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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.449 of 2012

Cuttack this the 13th day of November, 2014

Purna Chandra Patra...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *yes*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? *yes*

R.C.MISRA
(R.C.MISRA)
MEMBER(A)

A.K.PATNAIK
(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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Cuttack this the 13th day of November, 2014

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*HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)*

Purna Chandra Patra
Aged about 32 years,
Son of Late Niranjan Patra,
At-Plot No.250,
Saheed Nagar,
P.O-Bhubaneswar,
Dist-Khurda.
At present working as JTO (Electrical)
in the office of S.E. (Elect.), BSNL, Electrical Circle,
Bhubaneswar,
District-Khurda

...Applicant

By the Advocate(s)-M/s.A.K.Mohanty
T.K.Pati
P.N.Mohanty
R.K.Behera
R.C.Pradhan

-VERSUS-

Union of India represented through

1. The Secretary to Government of India,
Department of Telecommunications,
New Delhi.
2. Chief General, Telecommunication,
Orissa Circle,
Bhubaneswar,
District-Khurda.
3. Controller of Communication Accounts
Orissa, 4th Floor,
CPMG Building,
Bhubaneswar-751001
District-Khurda



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4. Chairman and Managing Director,
Bharat Sanchar Nigam Ltd.,
Corporate Office, Bharat Sanchar Bhawan,
Harish Chandra Mathur Lane, Janpath,
New Delhi-110001.
5. The D.D.O., Office of the Executive Engineer (Electrical),
BSNL Electrical Division,
Bhubaneswar,
District-Khurda.

...Respondents

By the Advocate(s)-Mr.L.Jena

ORDER

R.C.MISRA, MEMBER(A):

Applicant is presently working as J.T.O.(Electrical) in the Office of Superintending Engineer(Electrical), BSNL, Electrical Circle, Bhubaneswar. His grievance is that he being an employee of the Department of Telecommunications, Government of India, has to be governed under the provisions of Rule-37(A) of CCS(Pension) Rules and thus, is entitled to pensionary benefits on his absorption in BSNL in respect of his combined service rendered by him in the Government as well as BSNL, in accordance with formulae for calculation of pension, family pension from time to time. In the circumstances, GPF subscription as was being deducted from his salary should be allowed to continue.

2. Sequence of events of this matter are that applicant was a candidate for the post of Junior Engineer(Electrical) in the Department of Telecommunications for the Recruitment Year, 1998. He having been provisionally selected for the said post,



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was issued with offer of appointment dated 29.9.2000, in which post, he joined on 06.10.2000(FN) vide A-2/A. In the meantime, BSNL having come into existence, options of staff were called for absorption in the BSNL, pursuant to resolution dated 2.1.2001(A/4), which inter alia in Para-4 thereof stipulates that BSNL will absorb the optees on as is where basis. In the above backdrop, order dated 19.2.2002(A/5) conveying sanction of the President for permanent absorption of the applicant in the BSNL with effect from 1.10.2000 pursuant to letter dated 02.01.2001 of the BSNL and in accordance with the provision of rule-37 of CCS(Pension) Rules as amended from time to time was issued. While the matter stood thus, applicant submitted a representation dated 28.1.2010(A/6) to the Controller of Communication Accounts (in short CCA), Bhubaneswar, ventilating his grievance that annual statement of GPF account for the year from 2003-04 till date had not been received and accordingly, requested to look into the matter and issue upto date GPF Account statement in his favour. Thereafter, Office of Controller Communication Accounts, Bhubaneswar made a communication dated 29.4.2011 to the DGM(Admn.), BSNL, Bhubaneswar under intimation to the applicant, which is extracted hereunder.

"Sub: Irregular recovery and remittance of GPF and Pension Contribution in respect of two BSNL employees joined BSNL on or after 01.10.2000:



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Scrutiny of GPF and Pension Contribution Schedule for the month of 03/2011 reveals that some DDOs under your administrative control are wrongly recovering and remitting the GPF subscription and Pension Contribution to this office in respect of two employees who joined BSNL on or after 01.10.2000. Such employees being BSNL employees are clearly not eligible for GPF and Pension under Rule-37 A of CCS (Pension) Rules, 1972. The details of such irregular recovery and remittance are given below:-

- (a) Case of Shri Purna Chandra, Patra, JTO (Elec.) : The official joined BSNL on 06.10.2000 and therefore, not eligible for GPF and Pension from Govt. Fund. Notwithstanding this, your office has recovered GPF subscription of Rs.25,000/- and pension contributions Rs.5115/- and remitted to this office in the schedule of 03/2011.
- (b) Case of Shri Manoj Kumar Panda, JTO(Elec.) : The official joined BSNL on 11.10.2000 and therefore, not eligible for GPF and Pension from Govt. Fund. Notwithstanding this, your office has recovered GPF subscription of Rs.5,000/- and pension contribution Rs.5115/- and remitted to this office in the schedule of 03/2011/

2. In this connection, a similar case of Shri D.K. Behera, JTO (Elec.) of your office may be



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referred to Shri Behera joined BSNL on 31.01.2001 and your office is not remitting GPF/Pension contribution correctly treating him as BSNL employee. The three draft Presidential Order (PO) issued by Director (Estt), Orissa, DOT are found not in order as S/Shri D.K. Behera, Purna Chandra Patra and Shri Manoj Kumar Das joined BSNL on or after 01.10.2000 and the above three officials were not in DOT strength as on 30.09.2000 vide para 4(i) of DOT/DTS, New Delhi O.M. No.2-29/2000-Restg dated 30.09.2000 (Copy enclosed).

In view of above, it is decided that the irregular GPF subscription received from the above two officials are to be refunded immediately with interest vide DOT HQ, New Delhi letter No.7-19/2008/TA-1/1435-1460 dated 05.11.2009 (copy enclosed). The excess pension contribution already reemitted may be adjusted in the pension Contribution Schedule for the month of 04/2011. Please ensure stop remitting of GPF/Pension Contribution of the above employees and take necessary action at your end.

This issues with the approval of CCA".

3. On receipt of the above communication, applicant submitted a representation dated 10.5.2011(A/13) to the DGM, BSNL, Bhubaneswar to take up the matter with CCA for continuation of GPF subscription and issue GPF account statement. However, vide communication dated



22.3/2.5.2012(A/14) addressed to the DGM from the office of CCA, BSNL, it was intimated as under.

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 "Subject: Irregular recovery on account of GPF and Pension contribution in r/o the BSNL employees who joined service in BSNL after 1-10-2000.

It may be brought to your kind notice that the following four BSNL officers who joined service in BSNL after its information i.e. 1-10-2000, and are not entitled for GPF & Pensioner benefit under GPF (CS) Rules and CCS(Pension) Rules, have been permitted by the BSNL units for recovery of GPF subscription & Pension Contribution against the rules:

- (i) Shri Purna Chandra Patra JTO (Electricals) D/J 06-10-2000
- (ii) Shri Manoj Kumar Panda D/J 11-10-2000
- (iii) Shri D K Behera D/J 31-01-2001
- (iv) Shri Sarat Kumar Das D/J 22-01-2001

1. These officers though appointed by the erstwhile DOT yet joined service in BSNL after 1-10-2000. Since they did not have status of central government employee, they are not covered under GPF (CS) Rules & CCS (Pension) Rules but GPF subscription and Pension contribution started by the BSNL units in these cases in contravention of rules.

Not only this but Draft Presidential orders have also been issued in these cases except for Shri Sarat Kumar Das while Presidential Orders ought to have been issued in respect of erstwhile DOT employees

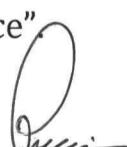


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(Government servants) who were in DOT service as on 30-09-2000 and transferred en masse to BSNL w.e.f. 01-10-2000 as per rule 37-A of the CCS(Pension) Rules and opted to retain for pensioner and other benefits of the government. In this regard, GOI, Ministry of Personnel, PG & Pensions (Department of Pensions & Pensioners Welfare) New Delhi O.M No.4/1-8/87-P&PW(D) dated 05-07-1989 may also be referred to. Since they were not in Government service as on 30-09-2000/01-10-2000, there was no reason to issue Draft Presidential Order. Thus Presidential Orders issued in these cases and similar other cases also are null and void and need to be cancelled.

2. Since date of joining etc. in respect of these officers was not intimated by the units to CCA office along with the first schedule, this office could not check/stop the irregularity immediately. However, vide this office letter number even dated 29-04-2011 (a copy enclosed for ready reference) addressed to the DGM (Admn) BSNL. Orissa Telecom Circle, Bhubaneswar, it was intimated that recovery on account of GPF/Pension contribution be stopped and amount already recovered refunded but it has been noticed that the amount is still being recovered by the BSNL units which is highly irregular. It may invite some litigation also in future.

It is therefore requested kindly to instruct the concerning DDOs to stop recovery on account of GPF & Pension Contribution w.e.f. 01-04-2012 in these cases and similar other cases too. Necessary action to refund the amount recovered with interest is being taken by this office".



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4. Aggrieved with the above, applicant has invoked the jurisdiction of this Tribunal under section 19 of the A.T.Act, 1985, seeking the following relief.

- (i) The office order dated 2.5.12 (Annexure-14) passed by Controller of Communication Accounts, Orissa, Respondent No.3 and the order dated 29.4.11 (Annexure-11) passed by Joint Controller of Communication Accounts in the office of the Controller of Communication of Accounts be quashed and the GPF subscription and GPF accounts statements for the period 2003-2004 to 2008-09 onwards be issued as per the representation of the applicant 10.5.11.
- (ii) The cost of litigation, incurred in filing the OA may be awarded upon the respondents if it is deemed fit and proper.
- (iii) Any other relief/reliefs as this applicant is entitled to be granted as this Hon'ble Tribunal deemed fit and proper for the ends of justice.

5. According to applicant, pursuant to recruitment process initiated and appointment order issued, he joined in the post of Junior Engineer(Elect.) against post sanctioned by the Department of Telecommunications, Government of India.

The terms and conditions of the offer of appointment ensures pensionary benefits which should not be changed to his



disadvantage due to change in the organizational structure. Similarly, pay and allowances should not be varied because of his absorption in the BSNL. According to applicant, if at all the authorities wanted to change the terms and conditions of the offer of appointment, the same should have been intimated to him, prior to his joining, so that he could have been able to have his say against the proposed decision. It is the case of the applicant that his rights to GPF contribution and consequential pensionary benefits cannot be taken away unilaterally or arbitrarily, without giving him opportunity of being heard.

6. It is the contention of the applicant that EPF Scheme is applicable to the employees who have joined in the BSNL on or after 01.10.2000. Respondent No.3 has misinterpreted the word "recruited" with "joined" as recruitment is a process which starts with the release of advertisement for appointment with the terms and conditions stipulated therein and ends with order of appointment. It is the case of the applicant that the DOT made the selection process, issued appointment letter and applicant accordingly, took up the assignment on his joining as per the terms and conditions of the offer of appointment and later on, he was asked to exercise his option for absorption in BSNL which he having so exercised, was ultimately absorbed in the BSNL. In the above background, the conditions of service cannot be wiped out without giving him prior notice or giving him an opportunity of being heard.



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7. In Paragraph-4.16(e) to Paragraph-4.18, applicant has made some ~~incorrigible~~ averments which are quoted hereunder.

"That the DOT/DTS, New Delhi, vide its OM No.2/29/2000-Reg. dt. 30.09.00 vide Para. 4(i) has stipulated that the establishment sanctioned for different units and officers posted in these units will stand transferred to BSNL along with their post on existing terms and conditions on the basis of as is where is "on deemed deputation" w.e.f. 1.10.00. The applicant having been appointed by DOT against the sanctioned post of the recruitment year 1998 i.e. prior to 1.10.00 (information of BSNL) a valuable right has been accrued to this applicant which cannot be taken away arbitrarily.

Further it is submitted vide Para 4(iv) when the orders in the matter status would be decided by DOT in consultation with Dopt., which is the Cadre controlling authority of CSS the impugned order at this stage is bad in law and not tenable.

That, other absorbee employees of DOT, exercised option along with the applicant recruited through same recruitment year 1998 availing the pensionary benefits to this applicant bad in law and liable to be set aside.

4.18. That as per the DOT/DT & S order vide OM No.2-29/2000-Reg. dt. 30.09.2000 in Para.4 specifically emphasizes that officers and staff shall continue to be subject to all rules and regulations as are applicable to Govt. servants including CCS (CCA) Rules, till such time they are absorbed finally by the company after they exercise their options. So, the applicant is entitled to get/avail all benefits accordingly till acceptance of option like other employees those who transferred enmasse from DOT to BSNL. The BSNL also extended the benefits of adhoc amount of Rs.1,000/- as per

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Date

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the meeting held on 2.1.2001 only after exercising the option and its acceptances, hence the applicant cannot be deprived of GPF/Pensionary benefit which he is enjoying for last 11 years".

8. With these submissions, applicant has sought for the relief as quoted above.

9. Per contra, Respondents have filed their counter-reply. At the outset, they have submitted that the draft Presidential order in respect of the applicant is void ab initio as the same has been issued inadvertently on the grounds that the applicant was not in Government service of Telecom Department as on 1.10.2000. According to Respondents, applicant reported and joined in his duty on 06.10.2000(FN) as Junior Engineer(Electrical) in the Office of Executive Engineer(Electrical) under BSNL vide A-3/A. It has been submitted that as per the settled position of law, Article 14 is not meant to perpetuate illegality and it does not envisage negative equality.

10. As regards deduction of GPF, it has been submitted that it was due to inadvertence DDO recovered the GPF and soon after the irregularity was noticed by the Accounts Officer(GPF), necessary instructions had been issued to stop recovery. It has been submitted that the benefit of any inadvertent action should not be claimed as a matter of right.

11. According to Respondents, only those Government servants of the erstwhile DoT have been considered as deemed



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deputation who were actually in Government service of the Department of Telecommunications as on 01.10.2000 and the applicant was not in Government service of the Department of Telecommunication as on 01.10.2000. It has been contended that no rules of the Government give status of Government servant on mere issue of appointment order. The applicant was neither a temporary nor permanent employee of the Department of Telecommunications as on 01.10.2000. While clarifying the DoT OM dated 30.09.2000, it has been submitted that the word, 'officer posted' means - officers physically on the role of the Department. Based on this, it is the submission of the Respondents that all the employees who have joined duty on 01.10.2000 irrespective of their year of recruitment process, have not been allowed GPF facility as the same is allowed only to Government servants. Finally, it is the emphatic submission of the Respondents that pensionary benefits are not applicable to the employees of BSNL except those who were in service on 30.09.2000 and transferred en masse to BSNL with effect from 01.10.2000. According to Respondents, applicant was not in DoT/DTS service on 30.09.2000/01.10.2000 and therefore, he is not entitled to pensionary benefits as per Rule-37-A of CCS (Pension) Rules, ^{ibid} and on the other hand, he is entitled for EPF as per the scheme framed by the BSNL itself.

12. We have heard the learned counsel for both the sides perused the pleadings of the parties. We have also gone through

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the rejoinder, additional counter to rejoinder filed by the Respondents as well as the written notes of submissions filed by both the sides.

13. Having regard to chronicles and the pleadings of the parties in this matter, the short ***point that emerges for our determination is whether the applicant could be said to be on deemed deputation to BSNL and consequently, an absorbee with effect from 01.10.2000.***

14. In order to answer the point in issue, it would be prudent, in the first instance, to adjudge whether the applicant was an appointee in DoT, Government of India. For this purpose, it is expedient to go through the GI, DOT/DTS, New Delhi OM dated 30.09.2000, which is extracted hereunder.

"Subject: Setting up of Bharat Sanchar Nigam Limited-transfer to staff-orders issued-regarding

1. In pursuance of New Telecom Policy 1999, the Government of India has decided to corporatize the service provision functions of Department of Telecommunications (DOT). Accordingly, the undersigned is directed to state that the Government of India has decided to transfer the business of providing telecom services in the country currently run and entrusted with the Department of Telecom services (DTS) and the Department of Telecom Operations (DTO) as was provided earlier by the Department of Telecommunications to the newly formed Company viz.,

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Bharat Sanchar Nigam Limited (the Company) with effect from 1st October 2000. The Company has been incorporated as a Company with limited liability by shares under the Companies Act, 1956 with its registered and Corporate office in New Delhi.

2. The Department of Telecom. Services and Department of Telecom. Operations concerned with providing telecom services in the country and maintaining the telecom network/telecom factories were separated and carved out of the Department of Telecommunications as a precursor to Corporatization. *It is proposed to transfer the business of providing telecom. Services and running the telecom factories to the newly set up Company, viz., Bharat Sanchar Nigam Limited w.e.f. 1st October 2000.* The Government has decided to retain the functions of policy formulation, licensing, wireless spectrum management, administrative control of PSU, standardization & validation of equipment and R&D etc. These would be responsibility of Department of Telecommunications (DOT) and Telecom Commission. As such, administrative department for Bharat Sanchar Nigam Limited would be the Department of Telecommunications (DOT).
3. The assets and liabilities of the present Department of Telecom. Services and Department of Telecom. Operations which earlier formed part of DOT will be transferred for this purpose by a separate order.
4. Since it will take some time for the new Company to finalize the



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terms and conditions for staff and to give an opportunity to Officers, staff, employees and industrial workers working in various circles & officers/units for exercising their options to join the newly created Company, it has been decided to make the following arrangement for smooth transition of corporatization and operation to the new company:

(i) *The establishment (officers, staff, employees and industrial workers) sanctioned for exchanges/offices, in various telecom circles, metro districts of Calcutta, and Chennai, project circles, civil, electrical and architectural wings, maintenance regions and specialized telecom. Units namely Data Networks National Center for Electronic Switching, Technical and Development circle, Quality Assurance circle (except TEC), training institutions, other units like telecom factories, stores and electrification projects of DOT/DTS/DTO (belonging to various organized services and cadres given in Annexure-'A' to this letter) and posted in these circles offices will stand transferred to Bharat Sanchar Nigam Limited along with their posts on existing terms and conditions, on as is where is basis, on deemed deputation, without deputation allowance,*

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with effect from 1st October 2000, i.e. the date of taking over of telecom. Operations by the Company from DTS & DTO. Bharat Sanchar Nigam Ltd. will exercise control and supervision of staff working against these posts.

(ii) The organizational structure of restructured Department of Telecommunications (DOT) is given at Annexure-'B' (Not Printed) Tables I to IV giving posts/ units to be retained in DOT and to be transferred to BSNL. Consequent to residual work of DTS and DTO being transferred to DOT, it will be continued to do the work allocated under Allocation of Business Rules. The officers and staff presently working in these posts will continue to work, until further orders, in their existing posts under DOT and all other officers and staff will stand transferred along with their posts on existing terms and conditions, on as is where is basis, on deemed deputation, without deputation allowance, w.e.f.1.10.2000 to the Company.

(iii) The Telecom Engineering Centre (TEC), Centre for Development of Telemetric (C-DOT), Wireless Planning and Coordination (WPC) and Wireless Monitoring Organization (WMO) will remain with Government

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under the control of the Department of Telecommunications. An expert committee will be constituted for distribution of work of TEC between DOT and the Company subsequently as per the report of the expert committee, allocation of staff it will be done accordingly.

(iv) Officers and staff belonging to various Central Secretariat Services providing services to offices/units being transferred to the Company will stand transferred along with their posts, as is where is basis, on deemed deputation, without deputation allowance, w.e.f.1.10.2000 to the Company on existing terms and conditions of service. Further orders in the matter would be decided by DOT in consultation with DOPT, which is the cadre controlling authority of CSS.

(v) Officers and staff shall continue to be subject to all rules and regulations as are applicable to Government servants, including the CCS (CCA) Rules till such time as they are absorbed finally by the Company after they exercise their options. Their pay scales, salaries and allowances will continue to be governed by existing rules, regulations and orders.



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(vi) The management of Bharat Sanchar Nigam Limited shall have full powers and authority to effect transfers of all the staff at all levels working under it.

(vii) Bharat Sanchar Nigam Limited will be competent to create as per norms adopted by it, however, it will seek prior approval of the Government for appointments to higher posts as per provisions of Article 144(1) of its Articles of Association.

(viii) Instructions regarding appointing and disciplinary authorities for employees working on deemed deputation and disposal of pending disciplinary and vigilance cases will be issued separately.

(ix) These orders will come into effect from 1st October 2000".

15. Perusal of the above OM makes it clear that power, authority and jurisdiction became exercisable by the BSNL with effect from 01.10.2000. This being the reason, circular dated 05.11.2009 was issued by the DoT to all Pr.CCAs,/CCA/Jt.CCAs/Dy.CCA regarding refund of GPF amounts to the subscriber of EPF Scheme, which reads as under.

"Sub: Refund of GPF amount to the subscriber of EPF scheme:

Kindly refer to this office letter of even No. dated 17.06.2008 in which instructions were issued for refund of

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GPF subscription recovered erroneously ~~or~~ from BSNL employees recruited ~~on~~ after 1.10.2000 by BSNL and wrongly credited to Govt. Account.

The question of allowing interest on the above deposits was under consideration. It has now been decided that interest at the rate prevalent at the time and for the period that amount remains with the Govt. may also be refunded to the BSNL employees through BSNL.

This issue with the approval of Member(F)".

16. Admittedly, applicant was a recruit in the recruitment conducted by the DoT and in the process of selection, he having been successful, was offered with the appointment by the DoT. But the fact remains, he joined the post against which he had been selected with effect from **06.10.2000**. It is the case of the applicant that order dated 19.2.2002(A/5) conveying sanction of the President for his permanent absorption in the BSNL with effect from **01.10.2000** having been issued, he accrues a right to be governed under the provisions of Rule-37-A of CCS(Pension) Rules, as amended from time. This order, in our considered view, is patently wrong and erroneous, because, applicant having joined as Junior Engineer(Electrical) with effect from 06.10.2000, by no stretch of imagination his appointment could be dated back to 01.10.2000.

17. Significantly, the DoT O.M. dated 30.09.2000 under the authority of which BSNL was set up thereby corporatizing the service provision functions of the Department of Telecom

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stipulated that the officers, staff, employees and industrial workers in various Telecom Circles, who are "**posted in these circle offices**" will stand transferred to BSNL along with their posts on existing terms and conditions, on as is where is basis, on deemed deputation, without deputation allowance with effect from 1st October, 2000. In view of this, the crucial question here is whether the applicant was '**posted**' as on the date of issue of this O.M. The answer based upon the facts is a clear '**No**'. The provisions of this O.M. shall, therefore, not apply to the case of the applicant.

18. In the above context of corporatization of the BSNL, Rule-37-A was inserted in the CCS (Pension) Rules, 1972 by a notification dated 30.09.2000. Rule 37-A(1) and (2) are quoted below.

- (1)- On conversion of a Department of the Central Government into a Public Sector Undertaking, all Government servants of that Department shall be transferred en masse to that Public Sector Undertaking, on terms of foreign service without any deputation allowance till such time as they get absorbed in the said undertaking, and such transferred Government servants shall be absorbed in the Public Sector Undertaking with effect from such date as may be notified by the Government.
- (2)- The Central Government shall allow the transferred Government servants an option to revert back to the Government or to seek permanent absorption in the Public Sector Undertaking.



19. This provision obviously is applicable to those of the employees who were in the service of the Government as on 30.09.2000, and the status of the applicant not being such, this provision is not attracted.

19. In his written notes of submission, the learned counsel for the applicant has cited the decision of the Hon'ble High Court of Delhi in the case of Indian Telecom Service Association & Ors. vs. Union of India & Ors. in WP.(C) No.22515 - 22518/2005 in order to buttress his argument. We have perused the judgment of the date 17.04.2012 in this regard. The petitioners in the said Writ Petition were the Indian Telecom Service Association & Ors. who had earlier challenged the circular dated 24.03.2005 of the Department of Telecom calling for options for absorption of Group - A officers of Indian Telecom Service, Telegraph Traffic Service and Telecom Factories Service in the BSNL, the effective date of absorption specified therein being 1.10.2000, by filing OAs in the Tribunal. The Tribunal decided the matter by holding that there was no infirmity in the insertion of Rule-37A in the Pension Rules vide notification dated 30.09.2000, and that since a bulk of officers in the BSNL/MTNL have been absorbed from 1.10.2000, no differential treatment can be accorded to Group-A officers. The Hon'ble High Court in their decision, however, held that the deemed date of absorption of the petitioners fixed on 1.10.2000 is illegal, being contrary to Rule-37-A(4) of CCS (Pension) Rules.

It was also held that the deemed date of permanent absorption of such of the petitioners who seek permanent absorption in BSNL/MTNL shall be 8.12.2005.

20. The crux of the matter is whether the ratio of the decision of the Hon'ble High Court can be appropriately applied to the case of the applicant in this O.A. The answer is in the negative, since applicant joined on 6.10.2000, after the formation of BSNL, and therefore, Rule-37-A of CCS (Pension) Rules does not cover the case of the applicant. The issue of the Presidential order dated 19.2.2002 by which the applicant was permanently absorbed in BSNL with effect from 1.10.2000 as against the fact that he had reported for duty on 6.10.2000 is patently wrong.

By issuing the letter dated 24.4.2011(Annexure-11), the Respondents have rectified this mistake and clarified the position that the applicant along with two other officials were not on DoT strength as on 30.09.2000, and being BSNL employees are not eligible for GPF and Pension under Rule-37-A of CCS (Pension) Rules, 1972. It is permissible for Respondents to right a wrong, when the same has been noticed, and rectify the claims admissible depending upon the eligibility of the applicant, as per rules.

21. Accordingly, we answer the point in issue against the claim laid by the applicant by holding that the applicant was not on the rolls of the Government on 30.09.2000, and was not an absorbee in the BSNL, ^{and} by implication is not covered by Rule-

37-A of CCS(Pension) Rules, 1972. The decision communicated by Respondents in letters dated 29.02.2011 and 02.05.2012 is, therefore, held to be valid as against the facts and the Rules invoked in this case.

22. In view of the above finding that the applicant is not entitled to the relief sought, the O.A. being devoid of merit is dismissed. There shall be no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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