

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 458 of 2005

Tuesday, this the 13th February, 2007

C O R A M :

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

HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

C.L. Lawrence,
S/o. C.C. Lawrence,
(Retired Chief Section Supervisor),
Office of the General Manager,
Telecommunication, Calicut),
Residing at Near Devagiri College
Staff Quarters, Calicut : 673 008

... Applicant.


(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
The Secretary to the Government of India,
Ministry of Communications,
(Department of Telecommunications),
New Delhi.
2. The Chief General Manager (Telecom),
Bharat Sanchar Nigam Limited,
Kerala Circle, Trivandrum.
3. The General Manager (Telecommunication),
Bharat Sanchar Nigam, Calicut.
4. Deputy General Manager (Administration),
Office of the General Manager (Telecom),
Bharat Sanchar Nigam Limited, Calicut.
5. Assistant General Manager (Administration),
Office of the General Manager (Telecom),
Bharat Sanchar Nigam Limited, Calicut.

... Respondents.


(By Advocate Mr. N. Nagaresh)



O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The core question involved in this case is: When an order of promotion is issued and pay fixed accordingly, but such an order has been passed giving effect to the promotion with retrospective effect, what is the entitlement of such promotee in regard to arrears of pay and allowances, and fixation of pay from the date order of promotion was issued, and, in case the individual stood already retired. terminal benefits on the basis of the revised pay?

2. Facts being admitted, obviate debate. The applicant, functioning as senior Section Supervisor of the Telecom Department voluntarily retired from service on 15-01-1998. It was after three years that the respondents passed an order of promotion of the applicant as Chief Section Supervisor in the grade of Rs. 6500 – 10500 w.e.f. 01-07-1996 under the Biennial Cadre Review Scheme. Pay of the applicant on placement in the higher scale was to be fixed under F.R. 22(1)(a) notionally and it was stated that no arrears of pay would be admissible. Option for fixation of pay was sought. Annexure A-3 order dated 26-07-2001 refers. The BSNL issued Annexure A-7 letter describing as to how the applicant came to be considered at this stage for promotion to the post of Chief Section Supervisor and while reiterating that no arrears of pay would be admissible, the respondents have stated that the revised pay would not result in any increase in the terminal benefits in view of the provisions of Rule 33 and 34 of CCS(Pension) Rules, 1972, as per which any increase in pay which is not actually drawn, shall not form part of emoluments/average emoluments for calculation of pensionary benefits. Authorities have



also passed necessary order of pay fixation vide Annexure A-14, as per which the pay of the applicant w.e.f. 01-01-1997 was Rs. 7,500/- . The applicant was permitted to retire voluntarily w.e.f. 15-01-1998. The applicant had claimed through this OA payment of arrears of pay and allowance from the date of promotion till voluntary retirement, fixation of terminal benefits on the basis of the revised pay fixed by the respondents.

3. Respondents have contested the OA. According to them, orders are specific that no arrears of pay and allowances are admissible, as already stipulated in the order at Annexures A-3, A-7 etc., Again, with regard to increase in pension, invoking the provisions of Rule 33 and 34 of the CCS (Pension) Rules 1972, unless actually drawn, the pay for last month or the last 10 months' average pay notionally fixed cannot be taken into account.

4. Counsel for the applicant, during the course of arguments, fairly conceded that the applicant does not press for the relief of arrears of pay and allowances, but would insist that pension and other terminal benefits should be on the basis of the revised pay i.e., Rs. 7,500/- p.m.

5. Counsel for the respondent only invited our attention to Rule 33 and 34 of the CCS (Pension Rules).

6. Thus the question is whether the applicant is entitled to have his terminal benefits determined on the basis of the notional pay as afforded vide Annexure A-14 order dated



18-04-2005.

7. Arguments were heard and documents perused. The applicant retired on 15.01.1998. His pay was revised on notional promotion w.e.f. 01-07-1996. His notional pay on the date of superannuation was Rs. 7,500/-. Order for promotion was passed only in 2001. This situation is comparable to the one occurring in terms of Ministry of Deptt. of Expenditure Memorandum dated 28-02-2003 and Office Memorandum No. 45/10/98-P&PW(A) dated 17-12-1998 issued by the Department of Pension. In their communication 26th April, 2004 clarification in such a situation has been given as under:-

<i>Point</i>	<i>Clarification</i>
<i>Whether the benefit of higher pay in the upgraded pay scale for calculating pensionary benefits, will be applicable to pensioners retired during 1-1-1996 to 18-2-2003</i>	Under notional fixation, the pay is actually fixed in higher pay scale from the date of such notional fixation. Increments in the higher pay scales are also allowed but no arrears are payable. Accordingly, the pension of all the pensioners as had retired during 1-1-1996 to 18-2-2003 would have to be fixed as per the upgraded pay scales notionally extended from 1-1-1996. However, no arrears shall be paid and the pension with reference to the higher revised pay scale shall actually be paid only w.e.f. 19-02-2003.
Whether revision of pension, this case could be done on the basis of average emoluments notionally drawn during the last 10 months of service under Rule 34 of CCS (Pension) Rules	Revision of pension is allowed as a special case in relaxation of Rules.

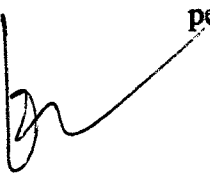
8. The term emoluments has been defined in Rule 33 of the CCS(Pension) Rules. Rule 34 deals with Average emoluments. By the clarification issued above, Revision of



pension is allowed as a special case in relaxation of Rules. Thus when an identical situation as in OM dated 17-12-1998 occurs, such a case also should be dealt with, with the same concessions afforded in the above case. Hence, in the instant case also, the applicant shall be allowed revised pension based on calculation of ten months' average notional pay fixed vide order dated 18-04-2005. However, as in the above case, no arrears of pension would be admissible from 15-01-1998 till 26-07-2001, i.e. the day when the promotion order of the applicant was passed.

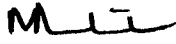
9. Coming to the other terminal benefits, i.e. commutation of pension, leave encashment and gratuity, clarification issued as mentioned above reflects that the difference of gratuity on account of revision of pay scales would not be payable nor is leave encashment admissible. Thus, in the instant case also, no such benefits would be admissible.

10. In view of the above, the OA is disposed of with a declaration that the applicant is entitled to have his pension fixed on the basis of the notional fixation of pay as per Annexure A-14 order dated 18-04-2005 and the same is payable w.e.f. 26-07-2001, the date of issue of promotion order. Such fixation of pension shall thus be notional for the period anterior to 26-07-2001. Respondents are directed to work ~~work~~ out the revised pension and communicate the same to the authorities concerned for disbursement. Detailed calculation sheet shall be made available to the applicant. This drill be performed within a period of two months from the date of communication of this Order.



11. No costs.

(Dated, the 13th February, 2007)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



Dr. K B S RAJAN
JUDICIAL MEMBER

CVI.