

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 275 OF 2013

Tuesday, this the 4th day of June, 2013

CORAM:

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

G.Mohandas
Retired Divisional Engineer (Telecom)
Residing at T.C.18/1925-I, JRA 120
Meppuram, Thirumala
Thiruvananthapuram – 695 006 ... **Applicant**

(By Advocate Mr. Vishnu S Chempazhanthiyil)

versus

1. The Chairman and Managing Director
Bharat Sanchar Nigam Limited
Corporate Office
Statesman House, New Delhi – 110 001
2. The Director
Human Resources, Bharat Sanchar Bhavan
Hareesh Chandra Mathur Lane
Janpath, New Delhi – 110- 001
3. The Chief General Manager
Bharat Sanchar Nigam Limited
Kerala Circle
Thiruvananthapuram – 695 033
4. The General Manager
Bharat Sanchar Nigam Limited
Alappuzha – 11
5. Union of India represented by the Secretary
Department of Telecom
New Delhi – 110 001
6. The Chief Vigilance Officer
Bharat Sanchar Nigam Limited
iv Floor, Statesman House
B-148, Barakhamba Road
New Delhi – 110 001 ... **Respondents**

(By Advocate Mr. George Kuruvilla (R1-4))

The application having been heard on 04.06.2013, the Tribunal
on the same day delivered the following:

ORDER

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

Non release of terminal benefit is the cause of grievance of the applicant. The applicant was issued with a charge sheet in November, 2011 when his superannuation date was 29-02-2012. While he denied the charges, he had approached the Tribunal in OA No. 1089 of 2011 for early finalization of the proceedings and the Tribunal calendared six months' time for the completion of proceedings. OP (CAT) No. 205 of 2012 was filed by the respondents and the respondents made a submission that attempt would be made to complete the inquiry proceedings as per the dictate of the Tribunal and the same was taken judicial notice of by the High Court. As the proceedings were not concluded as scheduled, Contempt Petition No. 1615/2012 was filed whereupon, the respondents had issued final orders on 12-02-2013. Penalty of reduction of pension by 10% for a period of one year was imposed vide order dated 12-02-2013. Thus there is no impediment to release the withheld terminal benefits, whereas the respondents were not inclined. Hence, this OA seeking the following reliefs:-

- (i) *Direct the respondents to release the entitled pensionary benefits forthwith.*
- (ii) *Direct the respondents to grant interest at the rate of 10% on entitled pensionary benefits from 05.07.2012 onwards.*
- (iii) *Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.*
- (iv) *Award the cost of these proceedings."*

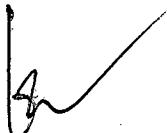
2. Respondents have contested the OA. They have, through the Counsel Statement, stated that the matter is not pending with the

respojdents, but it is the CVO who has to give a clearance and the same is awaited. Thus, the applicant moved MA No. 574 of 2013 impleading the said CVO of BSNL as Respondent No. 6. Through an MA No. 524 of 2013, a prayer has been made by the applicant for certain direction to the impleaded sixth respondent to expedite the matter.

3. Both the OA as well as the MA have been taken up for consideration. The above fact remains undisputed. The CVO is a part and parcel of the BSNL and thus, it was felt that direction given to the first respondent would abide his subordinates as well, as it is the responsibility of the first respondent to supervise the functions of his subordinates. Direction to the Respondent No. 1 and No. 3 would suffice in respect of this case. Hence, though no reply has been received from the Sixth Respondent, he having been represented by the Counsel for the other respondents, the entire matter has been considered.

4. With the imposition of penalty of 10% reduction in pension for a specific period, the applicant becomes entitled to receive various other terminal benefits without any truncation and on time. Normally, a specific time is allowed for settlement of the terminal benefits. In case of delay resulted due to lapses on the part of the administration, Rules provide for payment of interest at certain rates for such delayed payment of such terminal dues. and further the rules provide for action to be taken against the erring individuals.

5. It is appropriate at this juncture to refer to certain judgment of the Apex Court. The same are as under:-



(a) **S.K. Dua v. State of Haryana, (2008) 3 SCC 44,** wherein the Apex Court has stated –

"If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof."

(b) In the case of **Uma Agrawal (Dr) v. State of U.P., (1999) 3 SCC 438**, the Apex Court has held as under:-

"Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the court can certainly keep in mind the time-schedule prescribed in the Rules/instructions apart from other relevant factors applicable to each case."

(c) In the case of **Vijay L. Mehrotra v. State of U.P., (2001) 9 SCC 687**, the Apex Court has held as under:-

3. *"In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement."*

6. In the instant case, there is justification in not making the payment of terminal dues till the pronouncement of the result of the disciplinary proceedings. However, after the issue of the penalty order, which does not have any effect on the payment of terminal benefits, the same ought to have been released without any further delay. The grievance of the applicant is that the Chief Vigilance Officer is unnecessarily sitting on it. The grievance is justified and deserves to be redressed. Whoever may be responsible for such an avoidable delay, the applicant cannot be penalized. He would be

entitled to interest on delayed payment from March, 2013. However, if the amount is paid within one month from the date of communication of this order, interest need not be paid. If, instead, there is further delay, along with the amount of terminal benefits, interest @ 9% per annum shall be paid from 01-03-2013 till the date of payment. Since the ex-chequer should not be made to suffer, the amount so paid shall be realized by due process of law from the erring individual. In this regard, the following decision of the Apex Court is apt to be referred to and followed:-

LDA v. M.K. Gupta, (1994) 1 SCC 243,

11. Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public-oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was *mala fide* and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and

implicit in the exercise of power that it should be for the sake of society. When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the taxpayers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries."

In *vs. Balbir Singh*, (2004) 5 SCC 65, the Apex Court has reaffirmed the above in the following words:-

"We are in full agreement with what is observed herein. Thus the law is that the Consumer Protection Act has a wide reach and the Commission has jurisdiction even in cases of service rendered by statutory and public authorities. Such authorities become liable to compensate for misfeasance in public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen. The word compensation is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss. The provisions of the Consumer Protection Act enable a consumer to claim and empower the Commission to redress any injustice done. The Commission or the Forum is entitled to award not only value of goods or services but also to compensate a consumer for injustice suffered by him. The Commission/Forum must determine that such sufferance is due to mala fide or capricious or oppressive act. It can then determine amount for which the authority is liable to compensate the consumer for his sufferance due to misfeasance in public office by the officers. Such compensation is for vindicating the strength of law. It acts as a check on arbitrary and capricious exercise of power. It helps in curing social evil. It will hopefully result in improving the work culture and in changing the outlook of the officer/public servant. No authority can arrogate to itself the power to act in a manner which is arbitrary. Matters which require immediate attention should not be allowed to linger on. The consumer must not be made to run from pillar to post. Where there has been capricious or arbitrary or negligent exercise or non-exercise of power by an officer of the authority, the Commission/Forum has a statutory

obligation to award compensation. If the Commission/Forum is satisfied that a complainant is entitled to compensation for loss or injury or for harassment or mental agony or oppression, then after recording a finding it must direct the authority to pay compensation and then also direct recovery from those found responsible for such unpardonable behaviour."

7. The above dictum could comfortably be pressed into service in service matters and any loss that occurs to the ex chequer due to the recalcitrant attitude of any public servant could well be off set by way of realizing the same from the erring individual
8. In view of the above, the OA is allowed. The respondents are directed to release within one month from the date of receipt of a copy of this order the entire terminal benefits due to the applicant. In case of default, the amount shall be incremented by interest @ 9% per annum or at the rate provided for in relevant rule, whichever is lower, from 01-03-2013 till the date of such payment and the first respondent shall take due action against the erring individual for realization of the extent of interest paid to the applicant.
9. Under the above circumstances, there shall be no orders as to cost.

Dated, the 4th June, 2013.



Dr. K.B.S. RAJAN
JUDICIAL MEMBER