

**Central Administrative Tribunal
Principal Bench**

OA No.3618/2014

New Delhi, this the 8th day of November, 2016

Hon'ble Mr. P.K. Basu, Member (A)

Shri Hari Kishan Sharma,
S/o Late Shri Sultan Singh,
Near I.T.I. Patodi Road,
Rewari-123401.
Age 65 years,
Group 'C'.

...applicant
(By Advocate : Shri U. Srivastava)

Versus

Bharat Sanchar Nigam Ltd.,
Through Chairman & Managing Director,
Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpath,
New Delhi.

...respondent

(By Advocate : Shri R.N. Singh with Shri Amit Sinha)

ORDER (ORAL)

The controversy in the present OA is that applicant who worked in BSNL on deputation basis as an un-absorbed employee was granted Productivity Link Incentive (PLI) along with other employees of BSNL for the years 2001-02 and thereafter 2005-06 onwards, till he retired in 2009 but not granted PLI for 2003-04 and 2004-05. In this regard, the applicant has annexed letter dated 03.05.2011 of Department of Telecommunications (DoT) addressed

to Chairman & Managing Director, BSNL, wherein, the following directions have been given :-

“2. There should not be any discrimination between absorbed and unabsorbed employees and uniformity should be maintained for payment of PLI by the BSNL for absorbed and unabsorbed employees. Decision for payment PLI to unabsorbed employees for the years 2003-04 and 2004-05 may, however, be taken by BSNL Board as per earlier communication of Department of Telecommunication issued vide letter No.11-18/2003-SU.II (Pt.) dt. 10.09.07 (copy enclosed), instant guidelines of Department of Public Enterprises in the matter and keeping in view the financial condition of BSNL.

2. The matter came up before the Tribunal in OA No.1876/2010 and vide order dated 11.08.2011, the OA was disposed of directing the respondents as follows :-

“2. In view of this letter, on consensual basis, this OA is disposed of with a direction to the Respondent No.1 to take a final decision in the matter, which is stated to be under active consideration, expeditiously and definitely within a period of 2 ½ months and communicate the same to the applicant through a reasoned and speaking order on the subject. Needless to say that if the applicant is aggrieved with the decision taken by the respondents, he will be at liberty to seek redressal at the appropriate time in accordance with law.”

3. The respondents, thereafter issued letter dated 07.03.2012 in implementation of Tribunal’s order dated 11.08.2011 and through this letter, the applicant was intimated as follows :-

“The Board discussed the proposal in detail. The Board observed that considering the current financial position of the Company, the proposal may not be agreed. However, once the financial position improves the proposal may be reviewed”.

2. Hence, the matter regarding payment of PLI for the year 2003-04 and 2004-05 to the un-absorbed employees for the period they worked in BSNL is not acceded to due to the current financial position of the company and once the financial position improves the matter will be reviewed as decided by the BSNL Board.”

4. The contentions of the learned counsel for the respondents are as follows :-

- (i) An employee can seek recourse to judicial intervention in the Tribunal only if the respondent Government/BSNL violates any constitutional/statutory provisions or respondent's own policy. It is argued that in this case, the applicant has not been able to establish violation of any Rule/Policy or Statutory or Constitutional provision.
- (ii) It is not the case of the applicant that he has been discriminated against and other un-absorbed employees have been granted PLI.
- (iii) The denial of this benefit for the two years, namely, 2003-04 and 2004-05 has been on the ground that the Government of India had not agreed to pay to Government employees (such as the applicant) on

deputation to BSNL to accept payment of PLI and, therefore, since the Government of India is not a party, such a claim cannot be raised.

(iv) The instructions of DoT vide letter dated 03.05.2011 specifically mentioned that decision to grant PLI will be taken, *inter alia*, keeping in view the financial position of BSNL.

(v) The BSNL Board considered in 2010 the issue and did not accept the proposal for PLI to the unabsorbed employees due to the financial condition of the Company not being good.

5. Heard the learned counsel for both sides and perused the pleadings.

6. The letter dated 03.05.2011 quoted above in para 2 states that there should not be any discrimination between absorbed and un-absorbed employees and uniformity should be maintained for payment of PLI by the BSNL for absorbed and un-absorbed employees. Thus, the Government's contention was parity between absorbed and un-absorbed employees as regards payment of PLI. It is admitted that for the years 2003-04 and 2004-05, the absorbed employees and directly recruited employees of BSNL have been granted the benefit of PLI, but the un-absorbed employees have not

been granted. This is a clear contradiction of stand taken by the DoT.

7. As regards the financial position being the ground for not granting the PLI to the un-absorbed employees, admittedly, the un-absorbed employees have been granted PLI for the years 2001-02 and again from 2005-06 till the date of retirement of the applicant in the year 2009. Therefore, BSNL has indeed gone by the decision of DoT that there could be no distinction between the absorbed and un-absorbed employees. For the two years 2003-04 and 2004-05, the bad financial condition of the BSNL has been invoked only for unabsorbed employees, thus making a distinction between absorbed and un-absorbed employees. The proper course for action for BSNL would have been to moderate the PLI Scheme such that within the amount that has been spent for paying PLI to absorbed and direct recruits of BSNL, PLI could have been paid at a reduced rate across the Board to all employees including un-absorbed employees. BSNL has not done so. Therefore, the plea of bad financial condition does not appear to be convincing. The argument that DoT had not permitted payment of PLI to Government servants on deputation to BSNL (unabsorbed) does not hold good as PLI has been granted to such employees in 2001-02 and then again from 2005-06 onwards. Government cannot have such a whimsical policy.

8. In the conspectus of facts of this case, I find merit in the OA and the same is, accordingly, allowed. The respondents are directed to make the payment of PLI to the applicant for the years 2003-04 and 2004-05 at the rate it has been paid to other absorbed and directly recruited BSNL employees. The exercise will be done within a period of three months from the date of receipt of a certified copy of this order. No costs.

(P.K. Basu)
Member (A)

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