

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

HYDERABAD

O.A. No.021/00835/2017

Date of CAV:29.01.2018.

Date of Order :05.03.2018.

Between :

M.S.S.Ramachandra Murty, s/o late Suryanarayana-Murty, aged about 66 yrs, Retd. Personnel Assistant to DGM (Marketing), HMR Pride, 2nd Floor, F.No.202, Manjeera Pipeline Road, Madinaguda, Hyderabad-500 049.

... Applicant

And

1. Union of India, rep., by the Secretary (Dept. Of Telecom), 20, Ashoka Road, Sanchar Bhavan, Govt. of India, New Delhi-110 001.

2. The Chairman and Managing Director, Bharat Sanchar Nigam Limited, Corporate Office, Personnel Branch-II, 4th floor, Janapath, New Delhi-110 001. ... Respondents

Counsel for the Applicants ... Mr.M.S.S.Ramachandra Murty, Party-in-Person

Counsel for the Respondents ... Mrs.K.Rajitha, Sr.CGS
... Mr.M.C.Jacob, SC for BSNL

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)**

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ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

This OA has been filed under Section 19 of the Administrative Tribunals Act seeking the following relief:

"To direct the respondent with a prayer to re-fix the pay of the applicant as on 1.1.2007 on 68.8% DA merger and also 78.2% DA merger as per the orders issued with consequential benefits like revision of pension, payment of retiral benefits, payments of arrears for the period 1.1.2007 to till date of retirement with simple interest thereon i.e., 12% on the retrial benefits which is not attributable to the retiree in the interest of principles of natural justice and as per settled legal principles and also the judgment of the Hon'ble CAT, Kolkata, in OA.No.217 of 2001 in Siba Prasad vs. UOI dated 17.1.2001."

2. The applicant submits that the BSNL Corporate Office issued the second PRC orders vide Annexure.A-2 office order dated 5.3.2009 in pursuance of the Annexure.A-I orders of the Department of Telecommunications dated 27.02.2009. In the said order, the E-2 IDA pay scale has been revised to Rs.20,600-46,500 with effect from 1.1.2007 allowing a uniform fitment benefit @ 30% on Basic Pay + DA and 68.8% DA merger on old Basic Pay as on 1.1.2007 with actual benefits as per the foot note given below:

"In respect of Executives in E1A and E2A scales, their pay may be fixed in the revised E-1 & E-2 IDA scales of Rs.16400-40500 and Rs.20600-46500 respectively and these revised scales may also be used wherever specifying the pay scales is unavoidable (e.g for Pension contribution, fresh appointment etc.) till the time new scales are notified."

3. The applicant's case is that consequent on 68.8% DA merger, his pay has been wrongly fixed at Rs.26,720/- instead of Rs.26,910/- with Date of Next Increment (DNI) on 1.9.2007 in the revised pay scale resulting in short drawal arrears to the extent of Rs.27,480/- + 30% HRA increase on the Basic Pay. His grievance is also that after 78.2% DA merger was ordered, his pay was again wrongly fixed at Rs.28,210/- instead of Rs.28,560/- as on 1.1.2007 with DNI as on 1.9.2007 at Rs.29,420/-.

4. The contention of the applicant is that the stages available after accrual of increment of 3% in the pay scale of Rs.20,600-46,500/- for fixing the pay on 68.8% DA merger and also on 78.2% DA merger, which would have given him Rs.26,910/- as on 1.1.2007 (68.8% DA merger) and Rs.28,560/- as on 1.1.2007 (at 78.2% DA merger), has been denied to him. Thus, in view of the glaring error committed in his pay fixation

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- (i) there has been continuous recurring loss of less drawal of pay, pension and pensionary benefits with effect from 1.1.2012 on account of 78.2% DA merger; and
- (ii) less drawal of pay arrears and HRA till the date of retirement after 68.8% DA merger.

He also contends that two yardsticks have been adopted for fixation of pay on PRC in DOT and in BSNL, which has resulted in less drawal of pension and retiral benefits.

5. In their reply statement, the respondents have submitted that in pursuance of the office order dated 5.3.2009, the pay of the applicant has been revised initially at 68.8% DA merger and thereafter at 78.2% as follows:

| Fitment benefit | DA @ 68.8% | DA @ 78.2% |
|---|------------|------------|
| Pre-revised Basic Pay as on 31.12.2006 in the Pay scale Rs.11875-300-17275 | 12175 | 12175 |
| DA% | 8376.4 | 9520.85 |
| 30% fitment on basic+DA | 6165.42 | 6508.75 |
| Revised Basic Pay as on 01.01.2007 (Total) | 26716.82 | 28204.6 |
| Rounding Off to next ten rupees | 26720 | 28210 |
| Revised pay in the revised Pay scale Rs.20600-46500 with effect from 01.01.2007 | 26720 | 28210 |

As per Para 3 of the Office Order annual increment will be at the rate of 3% of the revised basic pay and the same is rounded off to the next multiple of rupees ten. Based on the same, his annual increment has been granted for every year from 01.09.2007 onwards till his retirement. Thus, they have refuted the applicant's contention that his pay fixation has been done without following the office order. They also point out that his representation alleging wrong fixation of pay has been rejected and the said rejection has neither been challenged in the OA nor has the authority who passed the order been made a party. The respondents further submit that the applicant is confused with the fixation of pay in earlier pay revisions when pay was fixed in the next stage wherein yearly increment is specified and stages are worked out in the pay scale. However, in the Annexure.A-I office order running pay scale is mentioned without

mentioning any stages and increment is granted at 3% of the basic pay instead of fixed increment as in the past. The same provision is available in the case of the VI CPC pay scales, which has also removed the stages and provided running pay scales. Hence, the contention of the applicant that his pay is not revised as per the fitment method is liable to be rejected.

6. The applicant has filed a rejoinder stating that the annual increment is 3% of the revised basic pay, which is considered, as a stage in the revised pay scale. Further, the pay to be fixed and the stages available in the revised pay scale is placed at Page No.5 of the OA. It is further averred that the pay fixation has been done on the running pay scale instead of fixing in the revised pay scale of the 2nd PRC where the stages are available. The applicant contends that a reply has been issued on his representation by the PGM,HTD, Hyderabad. As PGM, HTD and the CGMT, Hyderabad are all functioning under the control of BSNL authorities, the order issued by the PGM, HTD, is construed to be the orders of the BSNL. The applicant has also stated that even though BSNL has informed him that pay fixation guidelines are universal, they are applying different methods and denying his claim.

7. Heard the Applicant appearing as Party in Person and Mr.M.C.Jacob, learned Standing Counsel and perused the record.

8. Learned Standing Counsel argued that the claim of the applicant is based on the premise that his pay has to be fixed at the stage available after the accrual

of 3% increment. However, while there was such a provision in V CPC for first adding the benefit of fitment to the existing emoluments and then fixing pay in the revised pay scale at the stage above, there is no such provision either in the VI CPC or in A-2 office order dated 5.3.2009. Hence, the claim of the applicant is without any basis. Further, the applicant has not challenged the 2nd PRC office order dated 5.3.2009.

9. The question that falls for consideration in this OA is whether the applicant's pay fixation has been done in accordance with the Annexure.A-2 office order dated 5.3.2009.

10. We have perused the said office order and the foot note, relied upon by the applicant, which has also been extracted in para 2 (supra). The applicant admittedly falls in E-2 grade who would be entitled to the pay scale of Rs.20600-46500 as against his earlier pre-revised pay scale of Rs.11,875-17,275/. The fitment method to be followed in pay fixation is given in para 2 of the A-2 office order which reads as follows:

“2. Fitment method:

(i) A uniform fitment benefit @ 30%, on basic pay plus DA @ 68.8% as on 01.01.2007 would be provided to all executives. The aggregate amount would be rounded off to the next ten rupees and pay fixed in the revised pay scale.

(ii) If any extra ordinary increment (s) and/or increase in the pay in respect of executives have been granted with retrospective effect, which affects the revision of pay as on 01.01.2007, such increment and/or increase in pay will be ignored for the purpose of fitment/pay revision.

(iii) Where executives drawing pay at two or more consecutive stages in an existing scale get bunched then, for every two stages so bunched, benefit of one increment shall be given.

(iv) According to fitment method mentioned above, scalewise tables as on 01.01.2007 are enclosed as Annexure-I."

We also note that subsequently vide Annexure.A-3 OM of the Department of Telecommunications dated 18.7.2016, the pension of BSNL pensioners has been revised by allowing the benefit of merger amounting to 78.2% DA/DR for the purpose of fitment. The issue with regard to revision of pension/family pension of BSNL IDA prior to 10.6.2013 has been decided as follows:

"(a) The pension/family pension of BSNL IDA pensioners/family pensioners, who retired prior to 01.01.2007, may be revised as on 01.01.2007 notionally with actual benefit w.e.f. 10.06.2013 by adding together

(i) Existing basic pension/family pension including commuted portion of pension, if any.

(ii) Dearness relief (IDA) @ 78.2%

(iii) Fitment weightage @ 30% of the existing pension/family pension and dearness relief (IDA) thereon.

The amount so arrived will be regarded as consolidated pension/family pension with effect from 10.06.2013.

(b) The pension/family pension of BSNL IDA pensioners/family pensioners, who retired between 01.01.2007 and 09.06.2013, their pay may be revised notionally with effect from 01.01.2007 by allowing the benefit of merger of 50% DA/DR with Basic Pay/Pension effectively amounting to 78.2% IDA for the purpose of fitment and consequential revision of pension on notional pay with actual benefit w.e.f 10.06.2013, at par with the serving employees of BSNL. However, these pensioners do not get actual benefit of increase in pay/pension during the period between 01.01.2007 to 09.06.2013, and they would not get increase in the amount of DCRG, leave encashment and commutation of pension on this account."

11. From the material on record, it is seen that the pay of the applicant was initially revised at 68.8% DA merger and thereafter at 78.2% DA merger. For this purpose, the respondents have taken the pre-revised basic pay as on 31.12.2006 and has given the benefit of the DA merger and also 30% fitment on basic pay + DA and rounded off the same to the next ten rupees arriving at figure

of Rs.26,720/- at 68.8% DA merger and Rs.28,210/- at Rs.78.2% DA merger with effect from 1.1.2007. Thereafter, they have added increments at 3% of the basic pay as on 1.9.2007, 1.9.2008, 1.9.2009, 1.9.2010 and 1.9.2011 until his retirement on superannuation on 31.12.2011. The above fixation is strictly in accordance with the formula mentioned in the office orders dated 5.3.2009 and 18.7.2016.

12. The applicant's main contention appears to be that the stages available after accrual of increment of 3% in the pay scale of Rs.20600-46,500/- has to be taken for fixing his pay at 68.8% DA merger and 78.2% DA merger. He has accordingly worked out in a Tabular form as to how the pay has to be arrived after accrual of increment of 3% . We, however, find no basis at all for the claim that has been made in the tabular statement as there is no such provision in the office order dated 5.3.2009. The uniform fitment benefit that has been provided in the office order is 30% on the basic pay + DA as on 1.1.2007. The Annexure.I to the office order which shows the scale wise tables based on the aforesaid fitment method also shows that the revised E-2 IDA scale for the pre-revised pay of Rs.12,175/- would be Rs.26,720/-. As per the applicant's own statement his basic pay as on 1.1.2007 was Rs.12,175/-. Therefore, as per the fitment table, he would be entitled to Rs.26,720/-, which has already been sanctioned by the respondents with DNI on 1.9.2007 @ 3 % of basic pay thereby increasing his pay to Rs.27530/- @ 68.8% merger. The same formula has been adopted for DA merger @ 78.2%.

13. It is also pertinent to observe that there is no challenge to the office order dated 5.3.2009. This order came into force while the applicant was very much in the service of the respondent-Organization. It is only many years after his retirement that he is seeking pay re-fixation on the ground that the stages available after accrual of increment of 3% should have been taken for fixing his pay after merging DA. We do not find any basis for this contention in the 2nd PRC order. The applicant has also not brought to our notice any other cases where pay revision was done by the respondents by fixing in the next stage after accrual of annual increment at 3% of Basic Pay.

14. Having regard to the aforesaid facts and circumstances, we find no error in the pay fixation done by the respondents. The OA is devoid of merit and is accordingly dismissed. No order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 5th day of March, 2018

Dsn.