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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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ORIGINAL APPLICATION No. 060/00705/2014

Date of filing: 02.07.2015

Order reserved on: 19.09.2016

Chandigarh, this the 28th day of September, 2016

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

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Gurdev Singh aged about 64 years son of Sh. Phuman Singh, r/o Village Khizrabad, Tehsil Kharar, Distt. S.A.S. Nagar-Mohali (Punjab).

....APPLICANT

BY ADVOCATE: SHRI KASTURI LAL

VERSUS

1. Union of India through Secretary Communications, Department of Telecommunication, New Delhi.
2. Bharat Sanchar Nigam Limited through its General Manager, Telecom District, BSNL, Sector 34, Chandigarh-160022.
3. AGM (HR) office of GMT, Telephone Department, Sector 34, Chandigarh.
4. D.G.M. (Admn.) office of GMT, BSNL Sector 34, Chandigarh.
5. Principal General Manager Telephone, Telecom District, BSNL, Sector 34, Chandigarh.

....RESPONDENTS

BY ADVOCATE: SHRI V.K. ARYA FOR RESPONDENT NO. 1
SHRI SANJAY GOYAL FOR RESPONDETN NO. 2 TO 5.

ORDER

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

This Original Application filed by applicant Gurdev Singh under Section 19 of the Administrative Tribunals Act, 1985 involves twin

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issues- one relating to entitlement of the applicant to pension for service rendered by him in Department of Telecommunications (DoT) of Union of India-respondent no. 1, and the other relating to penalty order of removal of the applicant from service including appellate order consequent upon his conviction and sentence for offence under Section 304-I of Indian Penal Code (IPC).

2. Facts in the case are not in dispute. The applicant joined service of DoT (respondent no. 1) as Telephone Operator on 12.4.1972 and was promoted to the post of Senior Telephone Supervisor after completion of 26 years of service. Bharat Sanchar Nigam Limited (BSNL)- respondent no. 2 came into existence w.e.f. 1.10.2000. The applicant was permanently absorbed in BSNL w.e.f. 1.10.2000 vide Presidential Order dated 18.12.2001 (Annexure A-3). The applicant was convicted and sentenced for offence under Section 304-I IPC vide judgment and order dated 30.11.2005 (Annexure R-3) passed by learned Additional Sessions Judge, Rupnagar. On the basis thereof, after issuing show cause notice to the applicant and considering the reply filed by him, disciplinary authority passed order dated 20.8.2007 (Annexure A-2/A) imposing penalty of removal from service on the applicant. Appeal preferred by the applicant has been dismissed by the appellate authority vide order dated 4.10.2008 (Annexure A-2/B). The applicant has challenged the said orders on various grounds.

3. The applicant has filed criminal appeal against judgment and order dated 30.11.2005 of his conviction and sentence. The said criminal appeal is pending in the Hon'ble High Court. Hon'ble High Court vide order dated 17.8.2006 (Annexure A-3/A) has allowed bail

to the applicant during the pendency of his appeal. Hon'ble High Court vide order dated 7.1.2008 (Annexure A-4) has suspended the conviction of the applicant under Section 304-I IPC.

4. The applicant has alleged that he is entitled to pension for the service rendered by him in DoT from 12.4.1972 to 30.9.2000, in view of Rule 37-A (24)(c) of the Central Civil Services (Pension) Rules, 1972 (in short, the Pension Rules) and also in view of Rule 43 of the BSNL Rules, 2006. However, his claim for pension has been rejected vide order dated 1.5.2014 (Annexure A-1) communicated to him vide letter dated 16.6.2014 (Annexure A-2). The same are also under challenge in the instant O.A. The applicant has sought consequent direction for pension and other pensionary benefits alongwith interest as well as for all service benefits with interest till the date of his superannuation.

5. Respondents in their written statement justified the penalty of removal from service imposed on the applicant on account of his conviction, as per Rule 40 of the BSNL Rules. It is also pleaded that the applicant is not entitled to pension in view of penalty of removal from service imposed on him. The said penalty was imposed not on account of misconduct of the applicant while in service of BSNL and was rather imposed on account of his conviction by judicial Court. Consequently, the applicant has been rightly held to be not entitled to pension and other pensionary benefits.

6. The applicant has filed rejoinder wherein he controverted the stand of the respondents and reiterated his own version.

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

8. As regards penalty of removal from service, counsel for the applicant emphasized that appeal of the applicant against his conviction and sentence is still pending and appeal is continuation of trial and, therefore, the applicant could not have been removed from service on the basis of his conviction recorded by Trial Court. It was pointed out that the applicant has been granted bail by Hon'ble High Court vide order dated 17.8.2006 (Annexure A-3/A) and his conviction has also been suspended by the Hon'ble High Court vide order dated 7.1.2008 (Annexure A-4) and, therefore, he could not be removed from service on the basis of conviction.

9. We have carefully considered the matter. The aforesaid contentions cannot be accepted because after conviction and sentence by the Trial Court, penalty of removal or dismissal from service can be imposed on the basis of conduct leading to conviction by the Trial Court, notwithstanding pendency of appeal against the conviction. Rule 40 of the BSNL Rules also provides that the disciplinary authority may impose any penalty if the employee has been convicted on a criminal charge. Consequently, penalty of removal from service imposed on the applicant is not vitiated merely because his appeal against his conviction and sentence is pending.

10. As regards suspension of conviction of the applicant by Hon'ble High Court vide order dated 7.1.2008, suffice to mention that the impugned penalty order dated 20.8.2007 (Annexure A-2/A) had been

passed long before order dated 7.1.2008 (Annexure A-4) was passed by Hon'ble High Court suspending conviction of the applicant. In fact, during the hearing at the time of passing of order dated 7.1.2008 (Annexure A-4) by Hon'ble High Court, the applicant did not bring correct factual position to the notice of the Hon'ble High Court that order of his removal from service had already been passed on 20.8.2007. On the contrary, it was misrepresented during the said hearing that application for suspension of conviction was mainly on the ground that departmental proceedings had been initiated against the applicant for which he had asked for personal hearing. Thus the applicant concealed the material fact of order dated 20.8.2007 whereby penalty of removal from service had already been imposed on him and misrepresented that the departmental proceedings initiated on the basis of his conviction were still pending. Be that as it may, before passing of order dated 7.1.2008 regarding suspension of conviction of the applicant, penalty of removal from service had already been imposed on him vide order dated 20.8.2007 and, therefore, subsequent suspension of his conviction did not invalidate the penalty order of removal from service which had already been passed.

11. Thus it is concluded that impugned penalty order of removal from service of the applicant dated 20.8.2007 (Annexure 2/A) and appellate order dated 4.10.2008 (Annexure A-2/B) do not suffer from any infirmity or illegality and are not liable to be set aside.

12. However, claim of the applicant for retirement benefits for the service rendered by him in DoT has to be accepted. According to Rule

37-A (8) of the Pension Rules, a permanent govt. servant absorbed as an employee of a Public Sector Undertaking (PSU) or Autonomous Body (AB) is eligible for pensionary benefits on the basis of combined service rendered by him in Govt. and in the PSU or AB. However, in the instant case, in view of penalty of removal from service having been imposed on the applicant, he has forfeited his pensionary benefits for service rendered by him in BSNL. As regards retirement benefits of the applicant for service rendered by him in DoT, he is entitled to the same in view of Rule 37(A) (24)(c) of the Pension Rules read with Rule 43 of the BSNL Rules. Rule 37 (A) (24)(c) is reproduced hereunder:

"24 Upon conversion of a Government department into a Public Sector Undertaking or Autonomous Body-

- (a)
- (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 the event of his dismissal or removal or retrenchment, the decisions of the undertaking or body shall be subject to confirmation by the Ministry Administratively concerned with the undertaking or body."

A bare perusal of aforesaid Rule reveals that dismissal or removal from service of PSU or AB 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. In the instant case, perusal of judgment and order dated 30.11.2005 (Annexure R-3) of learned Additional Sessions Judge thereby convicting and sentencing the applicant under Section 304-I IPC reveals that occurrence of that case had taken place on

12.7.2002 i.e. subsequent to absorption of the applicant in BSNL- the PSU. The applicant has been removed from service on account of his said misconduct leading to his said conviction. He has not been removed from service on account of his conviction but has been removed from service on account of his conduct leading to his conviction. The said conduct was subsequent to his absorption in BSNL. Consequently on account of his removal from service for the said misconduct subsequent to his absorption in BSNL, the applicant has not forfeited his retirement benefits for the service rendered by him in DoT under the Central Govt. This is amply clear from bare reading of Rule 37A (24)(c) of the Pension Rules. Consequently the applicant is entitled to retirement benefits including pension since after the date of his removal from service, for the service rendered by him in DoT w.e.f. 12.4.1972 till 30.9.2000. Impugned order dated 1.5.2014 (Annexure A-1) communicated to the Applicant vide letter dated 16.6.2014 (Annexure A-2) rejecting his claim for pensionary benefits is thus liable to be set aside to the aforesaid extent.

13. As a necessary corollary of the discussion aforesaid, the instant O.A. is allowed partly. Order dated 1.5.2014 (Annexure A-1) communicated to the applicant vide letter dated 16.6.2014 (Annexure A-2) holding the applicant to be not entitled to any pensionary benefits is quashed. Respondents are directed to pay pensionary/retirement benefits including pension to the applicant for the service rendered by him in the DoT under Union of India (Respondent no. 1) w.e.f. 21.8.2007 (since after the date of his removal from service). The applicant for the first time made representation dated 9.10.2013 (Annexure A-7) claiming pensionary

/retirement benefits. Consequently, after allowing reasonable period of six months from the date of said representation, the applicant is also entitled to interest @ 8% per annum on his retirement benefits w.e.f. 9.4.2014 or due dates, whichever is later, till date of actual payment. The respondents are directed to do the needful within four months from the receipt of certified copy of this order. The O.A. regarding remaining relief is dismissed. No costs.

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

MS
(RAJWANT SANDHU)
MEMBER (A)

Dated: 28.09.2016
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