

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 21st day of August, 2008

ORIGINAL APPLICATION No.236/2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER

G.D.Gupta
s/o Shri S.L.Gupta,
r/o E-303, Lal Kothi Scheme, Jaipur
and retired on superannuation on the
post of Deputy General Manager (TR),
O/o Principal General Manager,
Telecom District, Jaipur

.. Applicant

(By Advocate: Mr. C.B.Sharma)

Versus

1. Union of India
through the Secretary to the
Government of India,
Ministry of Telecommunication & Information
Technology,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi.
2. Principal General Manager,
Telecom District, Jaipur
3. Controller of Communication Accounts,
Rajasthan Telecom Circle,
Jhalana Doongari,
Jaipur

.. Respondents

(By Advocate: Mr. Inderjeet Singh for resp. No.2)

O R D E R (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) That the respondents may be directed not to recover Rs. 57,683/- and not to adjust the same from Medical Allowance with further direction to release medical allowance due from January, 2007 by quashing letters dated 4/6/2007 and 9/4/2007 (Annexure A/1 and Annexure A/2) with all consequential benefits.
- (ii) That respondents be further directed to revise/to issue revised PPO to the applicant on the basis of last pay drawn in IDA scale at the stage of Rs. 20,000/- by allowing 50% D.A. as DP towards calculation of pensionary benefits and to release difference of due amounts along with interest as per Government of India decision No.5 below rule 68 of CCS (Pension) Rules, 1972.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded."

2. Briefly stated, facts of the case are that the applicant was retired from the post of Deputy General Manager (Finance) on 31.7.2005 while drawing pay on CDA scales. While finalising his pension case the emoluments granted to him in CDA scale was taken into consideration. Subsequently he was permanently absorbed in Bharat Sanchar Nigam Ltd. (BSNL, for short) w.e.f. 1.10.2000. Consequent upon his absorption in BSNL w.e.f. 1.10.2000, the pay and allowances were revised and paid according to the IDA pattern. The applicant received arrears of IDA pay

and allowances amounting to Rs. 1,69,743 for the period from 01.10.2000 to 31.07.2005 and difference amount of leave encashment of Rs. 31,950 admissible on retirement from his own office on 22.7.2006 and 31.7.2006 respectively. Due to change in emolument on absorption in BSNL, pension case of the applicant was revised according to emoluments in IDA pattern under Rule 37-A of CCS (Pension) Rules, 1972 and difference of pensionary benefits were to be settled by way of payment or recovery, as the case may be, and it was found that on account of revised pension as per emoluments drawn in IDA pattern, recovery of some of Rs. 57, 683/- being over payment of commutation of pension was to be effected. Accordingly, vide impugned letter Ann.A1, the BSNL authorities were requested to recover the aforesaid amount from the applicant and vide Ann.A2 the applicant was informed that his medical allowances due has been adjusted against over payment of commuted value of pension since the over payment is not refunded after several reminders. It is these orders which are under challenge in this OA, as can be seen from prayer clause as reproduced above, with further prayer that respondents may be directed to issue revised PPO to the applicant on the basis of last pay drawn in IDA scale at the stage of Rs. 20,000/- by allowing 50% D.A. as DP towards calculation of pensionary benefits and to release

difference of due amounts, which has sought to be quashed.

3. Notice of this application was given to the respondents. The respondent Nos. 1st and 2nd have filed separate replied. Respondent No.2 has taken objection regarding maintainability of the OA.

4. I have heard the learned counsel for the parties and gone through the material placed on record.

5. Since the respondents have raised objection regarding maintainability of the OA, as such, this question has to be decided at the first instance.

Admittedly, the applicant has opted for absorption in BSNL w.e.f. 1.10.2000, as such, he cannot be said to be employee of the Central Govt. Further, from the prayer clause, it is evident that the relief sought by the applicant ^{are} regarding (i) direction not to recover Rs. 57,683/- from the applicant and not to adjust the same from medical allowance as was done vide Ann.A2 which order has been passed by the BSNL authority and (ii) direction to the respondents to issue revised PPO to the applicant on the basis of last pay drawn in IDA scale in the manner stated above, which relief also pertains to BSNL authority. As such, the relief claimed by the applicant cannot be said to be a dispute relating to service matter in respect of his

parent department being a Central Govt. employee so as to attract provisions of Section 14 of the Administrative Tribunals Act, 1985. As already stated above, the relief as claimed by the applicant pertains to BSNL which is not a department of the Central Government but is Public Sector Undertaking having its independent entity, as such, this Tribunal has got no jurisdiction to entertain the matter.

6. The matter on this point is no longer res-integra. At this stage, it will be useful to quote decision of the Chandigarh Bench of the Tribunal in the case of Puleshwar Prasad Singh vs. Union of India and Ors. in OA No.1116-CH-2002 and OA No.1128-CH-2002 decided on 5.5.2003 (reported in 2003(2) ATJ 297) whereby the Chandigarh Bench has held as under:-

"The persons directly recruited, appointed and absorbed by/in BSNL are in absence of a Notification under Section 14 (2) of the Act, this Tribunal has no jurisdiction, power or authority to entertain and adjudicate their disputes with regard to their service matter even though it pertains to the period prior to their absorption. This category of the employees undoubtedly falls beyond the ambit of the jurisdiction of this Tribunal."

The judgment of the Chandigarh Bench was further considered by the Full Bench of the Tribunal at Jaipur in OA No.401/2002, B.N.Sharma vs. Union of India and ors. alongwith other similar OAs decided on 24th March,

2004. The questions which were posed before the Full Bench, as can be seen from para 13 of the judgment were:-

- "1. Whether the Tribunal has jurisdiction on all service matter in respect of service matters of central government employees who are on deemed deputation to BSNL or only in respect of cause of action relating to their parent department e.g. disciplinary proceedings, department etc. and not for the cause of action wholly arisen from BSNL e.g. transfer, promotion etc. by BSNL.
2. Whether the Tribunal has jurisdiction on all service matter in respect of service matters of central government employees, the cause of action for which related to a period prior to the absorption of such employees in BSNL."

The Full Bench answered the controversy that the Central Administrative Tribunal had no jurisdiction to adjudicate upon their service matters till a notification under sub-section (2) to Section 14 is issued. Admittedly, such notification has not been issued so far. At this stage it will be useful to quote para 22 of the judgment, which thus reads:-

"22. Resultantly, we answer the controversy, as already referred to above, holding that in cases in which the employees had been absorbed permanently with the BSNL, the Central Administrative Tribunal has no jurisdiction to adjudicate upon their service matters till a notification under sub-section (2) to Section 14 is issued."

7. Thus, in view of what has been stated above and the fact that the applicant has been permanently absorbed in BSNL w.e.f. 1.10.2000 which is company duly incorporated in terms of the provisions of

Companies Act, 1956, as such, this Tribunal has got no jurisdiction to entertain the matter, in view of the provisions contained in Section 14 of the Administrative Tribunals Act, 1985 till notification under Sub-section 2 Section 14 is not issued. Admittedly, no such notification has been issued so far.

8. Accordingly, the present OA is dismissed as this Tribunal has got no jurisdiction to entertain the dispute. Since the OA has been dismissed on the ground of jurisdiction, as such, no finding has been given on merits. No costs.



(M.L.CHAUHAN)
Judicial Member

R/