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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00983/2014

Friday, this the 16th day of November, 2018

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

Smt. Kochurani Lawrence,
Aged 49 years,
W/o Lawrence,
Senior Accountant,
Office of the Controller of Communication Accounts,
Kerala. (Department of Telecommunications)
Door Sanchar Bhavan, Thiruvananthapuram-695 033.
Residing at: "Alphonsa", No.TC.3/1062(3), VN-66B ,
Vyasa Nagar, Pattom P.O.,
Thiruvananthapuram-695 004.Applicant

(By Advocate Mr.T.C.Govindswamy)

V e r s u s

1. The Union of India,
Represented by the Secretary,
Ministry of Communications & Information Technology,
(Department of Telecommunications)
New Delhi – 110 001.
2. The Director General,
Fishery Survey of India,
Botawala Chambers, Mumbai-400001.
3. The Controller of Communication Accounts,
(Department of Telecommunications),
Office of the Controller of communication Accounts,
Kerala, Ministry of Communications &
Information Technology, Door Sanchar Bhavan,
Thiruvananthapuram-695 033.
4. The Registrar,
Rajiv Gandhi University,

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(Central University),
Rono Hills, Doimukh P.O.,
Itanagar -791 112, Andhra Pradesh.

...Respondents

(By Sr.CGSC Shri N.Anil Kumar)

This application having been heard on 13th November 2018, the Tribunal on 16th November, 2018 delivered the following :

ORDER

HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

OA No.983/2014 is filed by Kochurani Lawrence, Senior Accountant, Office of the Controller of Communication Accounts, (Department of Telecommunications), Kerala, seeking counting of her past service and to include her under the Pension rules applicable to those who are appointed prior to 01.04.2004 in Government service. The relief sought for in the OA are as follows:

- (i) Call for the records leading to the issue of A1 and quash the same;
- (ii) Declare that the respondents are bound to accept the applicant's A5 option with such conditions for repayment of Gratuity/Provident Contributions etc. Including interest thereon which the applicant has received for the service rendered under the 4th respondent;
- (iii) Direct the respondents to initiate action as per declaration in para 8(ii) above and direct further to grant all the consequential benefits emanating therefrom, including the benefit of past service and inclusion for the pensionary benefits under the CCS (Pension) Rules, 1972 within a time frame, as might be found just and proper by this Hon'ble Tribunal;
- (iv) Award costs of the incidental to this petition.

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(v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

2. The applicant was initially appointed as LDC under the 4th respondent University on 23.06.1987. She was promoted as UDC on 18.05.1993 and further as an Assistant with effect from 23.09.1998. Meanwhile Bharat Sanchar Nigam Limited (BSNL) had been founded with effect from 01.10.2000 on account of corporatisation of the Department of Telecommunications. As there was urgent need to have Accountants posted in the new organisation the applicant came on deputation to work with BSNL. She continued on deputation basis up to 08.02.2010 and was repatriated on completion of her term.

3. Meanwhile the applicant came by a notification issued by the Respondents-1to3 for appointment of Senior Accountants on permanent absorption basis. A copy of the notification dated 03.09.2010 is at Annexure A2 . Having been selected, the applicant at her request was relieved from the service of her erstwhile employer as per order dated 08.09.2010, copy of which is at Annexure A3. The applicant joined the post in BSNL on 13.09.2010.

4. It is maintained that by virtue of OM bearing No.28/10/84-Pension Unit dated 29.08.1984 (Annexure A4), the applicant is entitled to reckon her past service for the purpose of pension and other benefits. The applicant

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submitted an option as required under the OM before the 3rd respondent on 25.03.2011 which was not replied to. While these were going on, the applicant submits that the respondents issued provisional gradation list of Senior Accountants as on 31.08.2011 and the applicant figured at Sl.No.10. She was allotted the spot taking into account her past service. At the same time she also submitted a reminder dated 12.11.2013 (Annexure A7) seeking a decision on the option submitted by her already. Meanwhile it came to her notice that in the gradation list of Senior Accountants published on 24.10.2014 (Annexure A10) her seniority had been brought down. She was also given a reply rejecting her case as made out in Annexure A8.

5. By impugned order at Annexure A1 dated 23.01.2014 issued to the applicant, her plea for inclusion in the old pension scheme reckoning her service in Rajiv Gandhi University was finally disallowed. The applicant contends that this decision has been in contravention of the OM issued by the DOPT already referred to. She argues that as required under the provisions of the OM she had filed her option (Annexure A5) within time and the authorities were wrong in depriving her of her rights.

6. The respondents-1to3 have filed their reply statement opposing the contentions made in the OA. It is submitted that the applicant was a deputationist in CCA, Chennai from 10.08.2006 to 21.09.2007 and in the office of the CCA, Kerala from 24.09.2007 to 09.02.2010 when she was

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absorbed in the services of BSNL. As per the appointment order itself it is clearly mentioned that offer of appointment is subject to the conditions regarding mobility of personnel among Central/State Autonomous bodies prescribed in the OM issued by the Ministry of Personnel and Public Grievances and Pension dated 28.10.2009. As per Para-2(c) of the said OM employees of Central Autonomous bodies who were governed by Contributory Provident Fund Scheme will not be allowed entry in the old pension scheme on appointment with effect from 01.01.2004. Besides after assuming charge of Senior Accountant with her present employer she had requested for being paid terminal benefits from her erstwhile organisation and had also received the same. She had also enrolled herself in New Pension Scheme (NPS 2004) from the date of joining the present office. In so far as her claim that her place in the gradation list being brought down, it is maintained by the respondents that the initial list had been a provisional list and as per the list finally issued she occupies Sl.No.20 in the gradation list of Senior Accountant (Annexure A10).

7. It is strongly maintained that the impugned order is the out come of right application and correct interpretation of Government Policy on the subject and hence does not suffer from any infirmity. The counting of past service on submission of technical resignation on or after 01.01.2004 by an employee is regulated under OMs issued by the Government of India on 26.07.2005 and 28.10.2009. The Annexure A4 orders of Government of

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India have since been superseded by Annexure A11 orders.

8. Heard Shri T.C.Govindaswamy for the applicant and Shri Anil Kumar, Senior Standing Counsel for Central Government on behalf of the respondents.

9. The applicant's case is for being included in the old pension scheme on the ground that she had filed an option for being included under that scheme within one year of being absorbed in BSNL. This would enable her to count her seniority by reckoning her past service with her erstwhile employer as well. Hence she is seeking that her seniority in the final gradation list in Annexure A10 is to be revised upwards, while at the same time making her eligible to be part of the more beneficial old pension scheme.

10. The current rule relating to mobility of personnel among Central/State Autonomous Body while working under pensionable establishment is governed under Government of India , Department of Pension and Pensioners' Welfare OM No.28/30/2004-P&PW(B) dated 28.10.2009. Para-2(c) reads as follows:

2(c) the pre-existing arrangement of mobility between State/Central Autonomous Body to Central/State Government and between Autonomous Bodies that were governed by old pension schemes in force up to 31-12-2003 vide No.28/10/84-P&PW, dated 7-2-1986 (Sl.No.240 of Swamy's Annual, 1986) and O.M.No.28/10/84-Pension unit, dated 29-8-1984 (Sl.No.118 of Swamy's Annual, 1984), stand restored although those under CPF etc. will not be allowed entry into

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the old pension scheme on appointments from 1-1-2004.

11. Regardless of any previous concession made the relevant rule clearly lays down that those under CPF will not be allowed entry into old pension scheme on appointment from 01.01.2004. The applicant was covered under CPF when she was with her erstwhile employer and she came to be absorbed under BNSL several years after to 01.01.2004. As such the condition put out in the OM above clearly stands in the way of the applicant obtaining the benefit sought. Added to this is the fact that the applicant on her own sought and received all terminal benefits from her erstwhile employer. After having claimed her CPF dues cum Gratuity from her previous employer, she is now demanding to claim the benefit of that service to move up in seniority and partake of the more beneficial old pension scheme. Clearly this is untenable.

13. For reasons cited above, the OA is dismissed as devoid of merits. No costs.

(Dated this the 16th day of November 2018).

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A. No.180/00983/2014

1. **Annexure A1** – True copy of the Letter bearing No.CCA-KRL/600-143/10/Admn dated 23.01.2014, issued by the 3rd respondent.
2. **Annexure A2** – True copy of the letter bearing No.CCA/KRL/60-48/2010-Admn/D-14 dated 03 Sep 2010, issued from the office of the 3rd respondent.
3. **Annexure A3** – True copy of the order bearing No.PF-145/87(Vol.II) dated 08 Sep 2010, issued by the Registrar in-charge in the office of the 4th respondent.
4. **Annexure A4** – True copy of the Government of India, Department of Personnel & Administrative Reforms Office Memorandum bearing No.28/10/84-Pension Unit dated 29 Aug 1984.
5. **Annexure A5** – True copy of option dated 25.03.2011 submitted before the 3rd respondent by the applicant.
6. **Annexure A6** – True copy of the provisional gradation list of Senior Accountant as on 31.08.2011, dated 12.10.2011, issued by the 3rd respondent.
7. **Annexure A7** – True copy of the reminder dated 12.11.2013 addressed to the 3rd respondent.
8. **Annexure A8** – True copy of the detailed representation dated 12.11.2013, addressed to the 2nd respondent.
9. **Annexure A9** – True copy of the Circular bearing No.CCA/KRL/60-10/2011/Admn dated 15.11.2013 issued from the Office of the 3rd Respondent.
10. **Annexure A10** - True copy of the Circular bearing No.CCA/KRL/60-70/2011/Admn dated 24.10.2014, issued by the Joint Controller of Communication Accounts.
11. **Annexure A11** – True copy of the Government of India order bearing No.28/30/2004-P&PW(B) dated 29.10.2009, as published in Swamy's Annual 2009.
12. **Annexure A12** – True copy of the Government of India, Department of Pension & Pensioners' Welfare Office Memorandum bearing No.28/10/84-PU-Volume.I dated 12 Sep 1985.
13. **Annexure A13** – True copy of the Government of India, Department of

Pension & Pensioners' Welfare Office Memorandum bearing No.28/19/2002-P&PW(B) dated 19.02.2003.

14. **Annexure R2(A)**– Photocopy of the OM dated 28.10.09.
 15. **Annexure R2(B)** – Photocopy of lettr No.33-42/2012-SEA-III, dated 10/09/2014
 16. **Annexure R2(C)** – Photocpy of the application dated 12.11.2013.
 17. **Annexure R2(D)** – Photocopy of the file notings.
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