review of his punishment of dismissal from BSNL has been completed by the Ministry as prescribed under the Rules, and instructions may be issued to CCA, Bhubaneswar for grant of pension and pensionary benefits for his period of work in the Government, i.e. from 18.11.1975 to 30.09.2000. After a fairly long period of time, when respondent No. 1 did not act upon applicant's prayer, applicant filed O.A. No. 397/2013 before the Tribunal. The Tribunal disposed of the matter by observing that a decision of respondent No. 1 was needed in the matter and directed the said respondent to take a decision on the pending representation of the applicant in the light of DOT Instructions dated 21.07.2009 (sic) and communicate the same to applicant within 90 days of date of receipt of the order. Even though Tribunal directed respondent no. 1 to consider the representation, the respondent No. 2, i.e. the Controller of Communication Accounts, disposed of the representation by an order dated 23.10.2013 in which it was communicated that the DOT letter quoted by applicant, did not pertain to the present case. The applicant has been removed from service consequent upon his conviction in a criminal case. As

such, his request for grant of pension and other retiral dues for the service rendered under DOT cannot be acceded to. This decision is the subject of challenge in this O.A.

4. Respondents No. 1 and 2, the Union of India and the Department of Telecom, have filed their counter-affidavit in which they have submitted that DOT letter dated 21.07.2009 reiterating Sub-Rule 24 (c), now Sub-Rule 25(c) of the Rule 37-A of CCS (Pension) Rules, 1972 does not say that the absorbed employee is entitled to pension and other retirement benefits on his removal from service as a result of his being convicted in a criminal case in a Court of Law. It is further averred that the decision conveyed by the Controller, Communication Accounts, was taken in consultation with the Department of Telecommunication, and with their approval. Therefore, even though the Tribunal directed respondent No. 1 to take a decision in the matter, no contempt has been committed by respondents by the order passed by respondent No. 2, on 23.10.2013.

5. Respondents No. 3 and 4 in this O.A. are the authorities of BSNL who have also filed their counter-affidavit stating that case of the applicant was examined by the office of the Chief General Manager, Telecom, and a report was submitted to the Corporate Office in Delhi requesting for clarification in the matter. It is further submitted that since the applicant is a convict, as held by the learned Trial Court, he is not entitled to any retiral benefits.

6. The applicant in his rejoinder has, on the other hand submitted that Sub Rule 24 (c) of Rule 37-A of CCS (Pension) Rules, 1972 clearly provides that the absorbed employees of



BSNL are entitled to pension for the period of service in the Government if they are dismissed / removed after their absorption in BSNL for misconduct during their service in BSNL. The respondents are mis- interpreting this provision by holding that this may not be implemented in case of conviction in a criminal case. The applicant alleges that this decision of respondents is illegal, mala fide and arbitrary. Further, the Tribunal directed the respondent No. 1 to take a decision on the representation of applicant, but the respondent No. 2 has taken the decision, and thereby respondents had committed Contempt of Court.

7. Having perused the documents in this O.A., we have heard learned counsel for both sides. Since facts in the O.A. are admitted, we would not further elaborate on facts. The short point that is thrown up for resolution is, whether the applicant, being an absorbed employee in BSNL, is entitled to pension as well as other retiral benefits for the period that he served under the Government, because of his removal / dismissal from the BSNL on account of his conviction in the Special CBI Court for his misconduct during the period of absorption in the BSNL. The applicant was absorbed in BSNL w.e.f. 01.10.2000. He was arrested in a bribery case on 23.03.2003 and was found guilty and convicted by the Trial Court vide order dated 14.07.2008. Therefore, the misconduct was during the period after absorption of applicant in BSNL. The order of removal dated 10.02.2009 was passed on the ground that applicant was convicted on a criminal charge under Section 7 and 13 (2) of the Prevention of Corruption Act, 1988.



8. The learned counsel for applicant has relied upon letter dated 21.07.2009 of the Department of Telecom addressed to BSNL giving the following clarification :

"As per Sub-Rule 24(c) of the Rule 37-A of CCS (Pension) Rules, 1972, the absorbed employees of BSNL are entitled to retirement benefits for the service rendered under the Government even if they are dismissed / removed from the service after their absorption in BSNL for any misconduct during service in BSNL. The retirement benefits in such cases shall be admissible from the day following the date of dismissal / removal from BSNL."

9. Rule 37-A in the CCS (Pension) Rules, 1972 was inserted by an amendment vide Department of Pensions and Pensioners' Welfare Notification dated 30.09.2000. It laid down the conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Central Autonomous Body or a Public Sector Undertaking. This provision covered the cases of employees of Department of Telecom, who were absorbed in BSNL, following the corporation^{zahan} of the services² and operations of the Department of Telecom. Sub Rule 24 (c) of the said Rule lays down as follows :

"24(c). The dismissal or removal from service of the Public Sector Undertaking or Autonomous Body of any employee after his absorption in such undertaking or body for any subsequent misconduct shall not amount to forfeiture of the retirement benefits for the services rendered under the Government and in the event of his dismissal or removal or retrenchment, the decisions of the undertaking or body shall be subject to confirmation by the Ministry administratively concerned with the undertaking or body."

10. At Annex. A/5 of this O.A., we find a letter dated 21.07.2009 addressed from the DOT to CMD, BSNL clarifying that in conformity with the provision of Sub - Rule 24 (c) of the Rule 37-A of CCS (Pension) Rules, 1972, the absorbed employees are entitled to retirement benefits for the service rendered in the Government even if they are dismissed / removed from service



after absorption in BSNL for any misconduct during service in BSNL. The retirement benefits in such cases shall be admissible from the day following the date of dismissal / removal.

11. There is no doubt about the rule position in this matter. Rule 37-A provides a protection to the employees of BSNL that a decision of dismissal / removal will be subject to a review by the Ministry administratively concerned. Dismissal or removal will not result in forfeiture of retirement benefits for the period served under the Government, if ~~for~~^{for} the misconduct for which punishment is imposed, has happened during the period after absorption of employee in the BSNL. The ratification in the present case has been done by the Ministry and the punishment has been accepted by the Department of Telecom vide letter dated 14.01.2009. The office of Senior G.M.T.D., Balasore in his letter dated 12.10.2011, while forwarding the blank pension papers to the applicant, has mentioned that "you are entitled to get retirement benefit for the service rendered under DOT". In spite of this admission, pension papers were not processed. The applicant had approached this Tribunal in the previous O.A. No. 397 of 2013, and a direction was issued to respondent No. 1 to take a decision on the representation of applicant. Although direction was issued to respondent No. 1, it is respondent No. 2 who has disposed of the representation by an order dated 23.10.2013. Strictly speaking, this is a violation of the order of this Tribunal. When specific direction was given to Respondent No. 1 to take a decision, only he should have taken the decision. Be that as it may, in the impugned order, the respondent No. 2 states that Sub Rule 24 (c) of Rule 37-A of CCS (Pension) Rules, 1972 stood complied with, since the Department of Telecom has confirmed the decision of the BSNL with regard to removal of



the applicant from service. Further, it is mentioned that applicant has been removed from service consequent upon his conviction in a criminal case, and, therefore, his request for grant of pension and other retiral dues for the service rendered under DOT, cannot be acceded to.

12. We failed to find anywhere in the rules that if the dismissal / removal is consequent upon conviction in a criminal case, Sub Rule 24 (c) of Rule 37-A with regard to payment of pension for the service rendered under the Government will not be applicable. Therefore, ground of rejection is un-supported by the rules. In the counter affidavit, respondents No. 1 and 2 have failed to defend their stand. They have submitted that Rule 24 (c), now Sub Rule 25 (c) of Rule 37-A of CCS (Pension) Rules, 1972, does not anywhere say that the absorbed employee is entitled to pension and other retirement benefits on his removal from service, as a result of his being convicted in a criminal case or in a court of law. We failed to appreciate the logic in this argument. The Rule does not mention that cases of dismissal / removal on the ground of conviction in a Court of Law, are to be treated separately, therefore, no such distinction is intended. The reason given by respondents to reject case of the applicant, amounts to going beyond the legislative intention. It appears that they have gone by their subjective view in the matter, when the position of the rule is transparent and in fact entitles the applicant to pension for the period that he served under the Government.

13. Rule 37-A protects the conditions of service of employees of DOT who were absorbed in the BSNL w.e.f. 01.10.2000. One of the protections granted to them was that they would not



forfeit the period of service that they rendered in the Government Department in case they are removed or dismissed for acts of mis-conduct during service in BSNL. Such protection cannot be snatched away from the employee by a wrong interpretation. The punishment of removal on the basis of conviction in a Court of law, may be a stigma, but, it cannot be allowed to deprive the applicant of the benefits that he would have naturally derived for the period of service that he rendered in the Government. The retirement benefits as claimed by the applicant, are completely un-connected to his mis-conduct in BSNL in which, he was absorbed from 1.10.2000. His claim pertains to the previous period of his working in the Government, and will be governed by the appropriate provision of Rule 37-A of CCS (Pension) Rules, 1972.

14. It will be relevant to quote the decision of Apex Court in the case of ***D.S.Nakara Vs. Union of India and Ors.*** (1983) SCC 305 : (1983) L&S 145, in which, the Hon'ble Court observed as follows :

"The anticipated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer, not claimable as a right and therefore, 'no right to pension can be enforced through Court' has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad Vs. State of Bihar, wherein, the Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government, but, is governed by the Rules, and a Government servant coming within these rules is entitled to claim pension."

15. The applicant's prayer for payment of pension for the period which he served under the Government before his absorption in BSNL, is in conformity with Rule 37-A of the CCS (Pension) Rules. The respondents have not brought to our notice



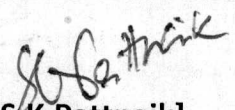
any statutory provision under which they have denied the retirement benefits to the applicant for the said period.


16. Since the payment of pension is a recurring cause of action, we are not inclined to hold the delay in filing of the O.A., against the applicant.

17. In consideration of the above facts, we dispose of this O.A. with the following directions :

- (1) The impugned order dated 23rd October, 2013 (Annex. A/14) is quashed.
- (2) The Respondents No. 1 and 2 are directed to issue authority for pension and retirement benefits as admissible to the applicant and, also disburse the said benefits within a period of **90 (ninety)** days from the date of receipt of this order.
- (3) If the pension and other retirement benefits are not disbursed to applicant within the time limit set above, the above respondents shall have to pay the pension along with Interest @ 9% per annum w.e.f. 11th February, 2009, the day following the date of his removal from BSNL, as provided under the Rules.

18. In the result, the O.A. is allowed to the extent stated above, with no order as to costs.


[S.K.Pattnaik]
Member(J)


[R.C.Misra]
Member (A)