

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2441/2015

Reserved on : 31.05.2016.

Pronounced on : 03.06.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. Mangal Singh Arya,
S/o late Sh. Jaghar Singh,
R/o Flat No. II-H-3/306,
Shubh Apartment,
GDA Society, Sector-2,
Rajender Nagar, Sahibabad,
Ghaziabad. (UP).

.... Applicant

(through Sh. K.P. Gupta, Advocate)

Versus

1. Union of India,
(Ministry of Communication & Information Technology),
Electronic Niketan,
6, CGO Complex,
New Delhi-110003.
Through : Its Secretary.
2. The Secretary (DOT & Chairman (TC),
Department of Telecommunication,
915, Sanchar Bhawan,
20, Ashoka Road,
New Delhi.
3. The Controller of Communication Accounts,
Office of Principal of Controller of Communication Accounts,
DOT Building,
Prasad Nagar,
New Delhi.
4. Joint Controller of Communication Accounts,
Office of Principal of Controller of Communication Accounts,
DOT Building,
Prasad Nagar,

New Delhi.

5. Mahanagar Telephone Nigam Limited,
Through its:
Chairman and Managing Director,
Mahanagar Door Sanchar Sadan,
9, CGO Complex, Lodi Road,
New Delhi-110003.

... Respondents

(through Sh. Acharya Santosh Prasad Chaursiya and Sh. Ajay Baurya, Advocates)

ORDER

The applicant joined Department of Telecommunication as a Junior Telecom Officer on 26.07.1976. He was absorbed in Mahanagar Telephone Nigam Ltd. (MTNL) as SDE on 01.10.2000 retrospectively vide order dated 24.01.2004. In June, 2002, he was promoted as Sub-Divisional Engineer. On 10.02.2010, he exercised his option for grant of pro-rata pension. On 16.09.2013, he was removed from service on account of conviction in a case registered against him under the Prevention of Corruption Act, 1988. On 21.11.2013, he made an application for grant of pensionary benefits to him but the respondents did not reply to the same. He then filed OA No. 444/2015 before this Tribunal seeking pro-rata pension, gratuity, leave encashment and other retiral benefits for the service rendered by him in the Department of Telecommunication during the period 26.07.1976 to 30.09.2000. The aforesaid O.A. was disposed of by this Tribunal on 03.02.2015 and directions were issued to the respondents to take decision in his case within a month. When the respondents

did not comply with the order, he filed CP-297/2015. Thereafter, the respondents passed the impugned order dated 19.05.2015 by which his case for retiral benefits was rejected. Hence, he has filed this O.A. seeking the following relief:-

“(i) In view of the facts and submissions made herein above, the applicant prays for directions to the respondent No. 1 to 4 to pay him pro-rata pension, leave encashment and gratuity with interest @12% per annum for his service for the period 26.07.1976 to 30.09.2000 and also for grant of facility of telephone with free calls and medical facility what so ever is available to him in accordance with Rules on the basis of post held and pay drawn at the relevant time during his posting in Department of Telecommunication.

(ii) Appropriate directions may please be issued for payment of insurance amount.

(iii) Award the cost for the present application; and

(iv) Any other or further relief, which this Hon'ble Tribunal deems fit and proper in the circumstances of the case, in favour of the applicant and against the respondent may please be awarded.”

2. The applicant has contended that his case is covered by Rule-31(A) of MTNL Conduct, Discipline and Appeal Rules, 1998, which provides as follows:-

“That dismissal/removal from service of MTNL after absorption for any subsequent misconduct shall not amount to forfeiture of his retirement benefits for the service rendered in the Central Govt. Also, in the event of dismissal/removal of such an employee from MTNL (i.e DOT staff permanently absorbed in MTNL), the employees concerned will be allowed protection to the extent that DOT will review such order before final decision is taken by MTNL.”

According to him, analogous provision in CCS (Pension) Rules also exists as sub-rule 24(C) of Rule 37A, which provides as follows:-

“The dismissal or removal from service of the Public Sector Undertaking of 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.”

3. In their reply, the respondents have stated that Rule-9(1) and Rule-41 of the CCS (Pension) Rules, 1972 clearly hold that leave encashment, pension and gratuity payable to any government servant shall be forfeited if he is dismissed or removed from service.

The aforesaid Rules read as follows:-

“9. Effect of dismissal, removal or resignation on leave at credit.

- (1) Except as provided in Rule 39 and this rule, any claim to leave to the credit of a Government servant, who is dismissed or removed or who resigns from Government service, ceases from the date of such dismissal or removal or resignation.

41. Compassionate allowance

- (1) A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity:

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired.”

Accordingly, his request could not be acceded to.

4. I have heard both sides and have perused the material on record. In my opinion, the stand taken by the respondents is unsustainable. They have applied the rule, which is applicable to employees, who were working with the Government and were dismissed or removed from service of the Government. However, for employees, such as, the applicant, who was initially working in the Government and later on got absorbed in MTNL, the applicable Rule would be sub-rule-25(c) of Rule-37(A) of CCS (Pension) Rules, 1972, Swamy's Pension Compilation Edition-2013.

5. In the instant case, it is not disputed by the respondents that the applicant was initially an employee of Department of Telecommunication where he had joined on 26.07.1976. He got absorbed in MTNL w.e.f. 01.10.2000. Thus, he had served in the Government during the period 26.07.1976 to 30.09.2000. He had also exercised his option for grant of pro-rata pension. His case was thus squarely covered by sub-rule-25(c) of Rule-37(A). The respondents have, therefore, erred by applying the wrong rule in his case.

6. I, therefore, allow this O.A. and set aside the impugned order dated 19.05.2015. I further direct the respondents to reconsider grant of retiral benefits to the applicant in the light of observations made above. In case pensionary benefits are granted to him then he would also be entitled interest at GPF rate computed from the date of retirement of the applicant till the date of payment. The

aforesaid payment shall be made to him within a period of 08 weeks from the date of receipt of a certified copy of this order. No costs.

(Shekhar Agarwal)
Member (A)

/Vinita/