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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No.571/2011

Jodhpur this the 4th February, 2013

CORAM

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

Bihari Lal Goswami S/o Late Sh Hanuman Prasad Ji
Aged 61 years, R/o 161 Bharat Nagar,
Near Ram Mandir, Shri Ganganagar,
Rajasthan

Retire from the post of Jr Telecom Officer (JTO)

.....Applicant

(Through Advocate Mr B.P. Goswami)

Versus

1. Union of India through Secretary to the Government,
Ministry of Communications, Department of Telecommunication,
No. 20, Ashoka Road, Sanchar Bhawan,
New Delhi – 110 001
2. The Chairman and Managing Director,
Bharat Sanchar Bhavan, Harishchandra Mathur Lane,
Janpath, New Delhi – 110 001
3. The Controller of Communication,
Department of Telecommunications, Accounts, Rajasthan,
Jhalana Dungri, Jaipur, Rajasthan
4. The Chief General Manager,
Bharat Sanchar Nigam Ltd., Sardar Patel Marg,
C-Scheme, Jaipur, Rajasthan
5. The General Manager,
Bharat Sanchar Nigam Ltd., Shyam Nagar,
Shri Ganganagar, Rajasthan

.....Respondents

(Through Advocate Mr. D.S. Sodha for Mr. Kuldeep Mathur for R-1)

(Through Advocate Mr. Pritam Solanki for Mr. K.L. Bishnoi for R-2 to R-5)

ORDER (Oral)

The applicant in the present OA is aggrieved by the refixation of his
pay and consequent reduction in pension and retiral benefits and further

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recovery of Rs 78,054/- by way of annexure A-1 in pursuance to the revised fixation memo Annex. A-1/A'.

2. The applicant has, vide this OA sought the following relief (s) :

- (i) *Application of the applicant may kindly be allowed with costs.*
- (ii) *That impugned order dated 7.6.2011 [A-1] and order dated 20.04.2011 [A-1/A] may kindly be quashed and set aside and it may given effect as if it were never passed against the petitioner.*
- (iii) *The respondents may kindly be directed revise the pension with interest and all other terminal benefits payable to the petitioner in accordance with the actual pay drawn by him in the last 10 months prior to his retirement and further the arrears of such pension and other terminal benefits be allowed to him, with all consequential benefits.*
- (iv) *That any other appropriate relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the application*

3. The brief facts of the case are that applicant who was the employee of the Government in Telecom Department was absorbed as Jr. Telecom Officer (JTO) in Bharat Sanchar Nigam Ltd. (BSNL) w.e.f. 12.11.2001 in pay scale of Rs 6500-200-10500 and his pay was fixed with DNI as Rs 6,900/-. As per Central Dearness Allowances Scales (CDA scales), the applicant gave his option w.e.f. July, 2002 and accordingly he was allowed annual grade increments till 31.3.2004. Thereafter vide fixation memo dated 31.3.2007, applicant's CDA pay was incorrectly fixed as Rs 6500/- with IDA pay Rs 9850/- w.e.f. 12.11.2001 to 31.05.2002. However, CDA pay of Rs 9850/- w.e.f. 1.6.2002 and CDA pay of Rs 10100 w.e.f. 1.11.2002 were allowed to the applicant.

The applicant filed detailed representation before the concerned authorities and agitated his grievances and after considering his representation vide memo dated 5.1.2008 the pay of the applicant was revised and correct pay fixation was allowed in the IDA pay scale of Rs

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9850/- w.e.f. 12.11.01 to 31.05.02 and Rs 10350/- w.e.f. 1.6.2002 in (CDA pay of Rs 6900/-). Thus, accordingly he was allowed annual grade increments till 1.6.2007. Applicant was superannuated from the service w.e.f. 31.01.11 for which order dated 28.1.2011 was issued by the respondents. After retirement while not considering the last pay drawn by the applicant continuously for the preceding 24 months, respondents acted in an illegal and arbitrary manner and effected a recovery of Rs 78,054/- from the applicant's retiral benefits against which the applicant filed a detailed representation and further reminders but no heed was paid. Neither any prior notice was served upon the applicant nor was any opportunity of hearing given to him. Therefore, the applicant preferred present OA to quash Annex A-1 and A-1/A. Further, he has requested to direct the respondents to pay the interest with arrears on such benefits with all consequential benefits.

5. The respondents No. 2 to 5 filed joint reply through their counsels and while vehemently denying all facts averred that applicant had opted for absorption in BSNL and had agreed that his services should be governed by the Rules and Regulations of BSNL. In the BSNL the IDA pay scales were applicable and the applicant had opted for the same and his pay fixation on promotion on the post of JTO from dated 12.11.2001 is under IDA scales and there was no question of application of CDA pay scale in the case of applicant. The counsel for the respondents further averred that by issuance of Annex. A-4, the pay of the applicant was wrongly fixed in CDA pay scales, which were not applicable in case of the applicant. In the subsequent

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fixation the same mistake had occurred and the same was liable to be corrected. Counsel for the respondents further submits that applicant had received excess amount for which he was never entitled, therefore, the recovery of Rs 78,054/- was effected from the applicant. In reply it has been further averred that the recovery was effected as per the law and there had been no irregularity in the same and applicant had been given full information and had known about his wrong fixation earlier made by the Department. It has been further averred that letter dated 30.6.2004 issued by the Department is not applicable to the applicant. The reply contains the averment that the application is liable to be dismissed simply for the reason that the excess payment made by the Department can be recovered from the employee at any time.

6. Heard counsels for the parties. Counsel for the applicant contends that the action of the respondents no. 2 to 5 in re-fixation of the pay of the applicant is in gross violation of the principle of the natural justice and is further in violation of the terms and conditions of the absorption laid down in the presidential order of absorption. He further drew my attention towards the para 4 of the D.P. & P.W. O.M. No. 4/18/87-P & P.W., dated 5-7-1989 which is as follows:

"4. The Public Sector Undertaking/Autonomous Body will formulate the terms and conditions of service in the new body at the earliest possible date. The employees will however have an option to retain Government pay scales till their promotion or retirement (whichever is earlier) or to come to the service conditions of PSU/Autonomous Body. However, until the exercise of this option, they will continue to be governed by the pay scales, leave entitlements and terminal benefits under the Government."

The counsel for the applicant has further cited the order of the BSNL dated 30/06/2004 and the clarification issued by the BSNL is quoted below:

"In continuation of this office order of even number dated 18/03/2004 on the above subject, it is stated that an option is available to the employees to come over in the service condition of the PSU from the date of their promotion or retirement (whichever is earlier) and until then they will continue to be governed by the pay scales, leave entitlements and terminal benefits under the government as per para 4 of DOP&PW O.M. No. 4/18/87 P&PW(D) dated 05-07-1989.

This option is admissible to those employees, who are regularly promoted in the higher grade for fixation of their pay in IDA pay scale of the promoted post."

The instructions of the DOP&PW and clarification issued by the BSNL make it clear that the applicant had an option to come over to the service condition of the PSU from the date of his promotion or retirement and draw his pay accordingly till then.

7. Counsel for the applicant further contended that as per Rule 59 (1) (b) (iii) of CCS (Pension) Rules, 1972, the respondents no. 2 to 5 had no authority to refix the pay of the applicant suo moto and as per the provision, the emoluments for the last 10 months of service had been correctly shown in the service record of the employee. He also contended that the Head of the Department can verify the records only for the period of 24 months preceding the date of retirement of the employee concerned and not for any further period prior to that. The counsel for the applicant in support of his contentions cited the judgment of the Hon'ble CAT, Madras Bench passed in OA No. 700/2009 dated 12.8.2010 by which in the similar circumstances the OA was allowed and the respondents were directed to sanction the pensionary benefits.

8. I have considered the contentions raised by the rival parties as well as averments made in the reply of respondent no. 2 to 5. The main averment in the reply of the respondent no. 2 to 5 is that the refixation of the salary of the applicant was made correctly and the employer has all the rights to recover excess amount paid illegally to the applicant. I have perused the documents submitted by the applicant. Annex. A-1 is the impugned order by which an amount of Rs 78,054/- is deducted as an excess amount paid, Annex. A-1/A is revised fixation memo dated 21.4.11, Annex. A-2 is the fixation memo of the applicant, Annex. A-4 is the fixation memo dated 5.1.2008 which was made after the representation of the applicant, Annex. A-6 is the order retiring the applicant on superannuation, Annex. A-7 is the last pay slip, Annexes. A-8, A-9, A-10 and A-11 are the representations of the applicant to the BSNL, Annexes A-12 and A-13 are the orders dated 30.6.2004 and 5.7.1989 by BSNL and DOP&PW and Annex. A-14 is the judgment of the Hon'ble CAT, Madras Bench.

Earlier on wrong fixation of the pay the applicant submitted a representation [A-8] and after that his salary was refixed and there is no denial of this fact that the applicant continuously received the salary as shown in Annex. A-7 for preceding 24 months and Rule 59 (1) (b) (iii) of CCS (Pension) Rules, 1972 clearly provides that no authority can revise the pay suo moto when the emoluments of the last 10 months are shown correctly in the relevant documents. The Head of the Department can verify the records only for the period of 24 months preceding the date of retirement of the employee concerned and not for any period prior to that date whereas

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the applicant has received this salary for more than 24 preceding months and while refixing the pay by Annex. A-2 respondent no. 3 ordered to deduct the amount of Rs 78,054/- from the retiral benefits of the applicant by neither giving any notice nor giving any opportunity to hear. Although, in reply respondent no. 2 to 5 has averred to submit Annex. R-1 but no such Annex. has been filed with the reply.

9. In this case the pay of the applicant was fixed in accordance with the BSNL HQ New Delhi letter No. 1-5/2004/PAT (BSNL) dated 18.03.2004 and endorsed vide GMTD letter no. EST/31-57/03-04/61 dated 22.03.2004 before the 24 months as mentioned in Rule 59 (1) (b) (iii) of CCS (Pension) Rules, 1972.

Therefore, as per the said provision, the pay of the applicant made earlier is to be restored for the purpose of calculating the pension and retiral benefits in view of the law propounded by the learned Madras Bench of this Tribunal delivered in OA No. 700/2009. Further there is no reason to differ from the view taken by learned Madras Bench in the identical facts.

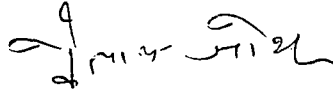
10. In view of the discussions made hereinabove, the OA is allowed. The order Annex. A-1 passed by the respondent no. 3 and Annex. A-1/A issued by the respondent no. 5 is quashed. Respondent no. 3 and 5 are directed to sanction pensionary benefits to the applicant on the basis of last pay drawn by the applicant in the preceding 24 months and further to pay him revised pensionary benefits accordingly. Further respondents shall make payment of Rs 78,054/- within 3 months period which has been recovered from the applicant unauthorisedly from the date of receipt of this order. The applicant

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shall be entitled to get interest @ 9% p.a. from the date of issuance of the order i.e. 7.6.2011 till the actual date of payment.

The respondents are also directed to pay the arrears of the pension alongwith interest @ 9% p.a. within 3 months of the receipt of this order.



(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

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