

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH AT BANGALORE

ORIGINAL APPLICATION NO. 170/00783/2016

DATED THIS THE 08TH DAY OF AUGUST, 2017

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

N.R. Deshpande,
S/o R.J. Deshpande,
Aged 74 years,
Retired Deputy General Manager (A/T),
Hyderabad, under T&D Circle,
Jabalpur (BSNL),
Residing at No. 579,
10th Cross, MECHS Layout,
Bengaluru - 560 077
... Applicant

(By Advocate Shri A.R. Holla)

Vs.

1. Union of India,
By Secretary,
Department of Telecommunications,
Sanchar Bhavan,
No. 20, Ashoka Road,
New Delhi – 110 001.

2. Bharat Sanchar Nigam Limited,
Corporate Office,
4th Floor, Bharat Sanchar Bhavan,
H.C. Mathur Lane, Janpath,
New Delhi – 110 001,
By its Chairman and Managing Director.

3. The Chief General Manager,
T&D Circle,
Sanchar Vikas Bhavan,
Residency Road,
Jabalpur – 482 001.

4. The Dy. Controller of Communication Accounts (Pension),
M.P. Telecom Circle,
1st Floor, Door-Sanchar Bhavan,
Hoshangabad Road,
Bhopal – 462 015. Respondents

(By Shri M.V. Rao, Senior Panel Counsel for R2 & 3 and
Shri J. Bhaskar Reddy, Senior Central Government Counsel for R1 & 4)

ORDER (ORAL)

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

Heard. Apparently the applicant had asked for pro-rata pension under Rule 37-A of Pension Rules. But vide Annexure-A14 it is indicated that the applicant had been retrospectively absorbed in the BSNL and therefore IDA pension was made available to him. There is a difference between CDA and IDA and that is now sought to be withdrawn from him.

2. On twin grounds, that may not lie as the applicant had sought for a pro-rata pension under Rule 37-A the only ground open at that point of time since in 2001 the relationship between the applicant and the BSNL had been severed by superannuation. It was proposed to them to say yes or no to Rule 37-A application but they could not have retrospectively absorbed the applicant so as to cause prejudice to him after all these years. The recovery cannot lie in view of the Hon'ble Apex Court judgment but then the reduction of pension also cannot lie because under Rule 37-A what is postulated is as follows:

“(1) On conversion of a department of the Central Government into a Public Sector Undertaking, all Government servants of that Department shall be transferred en-masse to that Public Sector Undertaking, on terms of foreign service without any deputation allowance till such time as they get absorbed in the said undertaking, and such transferred Government servants shall be absorbed in the

Public Sector Undertaking with effect from such date as may be notified by the Government.

(2) *The Central Government shall allow the transferred Government servants an option to revert back to the Government or to seek permanent absorption in the Public Sector Undertaking.*

(3) *The option referred to in sub-rule (2) shall be exercised by every transferred Government servant in such manner and within such period as may be specified by the Government.*

(4) *The permanent absorption of the Government servants as employees of the Public Sector Undertaking shall take effect from the date on which their options are accepted by the Government and on and from the date of such acceptance, such employees shall cease to be Government servants and they shall be deemed to have retired from Government service.*

(5) *Upon absorption of Government servants in the Public Sector Undertaking, the posts which they were holding in the Government before such absorption shall stand abolished.*

(6) *The employees who opt to revert to Government service shall be redeployed through the surplus cell of the Government.*

(7) *The employees including quasi-permanent and temporary employees but excluding casual labourers, who opt for permanent absorption in the Public Sector Undertaking shall, on and from the date of absorption, be governed by the rules and regulations or bye-laws of the Public Sector Undertaking.*

(8) *A permanent Government servant who has been absorbed as an employee of a Public Sector Undertaking and his family shall be eligible for pensionary benefits (including commutation of pension, gratuity, family pension or extra-ordinary pension), on the basis of combined service rendered by the employee in the government and in the Public Sector Undertaking in accordance with the formula for calculation of such pensionary benefits as may be in force at the time of his retirement from the Public Sector Undertaking or his death or at his option, to receive benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.*

"Explanation:- The amount of pension or family pension in respect of the absorbed employee on retirement from the Public Sector Undertaking or on death shall be calculated in the same way as calculated in the case of a Central Government servant retiring or dying, on the same day".

(9) The pension of an employee under sub-rule (8) shall be calculated on fifty percent of emoluments or average emoluments, whichever is more beneficial to him.

(10) In addition to pension or family pension, as the case may be, the employee who opts for pension on the basis of combined service shall also be eligible to dearness relief as per industrial Dearness Allowance pattern.

(11) The benefits of pension and family pension shall be available to quasi-permanent and temporary transferred Government servants after they have been confirmed in the Public Sector Undertaking.

(12) A Permanent Government servant absorbed in a Public Sector Undertaking or a temporary or quasi-permanent Government servant who has been confirmed in the a Public Sector Undertaking subsequent to his absorption therein, shall be eligible to seek voluntary retirement after completing ten years of qualifying service with the Government and the Public Sector Undertaking taken together, and such person shall be eligible for pensionary benefits on the basis of qualifying service.

(13) The Central Government shall create a Pension Fund in the form of a trust and the pensionary benefits of absorbed employees shall be paid out of such Pension Fund.

(14) The Secretary of the administrative Ministry of the Public Sector Undertaking shall be the Chairperson of the Board of Trustees which shall include representatives of the Ministries of Finance, Personnel, Public Grievances and Pensions, Labour, concerned Public Sector Undertaking and their employees and experts in the relevant field to be nominated by the Central Government.

(15) The procedure and the manner in which pensionary benefits are to be sanctioned and disbursed from the Pension Fund shall be determined by the Government on the recommendation of the Board of Trustees.

(16) The Government shall discharge its pensionary liability by paying in lump sum as a one-time payment to the Pension Fund the pension or service gratuity and retirement gratuity for the service rendered till the date of absorption of the Government servant in the Public Sector Undertaking.

(17) The manner of sharing the financial liability on account of payment of pensionary benefits by the Public Sector Undertaking shall be determined by the Government.

(18) Lump sum amount of the pension shall be determined with reference to Commutation Table laid down in Central Civil Services (Commutation of Pension) Rules, 1981.

(19) *The Public Sector Undertaking shall make pensionary contribution to the Pension Fund for the period of service to be rendered by the concerned employees under that undertaking at the rates as may be determined by the Board of Trustees so that the Pension Fund shall be self-supporting.*

(20) *If, for any financial or operational reason, the Trust is unable to discharge its liabilities fully from the Pension Fund and the Public Sector Undertaking is also not in a position to meet the shortfall, the Government shall be liable to meet such expenditure and such expenditure shall be debited to either the Fund or to the Public Sector Undertaking.*

(21) *Payments of pensionary benefits of the pensioners of a Government Department on the date of conversion of it into a Public Sector Undertaking shall continue to be the responsibility of the Government and the mechanism for sharing its liabilities on this account shall be determined by the Government.*

(22) *Nothing contained in sub-rules (13) to (21) shall apply in the case of conversion of the Departments of Telecom Services and Telecom Operations into Bharat Sanchar Nigam Limited, in which case the pensionary benefits including family pension shall be paid by the Government.*

(23) *For the purposes of payment of pensionary benefits including family pension referred to in sub-rule (22), the Government shall specify the arrangements and the manner including the rate of pensionary contributions to be made by Bharat Sanchar Nigam Limited to the Government and the manner in which financial liabilities on this account shall be met.*

(24) *The arrangements under sub-rule (23) shall be applicable to the existing pensioners and to the employees who are deemed to have retired from the Government*

(25) *Upon conversion of a Government Department into a Public Sector Undertaking,-*

a) *the balance of provident fund standing at the credit of the absorbed employees on the date of their absorption in the Public Sector Undertaking shall, with the consent of such undertaking, be transferred to the new Provident Fund Account of the employees in such undertaking;*

b) *earned leave and half pay leave at the credit of the employees on the date of absorption shall stand transferred to such undertaking ;*

c) *the dismissal or removal from service of the Public Sector Undertaking of any employee after his absorption in such undertaking 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 shall be subject to review by the Ministry administratively concerned with the undertaking.*

(26) *In case the Government disinvests its equity in any public sector undertaking to the extent of fifty-one per cent or more, it shall specify adequate safeguards for protecting the interest of the absorbed employees of such Public Sector Undertaking.*

(27) *The safeguards specified under sub-rule (26) shall include option for voluntary retirement or continued service in the undertaking or voluntary retirement benefits on terms applicable to Government employees or employees of the Public Sector Undertaking as per option of the employees and assured payment of earned pensionary benefits with relaxation in period of qualifying service, as may be decided by the Government."*

3. Therefore the only matter to be examined by the respondents is whether under Rule 37-A of the pension rules benefit can be extended to the applicant or not. Therefore Annexure-A14 is wrongly focused on another aspect which may not arise at all. Therefore Annexure-A14 is hereby quashed. The matter is remitted back to the respondents to do the needful within two months next.

4. OA is disposed off as above. No order as to costs.

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

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