

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.316 of 2011

This the 23rd day of March, 2012

CORAM:

Hon'ble Dr.K.B.S.Rajan, Judicial Member
Hon'ble Mrs K.Noorjehan, Administrative Member

K.N.Velukuttan, Divisional Engineer(Retired)
BSNL, Kaithamukku, R/o TC No.43/6666(5)
Residing at T.C No.43/6666(5), Pournami,
NKRA-57, Neelattikara, Manacaud PO
Thiruvananthapuram- 695 009. Applicant

(By Advocate - Mr.Vishnu S Chempazhanthiyil)

V e r s u s

1. The controller of Communication Accounts
Kerala Circle, Thiruvananthapuram - 695 033
2. Union of India, represented by the Secretary
Department of Telecommunications
Sanchar Bhavan, New Delhi
3. The Chief General Manager, Office of the CGMT, BSNL
Thiruvananthapuram - 695 033 Respondents

(By advocate - Mr.George Joseph, ACGSC for R1&2 &
Mr.Pradeep Krishna for R3)

This Original Application having been heard on 23.02.2012, the Tribunal
delivered the following :

ORDER

Hon'ble Mrs.K.Noorjehan, Administrative Member -

The applicant is aggrieved by the illegal reduction in pension and pensionary benefits by the respondents without notice to the applicant.

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2 Brief facts of the case as stated by the applicant are that he was initially recruited in the department of Telecommunication and on the corporatisation of a part of DOT into BSNL, he was given an option to switch over to BSNL and he became a permanent employee of BSNL. He superannuated from the service of BSNL on 31.5.2010. On his retirement he was governed by Rule 37(A) of the CCS (Pension) Rules. At the time of his retirement, the applicant was placed in the pay scale of Rs.29100-54500 with a basic pay as Rs.42890/-. Accordingly, he was to be granted pension at the rate of Rs.21445/- per month..It is submitted that in the year 2002 there was a stepping up of his pay by a letter dated 2.9.2002 with the approval of the CGMT, Trivandrum at par with his junior Mr.Ramrupe (Annexure A-2). To the utter shock and surprise of the applicant the 1st respondent issued Pension Payment Order by reducing the the benefit of stepping up so granted to him in the year 2002 and fixed his pension at the rate of Rs.20555/- per month instead of 21445/-. He alleged that this reduction has resulted in corresponding decrease in his retiral benefits such as DCRG, Commuted value of pension etc. He submitted representations dated 10.8.2010 and 29.9.2010 to the respondents for the illegal reduction of his pension that too without notice to him. In response to his representation the 1st respondent intimated by communication dated 13.1.2011 that the stepping up of pay on par with the junior which was granted in the year 2002 was not correct, therefore, the same was not taken into account. The applicant by another representation dated 21.2.2011 pointed out that the action of the 1st respondent is illegal in reopening the stepping up matter at this distance of time, that too without notice to him.

3 The third respondent submitted that stepping up of pay was granted in the grade of Sub Divisional Engineers (SDEs) under CCS RP Rules 1997 with reference to All India Seniority List in the grade of Junior Telecom Officers (JTO), which is the feeder cadre for promotion to All India Cadre of SDEs. However, the first respondent is disallowing the stepping up of

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pay which was permitted on 09.08.2002, as being violative of instructions contained in DG P&T letter No.4/57/67-P&T dated 16.01.1968 (Annex R-1).

4 Respondents 1 & 2 filed a separate reply statement. It is submitted by the respondents that the stepping up of pay was not in order in terms of DGP&T letter No.4/57/67-P&T dated 16.1.1968 incorporated as DGP&T's instruction (2) below Fundamental Rule-22 (Swamy's Compilation of FRSR Part-1 2010 edition). It is clarified therein that in cases where the seniority list for the lower cadre is maintained locally and for the higher post the same is maintained as All India Basis, then the stepping up of pay of a senior, if all conditions are fulfilled, can be made only with reference to a junior of the same circle to which the senior belongs. In the case of TES Group-B officers, the seniority list is maintained on all India basis while for the lower post, viz Junior Engineer (JTO earlier), it is on circle level. In the case of the applicant, a Junior Engineer of Kerala Telecom Circle he was a Govt of India Officer in 1998 whereas Sh.D.S.Ramrupe, with reference to whose pay his pay was stepped up in 2002, was an officer of MTNL, Mumbai, a company owned by the Govt of India in Maharashtra Telecom circle in the year 1998. Therefore Ramrupe is not a comparable junior in the lower post, JTO, since they do not belong to the same circle. Moreover, the applicant is a Govt of India Officer and D.S.Ramrupe was an officer of a company, therefore the stepping up in this case is irregular. Moreover, the pensionary benefits of the employees of BSNL are governed under Rule 65 of CCS (Pension) Rules, 1972. They further averred that Rule 59 of CCS (Pension) Rules, 1972 empowers to verify the correctness of emoluments for the period of 24 months preceding the date of retirement to see whether it is correctly arrived at. Therefore the action of the 1st respondent is justified..

5 Applicant filed rejoinder to the reply reiterating the facts as stated in the OA and submitted that in a similar case the coordinate Bench of this Tribunal in OA 999/2010 has considered the case and the decision therein is squarely applicable in this case.

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6 Arguments were heard and documents perused.

7 The learned counsel for the applicant argued that the O.A is covered by the orders of the Tribunal in O.A. 999/2010 which was implemented by the respondents.

8 It is seen that after an elaborate discussion in OA 999/2010, the same was allowed by this Tribunal. The relevant portion of the order is extracted below:

11. The basis for stepping up of pay was that promotion of the applicant from JTO to SDE took place in 1994 while that of his junior Shri Ramrupe in 1998 only. In between the 5th pay Commission recommendations came into force with effect from 01.01.1996. As regards stepping up of pay, the Revised Pay Rules 1997 inter-alia provide as under:-

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" Note 9. In cases where a senior Government servant promoted to a higher post before the 1st day of January, 1996, draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1996, the pay of the senior Government servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfilment of the following conditions, namely:-

(a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.

(b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical.

(c) the senior Government servants at the time of promotion have been drawing equal or more pay than the junior

(d) the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22 or any other rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer. "

12. Government of India orders (18) under FR 22 provides for the contingencies/conditions for grant of stepping up of pay and the same are as under:-

"18. (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

13. The question for consideration is whether the applicant's claim should be dismissed on the sole ground that the seniority of the feeder post at the time of his promotion was of circle basis. In the instant case, need to step up of the pay of the

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applicant arose more on account of the situation which arose on the implementation of revised Pay Rules 1997 and there is no stipulation therein that the seniority should be with reference to the same circle. When the date of promotion of the applicant is in 1994 and that of his junior is in 1998, that the applicant is senior is apparent and the applicant's claim for stepping up of pay is not with reference to his position as SDE which has A-1 seniority. As such, the respondents have fallen into grave error in assuming that the applicant is not eligible for stepping up of pay and as such the benefit of stepping up of pay granted to him in 2000 should be withdrawn. Apart from the above, as per Rule 59(1)(iii) of the CCS Pension Rules a time limit has been stipulated for verification of pay particulars and this being a statutory provision the same should be adhered to. The said Rule is as under:-

Rule 59 – Authorisation of pension and gratuity

(1) The Head of Office shall divide the period of preparatory work of two years referred to in Rule 58 in the following three stages:-

(a) XXXXXXXXXXXXXXXX

(b) Second stage – Making good omission in the Service Book:-

(i) xxxxxxxxxx

(ii) xxxxxxxxxx

(iii) Calculation of average emoluments.- For the purpose of calculation of average emoluments, the Head of Office shall verify from the Service Book the correctness of the emoluments drawn or to be drawn during the last ten months of service. In order to ensure that the emoluments during the last ten months of service, have been correctly shown in the Service Book, the Head of Office may verify the correctness of emoluments for the period of twenty four months only preceding the date of retirement of a Government servant, and not for any period prior to that date. "

14. From the above point of view also rectification of the so called assumed mistake is impermissible.

15. The counsel for the applicant has referred to a decision in O.A 05/2009 of this Tribunal in support of his case.

16. Taking into account all the above facts, it is clear that the applicant has made out a cast iron case in his favour. The reason given by the respondents for withdrawing the benefit of stepping up is untenable, illegal and unsustainable. If the contention of the respondents is allowed, it would go diametrically opposite to the very principle of grant of stepping up of pay and as also the statutory provisions prescribing certain limitation for rectification of service book.

17. In view of the above, the original application is allowed. The impugned order at Annexure A-8 is quashed and set aside. It is declared that the applicant's pension shall be based on the pay last drawn by him without any truncation. Necessary orders shall be passed by the respondents without any reduction on the ground of withdrawal of the stepping up benefit granted.

9 In the above order, the Single Bench (one of us) had allowed the OA on the following twin Grounds:-

(a) The Revised Pension Rules did not specify that while considering stepping up of pay, comparison of seniority should be with respect to the same circle. The first part of Para 13 of the order refers.

(b) Apart from that there is a statutory bar from rectifying mistakes that have occurred more than two years anterior to the date of retirement. Rule 59(1)(b)(i) and (iii) of the CCS(Pension) Rules, 1972 refers. This decision has been relied upon by the Madras Bench in OA No. 700 of 2009 vide Annexure

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10 On a careful consideration of the above order of this Bench, it is observed that while passing the above order the Tribunal does not seem to have taken into account a clarification made by the DGP&T in its letter No.4-57/67 P&T dated 16.01.1968 vide Anneuxre R-1 which inter alia reads as under:-

"(2) Stepping up only with reference to seniority list of lower cadre recruiting unit. - It has been clarified in M.F., O.M No.F.2(10)-E.III (A)/62, dated the 20th July, 1965, that in cases where the seniority list for the lower cadre is maintained locally and for the higher post the same is maintained on All India basis, then the stepping up of pay of a senior, if all the other conditions are fulfilled, can be made only with reference to a junior of the same circle to which the senior belongs. In the case of TES, Group 'B' officers, the seniority list is maintained on All India basis, while for the lower post, viz, junior Engineers, it is on Circle level. As such, their cases are to be considered only with reference to juniors of the same Circle."

11 According to R 1-2, this condition of belonging to the same cadre is not fulfilled in the present case. In this particular instance the official with whom the stepping up was allowed with effect from 21.10.1988 belongs to MTNL Bombay, a company while the applicant was a Government of India officer in the department of Telecom, Kerala Circle. The seniority list of JTO is maintained circle-wise in DOT. Therefore, Sh.D.S Ramrupe was SDE MTNL Bombay with effect from 21.10.1998. The applicant did not belong to that cadre. The MTNL follows its own rules about promotion, while it may not be the same in DOT from where officers might have gone on deputation to MTNL. The respondents R 1-2 pointed out that JTO is not an All India Cadre as is borne out by the third respondent's clarification received from DOT New Delhi.

12 In view of the above, this Bench differs from the finding at the first part of para 13 of the order in OA 999/2010.

13 However, the statutory provision contained in Rule 59 of CCS (Pension) Rules, 1972 which prescribes the procedure classifying the same as various stages for completion of pension papers cannot be ignored. Rule

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59(1)(b)(i) and Rule 59(1)(b)(iii) provides for rectification of mistake in fixing the pay of a government servant retiring shortly. Both this Bench as well as the Madras Bench have referred to and relied upon the same.

14 The instructions of 1968 is only from the Administrative Ministry. And, in violating of the same stepping up of pay is granted to an individual, then rectification of mistake can certainly take place if there is no statutory bar. However, Rule 59 of the CCS(Pension) Rules 1972 provides a bar for rectification of mistakes in calculation of pay pertaining to a period anterior to two years of retirement. A Constitution Bench of the Apex Court in the case of P.S. Sathappan vs Andhra Bank Ltd., (2004) 11 SCC 672 the Apex Court had occasion to consider the availability of appeal against an order of first appeal or second Appeal. It has held in this regard as under:-

It may be true that in certain cases letters patent appeals are available even from an appellate order passed by a learned Single Judge of the High Court to a Division Bench but the same was permissible only when there was no bar thereto and subject to the condition laid down in clause 15 itself. We may notice that when a first appeal or second appeal was disposed of by a Single Judge, a letters patent appeal had been held to be maintainable therefrom only because there existed no bar in relation thereto. Such a bar has now been created by reason of Section 100-A of the Code. No appeal would, therefore, be maintainable when there exists a statutory bar. When Parliament enacts a law it is presumed to know the existence of other statutes. Thus, in a given case, bar created for preferring an appeal expressly cannot be circumscribed by making a claim by finding out a source thereof in another statute.

15 Viewed from the above, notwithstanding the fact that there existed the DOPT Instructions of 16-01-1968, that stepping up of pay should be only on comparison with a junior in the same circle, when erroneously, without considering the above, if stepping up of pay is granted comparing the seniority of a junior of another Circle, in such a case, rectification of mistake and refixation of pay which could be possible till such time where there is no bar, cannot be made when there is a statutory bar under Rule 59 (1)(b)(i) or (iii) of the CCS(Pension) Rules, extracted above. The respondents

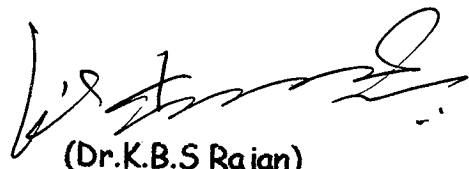
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have missed the bus.

16 In view of the above, the OA succeeds. It is declared that the applicant is entitled to have the last pay drawn fixed without any truncation on account of erroneous stepping up of pay and his pension shall be based on such last pay drawn. Hence, the impugned order dated 11/13-01-2011 is quashed and set aside. Respondents are directed to ensure that the applicant is paid the correct pension. This order shall be complied with, within a period of three months from the date of communication of this order. No orders as to costs.

(Dated 23rd March 2012)


(K.Noorjehan)
Administrative Member


(Dr.K.B.S Rajan)
Judicial Member

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