

OA.No.170/00630/2015/CAT/Bangalore Bench
**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00630/2015

DATED THIS THE 04th DAY OF SEPTEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

Sri Yeshwant Ganpatrao Desai
Aged about 66 years
S/o Ganpatrao S.Desai
Retired Telegraphman-BSNL
Residing at H.No.594
Peth Galli, at Post Kadoli (Taluk & Dist.)
Belagavi-591 143.

....Applicant

(By Advocate Sri K.Hanifa)

Vs.

1. The Secretary
Department of Telecom (Govt. of India)
Sanchar Bhavan, 20 Ashoka Road
New Delhi-110 001.
2. Chairman & Managing Director
Bharat Sanchar Nigam Limited
Corporate Office, H C Mathur Lane
Janpath, New Delhi-110001.
3. The Secretary
Department of Public Enterprises (Govt. of India)
14, CGO Complex, Lodhi Road
New Delhi-110 003.
4. Controller of Communication Accounts (DOT)
Amenity Block, Palace Road
Bengaluru-560 001.
5. General Manager Telecom, BSNL
Opp. Globe Theatre, Camp
Belagavi-590001.

...Respondents

(By Advocates Sri M.Vasudeva Rao for R1,3&4 and Sri Vishnu Bhat for R2&5)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- a) *Quash the impugned orders No.1-1(1)/06-PAT dated 17.12.2008 at Annexure-A11 issued by the R-1 and No.KTK/CCA/SA/Pen-Audit REvsn/2475 dated 30.11.2012 at Annexure-A16 issued by the R-4, which are issued in violation of provisions of paragraph-4 of the OM dated 5.7.1989 at Annexure-A1, Section 25FF (b) of the I.D Act, 1946, clause 2 (g) of the impugned Lr.No.BSNL/26/SR/2002 dated 07.08.2002 at Annexure-A3 and violation of Article 14 of the Indian Constitution.*
- b) *Direct the respondents to amend/modify the order No.BSNL/26/SR/2002 dated 07.08.2002 at Annexure-A3 and its clauses 2.1-a and 2.1-e, so as to provide fixation of promoted CDA pay, as per FR22/FR23, on next/subsequent increment falling on or after 01.10.2000 in the pre-promoted CDA pay, in respect of promotions prior to 01.10.2000, and then replace by IDA scale on the lines of DOT order No.1-1(1) 20 PAT dated 12.09.2006 at Annexure-A6.*
- c) *Direct the respondents to arrange for Presidential order etc., if need be, on the lines of CPCs (Central Pay Commissions), to be in conformity with the provisions of the Section 25FF(b) of the Industrial Disputes' Act, 1947 to support the requirement of prayer (b) as above.*
- d) *Consequently, quash the pay fixation memos Q/4220/28-1 at Annexure-A17 and Q4220/28-2 at Annexure-A18 both dated 10.01.2013 issued by the R-5.*
- e) *Direct the respondents to restore the pay of the applicant as per the pay fixation memo no.Q4220/110 dt.6.6.2009 at Annexure-A12, i.e. in case of his BCR promotion falling on 01.09.1999, allowing his fixation of promoted CDA pay on 01.10.2000 (the date of subsequent increment to next increment) as per FR23, and then replace the same by IDA scale on 01.10.2000; and to refund the recovered amount of Rs.75254/- with interest, and also for further extension of normal benefits of pay/pension on that basis revising all the subsequent pay fixation memos along with the monetary benefits, arrears etc. accruing thereof with interest.*

2. According to the applicant, he was working as Telegraph man in DOT which was converted to BSNL PSU w.e.f. 01.10.2000. He was transferred and absorbed in BSNL along with majority of Govt. servants of the DOT vide absorption order dtd.18.12.2001(Annexure-A2). According to paragraph 4 of

OA.No.170/00630/2015/CAT/Bangalore Bench

the OM No.4/18/87-P&PW(D) dtd.5.7.1989(Annexure-A1), the employees who are transferred from Govt. service to PSU service will have an option to retain Govt. pay scales(CDA pay) till their promotion or retirement(whichever is earlier). The applicant submits that as per above OM, the Govt. servants even after transferred(absorption) to PSUs, they can retain the Govt. pay scales till their promotion. He further submits that whenever a promotion is granted to a Govt. servant, the servant has option to have the benefit of promoted/new pay not only from the date of promotion, but also from a later date, i.e. from the date of next/subsequent date of increment as per provision of pay fixation rules FR22(I) (a) (1) and FR23. As per option under FR22(I) (a) (1) the fixation of promoted/new pay can be sought from the date of next increment falling in the pre-promoted/ old pay; and as per option under FR23 the pre-promoted/old pay can be continued till the next or any subsequent increment falling in the pre-promoted/old pay and then to have fixation of promoted/new pay. Therefore, if their initial date of promotion is finalized on or after the date of transfer(absorption) to PSUs, then as per FR22/FR23, the Govt. pay scale can be retained till such finalization of promotion on or after absorption.

3. The applicant submits that he was granted BCR promotion on 01.09.1999(prior to absorption) in CDA pay scale in DOT by the 5th respondent vide memo dtd.04.11.2008(Annexure-A9). The date of next increment in the pre-promoted/old pay was on 01.10.1999 and the date of subsequent increment was on 01.10.2000(the date of absorption in BSNL PSU). The applicant submitted his option on 26.11.2008(Annexure-A10) invoking the provision of FR23 which states that the holder of post, the pay of which is changed may at his option retain his old pay until the date on which he has earned next or any subsequent increment in the old scale. His

promoted CDA pay was fixed accordingly on 01.10.2000 and then replaced by IDA scale on the same date by R5 vide fixation memo dtd.6.6.2009(Annexure-A12), his IDA pay as on 01.10.2000 was Rs.6340/-. But, when his case was sent to R4 for revision of pension, the case was returned with the observation that the applicant was eligible to opt for fixation from next or any subsequent increment under FR23. However, as per DOT OM dtd.17.12.2008(Annexure-A11), the option for fixation of pay is not available to absorbed employees, who were promoted before 01.10.2000 with DNI(Date of Next Increment) after 01.10.2000 i.e. fixation in higher pay scale cannot be done in IDA scale for promotion before 01.10.2000. The R4 further observed that the fixation of promoted CDA pay on 01.10.2000 has to be re-examined in the light of clarification in DOT OM dtd.17.12.2008. The applicant submits that this OM dtd.17.12.2008 was culmination of references rose by the Controller of Communication Accounts(CCA), WB Circle, Kolkata vide dtd.02.06.2006(Annexure-A5) which contended erroneously that in case of replacement of CDA scales by IDA scales, the fixation of promotion on date of next increment on or after absorption has to be considered and settled by the provisions on the lines of implementation of CPCs and the pay of absorbed employees in BSNL cannot be fixed in CDA scale after 01.10.2000. This violates the provision of Section 25FF(b) of ID Act which says that there should be protection of terms and conditions of workman prior to transfer. Hence, there is lack of proper application of mind on the part of respondents as they have blindly acted on the references of CCAs, Kolkata which caused grave injustice to the absorbed employees who were granted promotion prior to 01.10.2000 in CDA scale and their next/subsequent falling on or after 01.10.2000 as they were denied fixation of promoted CDA pay and allowed fixation in IDA scale resulted in reduction in his pay and pension.

4. The applicant further submits that based on the observation of R4, the R5 had revised fixation of pay of the applicant by denying fixation of CDA promoted pay on 01.10.2000 vide memos No.Q4220/28-1(CDA pay) and Q4220/28-2(IDA pay) dtd.10.01.2013(Annexures-A17 & A18). This has resulted in reduction of pay of Rs.480/- as on 01.10.2000 and pension and based on which R4 ordered recovery of Rs.75254/- in the gratuity amount in the sanction copy dtd.18.04.2013(Annexure-A20). Aggrieved by which, the applicant submitted a representation dtd.08.04.2013(Annexure-A19) to R1 and sought information under RTI dtd.14.08.2013(Annexure-A21). The R1 vide RTI reply dtd.30.09.2013(Annexure-A22) replied that the matter was sub-judice. The applicant again sought detailed information vide appeal dtd.14.10.2013(Annexure-A23). The respondents have furnished the list of pending OAs before various Tribunals vide appellate order dtd.20.11.2013(Annexure-A24). The applicant submits that on perusal of those OAs stated to be pending, it is found that section 25FF(b) of ID Act has not been invoked in any of those OAs. Further, none of the OAs have the contentions raised by the applicant in the present OA. Further the OAs.31/2012(Annexure-A31) and OA.No.115-128/2013(Annexure-A32) were also not decided on the points raised by the applicant. As such the contention of R1 that the case is sub-judice is wrong but made only to evade the responsibility of deciding the contentions raised by the applicant.
5. The applicant further submits that Section 25FF(b)(Annexure-A15) of the Industrial Disputes' Act entails that in case of transfer to undertakings there should be protection of pre-transfer terms and conditions. The sub section (b) clearly states that the terms and conditions of the service applicable to workman after such transfer are not to be in any way less favourable to the

workman that those applicable to him immediately before the transfer. Obviously as per Section 25FF(b) there should be protection of pre-absorption terms and conditions of the absorbed employees whose services have been continued uninterrupted even after their transfer on 01.10.2000 from DOT to BSNL. Hence, if the applicant even after his promotion prior to 01.10.2000 wishes for option to continue his Govt. CDA pay(old pay) with its benefits of promotion etc. till his any subsequent increment falling on or after 01.10.2000 as per FR 23 and then seek fixation in IDA pay(new pay), such option and fixation cannot be denied. But this is denied in case of the applicant vide impugned orders at Annexure-A11 & A16 which are arbitrary, unfair and violation of Article 14 of the Constitution and hence should be quashed.

6. The respondents Nos.2 & 5 have filed their reply statement in which they submitted that the applicant was appointed as Telegraphman in DOT. Further he was promoted under One Time Bound Promotion(OTBP) scheme w.e.f. 01.09.1989 in the scale of Rs.800-15-1010-EB-20-1150. Again he was promoted under BCR Scheme on completion of 26 years of service w.e.f. 01.01.2000 in the scale of Rs.4000-100-6000 and accordingly pay has been fixed at Rs.4000 w.e.f. 01.01.2000 i.e. from the date of promotion and as per the option of the applicant vide Memo No.Q-4220 dtd:03.03.2000. In the meantime, the OTBP scale of Rs.3050-4590 was upgraded w.e.f. 10.10.1997 to the scale of Rs.3200-4900 and as per the option of the applicant, his pay has been fixed to Rs.3710 w.e.f. 10.10.1997 vide Memo dtd.27.01.2001 and due to this re-fixation, the fixation on BCR promotion has been further revised and pay has been fixed to Rs.4000 w.e.f. 01.01.2000 with date of next increment as 01.01.2001.

7. It is submitted that on absorption in BSNL the pay of the applicant has been

OA.No.170/00630/2015/CAT/Bangalore Bench
 fixed from CDA scale of Rs.4000-6000 to IDA pay scale of Rs.5700-160-8100
 w.e.f. 01.10.2000 at the stage of Rs.5700/-. According to BSNL HQ ND orders
 dtd.08.11.2005 and 01.07.2008, the promotion under BCR Scheme has been
 given from the date of completion of 26 years of regular service w.e.f.
 01.09.1999 and the applicant has opted to fix his pay in CDA till 01.10.2000
 and fixation in new IDA pay scale w.e.f. 01.10.2000. According to his option,
 the pay has been fixed vide Memo No.Q-4220/110 dtd.06.06.2009. On receipt
 of the clarification under DOT ND No.1-1(1)06-PAT dtd.17.12.2008 and
 according to the objection raised by the Controller of Communication
 Accounts, DOT Cell BG No.KTK/CCA/IDA/SA/Pen-Audit Revsn/2475
 dtd.30.11.2012 the pay fixation done vide Q-4220/110 dtd.06.06.2009 was
 irregular and hence the same has been revised according to clarification
 received and the pay fixation has been revised and regularized vide Memos
 No.Q-4220/28-1, No.Q-4220/28-2, No.Q-4220/28-3 & No.Q-4220/28-4
 dtd.10.10.2013. Hence the pay fixation is done as per the policy of the
 Department and hence the applicant's claim for having his pay fixed under FR
 22(1)(a)(i) and FR 23 from 01.10.2000 is not tenable.

8. The provision under FR 23 states that 'the holder of a post, the pay of which is changed, shall be treated as if he were transferred to a new post on the new pay provided that he may at his option retain his old pay until the date on which he has earned his next or any subsequent increment on the old scale, or until he vacates his post or ceased to draw on that time scale. The option once exercised is final.' As such FR 23 is not related to pay fixation on promotion, but it is related to retention of old pay scale till the date of next or subsequent increments wherever the pay scale of posts are changed. In the present case, at the time of the applicant's promotion under BCR on 01.09.1999, there was no change in pay scale of BCR and therefore he was

not entitled for any provisions under FR 23 i.e., option for retaining the old pay scale up to 01.10.2000 and then getting the pay fixed in the BCR scale. But he had only one option as per FR 22 to get his pay fixed with effect from the date of his next increment i.e. 1.10.1999. The applicant's attempt to mix the provisions of FR 22 and FR 23 for fixation of pay on promotion to BCR on 1.9.1999 is not correct because the principles of these two rules are applicable entirely under different circumstances.

9. The applicant's contention regarding retaining the Government pay scale i.e., CDA pay scales till promotion or retirement whichever is earlier as per clause IV of OM No.4/18/87-P & PW (D) dtd.5.7.1989 is not correct because this clause is applicable only for officials who got promotions after 01.10.2000 and not in the case of the applicant whose promotion was well before 01.10.2000 i.e. on 01.09.1999.

10. As per the order of DOT letter dtd.17.12.2008, it has been clarified that the option of fixing the pay from the date of next increment falling after 01.10.2000 available under FR 22 will not be available for the employees of BSNL since their status changed on 01.10.2000. Hence their pay will have to be fixed on the date of their promotion as per the existing rules prior to 01.10.2000 and no re-fixation can be permitted on the next increment date which is falling after 01.10.2000. But, in the case of the applicant, the promotion under BCR was well before 01.10.2000 and hence this order is not applicable. The fixation of pay in respect of the applicant on promotion under BCR on 01.09.1999 has to be fixed in accordance with FRs either on 1.9.1999 or on the date of his next increment which is on 1.10.1999. In either case, the pay gets fixed at the minimum of the pay scale applicable to BCR which is Rs.4000-100-6000. Hence, the pay fixation at Annexure-A17 is in order. There is no question of

denying pay fixation in CDA scales on 01.10.2000 because even if the applicant had opted for pay fixation from the date of next increment, which in his case was 01.10.1999, fixation on 01.10.2000 was not at all permissible under FR22. Hence, the question of denial of pay fixation on 01.10.2000 does not arise at all and thus there is no injustice done to the applicant. The excess paid pay and allowance as a result of wrong pay fixation were recovered from the Retirement Gratuity at the time of retirement.

11. The respondents further submitted that the order dtd.4.11.2010(Annexure-A13) allows the Govt. servants to retain the CDA pay scales till their date of promotion which falls after 01.10.2000. In the case of the applicant, the date of promotion neither falls on 01.10.2000 nor after 01.10.2000 but on 1.9.1999, and hence these orders are not applicable in his case and discussion on this point is not relevant here. In the applicant's case, the date of promotion under BCR is 1.9.1999. As per promotion order issued vide order NO.E-5/BCR/79 dtd.4.11.2008(Annexure-A9), the applicant can opt for pay fixation within one month from the date of issue of these orders. Hence, option means option for pay fixation with effect from the date of next increment in the lower scale held by the official before promotion which is 1.10.1999. As per FRs, the option for pay fixation on promotion can be exercised either with effect from the date of promotion or with effect from the date of next increment and not any subsequent increment dates. The date of promotion and the date of next increment both falls before 01.10.2000 and thus the process of promotion and fixation of pay are complete before 01.10.2000 and therefore the question of denial of re-fixation of pay from the date of subsequent increment will not arise because the option under FR is available from the date of next increment only and not from any other subsequent increment after 01.10.2000. The applicant's contention that section 25 FF of the Industrial

Dispute Act 1947 is to be made applicable in his case is not correct because the said act deals with compensation to workmen in case of transfer of undertaking where its ownership or management is transferred. In the present case, the ownership of the undertaking i.e. BSNL has not changed and the Govt. of India continues to hold the ownership and therefore the same cannot be compared and made applicable.

12. The applicant's claim for re-fixation of pay from 01.10.2000 on his promotion to BCR from 1.9.1999 is not permissible under FR-22 since under FR-22, the option for fixation can be exercised only from the date of next increment and not from any subsequent increment dates.

13. The provisions of FR 23 is applicable only when the pay scale of the post is changed and the official is allowed to retain the old scale till the date of next or subsequent increments. But, in the present case, the issue is fixation of pay on promotion under BCR where FR 22 is applicable and not FR 23. FR 23 and FR 22 are entirely different set of rules and are applicable in different circumstances as explained above. The provisions of FR 23 cannot be made applicable in case of promotions where only FR 22 is applicable and the provisions of these rules cannot be mixed.

14. The respondents submit that the orders issued vide letter dtd.17.12.2008 by DOT is self-explanatory and it is applicable in cases where the promotion is before 01.10.2000 and Date of Next Increment(DNI) falls after 01.10.2000. Whereas in the case of the applicant, his promotion under BCR is before 01.10.2000 and the DNI falls on 01.10.1999 which is also before 01.10.2000. As such the applicant is not affected in any manner by the letter dtd.17.12.2008 and hence the request of the applicant to quash the same is not relevant.

15. On the contention of the applicant regarding DOT orders dtd.04.11.2010 and BSNL letter dtd.12.7.2011 are silent regarding promotions which fall on 01.10.2000, the respondents submit that it is incorrect because para 'e' of BSNL order No.BSNL/26/SR/2002 dtd.7.8.2002(Annexure-A3) clearly deals with the procedure for fixation of pay for promotions with effect from 01.10.2000. Moreover, discussion about fixation of pay on promotions on 01.10.2000 is not relevant in the applicant's case because his date of promotion is on 01.09.1999 and not on 01.10.2000. There is no question of pay fixation on or after 01.10.2000 in this case under BCR because the applicant has no option to select the date on or after 01.10.2000 for fixation of pay for his promotion under BCR which was with effect from 1.9.1999. The date of which he could have opted for fixation of pay on promotion was only 01.10.1999 which was the immediate DNI after the date of promotion. The applicant cannot opt for subsequent DNI for fixation of pay as there is no such provisions in FRs. Clause 4 of OM dtd.5.7.1989 is not applicable to the case of the applicant as his date of promotion of BCR is well before 01.10.2000 i.e. on 01.09.1999. The applicant's contention that the respondents have disregarded and ignored the terms and conditions set out by themselves regarding para 4 of OM dtd.5.7.1989 vide clause 5 of the absorption order dtd.18.12.2001(Annexure-A2) is not correct because order dtd.5.7.1989 is a special benefit provided to retain the CDA pay scales till the date of promotion/retirement whichever is earlier to those employees whose date of promotion/retirement falls after 01.10.2000. Since he is not falling under such category of employees, his request to quash the impugned orders as arbitrary, unjust and unfair is not justified and no injustice is done to the applicant as alleged by him and hence the OA is liable to be dismissed.

16. The respondents 1,3 & 4 have filed reply statement in which they contended that the OA is highly belated and barred by limitation as the applicant is challenging the order dtd.30.11.2012 at Annexure-A16 in 2015 i.e. after 2 ½ years delay and hence on this ground alone the OA is liable to be dismissed. They further submitted that the mode of fixation of pay in IDA scales in respect of absorbed employees of BSNL who were promoted prior to 01.10.2000 but opted for fixation of pay in the promoted pay scale from the date of their next increment in their lower grade falling after 01.10.2000. On receiving reference from BSNL on the subject, DOT issued instructions vide OM dtd.12.09.2006(Annexure-A6) wherein it was provided that absorbed employees promoted prior to 01.10.2000 may be allowed fixation of pay to the promoted pay scale from the date of their next increment in the lower scale that fell after 01.10.2000. Subsequently, the matter was re-examined in consultation with Department of Public Enterprises(DPE) which observed that the option of fixing pay from the date of next increment as available under FR 22 cannot be made available to BSNL employees as their status changed on 01.10.2000 and hence their pay needs to be directly fixed on the date of their promotion as per the existing rule prior to 01.10.2000 and no refixation is permitted on the date of next increment that fell after 01.10.2000. Accordingly, OM dtd.17.12.2008 was issued in consultation with nodal ministry(DPE) after approval of Secretary(T). This stand was taken as a policy decision by the Government keeping in view benefits to all the employees of BSNL and it cannot be altered/changed for individual employees. Moreover, the veracity of DOT order dtd.17.12.2008 has already been examined in a number of OAs including OA.No.31/2012 and OA.115-128/2013 wherein this Bench found that there was no illegality or error found in the instructions contained in OM dtd.17.12.2008 and hence the method adopted for fixation of pay is found to

OA.No.170/00630/2015/CAT/Bangalore Bench

be in order. Hence, the applicant is not entitled to file this OA being res judicata. In addition to this the Hon'ble CAT, Madras Bench has recently dismissed the number of OAs vide common order dtd.31.03.2015(Annexure-R1) observing that the respondents are empowered to re-fix the pay of employees of BSNL as per the instructions contained in OM dtd.17.12.2008 and fix the pension entitlement also accordingly.

17. The fixation of pay of the applicant vide memo No.Q-4220/110 dtd.06.06.2009(Annexure-A12) was issued in accordance with DOT(HQ) OM No.1-1(1)/06-PAT dtd.12.09.2006. Subsequently, this aspect was re-examined by the DOT in consultation with Department of Public Enterprises, the nodal department to issue instructions/clarifications on common issues pertaining to Central Government Undertakings/bodies, who have not agreed to the instructions communicated in the OM dtd.12.09.2006 due to the fact that the status of employees of BSNL changed on 01.10.2000 and the option for fixing their pay from the next increment date available under FR-22/23 is not applicable. Hence their pay will have to be fixed on the date of their promotions as per then existing rules prior to 01.10.2000 and no re-fixation can be permitted on the next increment date which is falling after 01.10.2000 for which orders to this effect were issued vide DOT OM dtd.17.12.2008.

18. The applicant's further contention to rely on the provisions of section 25 FF of the Industrial Disputes Act is unrelated so far as the case on hand agitated by the applicant in this OA is concerned. The provisions contained in the order dtd.07.08.2002(Annexure-A3) explained the manner in which the fixation of pay from CDA scale to IDA scale has to take place w.e.f. 01.10.2000, the deemed date of absorption of employees in BSNL and has no relation to the case of the applicant which relates to fixation of pay of the applicant who got

his promotion on 01.09.1999 straightaway on the date of promotion without the option for fixation on the DNI after 01.10.2000 available to him as clarified in OM dtd.17.12.2008 which has been upheld in several other cases. All other orders/OMs issued prior to order dtd.17.12.2008 have been modified to the extent as provided in this OM, in so far as it relates to fixation of pay of the officials who are promoted prior to 01.10.2000 and whose DNI fell after that date is concerned which has been upheld as valid. Hence, the applicant is not entitled to any relief sought for and the OA being devoid of merit should be dismissed.

19. The applicant has filed rejoinders to the reply statements filed by R1,3 & 4 and R2&5 and submits that the contention of the respondents that the veracity of the impugned order dtd.17.12.2008 has already been examined in a number of cases is not acceptable since order has not been examined on the grounds inter-alia invoked by the applicant and Section 25FF(b) of the Industrial Disputes Act has not come before the Tribunals for adjudication. The respondents are deliberately silent on the fact that the orders of the Tribunals have not adjudicated on the provisions of the ground invoked by the applicant. The contention of the respondents that the pay fixation memos at A-17 and A18 as per order dtd.17.12.2008 have been found to be legally valid in view of the judicial pronouncements is not tenable since the pronouncements have not discussed any grounds invoked by the applicant.

20. The contention of the respondents that FR23 is not related to pay fixation on promotion is wrong. In most cases of promotion there is change of pay from old to new. The respondents agree that FR23 is applicable whenever there is change of pay. Hence, it is clear that FR23 is applicable to promotions since promotions mostly involve change of pay. Further R2 & R5 wrongly stated that retaining CDA pay scales till promotion as per clause 4 of OM dtd.5.7.1989 is

OA.No.170/00630/2015/CAT/Bangalore Bench

applicable only for officials who got promotion after 01.10.2000 and not in case of the applicant whose promotion on 01.09.1999 well before 01.10.2000. The clause says that CDA scales can be retained till their promotion on transfer to PSUs. The term till their promotion obviously should mean till the completion/finalization of process of promotion. As the process of promotion involves option to have the fixation of promoted/revised pay on the next/subsequent increment, it can be completed only on fixation on the date of next/subsequent increment. Hence, if the promotion falls prior to 01.10.2000 and if the date of next/subsequent increment falls on or after 01.10.2000, then the process of such promotion will be completed only on or after 01.10.2000 if opted as per FR22/FR23. As such the CDA scales can be retained till such date on or after 01.10.2000 as per para 4 of the OM dtd.5.7.1989. The respondents have wrongly interpreted the right to exercise option for fixation of revised pay under FRs and wrongly state that option can be exercised only from the date of next increment even though FR 23 clearly provides that in case of change of pay the old pay can be continued up to next or any subsequent increment. Since the applicant was denied the due FR 23 fixation at A-12 only on the basis of the order dtd.17.12.2008, the contentions of the respondents deserve to be set aside.

21. The respondents have filed additional reply reiterating the submission already made in the reply statement.

22. Learned Counsel for both the parties have filed their written arguments note.

23. We have heard the Learned Counsel for the parties. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA and the reply statements.

24. We have gone through the main contentions of the applicant and replies of the respondents in detail. The four major points made by the applicant relate to following the guidelines issued vide Annexure-A1 dtd.5.7.1989, the applicability of FR22/FR23 and Section 25FF(b) of the Industrial Disputes Act and the DOT order dtd.17.12.2008(Annexure-A11). In this case, the applicant had been given promotion before the date of absorption namely 01.10.2000 i.e. on 01.09.1999 and the date of next increment was on 01.10.1999. The applicant had exercised an option vide Annexure-A10 citing FR23. It is clear that the provisions for opting from the date of subsequent increments is not provided under FR23 and as such the applicant could have the option only till the date of next increment after his promotion, viz.01.10.1999. The reference to the Industrial Disputes Act will not be of any assistance to the applicant as it relates to the compensation for workmen arising out of change of ownership and the management. The BSNL continues to be a Govt. of India undertaking and even otherwise the Industrial Disputes Act provision relates only with respect to the compensation for workmen which will also not apply in case the terms and conditions are not modified. The applicant's laborious exercise of approaching these provisions from the side of having the same terms and conditions cannot be sustained in view of the various changes, many to the benefit to the employees opting for continuing employment.

25. In view of the above, it is clear that the decision of not allowing re-fixation as on 01.10.2000 with an additional increment as claimed under FR23 appears to be correct and the calculations made at Annexure-A17 & A18 appear to be correctly done. However, Annexure-A16 has unnecessarily brought in DOT OM dtd.17.12.2008 which is not relevant in this case. Even otherwise, the OM dtd.17.12.2008 has been upheld several times by various Benches of this

OA.No.170/00630/2015/CAT/Bangalore Bench

Tribunal. As such, the contentions of the applicant cannot be accepted and OA is liable to be dismissed. However, with respect to the recovery of excess amount drawn on account of erroneous pay fixation, we have to go by the rulings of the Hon'ble Apex Court in *Civil Appeal No.11527/2014 in State of Punjab and Others vs. Rafiq Masih (White Washer) vide order dtd.18.12.2014* and hence we direct the respondents to refund the recovered amount of Rs.75254/- to the applicant within a period of two(2) months from the date of receipt of copy of this order.

26. The OA is disposed of with the above order. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00630/2015

- Annexure A1: Copy of OM No.4/18/87-P & PW (D) dt.5.7.1989
- Annexure A2: Copy of Absorption order no.27-1/ KARNATAKA/ BELGAUM/ 1125/2001 dt.18.12.2001
- Annexure A3: Copy of impugned order Lr.No.BSNL 26/SR/2002 dt.07.08.2002
- Annexure A4: Copy of BSNL HQ No.250-8/203-Pers.III dt.24.02.2003
- Annexure A5: Copy of CCA/WB C/PEN/WBTC/20-0/misc/06-07 dt.2.6.2006
- Annexure A6: Copy of OM No.1-1(1)/06-PAT dt.12.09.2006
- Annexure A7: Copy of FR 23
- Annexure A8: Copy of letter No.CCA/CTD/P-10890 (Part) dt.05.06.2007
- Annexure A9: Copy of BCR promotion order issued by GMT Belgaum (R-5) vide No.E5/BCR/79 dt.4.11.2008
- Annexure A10: Copy of option letter dt.26.11.08 submitted by the applicant for fixation of his promoted pay as per FR 23
- Annexure A11: Copy of impugned order of DOT (R1) OM No.1-1(1)/06-PAT

dated 17.12.2008

- Annexure A12: Copy of pay fixation memo for promoted pay issued by the GMT Belgaum (R-5) vide O.M.No.4220/110 dated 6.6.2009
- Annexure A13: Copy of DOT Lr.F.No.2-49(3)2009-PAT dtd.4.11.2010
- Annexure A14: Copy of O.O.BSNL No.1-15/2011/PAT dt.12.07.2011
- Annexure A15: Copy of Section 25 FF of the Industrial Dispute's Act 1947
- Annexure A16: Copy of impugned order Ir.No.KTK/CCA/IDA/SA/Pen-Audit/Revsn/2475 dt.30.11.2012 of the CCA Bangalore (R-4)
- Annexure A17: Copy of revised IDA pay fixation vide No.O.M.No.4220/28-2 dtd.10.01.2013 by R-4 as per A3
- Annexure A18: Copy of revised CDA pay fixation vide no.O.M.No.0-4220/28-1 dt.10.01.2013 by R-4 as per A3
- Annexure A19: Copy of applicant's representation dtd.08.04.2013
- Annexure A20: Copy of sanction of gratuity amount dtd.18.04.2013 of the R5 ordering recovery of Rs.75254/-
- Annexure A21: Copy of applicant's 1st RTI application dtd.14.8.2013 seeking action taken on his representation
- Annexure A22: Copy of RTI reply by the DOT (R1) vide his letter no.3-7(22)/2013-PAT dt.30.09.2013
- Annexure A23: Copy of appeal dtd.14.10.2013 by the applicant to the above RTI reply dtd.30.09.2013
- Annexure A24: Copy of Appellate order vide no.58622/DE/RTI/13 dt.22.10.2013 issued by the FAA9RT) of R1
- Annexure A25: Copy of applicant's letter dtd.07.12.2013 sending Rs.868/- to R-1 seeking copies of proceeding before Hon'ble CATs
- Annexure A26: Copy of piece of envelope containing the above copies, booked at New Delhi PO with postage of Rs.116/-
- Annexure A27: Copy of online Grievance no.DPG/T/2014/80136 dtd.05.03.2014 & DPG reply dtd.03.04.2014
- Annexure A28: Copy of Letter No.1-15/2011/PAT(BSNL) dt.01.07.2014
- Annexure A29: Copy of another RTI appln. of the applicant dtd.27.9.14
- Annexure A30: Copy of RTI reply no.3-7(22) 2013-PAT dtd.20.10.14 by the R-1
- Annexure A31: Copy of order in OA.No.31/2012 dt.01.05.2013 of CAT, Bangalore Bench
- Annexure A32: Copy of order in OA.No.115 to 128/2013 dt.31.07.2013 of CAT, Bangalore Bench

Annexures with reply statement filed by R2 & 5:

-NIL-

Annexures with reply statement filed by R1,3 & 4:

Annexure R1: A copy of the order dtd.31.03.2015 passed by CAT, Madras Bench

Annexures with rejoinder to the reply filed by R1,3 & 4:

-NIL-

Annexures with rejoinder to the reply filed by R2 & 5:

-NIL-

Annexures with additional reply filed by R1,3 & 4:

-NIL-

Annexures with written arguments filed by the applicant:

Annexure-A33: A copy of I.D.Act, 1947 updated upto 14.10.2015

Annexure-A34: A copy of Wage Policies & related matters –DPE-OM.No.2(42)
97-DPE (WC) dt.24.10.1997
