

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00023/2018

Thursday, this the 4th day of October, 2018

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

A. Ravikumar (HR No. 198307690), Accounts Officer (EC) (Retired),
 O/o. Principal General Manager, (M-STR) BSNL, Ernakulam,
 Ambady House, Rayamangalam, Kuruppampady PO,
 Pin – 683 545, Dist. Ernakulam. **Applicant**

(By Advocate : Mr. Vinay Kumar Varma)

V e r s u s

1. The BSNL, (through Chairman & Managing Director),
 Corporate Office, Bharat Sanchar Bhawan, Harish Chander
 Mathur Lane, Janpath, New Delhi – 110 001.
2. The Chief General Manager Maintenance, South Telecom Region,
 11 Link Road, Ganapathy Colony, Guindy, Chennai – 695 033.
3. The Principal General Manager Maintenance STR,
 Microwave Station Building, Deshabhimani Road, Kaloor,
 Ernakulam – 682 017.
4. The Divisional Engineer (Engineering), Office of the Principal
 General Manager Maintenance STR, Microwave Station Building,
 Deshabhimani Road, Kaloor, Ernakulam-682017. **Respondents**

(By Advocate : Mr. Thomas Mathew Nellimoottil)

This application having been heard on 26.09.2018 the Tribunal on
 04.10.2018 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

“I) Call for the proceedings leading to Annexure A3 and set aside
 Annexure A1 and Annexure A2 communications to the extent that it directs
 for the withholding of the retiral benefits of the applicant.

II) Direct the respondents to initiate steps to dispose of the pending vigilance/disciplinary case against the applicant expeditiously, and to complete the process within a time frame stipulated by this Hon'ble Tribunal.

III) Pass such further or other orders as this Hon'ble Tribunal may be pleased to deem fit and proper in the circumstances of the case.”

2. The brief facts of the case are that the applicant stands retired from service with BSNL after attaining the age of superannuation on 31st October, 2017. While working as Accounts Officer in the office of 5th respondent he was charge sheeted vide memo dated 16.10.2017. The charge memo is still pending with no final outcome as yet. It is further submitted that during the last month of his service on 26.10.2017 just five days before his retirement from service on 31.10.2017 the applicant was issued with the memorandum of charge with following articles of charges:

“Article – I

1. Shri A. Ravikumar AO (EC) HR No. : 198307690, O/o PGMM STR Ernakulam is responsible for not conveying the absence from duty on 22.4.17, 25.4.17 and 26.4.17 to CAO, O/o PGMM STR Ernakulam.

2. By the above act Shri A. Ravikumar AO (EC) HR No. : 198307690, O/o PGMM STR Ernakulam, willfully exhibited lack of absolute integrity lack of devotion to duty and an act of unbecoming of a public servant by deliberate absence from the employee's appointed place of work thereby contravened the Rules 4(1)(a), Rule 4(1)(b), Rule 4(1)(c), Rule 5(6), Rule 5(18), Rule 5 (20), Rule 5(31) and Rule 5(32) of BSNL CDA Rules, 2006.

Article-II

1. Shri A. Ravikumar AO (EC) HR No. : 198307690, O/o PGMM STR Ernakulam is responsible for incorrect settlement of TA claims of Sri A. Ravikumar AO (EC), STR Ernakulam (self), Smt. Sudha Rajagopal JAO (C&C) STR Ernakulam & Sri C.S. Rajendran AO (C&C) STR Ernakulam resulting in excess payment to the officers.

2. By the above act Shri A. Ravikumar AO (EC) HR No. : 198307690, O/o PGMM STR Ernakulam exhibited lack of devotion of duty and neglect of work or negligence in the performance of duty, thereby contravened Rule 4(1)(b) and Rule 5(8) of BSNL CDA Rules, 2006.”

Based upon the above charges the applicant has not been paid the amount due to him on his retirement such as DCRG, commuted value of pension and leave encashment. The respondents have not even issued him the Pension Payment Order till date. Thus the applicant has no means of knowing the amount which has been sanctioned to him as provisional pension pending the completion of vigilance/disciplinary case against him. Lastly it is submitted that there is no pecuniary loss caused to the 1st respondent by the acts/omissions of the applicant and the amount involved would be so minuscule so as to render withholding the retiral benefits of the applicant which is unjustified and illogical. He has further submitted that as per Section 61 of the BSNL CDA Rules, 2006, the rules permit withholding of part of the retiral benefits like DCRG and commuted value of pension depending upon the gravity of the charges.

3. Notices were issued to the respondents. They have entered appearance and filed reply statement. It is contended by the respondents that since the disciplinary proceedings initiated against the applicant is pending, the DCRG was withheld in accordance with the Rule 69(1) of CCS (Pension) Rules, 1972 which provides that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. Therefore, DCRG can be disbursed to the applicant only on the completion of the disciplinary proceedings. They have relied on Rule 61 of BSNL (Conduct, Discipline and Appeal) Rules, 2006 which reads thus:

“Rule 61. DISCIPLINARY PROVISIONS FOR RETIRING EMPLOYEES

(1) The departmental Disciplinary proceedings will continue against an employee after his retirement if the same was initiated before his retirement.

(2) Disciplinary proceedings, if instituted while the employee was in service whether before his retirement or during his re-employment, shall after the retirement of the employee, be deemed to be proceeding under these Rules and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

(3) During the pendency of the disciplinary proceedings the disciplinary authority may withhold payment of gratuity for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the company, if the employee is found in the disciplinary proceedings or judicial proceedings to have been guilty of offences/misconduct as mentioned in sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the company by misconduct or negligence, during his service including service rendered on deputation or on reemployment after retirement. However, the provisions of Section 7(3) and 7 (3A) of the payment of Gratuity Act, 1972 should be kept in view in the event of delayed payment, in case the employee is fully exonerated.....”

It is further submitted by the respondents that the provisional pension of Rs. 24,520/- is approved by the BSNL and the same has been forwarded to the Department of Telecommunication i.e. the pension payment authority for effecting payment. As the amount of provisional pension sanctioned is the same as the full pension amount, the issue of disbursement of commuted value of pension does not arise until the final orders are passed in the disciplinary proceedings. With regard to the leave encashment of the applicant the respondents submitted that the applicant is entitled to get Rs. 8,61,644/- towards leave encashment and after withholding Rs. 43,082/- an amount of Rs. 8,18,562/- was sanctioned for payment. The said amount has been credited to the applicant's bank account on 2nd January, 2018.

4. In support of their contentions the respondents have relied upon the judgment of the Hon'ble High Court of Jharkhand in WP(S) No. 4220 of 2013 – ***Bharat Sanchar Nigam Limited v. Shri Shardindu Kundu*** dated 6.5.2014.

5. Heard Shri Vinay Kumar Varma, learned counsel appearing for the applicant and learned Standing Counsel for the respondent BSNL. Perused the record.

6. It is held by the apex court in numerous cases that pensionary benefits are not bounty and during the course of service if it is statutorily denied or stopped it will cause duress to the retired employee. The counsel for the applicant has emphasized that the charge against the applicant is not so heinous that his entire commuted value of pension and DCRG should have been withheld by the respondents. Going through the facts and circumstances of the case it can be seen that the applicant has been charge sheeted for unauthorized absence of 3-4 days and that he is responsible for incorrect settlement of TA of three employees. As regards the 1st charge though the department has marked him absent, the applicant submitted that he had accompanied the internal audit team and his superiors were aware of it. For the sake of his presence the respondents have initiated departmental action against him and withheld his gratuity and other pensionary benefits. Particularly on the basis of commission of serious irregularities during the service period such recoveries are permissible but in the present case it seems that there is certain biasness towards the applicant as his absence for

a short duration has been subjected to departmental inquiry. This Tribunal is not justifying the actions done by the applicant herein but the action taken by the respondents against the applicant seems to be very harsh.

7. In view of the above we direct the respondents to culminate the inquiry against the applicant within a period of three months from the date of receipt of a copy of this order. In the meantime 50% of the DCRG amount may be released to the applicant without fail. Obviously the commutation of pension cannot be released unless the departmental inquiry is finalized.

8. With the above directions the Original Application is disposed of. No order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

“SA”

Original Application No. 180/00023/2018**APPLICANTS' ANNEXURES**

Annexure A1 - True copy of communication No. 14-36/2016-SEA-BSNL dated 30.10.2017 of 1st respondent.

Annexure A2 - True copy communication No. PGM/STR/ENK33/X-3/2017-18/50 dated 31.10.2017 of 4th respondent.

Annexure A3 - True copy of the memorandum No. VIG/012886/7400/Rule 36/98307690 dated 16.10.2017 issued by the 2nd respondent.

Annexure A4 - True copy of the detailed representation dated 16.11.2017 submitted by the applicant.

Annexure A5 - True copy of the order of the Hon'ble Allahabad High Court in BSNL & 4 Others v. Rameshwar Dayal dated 3.8.2017.

RESPONDENTS' ANNEXURES

Nil

-X-X-X-X-X-X-X-