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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 263/2009

Jodhpur this the 4th day of March, 2013.

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J)

Shri O.P. Verma S/o Shri Ram Narayan Ji
R/o Near Post Office, Gotan
District - Nagaur

.....Applicants

(Through Advocate Mr. J.K. Mishra)

Versus

1. Union of India through the Secretary to Government of India, Ministry of Communication, Department of Telecom, Sanchar Bhawan, New Delhi.
2. The Chief General Manager, Telecom, Rajasthan Circle, Sardar Patel Marg, Jaipur
3. The General Manager, Telecom District, Bikaner
4. The Assistant General Manager (pers.), Office of the P.G.M.T.D., Jaipur
5. Bharat Sanchar Nigam Limited, through its Chairman and Managing Director, Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi.

(Through Advocate Mr Kuldeep Mathur)

.....Respondents

ORDER (Oral)

Per Justice Kailash Chandra Joshi, Member (J)

The applicant Shri O.P. Verma by way of this application has prayed for following relief (s) :

(i) The deduction of Rs 2000/- paid as adhoc allowance in the month of June 2008, and non payment of adhoc allowance may be declared as illegal.

- (ii) That the respondents may be directed to make payment of adhoc/deputation allowance at the rate of Rs 2000/- per month to applicant w.e.f. 1-10-2000 to till his retirement i.e. 30-06-08 along with interest at market rate.
- (iii) That respondents may also be directed to revise the pension of applicant and same may be paid according to average pay drawn during last ten months of his service.
- (iv) Any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (v) That the costs of this original application may be awarded.

and after hearing both the parties, the applicant found entitled for the deputation allowance vide order dated 22.07.2011 in OA No. 263/2009 passed by this Tribunal. Against the order of this Tribunal, Union of India filed writ petition D.B.C.W.P. No. 7990/2012 which was allowed by the Division Bench of the Hon'ble Rajasthan High Court vide order dated 05.11.2012 and set aside the order of this Tribunal dated 22.07.2011 and ordered to remand the matter to this Tribunal with a request to deal with and decide the same in accordance with law. The Division Bench while disposing off the writ petition made it clear that the disposal of the writ petition shall not be of any impediment in the parties settling out the matter without adjudication by the CAT.

2. The necessary facts so as to adjudicate this issue may be summarized as that the applicant was initially appointed on the post of Technician on 24.02.1967 and promoted to the post of High Grade Technician, Telephone Inspector in the year 1983 and lastly to the post of Junior Telecom Officer (JTO) Group 'B' w.e.f. 12.10.1998 after passing the examination under department quota and he worked on various places on the post and lastly retired on superannuation on 30.06.2008 from the office of G.M.T.D., Bikaner.

That a criminal case under section 420, 379, 120 B of Indian Penal Code readwith section 23, 25 and 27 of I.T. Act was registered against the applicant and other 3 departmental employees alongwith 4 private persons on 13.08.2002 in Police Station, Merta City and a chargesheet was filed in the court of Judicial Magistrate, Merta Citry who in turn took cognizance against the applicant also.

After creation of BSNL w.e.f. 01.10.2000, the options were invited from the employees working in the telecommunication department to get absorbed in BSNL and till the absorption is finalized by the BSNL and employees to be fitted in the IDA pay scale, they were ordered to be paid an adhoc amount of Rs 2000/- per month we.f. 01.10.2000. The applicant also submitted his option for absorption in the BSNL but due to pendency of the criminal case he could not be absorbed. However pendency of the criminal case does not deprive applicant's entitlement for adhoc allowance as he worked in the BSNL on deemed deputation basis.

Vide order dated 24.08.2007 it was ordered that the adhoc amount shall not be paid to those Group 'B' officers against whom disciplinary proceedings under rule 14 of CCS (CCA) Rules is pending and applicant was under suspension due to pendency of criminal case and he was being paid subsistence allowance @50% for 3 months and thereafter @75% till the revocation of the suspension order and suspension order was finally revoked on 19.06.2006 vide letter dated 13.06.2006. As the applicant was pressing hard for payment of adhoc amount, an approval of the competent authority for payment of adhoc allowance w.e.f. 19.06.2006 was conveyed by the Divisional Engineer (Admn) vide

letter dated 16.06.2008 subject to undertaking taken from the applicant. The adhoc payment was made to the applicant for the month of 2008.

3. The applicant further averred that Shri P.K. Pardeshi co-accused in same criminal case and Shri Sohan lal Chouhan, SDEs were being paid the adhoc amount much earlier than the applicant. The applicant, therefore, filed this OA praying for relief(s) referred in para-1 above.

4. The respondents by way of their detailed reply denied the averments and ground pleaded in the OA and further pleaded that as applicant was involved in criminal act, he was put under suspension w.e.f. 13.08.2002 and his suspension was revoked on 06.06.2006. After revocation of suspension, the applicant resumed his duties on 19.06.2006, thus, there is no question of granting him adhoc or deputation allowance for the period he remained under suspension or the period prior to resuming of the duties by the applicant on 06.06.2006 and the applicant is not entitled to any adhoc or deputation allowance as criminal case is pending against him, thus, the OA is liable to be dismissed.

5. I have heard the counsel also perused the record. The counsel for the applicant contended that circular dated 27.02.2013 [A/1] refer the denial of such allowance to those employees against whom the disciplinary proceedings under Rule 14 is pending and it does not refer to the pendency of the criminal case to such denial,

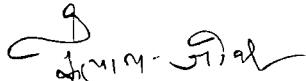
therefore, applicant is entitled to get the adhoc or deputation allowance.

6. From the bare perusal of the reply submitted by the respondents it is clear that the adhoc or deputation allowance was denied to the applicant only on the ground of pendency of criminal case and due to that he was put under deemed suspension from 13.08.2002 to 06.06.2006. In my considered view, the grounds averred in the reply are not sustainable in the eyes of law because such adhoc or deputation allowance can only be denied during the pendency of disciplinary proceedings under rule 14 of CCS (CCA) Rules as the Department did not initiate disciplinary proceedings against the applicant, therefore, such denial cannot be sustained particularly in view of the fact that similarly situated persons viz. Shri P.K. Pardeshi and Shri Sohan lal Chouhan, SDEs were being paid adhoc or deputation allowance and this fact has not been denied in the reply filed by the respondents.

7. In view of the discussions made hereinabove, it is clear that applicant is entitled to get the adhoc or deputation allowance @ Rs 2000/- per month from 01.10.2000 to the date of his retirement. However, it is made clear that if he had been paid any allowance for any particular period earlier that shall be adjusted against the total amount due. So far as the suspension period is concerned, it will depend upon any order to be passed by the competent authority for regularization of the suspension period.

8. Looking into the entire facts and circumstances of the case and the fact that applicant has been denied the adhoc or deputation allowance without any reasonable cause, The applicant is entitled to get the interest @ 8% p.a. on the due amount from the date 01.11.2000 to the date of actual payment by the respondents. Respondents are directed to pay the amount within four months from the receipt of this order.

There shall be no order as to costs.


(JUSTICE K.C. JOSHI)

JUDICIAL MEMBER

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