

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00059/2017

Date of Order: This, the 11th day of September 2018

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

Smti Suparna Deb
D/o Late Sukhendra Mohan Deb
C/o Sri Sanjay Deb
Kshudiram Sarani, Sibbari Road
Tarapur, P.O. Tarapur, Sichar
Pin-788003, Assam.

...Applicant

By Advocates: Mr. S. Nath & Mr. G.J. Sharma

-Versus-

- 1 The Union of India.
Through the Secretary
Ministry of Communication and IT
Department of Telecommunication
Sanchar Bhawan, Ashoka Road
New Delhi-110001.
- 2 Chief Managing Director
Bharat Sanchar Nigam Limited
Corporate office 102-B
Statesman House, 148 Barahhumba Road
New Delhi- 110001.
- 3 Chief Managing Director
Bharat Sanchar Nigam Limited
Assam Telecom Circle
Panbazar, Guwahati- 781001.
- 4 The General Manager
BSNL, Kamrup Telecom District
Panbazar, Guwahati- 781001.

5 The General Manager
BSNL, Silchar SSA
P.O- Silchar , PIN- 788001.

...Respondents

By Advocate: Mr. R. Hazarika, Addl. CGSC for res. 1
Mr. B.C. Pathak, BSNL Advocate.

O R D E R (ORAL)

MANJULA DAS, JUDICIAL MEMBER:

By this O.A., applicant makes a prayer for a direction upon the respondents to release family pension due and admissible to the applicant with arrears at least from June, 2009 in terms of Government of India's O.M. No. 1/19/03-P&PW(E) dated 06.09.2007 and O.M. No. 1/6/08-P&PW (E) dated 22.06.2010.

2. Mr. G.J. Sharma, learned counsel appearing on behalf of the applicant submits that applicant is the unmarried daughter of deceased employee Late Sukhendra Mohan Deb, a Telegraph Overseer of the Office of D.T.O. Silchar of the Department of Telecommunication, Govt. of India who retired on superannuation from service on 31.01.1986 and died on 12.09.2005. Applicant's mother Smt. Basanti Deb was

sanctioned family pension. However, she was also died on 09.05.2009. Thereafter, the applicant who is the unmarried daughter has approached the respondents for sanction of family pension on 17.11.2009. Since then, the department has been processing the matter but the applicant has not got any relief.

2. By relying O.M. dated 22.06.2010, Mr. Sharma submits that the unmarried daughters can themselves intimate regarding PPO and details to the Pension Sanctioning Authority for release of Pension. According to Mr. Sharma, although the applicant had furnished all the documents available to her viz; PPO, affidavit in support of proof of sole unmarried daughter, certificate from Gaon Panchayat, etc but till date the respondents have not released monthly family pension to the applicant. Hence misplacing of service record of Late Sukhendra Mohan Deb cannot be a ground for denial of monthly pension to the applicant.

3. On the other hand, Mr. R. Hazarika, learned Addl. CGSC appearing on behalf of the respondent No. 1 submits that the instant O.A. is not maintainable for non-joinder of necessary party. In the instant case, the applicant has made some contentions regarding submission of representations to

DoT, Guwahati regarding payment of family pension to her. But the applicant has failed to array the DoT, Guwahati as a party respondent in the instant O.A.

4. According to Mr. Hazarika, pension was sanctioned to Sukhendra Mohan Deb and then to his wife (since both deceased). No papers have been received by DoT, Guwahati from BSNL authority for payment of family pension to the applicant. Without receiving and verifying the pension papers, the DoT cannot issue PPO in favour of the applicant. Hence family pension of the applicant can be considered by DoT only after receipt of relevant papers from BSNL.

5. Mr. B. Pathak, learned BSNL counsel appearing on behalf of respondent Nos. 2, 3, 4 & 5 submits that the provisions of the OM dated 06.09.2007 and 22.06.2010 has no application with regard to the liability of the respondents as the deceased father of the applicant was purely an employee of Department of Communications, Ministry of Communications, Govt. of India who retired from service on attaining the age of superannuation with effect from 31.01.1986. Hence, there is no cause of action to bind the respondent Nos. 2 to 5 who are the authorities purely under the BSNL. Therefore, the instant O.A. is liable to be dismissed. The deceased father of the applicant

died on 12.09.2005 and he was availing pension from the Department of Posts and Telegraph. After the death of the deceased father/pensioner of the applicant, nothing is stated or available on record to show that the mother of the applicant/wife of the pensioner had ever availed the family pension as provided under Rule 54 of the CCS (Pension) Rule, 1972. Therefore, the cause of action arose immediately on 12.09.2005. As such, relief sought by the applicant in the instant O.A. cannot be considered.

6. Mr. Pathak further submits that the deceased father of the applicant was not the employees to be considered under any rules, regulations, directions or statutes of BSNL. By the Minutes dated 02.01.2001, it has been provided that the existing Group C and D staff (employees) of the DOT would be absorbed in BSNL as provided under Clause 4 and that is to be done "as is where is basis". The deceased father of the applicant was a Govt. servant within meaning of Rule 2 of the CCS (Pension) Rules, 1972. As he retired well ahead of coming of the BSNL, as such, the provisions of Rule 37-A of the CCS (Pension) Rules, 1972 was not applicable to him. Consequently, with all rigours of law, the applicant cannot claim any such benefit from the respondents. The crucial date for absorption of

the existing employees/Govt. servants in BSNL were fixed as 01.10.2000 i.e. the date on which the assets and liabilities were transferred by the DOT to the BSNL which was fixed to effectuate the process of absorption by giving the service benefits rather retrospectively through a mechanism by seeking option for such absorption and also through the issuance of a 'Presidential Order' in a given format as provided under rule 37-A of the CCS (Pension) Rules, 1970. Unless such process is done and the DoT employee is absorbed in BSNL through the Presidential Order, no DoT employee retired or in service can be considered as BSNL employee. Moreover, the father of the applicant retired from service on 31.1.1986 and therefore, he cannot be considered as an employee in 'deemed deputation' as per OM dated 30.09.2000 although he was a regular employee of Posts and Telegraph Department. Hence, the claim against the respondent Nos. 2 to 5 is not maintainable and binding on the said respondents. It is a clear case of mis-joinder of parties so far as the relief is sought for. The series of representation as stated hereinabove has nothing to do with the relief sought for as the settled provision of law is that the successive representation cannot give rise to fresh cause of action if the cause of action is already barred by law of limitation.

7. Having heard the learned counsel for the parties, perusal of the pleadings and material placed on record, it is noted that deceased father of the applicant who served as a Telegraph Overseer under the office of D.T.O. Silchar of the department of Telecommunication, Govt. of India from 16.01.1946, retired from service on 31.01.1986 that is, before BSNL came into operation. Clause 9 of the Minutes dated 02.01.2001 provides that the employees who opt for permanent absorption in BSNL, would be governed by the provisions of Rule 37-A of the Central Civil Services (Pension) Rules, 1972 [referred to as the CCS (Pension) Rules] for which necessary notification has been issued by the Government of India, Department of pension & Pensioners Welfare on 30.09.2000.

From the perusal of record, it is noted that the deceased father of the applicant retired well ahead of coming of the BSNL, as such, the provisions of Rule 37-A of the CCS (Pension) Rules, 1972 is not applicable to him inasmuch as he was not in service as on 01.10.2000.

8. Further it is noted that pension was sanctioned to Sukhendra Mohan Deb and then to his wife (father and mother of the applicant). However, no papers have been received by

DoT, Guwahati from BSNL authority for payment of family pension to the applicant.

9. On the other hand, it is also candid clear that grievance of the applicant arose since 2009 and she was remained silent by knocking only the door of the respondents by filing series of representation that too without approaching the appropriate forum. However, by now, the applicant has approached this Tribunal for redressal of her grievances that too after a lapse of more than 9 years.

10. In view of the foregoing discussion, I find that the present application is devoid of merit. Accordingly, O.A. stands dismissed. No order as to costs.

**(MANJULA DAS)
MEMBER (J)**

PB