

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.537/2013

THURSDAY..., this the *4th* day of February, 2016

CORAM:

Hon'ble Mr. U.Sarathchandran, Judicial Member

M.Salahudheen
Senior Section Supervisor (Retd.)
Office of the Principal General Manager, Telecom
Thiruvananthapuram – 695 001
Residing at Sunitha Cottage
Kodunganoor P.O
Vattiyoorkavu
Thiruvananthapuram – 695 013

..... **Applicant**

(By Advocate – Mr.Vishnu S Chempazhanthiyil)

V e r s u s

1. The Controller of Communication Accounts
Department of Telecommunication
Door Sanchar Bhavan
Thiruvananthapuram – 695 033
2. Union of India, represented by its
Secretary, Department of Telecom
20 Ashoka Road, Sanchar Bhavan
New Delhi – 110 001
3. The Principal General Manager
Thiruvananthapuram Telecom District
BSNL Bhavan, Uppalam Road
Thiruvananthapuram – 695 001
4. The Chief General Manager
Bharat Sanchar Nigam Limited
Kerala Circle, Thiruvananthapuram – 695 033

..... **Respondents**

(By Advocate – Mr.S Ramesh, ACGSC for R 1 & 2, Mr.George Kuruvilla for R 3&4)

This Original Application having been heard on ~~23.12.2015~~, the Tribunal on the *4/2/16* day delivered the following:



ORDER

By Hon'ble Mr.U.Sarathchandran, Judicial Member

The short question in this case is whether the respondents are justified in taking steps for reducing the applicant's pension on the basis of Annexure A-2 revised pay fixation after his retirement. The applicant was superannuated from BSNL as Section Supervisor on 30.04.2013. Prior to the formation of the BSNL on 01.10.2000 applicant was working under the Department of Telecommunications and was a Government of India employee. After the formation of BSNL he was given the option to come over to BSNL. Having exercised the option to come over to the BSNL, he became a BSNL employee. When he retired from service, his last pay drawn / basic pay was Rs.28620/- in the scale of pay of Rs.16390/- - Rs.33,830/-. The retirement benefits including retirement gratuity, commuted value of pension and pension were calculated on the basis of last pay drawn i.e, Rs.28,620/-. Now the respondent no.1 has issued a directive to the Accounts Officer under him to recalculate the pay of the applicant by revising the pay as Rs.27,780/- from 1.2.2000 onwards vide Annexure A-2. Annexure A-2 step taken by respondent no.1 is under challenge in this Original Application mainly on the ground that respondent no.1 is not competent to cancel / nullify pay fixation granted to the applicant pursuant to the biannual cadre review promotion granted on 29.8.2000 by the Department of Telecommunications. According to the applicant the action of respondent no.1 in nullifying / canceling the fixation of pay granted to the applicant and consequential re-fixation of the pay is illegal and arbitrary.

2 Applicant contends that in terms of Rule 59 to 65 of CCS (Pension) Rules, respondent no.1 is incompetent to deny what has been already granted by the applicant's employer. It is pointed out that his Junior Mrs.B Vasunthara, Senior



TOA was granted BCR on 16.10.2000 and was placed at a pay of Rs.8700/- on 1.2.2001 with DNI on 1.2.2002 and therefore applicant is entitled for stepping up of his pay on par with her because at that time applicant was granted BCR on 29.8.2000 and was placed at Rs.6025 on 29.8.2000 on the scale of pay of Rs.5500-9000 and would receive only Rs.8475/- as on 1.2.2001. Applicant contends that denial of pensionary benefits based on actual last pay drawn of the applicant is illegal and arbitrary and hence he seeks relief as under:

"1. Declare that the action of the part of the 1st respondent in sanctioning reduced pensionary benefits without notice to the applicant is illegal and arbitrary.

2. Direct the respondents 1&2 to grant pensionary benefits after taking into account the actual last pay drawn of the applicant at Rs.28620/- and direct respondents 1 & 2 to recompute the pensionary benefits based upon the actual last pay drawn by the applicant and release the arrears forthwith with 9% interest.

3. Call for the records leading to the issue of Annexure A-2 and set aside Annexure A-2.

4. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

5. Award the cost of these proceedings. "


3 According to respondent nos.1 and 2 the issue in this case pertains to the mode of fixation of pay in IDA Pay Scale in respect of the absorbed officials of BSNL who were promoted prior to 01.10.2000 but opted for fixation of their pay in the promoted scale from the date of their next increment in the lower grade which fell after 01.10.2000. On getting a reference from BSNL on the subject the Department of Telecommunications issued instructions vide O.M No.1-1(1)/06-PAT dated 12.09.2006 after consultation with the Telecom Finance wherein it was clarified that the absorbed employees promoted prior to 01.10.2000 may be allowed fixation of pay to the promoted scale from the date of their next increment in the lower scale that fell after 1.10.2000. Subsequently, the matter was re-examined in consultation with the Department of Public Enterprises.(DPE) The DPE observed that the proposal of DoT is not agreed to because the option of fixing pay from the date of next increment as available under FR 22 cannot be



made available to the BSNL employees as their status has changed as on 1.10.2000 and hence their pay needs to be fixed on the date of their promotion as per the existing rule prior to 1.10.2000 and no re-fixation is permitted on the next date of increment that fell after 1.10.2000. According to the respondents it is for the aforesaid reason that re-fixation of the pay of the applicant was ordered to be done as per Annexure A-2. Accordingly, the applicant is entitled to only Rs.27,780/ as his last pay drawn.. Respondent nos.1 & 2 contend that the applicant was enjoying undue benefits due to the wrong fixation which involved huge amount of Government exchequer and therefore they pray for dismissing the Original Application.

4. A reply statement was filed by respondent nos.3&4 also. It is stated by them that applicant was aware long before his retirement that pay fixation based on the option exercised by him was provisional and that he had given an undertaking marked as Annexure R3(a) to the effect that he would abide by government decisions on the issues of fixation of pay in the IDA scale from the date of his next increment after the formation of BSNL on 01.10.2000. According to respondent nos.3 &4 the controversial option by the applicant and similarly placed officials had been a subject of discussion and subsequent clarifications for a long time and a final decision was conveyed by respondent no.4 vide Annexure R-3(b) in the light of the O.M issued by the Department of Telecommunications on 17.12.2008 holding that the pay of such officials have to be fixed on the date of their promotion as per the existing rules prior to 01.10.2000 and no re-fixation can be permitted on the next increment date which is following after 1.10.2000. Respondent nos.3&4 therefore, pray for dismissing the Original Application.

5. Separate rejoinders were filed by the applicant to the reply filed by respondent nos.1&2 and respondent nos.3&4. According to him there is no mistake in the pay fixation and the action of the respondent no.1 in



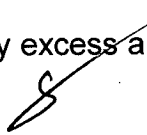
nullifying/canceling the fixation of pay is illegal and arbitrary. There was no mistake on the part of the applicant also. Applicant's promotion date 29.8.2000 was fixed more than a decade ago and the pay was revised on the order of DoT dated 17.12.2008.

6 Heard Mr.Vishnu S Chempazhanthiyil, learned counsel for applicant and Mr.S.Ramesh,ACGSC for respondent nos.1 and 2 and Mr.George Kuruvilla for respondent nos.3 & 4.

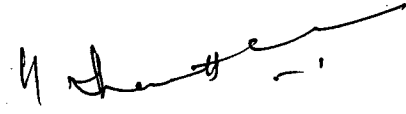
7 Learned counsel for respondent nos.1 and 2 produced an order of the co-ordinate bench of this Tribunal at Bangalore in O.A No.115/2013 and connected cases. This Tribunal upheld the decision of the respondent BSNL. The Tribunal was relying on an earlier order passed by the said Bench on 1.5.2013 in O.A 31/2012 wherein it was held that :-

"The pay of the applicant has been fixed in accordance with the above instructions (O.M dated 17.12.2008 of GOI). The BSNL has its own pay structure and not all the instructions of GOI for staff of Departments of GOI are necessarily applicable to the staff of BSNL. In case of common issues pertaining to Central Government undertakings/bodies, it is the Department of Public Enterprises of GOI which issues instructions/clarifications We do not find any illegality or error in the method adopted for fixation of pay. The O.A is accordingly dismissed."

8 After hearing both sides, this Tribunal is of the view that the decision in the aforementioned cases by the co-ordinate Bench of this Tribunal at Bangalore is equally applicable in the instant case as well. Therefore, this Tribunal holds that there is no illegality or error committed by respondent no.1 while issuing Annexure A-2 communication. Nevertheless, since the applicant is a retired official, this Tribunal is of the view that in the light of the ruling of the Apex Court in the case of *State of Punjab and Others v. Rafik Masih (White Washer)* (2015) 4 SCC 334 (judgment dated 18.12.2014 in Civil Appeal No.11527/2014), recovery of excess amounts paid to the retired employee is impermissible in law, this Tribunal directs the respondents not to recover any excess amount from the applicant. It is made



clear that this Tribunal has not interfered with the impugned Annexure A-2 communication. The Original Application is disposed of as above. No order as to costs.



**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

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