

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORIGINAL APPLICATION NO.424 OF 2011

Jabalpur, this Friday, the 03rd day of August, 2018

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

Rajpal Singh, aged 50 years, S/o Shri Narayan Singh,
Ex Accounts Officer (SBP), Office of the General Manger,
Telecom District, Bhopal (MP) R/o 300,
FCI Lane, Trimurti Nagar, Jabalpur (MP) 482002 - **APPLICANT**

(By Advocate – **Shri L.C.Patne**)

Versus

1. Union of India through Secretary,
Department of Telecommunications, Sanchar Bhawan
10, Ashoka Road, New Delhi-110 001

2. Bharat Sanchar Nigam Limited, Through its Chairman
& Managing Director, Bharat Sanchar Bhawan,
H.C.Mathur Lane, Janpath, New Delhi-110001

3. Director (Finance) Bharat Sanchar Nigam Limited,
H.C.Mathur Lane, Janpath, New Delhi-110001

4. Controller of Communication Accounts, MP Telecom Circle,
Bhopal, Door Sanchar Bhawan, Hoshangabad Road,
District Bhopal (MP)-462015

5. Chief General Manager, MP Telecom Circle, BSNL Bhawan,
Hoshangabad Road, District Bhopal (MP)-462015

6. Telecom District Manager, Bharat Sanchar Nigam,
Dupada Road, Shajapur (MP)-465001 - **RESPONDENTS**

(By Advocate – **Shri S.P.Singh**)

(Date of reserving the order: 24.04.2018)

ORDER**By Navin Tandon, AM-**

By filing this Original Application, the applicant has claimed pension and retirement benefits with effect from 14.11.2007 i.e. from the date of his dismissal. Whereas, his pensionary benefits have been calculated by the respondents up to 30.09.2000 i.e. up to the period he rendered services in Department of Telecommunication (for short '**DoT**'), before his absorption (with effect from 01.10.2010) in Bharat Sanchar Nigam Limited (for short '**BSNL**') as per Rule 43 of BSNL (Conduct, Discipline and Appeal) Rules, 2006 (hereinafter referred to as '**BSNL (CDA) Rules**').

2. The brief admitted facts of the case are that the applicant was appointed as Time Scale Clerk as on 17.06.1980. He was appointed as Assistant Accounts Officer in P&T Accounts and Finance Service on 06.09.2002 (Annexure A-1). He was absorbed in BSNL with effect from 01.10.2000 vide order dated 11.03.2004 (Annexure A-2). He was convicted under the Prevention of Corruption Act, 1988 and sentenced to six months and one year rigorous imprisonment and fine of Rs.1000/- and Rs.2000/- by Special Judge of CBI Court, Bhopal in Case No.06/2004 vide order dated 11.10.2006. The Criminal Appeal No.2051 of 2006 filed against said conviction was admitted by the Hon'ble High Court of Madhya Pradesh at Jabalpur and sentence has been suspended till the

pendency of the criminal appeal. After conviction the applicant was imposed the penalty of dismissal from service vide order dated 14.11.2007 (Annexure A-4).

2.1 The Department of Telecommunication vide letter F. No. 318-12/2008-Pen (T) dated 21.07.2009 (Annexure A-10) has clarified that “[A]s per sub-rule 24(e) of Rule 37-A of CCS (Pension) Rules, 1972 the absorbed employees of BSNL are entitled to retirement benefits for the service rendered under the Government even if they are dismissed/removed from the service after their absorption in BSNL for any misconduct during service in BSNL. To retirement benefits in such cases shall be admissible from the day following the date of dismissal/removal from BSNL”.

2.2 The applicant has claimed pension and retirement benefits w.e.f. 14.11.2007 i.e. from the date of his dismissal, whereas his pensionary benefits were calculated up to 30.09.2000 i.e. up to the period the applicant rendered services in DOT, before his absorption in BSNL w.e.f. 01.10.2000, as per Rule 43 of BSNL(CDA) Rules, 2006.

3. Now, by filing this Original Application, the applicant has prayed for the following reliefs:-

“8.1 That the Hon’ble Tribunal may be pleased to quash the impugned order dated 23/02/2011 (A/21) as void, unlawful and arbitrary.

8.2 The Hon'ble Tribunal further pleased to direct the respondents to first revise the average emoluments, drawn by the applicant immediately prior to 01/10/2000, under the CCS Revision of Pay Rules, 2008 w.e.f. 01/01/2006 and thereafter fix the pension and pay the same from 14/11/2007 till realization along with arrears of pension worked out on account of pay revision along with interest at admissible rate.

8.3 The Hon'ble Tribunal be further pleased to direct the respondents to work out and pay the other retiral benefits i.e. gratuity, leave encashment along with interest in terms of above said relief.

8.4 The Hon'ble Tribunal be further pleased to direct the respondents to release the transfer TA bill admissible to the applicant on his retirement w.e.f. 14/11/2007 till date which has been wrongly returned by the respondent No.4 as is evident from memo dated 15/03/2011.

8.5 The Hon'ble Tribunal be further pleased to direct the respondents to pay full pension to applicant (50% of revised last wages drawn as on 14/11/2007) by treating the applicant to have retired w.e.f. 14/11/2007 and by invoking the recommendation of 6th CPC which entitles full pension on completion of 20 years of service.

8.6 The Hon'ble Tribunal be further pleased to direct the respondent to release the unlawful withheld medical allowance @ Rs.300/- per month w.e.f. January 2011 and to continue paying the same along with monthly pension”.

4. The applicant has contended that his pension has been wrongly fixed with reference to his deemed date of retirement as 30.09.2000 i.e. a day before the date of his absorption in BSNL. He has contended that the retiral benefits admissible to him should have been calculated with reference to the date from which he was not in services of BSNL i.e. 14.11.2007.

4.1 The applicant has further contended that if the pension of the applicant is calculated by treating him to have retired with effect from 14.11.2007, then he becomes entitled for fixation of his pension based upon the revised last pay drawn under the recommendations of the 6th Central Pay Commission, which came into effect from 01.01.2006.

4.2 The applicant has also contended that he has been granted arrears to the tune of Rs.9357/- as payment of medical allowance. However, no order has been passed as regards payment of fixed medical allowance @ Rs.300/- per month.

4.3 The applicant has contended that he had earlier approached this Tribunal by filing Original Application No.817 of 2010, which was disposed of vide order dated 08.11.2010 (Annexure A-20) with a direction to the respondents to consider the grievances raised by the applicant in his representations as well as in said OA, by passing a reasoned order. In compliance to the said directions the respondents have passed the impugned order dated 23.02.2011 (Annexure A-21). The said order is vitiated as it failed to see that average emoluments drawn by the applicant immediately prior to 01.10.2000 ought to have been first revised under Central Civil Services Revision of Pay Rules, 2008 w.e.f. 01.01.2006 and thereafter pension should have been fixed and paid to the applicant w.e.f. 14.11.2007.

4.4 The applicant has further contended that the impugned order dated 23.02.2011 (Annexure A-21) is vitiated as while rejecting his representation, the respondents have wrongly treated him as a pensioner drawing pension w.e.f. 01.01.2006. In fact, the applicant was not a pensioner and was not drawing pension on 01.01.2006, which is a pre-requisite for attracting the applicability of the said rules.

5. On the other hand the respondents have submitted that the applicant has been deemed to have retired on 30.09.2000 as per Rule 43 of the BSNL (CDA) Rules, 2006 and his pension has been correctly fixed and calculated as on 30.09.2000.

5.1 The respondents have further submitted that as per BSNL TA/DA Rules, 2002 read with GOI (1) below SR 147, TA is not admissible to employees who quit service by resignation or may be dismissed or removed from service. Since the applicant was dismissed from BSNL with effect from 14.11.2007, he is not entitled for Transfer TA bill.

6. Heard the learned counsel of parties and carefully perused the pleadings of the respective parties and the documents annexed therewith.

7. In the instant case we find that the applicant was a Central Government employee only during the period from 17.06.1980 to 30.09.2000. He opted for absorption in BSNL and accordingly he was absorbed in BSNL with effect from 01.10.2000 and thus ceased to be a

Central Government employee. He became an employee of BSNL with effect from 01.10.2000. On the basis of a trap laid down by the CBI he was charge-sheeted under the Prevention of Corruption Act, 1988 and the competent court awarded him sentence of 6 months and one year rigorous imprisonment. He was chargesheet as per the BSNL (CDA) Rules and was dismissed from the service of BSNL vide order dated 14.11.2007(Annexure A-4). Since he was dismissed from services of BSNL, he forfeited his services rendered in BSNL and therefore he was not entitled for pensionary benefits of the services rendered by him in BSNL. However, the applicant has been rightly granted pensionary benefits in respect of the services which he rendered in DOT as the same has been protected under sub rule 24(c) of Rule 37A of the CCS (Pension) Rules, 1972. The respondents have already released his pension and retirement benefits for the services rendered by him in DOT.

8. As regards the contention of the applicant that in terms of the clarification dated 21.07.2009 (Annexure A-10) issued by the DOT, the retiral benefits admissible to him should have been calculated with reference to the date from which he was not in the service of BSNL i.e.14.11.2007 i.e. he may be treated as retired from 14.11.2007 (the date of his dismissal from services of BSNL) and as such he is entitled for fixation of pension based upon the last pay drawn under the recommendation of 6th CPC 2008 which came into effect from

01.01.2006, we find that as per sub-rule 24(c) of Rule 37A of the CCS (Pension) Rules, 1972 the applicant is eligible only for the benefits for the service rendered by him under the Central Government and not for the service rendered under the BSNL and the same has already been granted to him by the respondents. The letter dated 21.07.2009 issued by the DOT is only a clarification to sub rule 24(c) of Rule 37A of the CCS (Pension) Rules 1972, as rightly contended in the impugned order. The clarification “the retirement benefits in such cases shall be admissible from the day following the date of dismissal/removal from BSNL” means that the retirement benefits will become payable from that date onwards since he had been in receipt of salary from BSNL till his date of dismissal/removal. However, it is amply clear that the applicant is entitled for retirement benefits of the services rendered by him only under the Central Government, which undoubtedly had come to an end on 30.09.2000 i.e. a day before the date of his absorption in BSNL.

9. The Government of India issued notification of 6th CPC introducing CCS Revised Pay Rules, 2008 on 30.8.2008. Subsequent to the notification of 6th CPC, DOP&PW vide its OM No.38/37/2008-P&PW(A), dated 01.09.2008 issued an order for implementing 6th CPC decision for pre-2006 pensioners/family pensioners. This order is applicable to all pensioners/family pensioners who were drawing pension/family pension as on 01.01.2006 under the CCS (Pension)

Rules 1972. Since the applicant has been deemed to have retired on 30.09.2000 his pension case has been prepared correctly by the respondents in accordance with the office memorandum mentioned above.

10. The respondents have already released an amount of fixed medical allowance of Rs.9357/- for the period w.e.f. 14.11.2000 to 31.12.2010 on 19.1.2011.

11. As regards the claim of the applicant for transfer TA, the respondents have rightly submitted that as per BSNL TA/DA Rules, 2002 read with GOI (1) below SR 147, TA is not admissible to employees who quit service by resignation or may be dismissed or removed from service. Since the applicant was dismissed from BSNL with effect from 14.11.2007, he is not entitled for Transfer TA bill.

12. In view of the aforesaid we are fully convinced that the respondents have correctly applied the rules while rejecting the claim of the applicant by the impugned order. Accordingly, the Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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