

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 10.10.2014

OA No.361/2013

Mr. Bharat Singh, Counsel for the applicant.

Mr. Mukesh Agarwal, Counsel for Respondent-1.

Mr. Neeraj Batra, Counsel for Respondents-2 &3.

Heard the learned counsel for parties.

Order Reserved.

Anil Kumar

(ANIL KUMAR)

ADMINISTRATIVE MEMBER

Adm/

15/10/14
order pronounced
today in the open
court

15/10/14

C.O.

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 361/2013

ORDER RESERVED ON: 10.10.2014

DATE OF ORDER: 15.10.2014

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. Bharat Kumar Kumawat S/o late Shri Gheesa Lal Kumawat, age 33 years, presently posted at Sr. TOA (G) Unit AO Cash, O/o the PGMTD Jaipur, R/o 73, Janakpuri, Ajmer Road, Heerapura Power House, Jaipur.
2. Manoj Kumar Sharma S/o late Shri Hajari Lal Sharma, aged 38 years, presently posted at Sr. TOA (G) Unit CO (LC) O/o the PGMTD Jaipur R/o A-5A, Shankar Vihar Vistar, Murlipura Scheme, Jaipur.
3. Vijay Bahadur Pal S/o late Shri Babu Lal, presently posted at Sr. TOA (G) Unit SDE (Marketin) O/o GMTD, Kota R/o 308, Bharat Gali, Sharaswati Colony, Kharli Phatak, Kota.

...Applicants

Mr. Bharat Singh, counsel for applicants.

VERSUS

1. Union of India through Secretary, Department of Telecommunication, Sanchar Bhawan, 20, Ashok Road, New Delhi.
2. Bharat Sanchar Nigam Limited, 6th Floor, 'A', Wing, Statesman House, Barakhamba Road, New Delhi, through its Director General.
3. Chief General Manager, Telecommunications, Bharat Sanchar Nigam Limited, Rajasthan Circle, Jaipur.

...Respondents

Mr. Mukesh Agarwal, counsel for respondent no. 1.
Mr. Neeraj Batra, counsel for respondent nos. 2 & 3.

ORDER

The applicant has filed the present O.A. being aggrieved from the letter issued by the respondents dated 12.11.2012

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(Annexure A/1) vide which it was informed that all the four clients mentioned in the Legal Notice for Demand of Justice dated 25.10.2012 have their appointments in BSNL after 01.10.2000 i.e. after formation of PSU/BSNL so they are being covered under EPF Scheme like other PSU/BSNL recruited / appointed employees.

2. Heard learned counsel for the respective parties and perused the documents available on record.

3. Learned counsel for the applicants submitted that the applicants were appointed by the erstwhile Department of Telecommunications (DOT), Government of India on compassionate ground vide different orders dated 08.08.2000, 17.12.1998 and 12.01.2000 (Annexure A/2, collectively) i.e. much prior to the date of formation of the BSNL on 01.10.2000.

4. He further submitted that the applicants were sent for training by DOT and they joined their theoretical training on 14.08.2000 i.e. before the formation of the BSNL on 01.10.2000. Vide order dated 13.10.2000 (Annex. A/3), all the applicants were sent for practical training of one month.

5. He also submitted that although the formal appointment letters were issued by the BSNL in favour of the applicants after 01.10.2000 but in fact all the applicants were recruited by the

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erstwhile Department of Telecommunication, Government of India well before the formation of BSNL.

6. Learned counsel for the applicants further submitted that BSNL was formed on 01.10.2000 and the employees of the DOT were asked for options for merger into BSNL. The applicants also submitted their options for merger in BSNL. In pursuance of the options given by the applicants, the Presidential Orders were issued in favour of the applicants vide separate orders dated 06.02.2002 and 28.01.2002, respectively (Annexure A/5, collectively). In the Presidential Orders, it was categorically mentioned that the applicants shall be eligible for pensionary benefits including the gratuity as per the provisions of Rule 37-A of the CCS (Pension) Rules, as amended from time to time.

7. Learned counsel for the applicants further argued that abruptly on 28.01.2003 (Annexure A/6), BSNL issued an order stating that persons who were appointed by BSNL on compassionate grounds on or after 01.10.2000 would not be allowed pension and they would be governed by the General Provident Fund Scheme. Further clarification was also issued by BSNL on 04.05.2007 (Annexure A/7) whereby the Presidential Orders already issued in favour of the compassionate grounds appointees were to be treated as null and void. Being aggrieved, the applicants got issued Legal Notice to the respondents on 25.10.2012 which has been rejected by the respondents vide their letter dated 12.11.2012 (Annexure A/1).

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8. Learned counsel for the applicants argued that the Circular dated 28.01.2003 and clarification dated 04.05.2007 qua the applicants are violative of the provisions of the Rule 37-A of the CCS (Pension) Rules and are arbitrary to the Office Memorandum dated 05.03.2008 issued by the Department of Pension and Pensioners' Welfare, Ministry of Personnel, Government of India.

9. Learned counsel for the applicants further argued that although the formal orders were issued by the BSNL in favour of the applicants after 01.10.2000 but in fact the applicants were recruited by the erstwhile Department of Telecommunications, Government of India well before the formation of BSNL. The BSNL cannot treat the Presidential orders issued in favour of the applicants as null and void. Therefore, the respondents be directed to cover the applicants under pension scheme as per Rule 37-A of the CCS (Pension) Rules, 1972.

10. On the other hand, learned counsel for the respondents submitted that all the three applicants were not appointed by the Department of Telecommunications. They were appointed by the BSNL vide letter dated 16.11.2000 (Annexure R/1). The orders dated 08.08.2000, 17.12.1999 and 12.01.2000 (Annexure A/2, collectively) are the offer of appointment letters on compassionate grounds issued by the Department of Telecommunications. Learned counsel for the respondents further argued that though the applicants were sent for training

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during the period of DOT but were appointed in BSNL, hence, they are recruitee in BSNL and not DOT.

11. Learned counsel for the respondents submitted that though the applicants submitted their options for merger into BSNL and further Presidential Orders were also issued but subsequently due to the clarification issued vide letter dated 04.05.2007, the options and the presidential order issued in favour of the applicants were treated as null and void. Since the applicants were appointed by the BSNL, hence, all the Rules of BSNL are applicable on them and hence Rule 37-A of CCS (Pension) Rules, 1972 is not applicable to the applicants. Thus, he prayed that the O.A. has no merit and it should be dismissed with costs.

12. I have considered the rival submissions of the respective parties.

13. When the case was heard on 24.09.2014, learned counsels for the respondents were directed to clarify the following points:

- (i) What was the process of selection of the applicant?
- (ii) When he was send for training?
- (iii) Whether during the period of training, the applicant received the salary/stipend.
- (iv) Whether the period of training is counted as service or not?

14. In compliance of these directions, the learned counsel for the respondent nos. 2 & 3 produced a letter dated 08.10.2014. As per this letter, the selection of the applicants was made as per Department of Telecom letter dated 20.02.1999 under the

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Scheme for Compassionate Appointment Quota. The applicants were sent for training w.e.f. 14.08.2000 to 13.11.2000. During the period of training, the applicants were paid stipend (Training Allowance). The applicants are the appointee of BSNL. Since the applicants are BSNL employee, hence, the EPF and Pension matter will be settled by EPF department. The respondents have not replied to the query 'whether the period of training is counted as service or not?

15. The respondents have also not produced the appointment letter of the applicant no. 3 – Shri Vijay Bahadur Pal S/o late Shri Babu Lal. The appointment letter dated 16.11.2000 is in relation to Shri Manoj Kumar Sharma and Shri Bharat Kumar Kumawat.

16. It is not disputed between the parties that all the three applicants in the present O.A. were issued offer of appointment prior to 01.10.2000 i.e. prior to formation of the BSNL. The said offer of appointment letters were issued by the Department of Telecommunication, Government of India. Not only offer of appointment letters were issued prior to the formation of the BSNL but they were sent on training w.e.f. 14.08.2000. This training has two components. There were two months theoretical and one month practical training. Thus, all the three applicants were sent on training by the Department of Telecommunication, Government of India because BSNL was formed on 01.10.2000. The letter dated 25.07.2000 vide which they were deputed on

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training also mentions name of SSA allotted to the applicants.

Shri Manoj Kumar Sharma and Shri Bharat Kumar Kumawat were allotted PGMTD, Jaipur and Shri Vijay Bahadursingh Pal was allotted GMTD, Kota. It is also admitted that during the period of training, the applicants were paid stipend. Thus, it can be said that the applicants were duly selected and also appointment offer letters were issued to them by the Department of Telecommunication, Government of India. Their posting was also decided by the DoT, Govt. of India. They were sent on training by the DoT and paid stipend during the training period. The appointment letter issued to the applicants dated 16.11.2000 (Annexure R/1) referred to by the learned counsel for the respondents was a mere formality on completion of training. Even this appointment letter dated 16.11.2000 mentions that their appointment will be effective from 14.11.2000 (F/N) and these orders have been issued from the office of the Principal General Manager Telecom District, Jaipur. These orders obviously have been issued in compliance to the orders dated 25.07.2000 issued by the DoT, Government of India, which allotted the SSA to the applicants.

17. The Government of India, Department of Personnel and Training vide OM No. 16/16/89-Estt, (Pay-I), dated the 22nd October, 1990 and OM No. 16/16/92-Estt. (Pay-II), dated the 31st March, 1992 provided that the period of training of direct recruitee who are compulsorily required to undergo training before taking up Government employment would be treated for

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the purpose of increment. This shows that the period of training is counted for the purpose of service and in these particular cases, the respondents have not denied whether the period of training is counted as service or not in spite of clear directions being issued to them to clarify the position.

18. Further the Government of India, Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioner Welfare issued Office Memorandum No. 38/58/06-P&PW (A) dated 05th March, 2008 on the subject of applicability of CCS (Pension) Rules, 1972 in respect of those put on induction training prior to 01.01.2004 and were in receipt of stipend, para 3 of the said OM is quoted below: -

"3. The matter has been further examined and it is now clarified that the employees who were required to undergo departmental training relating to jobs prior to 1.1.04 before they were put on regular employment and were in receipt of stipend during such training would also be covered under the CCS (Pension) Rules, 1972 provided the period spent on such training was eligible for being counted as qualifying service under the CCS (Pension) Rules, 1972."

Though this Office Memorandum dated 05th March, 2008 is not directly related to the present O.A. but this shows the intention of the Government of India of treating the period of training where stipend is paid for the purpose of calculating or counting a cut-off-date. This Office Memorandum dated 05th March, 2008 deals with the applicability of CCS (Pension) Rules, 1972 with regard to the persons who were appointed prior to 01.01.2004, the date from which a new pension scheme was

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introduced in place of CCS (Pension) Rules, 1972, whereas, in the present case, the cut-off-date would be 01.10.2000 when the BSNL came into existence. If the same principle is applied, I am of the opinion that the applicants in the present O.A. would be entitled to the benefits of Rule 37-A of CCS (Pension) Rules, 1972 since they were sent on training prior to 01.10.2000 and they were paid stipend during the training period.

19. Therefore, the respondents are directed to treat the applicants as appointee of Department of Telecommunications, Government of India and provide them the benefits of Rule 37-A of CCS (Pension) Rules, 1972 and the respondents shall pass and communicate orders to the applicants to this effect expeditiously but in any case not later than a period of three months from the date of receipt of a copy of this order.

20. Consequently, the Original Application is allowed to the extent indicated above. There shall be no order as to costs.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat