

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...

**ORIGINAL APPLICATION No. 060/01020/2014**

**Date of filing: 13.11.2014  
Order reserved on: 22.03.2016**

**Chandigarh, this the 29<sup>th</sup> day of March, 2016**

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**CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J) &  
HON'BLE SMT. RAJWANT SANDHU, MEMBER (A)**

...

Vijay Pal Singh aged 55 years son of Sh. Sewa Ram, Ex. SDOT, Tohana, presently resident of Gali Lal Ji Wali, Mandi Killianwali, District Muktsar, (Punjab).

....APPLICANT

BY ADVOCATE: SHRI R.K. SHARMA

VERSUS

1. Union of India through Secretary to the Government of India, Ministry of Communication and Information Technology, Government of India, Department of Telecom, Sanchar Bhawan, 20 Ashoka Road, New Delhi-110001.
2. Bharat Sanchar Nigam Limited, Corporate Office, Bharat Sanchar Bhawan, 4<sup>th</sup> Floor, Harish Chander Mathur Lane, Janpath, New Delhi, through its Chairman-cum-Managing Director.
3. Controller of Civil Accounts, Haryana Telecom Circle, BSNL, 107, The Mall, Ambala Cantt. Haryana.
4. Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Bharat Sanchar Nigam Limited, 107, The Mall, Ambala Cantt. Haryana.
5. General Manager Telecom District, Bharat Sanchar Nigam Limited, Hisar.

....RESPONDENTS

BY ADVOCATE: MS. NIDHI GARG FOR RESPONDENS NO. 1&3  
SHRI MADAN MOHAN FOR RESPONDETNS NO. 2,4 &5.

**ORDER****HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER(J):-**

Vijay Pal Singh applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

" i) Quash Order No. Q-2609/104 dated 20.11.2013 passed by Respondent No. 5, copy Annexure A-1, whereby claim of the applicant for retirement benefits for the service rendered by him under the Government and Bharat Sanchar Nigam Limited till his dismissal from service has been declined.

ii) Issue directions to the respondents to grant pension to the applicant for the service rendered by him for the period from 29.12.1980 to 12.02.2006 before his dismissal vide order dated 13.02.2006, alongwith interest @ 18% per annum from the date amount became due till actual day of payment, in view of sub rule 24 (c) of Rule 37 of CCS (Pension) Rules, 1972 read with letter dated 21.07.2009 issued by the Government of India, Ministry of Communications and Information Technology, Department of Telecommunications, New Delhi."

2. Facts in the case are not in dispute. The applicant initially joined erstwhile Department of Posts and Telegraph as Postal Assistant on 29.12.1980. He applied for the post of Junior Engineer in the Telecom Wing of the said department under the outsider quota through proper channel in the year 1983. He was selected and sent for training with effect from 06.02.1989 vide order dated 01.02.1989 (Annexure A-2). After completing the training, the applicant joined as regular Junior Engineer Telecom on 02.11.1989 and was promoted as S.D.O. on officiating basis for 179 days in the year 1998 and was promoted as T.E.S. Group-B Officer w.e.f. 08.08.2000 and posted as Sub-Divisional Engineer Telegraph. On formation of Bharat Sanchar Nigam Limited (BSNL)-respondent no. 2 w.e.f. 01.10.2000, options were invited from all the employees of Department of Telecommunication (DoT) for

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absorption in BSNL. The applicant was absorbed in BSNL w.e.f. 01.10.2000 vide order dated 30.01.2004 (Annexure A-5).

3. Pursuant to disciplinary proceedings, the applicant was dismissed from service vide order dated 13.02.2006. His appeal and review petition against the said order were dismissed.

4. Vide notification dated 30.09.2000 (Annexure A-7), Rule 37 A was inserted in the Central Civil Services (Pension) Rules, 1972 (in short, the Pension Rules). Claim of the applicant is that under sub-rule 24 (c) of Rule 37 A of the Pension Rules, the applicant is entitled to retirement benefits including pension for the service rendered by the applicant in the DoT since 29.12.1980 till 30.09.2000 (till before his absorption in BSNL w.e.f. 01.10.2000). DoT also issued letter dated 21.07.2009 (Annexure A-8) in this regard.

5. The applicant submitted application dated 23.07.2013 (Annexure A-9) followed by application dated 24.09.2013 (Annexure A-10) claiming retirement benefits. The same have been declined by the respondents vide order dated 20.11.2013 (Annexure A-1), which is under challenge in the instant O.A. The applicant also made representations dated 08.01.2014 (Annexure A-11) and 03.04.2014 (Annexure A-12), but did not evoke any favourable response.

6. The applicant has staked his claim on sub-rule 24 (c) of Rule 37A of the Pension Rules and on judgment dated 02.07.2012 (Annexure A-15) of the Tribunal in T.A. NO. 13/HR/2011 (CWP No. 2672 of 2008) titled ' Piara Singh Vs. Bharat Sanchar Nigam Ltd. & Ors., upheld by

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Hon'ble Supreme Court vide judgment dated 06.12.2012 (Annexure A-16) in CWP No. 24125 of 2012 Bharat Sanchar Nigam Ltd. & Ors. Vs. Central Administrative Tribunal & Ors., and also judgment of the Tribunal dated 03.07.2012 (Annexure A-17) in O.A. No. 1062/PB/2011 titled ' Dharam Pal Thapar Vs. Union of India & Ors.'

7. Respondents no. 1 & 3 (Union of India and Controller of Civil Accounts) in their written statement while not broadly disputing the factual position refuted the claim of the applicant alleging that the applicant secured recruitment as Junior Engineer/Junior Telecom Officer on the basis of fake and forged B.Sc. mark-sheet which was the eligibility qualification for the said post. On verification, it was found that the applicant had passed High School Examination in the year 1976 in 3<sup>rd</sup> division and he appeared in Intermediate Examination in the year 1978, but was declared failed and he was never a student of B.Sc. Consequently pursuant to disciplinary proceedings taken against the applicant, he was dismissed from service. The dismissal order has attained finality. The applicant has also been convicted and sentenced for various offences on the same allegations vide Special Judicial Magistrate judgment dated 29.07.2010. It was thus contended that the applicant's initial appointment was invalid and, therefore, he is not entitled to receive any Pension for the period he served under the Govt. of India. It was submitted that sub-rule 24 (c) of Rule 37 A of the Pension Rules does not apply to the applicant because the said sub-rule applies where the employee is dismissed or removed from service for any misconduct subsequent to his absorption in a Public Sector Undertaking or Autonomous Body, but in the instant case, the applicant was dismissed from service because he secured his initial

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appointment under the Govt. of India on the basis of fake and forged certificate. It was also submitted that the O.A. is barred by limitation. Judgments relied on by the applicant were alleged to be distinguishable on facts.

8. Respondents no. 2, 4 & 5 (BSNL) in their written statement also broadly took the same stand as that of respondents no. 1 & 3.

9. The applicant filed replications to the written statements of the respondents wherein he controverted the stand of the respondents and reiterated his own version.

10. We have heard counsel for the parties and perused the case file.

11. Counsel for the applicant contended that in view of sub-rule 24 (c) of Rule 37 A of the Pension Rules, the applicant is entitled to Pension and other retirement benefits for the period of service rendered by him in the DoT. Reliance has been placed on judgment (Annexure A-15) in the case of Piara Singh (supra) as upheld by the Hon'ble High Court vide judgment (Annexure A-16), and also judgment (Annexure A-17) in the case of Dharam Pal Thapar (supra). It was also submitted that judgment in the case of Piara Singh (supra) is under challenge in SLP pending in the Hon'ble Supreme Court, but it would not render the said judgment nonest till the disposal of the SLP, as observed by Hon'ble High Court of Punjab and Haryana in judgment dated 06.01.2012 in CWP No. 77 of 2012 titled ' Chief Engineer, Union Territory, Chandigarh Vs. Ram Sarup Walia & Ors'.

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12. On the other hand, counsel for the respondents contended that the applicant is not entitled to the benefit of sub-rule 24 (c) of Rule 37 A of the Pension Rules because he has been dismissed from service on account of securing initial recruitment in the DoT on the basis of fake and forged certificate and not on the basis of his misconduct subsequent to his absorption in BSNL. It was also contended that consequently the initial appointment of the applicant was void and, therefore, he is not entitled to Pension and other retirement benefits. In support of this contention, reliance has been placed on judgments of Hon'ble Supreme Court in 1990 (4) SLR 237 (SC) titled 'The District Collector & Chairman Vizianagaram (Social Welfare Residential School Society, Vizianagaram & Anr. Vs. M. Tripura Sundari Devi' ; 2004 (1) RSJ 691 titled 'R. Vishwanatha Pillai vs. State of Kerala and Ors.' ; (2005) SCC (L&S) 1011 titled 'Bank of India and Anr. Vs. Avinash D Mandivikar and Others' and 2008 (4) RSJ 262 titled 'Regional Manager, Central Bank of India vs. Madhulika Guruprasad Dahir & Ors.' It was also pointed out that the applicant has also since been convicted and sentenced vide judgment dated 29.07.2010 on the same allegations of forged certificate for securing recruitment in DoT. It was also submitted that judgment (Annexure A-16) in the case of Piara Singh (supra) is still under challenge in the Hon'ble Supreme Court.

13. We have carefully considered the matter. Before proceeding further, sub-rule 24 (c) of Rule 37 A of the Pension Rules which has been heavily relied on by counsel for the applicant is reproduced hereunder:-

"(24) upon conversion of a Government Department into a Public Sector Undertaking or Autonomous body-  
(a) ...

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(b) ...

(c) The dismissal or removal from service of the public sector undertaking or autonomous body of any employee after his absorption in such undertaking or body for any subsequent misconduct shall not amount to forfeiture of the retirement benefits for the service rendered under the Government and in event of his dismissal or removal or retrenchment, the decisions of the undertaking or body shall be subject to review by the Ministry administratively concerned with the undertaking or body."

14. It is undisputed that dismissal of the applicant from service has attained finality. He was dismissed on the ground of using fake and forged certificate for securing recruitment in DoT. He has also been convicted and sentenced for the same by Special Judicial Magistrate. It is thus apparent and undisputed that the applicant has been removed from service not on account of any misconduct subsequent to his absorption in BSNL, but on account of using a fake and forged certificate for securing initial appointment in DoT. The expression 'for any subsequent misconduct' in sub-rule 24 (c) of Rule 37 A of the Pension Rules is very significant. Benefit of the said sub-rule would have been available to the applicant if he had been dismissed or removed from service on account of his misconduct subsequent to his absorption in BSNL. However, admittedly he was dismissed from service for using fake and forged certificate for securing initial appointment in DoT and not on account of misconduct subsequent to his absorption in BSNL. Plain language of the aforesaid sub-rule 24 (c) is clear and ambiguous and does not admit of two interpretations. The only interpretation is that benefit of the sub-rule is available to an employee who is dismissed or removed from service on account of misconduct subsequent to his absorption in the Public Sector Undertaking or Autonomous Body and not on account of misconduct

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prior thereto. In the instant case, the applicant has been dismissed from service on account of using fake and forged certificate for his initial appointment in DoT and not on account of misconduct subsequent to his absorption in BSNL. Judgment (Annexure A-15) in the case of Piara Singh (supra) as upheld by the Hon'ble High Court of Punjab & Haryana vide judgment (Annexure A-16) does not help the applicant because in that case, the respondents (BSNL and Govt. of India) did not dispute the entitlement of that applicant for pensionary benefits for the service rendered by him in DoT, but the dispute in that case was as to who was to sanction the pension and who was to release it. DoT was impleaded as respondent no. 5 in that O.A. subsequently and it pleaded that if such pension is to be paid, the same is to be sanctioned by the BSNL authorities since they are the pension sanctioning authority and respondent no. 5 i.e. DoT is only the authority to release the pension after it has been sanctioned by the BSNL, the last employer of the applicant. Respondents no. 1 to 4 (BSNL) had argued in that case that they are not required to pay proportionate pension for the earlier service of that applicant in DoT and it is the DoT which would be liable to pay the amount. Thus in that case, the question whether the applicant was entitled to benefit of sub-rule 24 (c) of 37 A of the Pension Rules or not was not raised and adjudicated. Consequently judgments in the case of Piara Singh (Supra) do not help the applicant. Moreover, the said judgments have also not attained finality because SLP is pending in Hon'ble Supreme Court. Judgment in the case of Dharm Pal Thapar (Supra) has relied on the judgment in the case of Piara Singh (Supra). Moreover, from the facts given in the judgment of Dharam Pal Thapar (supra), it is not clear as to whether the applicant was dismissed from service on



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account of any misconduct subsequent to his absorption in BSNL or on account of any misconduct prior to his absorption in BSNL. So the said judgment also has no applicability to the instant case.

15. On the other hand, judgments of Hon'ble Supreme Court in the cases of R. Vishvanatha Pilai (Supra) and Regional Manager Central Bank of India (Supra) are fully attracted to the instant case. In those cases, the respective employees had secured employment on the basis of false caste certificates. On detection thereof, they were shunted out of job. It was held that they were not entitled to any retirement benefit because their appointment itself was bad. Consequently in the instant case also, the applicant is not entitled to any retirement benefit because his initial appointment in DoT itself was bad.

16. For the reasons aforesaid, we find that the applicant is not entitled to pension or other retirement benefits for service rendered under the Govt. of India or for service rendered in BSNL. There is no infirmity much less illegality in the impugned order (Annexure A-1) rejecting the aforesaid claim of the applicant. Accordingly, the instant O.A. is dismissed being devoid of any substance. There shall be no order as to costs.

**(JUSTICE L.N. MITTAL)**  
**MEMBER (J)**

**(RAJWANT SANDHU)**  
**MEMBER (A)**

**Dated: 29.03.2016**

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