

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 119/2012

Date of Order: 30.05.2016

CORAM

HON'BLE DR. K.B.SURESH, JUDICIAL MEMBER
HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Om Narain Sharma S/o late Shri S.N. Sharma, by caste Sharma, aged about 63 years, R/O 1740, Chella House, Jat Ka Kua Ka Rasta-II Cross, Chandpole Bajar, Jaipur presently retired as Chief Technical Supervisor, O/o P.G.M.TD, Jaipur-10.

.....Applicant

Mr. P.N. Jatti, counsel for applicant.

VERSUS

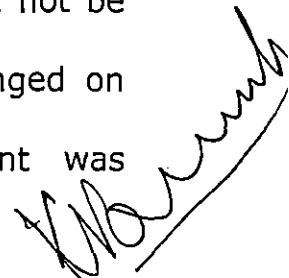
1. Union of India through the Secretary to the Department of Telecom, Sanchar Bhawan, New Delhi.
2. Chairman, Bharat Sanchar Nigam Ltd., Sanchar Bhawan, New Delhi.
3. Chief General Manager, Bharat Sanchar Nigam Ltd., Rajasthan Circle, Jaipur-8.
4. Principal General Manager, BSNL, Jaipur Telecom District, Jaipur-10.

.....Respondents

● Mr. S.S. Sharma, counsel for respondent No.1.
Mr. Neeraj Batra, counsel for respondents No.2 to 4.

ORDER (ORAL)

Heard. Counsel for the applicant submits that vide Annexure A/1 order dated 21.09.2011, the pay fixation of the applicant made on 22.12.2000 was revised on the ground that option of the applicant was not received within the prescribed time of one month and moreover as per DOT letter dated 17.12.2008 (Annexure R/2) option of fixing the pay from the next increment dated available under FR-22 will not be available for the employees of BSNL since their status changed on 01.10.2000. Counsel for applicant clarified that applicant was

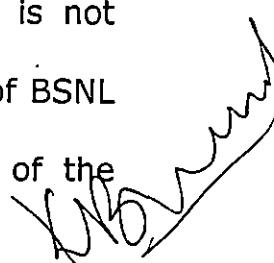


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promoted as TTA on 19.09.2000 but as the order was delivered to him late, he could exercise his option on 01.02.2001 only, after receipt of the order and the revision of the pay fixation vide order dated 01.09.2008 in compliance of CCA, Jaipur letter 10.07.2008 is not justified.

2. Per contra, counsels for the respondents submitted that as may be seen from Ann.R/1 i.e. promotion order dated 19.09.2000 of various officials including the applicant to the post of TTA, as per para 3 the promoted officials were asked to exercise the option within one month if they want to opt for pre-structured cadre pay scales and in that case their pay fixation was to be done by granting one advance increment for re-structured cadre training. However, the applicant did not exercise his option on time. Counsels for respondents also referred to Ann.R/2 OM dated 17.12.2008 in which it has been instructed that the option of fixing the pay from the next increment date available under FR-22 will not be available for the employees of BSNL since their status changed on 01.10.2000. Hence, their pay will have to be fixed on the date of their promotion as per then existing rules prior to 01.10.2000 and no re-fixation can be permitted on the next increment date which is falling after 01.10.2000. On these grounds, counsels for respondents submitted that the decision as at Ann.A/1 order dated 21.09.2011 is perfectly in order and there is no ground to set it aside.

3. Considered the aforesaid contention and perused the record. The arguments of the counsels for respondents that as per Ann.R/2 OM dated 17.12.2008 that FR-22 is not available to the employees of BSNL because it is a PSU, is not valid, as even if the rule is not applicable, its principle would be applicable to the employees of BSNL as the law is to be equally applied to all under Article 14 of the



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Constitution of India. Further it is also noted that the Hon'ble Apex Court in the case of State of Punjab and Others Vs. Rafiq Masih (White Washer) & Others (Civil Appeal No.11527/2014 and connected cases) decided on December, 18, 2014) reported in (2015) 2 SCC (L&S) 33 has been upheld in Para 18(ii) that the recovery from the retired employees or the employees who were due to retire within one year of the order of recovery cannot be made. As the applicant has already been retired in 2008 and the order has been issued in 2011, no such recovery can be made from the applicant, who is a retired employee. Therefore, the impugned order dated 21.09.2011 (Annexure A/1) is set aside and the amount, if any, recovered from the applicant shall be paid back by the respondents to the applicant without interest. Accordingly, the Original Application is allowed. No order as to costs.



(Ms. Meenakshi Hooja)
Administrative Member



(Dr. K.B.Suresh)
Judicial Member

kumawat