

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/01087/2016

Jabalpur, this Wednesday, the 02nd day of May, 2018

HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Suraj Pratap Singh, aged about 67 years, S/o Shri Chhatrapati Singh, R/o Chhatrapatinagar, Bansagar, District – Rewa (M.P.) – 486001
-Applicant

(By Advocate – Jagdamba Bux Singh)

V e r s u s

1. Chairman cum Managing Director, Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, Harishchandra Mathur Lane, Janpath, New Delhi – 110001.
2. Director (HR), O/o CMD, BSNL, Bharat Sanchar Bhawan, Harishchandra Mathur Lane, Janpath, New Delhi – 110001.
3. Chief General Manager, Bharat Sanchar Nigam Limited, Sanchar Bhawan, Hoshangabad Road, Bhopal (M.P.) – 462015.
4. Telecom District Engineer, BSNL Bhawan, Near Head Post Office, Sidhi (M.P.) – 486661
- Respondents

(By Advocate – Shri Sapan Usrethe)

(Date of reserving order : 09.04.2018)

O R D E R

This Original Application has been filed by the applicant challenging the order dated 30.12.2015 (Annexure A-6), whereby the penalty of forfeiture of pension in full permanently and

forfeiture of retirement gratuity in full has been imposed on the applicant. He has also challenged the order dated 28.09.2016 (Annexure A-9) by which the appeal filed by the applicant on 25.01.2016, has been rejected.

2. The applicant has sought for the following reliefs:

- “(i) Quash the order dated 28.09.2016 (Annexure A-9) rejecting the appeal preferred by the applicant on 25.01.2016;
- (ii) Quash the order dated 30.12.2015 (Annexure A-6) passed by the Respondent no.3 for forfeiture of pension in full permanently and forfeiture of gratuity in full being unjustified, illegal & arbitrary and order for the payment of all the terminal benefits including pension and gratuity;
- (iii) Any other order/orders which this Hon’ble Court deems fit and proper.
- (iv) Cost of the petition may also kindly be awarded.”

3. Precisely, the case of the applicant is that he was initially appointed as Junior Engineer on 27.04.1977 in the Department of Telecommunication (in short ‘DoT’) and thereafter promoted to the post of Sub Divisional Engineer on 08.12.1993. Later on, he was absorbed in BSNL w.e.f. 01.10.2000 as per order dated 19.02.2004 (Annexure A-1).

4. On 01.04.2008, a criminal case was instituted by the CBI against the applicant. In the meantime, the applicant stood retire from service on attaining the age of superannuation on 31.12.2008. Since the criminal case was pending against the applicant, the terminal benefits including pension and gratuity were not paid to the applicant. In the criminal case, the applicant was convicted by the Special Judge, CBI, Jabalpur on 28.09.2012 against which he has filed Criminal Appeal No.2189/2012 before the Hon'ble High Court of Madhya Pradesh at Jabalpur, which is pending for adjudication.

5. The case of the applicant is that the respondent department had given a show cause notice under Section 9 of the CCS (Pension) Rules, 1972 (hereinafter referred to as '**Pension Rules**') and Rule 61 of the BSNL (CDA) Rules, 2006 (in short '**2006 Rules**') as per letter dated 05.02.2013 (Annexure A-4), proposing forfeiture of pension and retirement gratuity in full permanently. The applicant had preferred representation to the show cause notice on 20.02.2013 (Annexure A-5), stating that there is no justification for proposed penalty as he had already completed full pensionable service in DoT and the same cannot be forfeited by

the BSNL. However, the respondent No.3, passed the order dated 30.12.2015 (Annexure A-6) for forfeiture of pension in full permanently and forfeiture of retirement gratuity in full. Against the said order, the applicant preferred and appeal on 25.01.2016 (Annexure A-7) to the respondent No.2.

6. Since no decision was taken on his appeal, the applicant filed OA No.200/00645/2016 before this Tribunal, which was disposed of vide order dated 28.06.2016 with a direction to the respondent No.2 to consider and decide the appeal within a period of three months from the date of receipt of copy of the order. It has been submitted by the applicant that in pursuance to the order of this Tribunal, the respondent No.2 has decided the appeal and has rejected the same vide order dated 28.09.2016 (Annexure A-9), without considering the submissions made by the applicant and without applying the mind.

7. The respondents have filed their reply. It has been submitted that the applicant, while working as TDE, Sidhi, was trapped red handed on 01.04.2008 by the CBI, Jabalpur under Crime No. RC0092008A003 for the offence of demanding and accepting illegal gratification of Rs.10,000/- (Ten Thousand) other than legal

remuneration from one Shri Mohammad Nabi. He was arrested by the CBI on 01.04.2008 and was produced before the Court of CBI, Jabalpur and Special Case No.05/2010 was registered against him on 22.07.2008. It has been further submitted by the respondents that during the pendency of the criminal case, the applicant retired from service on 31.12.2008. Thereafter, on 28.09.2012, the applicant was found guilty by the CBI Court and was convicted under Section 7 and 13(2) of the Prevention of Corruption Act, 1988 and was sentenced for rigorous imprisonment of two years and fine of Rs.10,000 and Rs.1000/- for each offence.

7.1 It has also been submitted by the respondents that the respondent department issued a show cause notice dated 05.02.2013 to the applicant under the provisions of Rule 9 of Pension Rules and Rule 61 of 2006 Rules, wherein it has been proposed for forfeiture of his pension in full permanently and forfeiture of retirement gratuity in full. After considering the representation preferred by the applicant, the penalty was imposed on ratification from the concerned Ministry, i.e. DoT vide letter dated 16.11.2015 (Annexure R-1). It has been stated that the respondents have acted as per Rule 61 of the 2006 Rules, which

provides procedure for disciplinary provisions for retired employee. The appeal filed by the applicant was decided vide the order dated 28.09.2016 (Annexure A-9), as per rules. Therefore, there is no illegality in passing the orders at Annexure A-6 and A-9, and the O.A deserves to be dismissed.

8. Heard the learned counsel for the parties and perused the pleadings and documents available on record.

9. The main case of the applicant is that w.e.f 27.04.1977 till his absorption in BSNL, i.e. on 01.12.2000, he was employee of DoT and thereafter he became employee of BSNL. As per Rule 37-A of the Pension Rules, the applicant shall be entitled for the benefits, as mentioned in sub rule (4) of Rule 37-A of the Pension Rules. The relevant sub rule (4), under the heading Rule 37-A of the Pension Rules, reads as under:

“37-A. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Central Autonomous Body or a Public Sector Undertaking:-

(4) The permanent absorption of the Government servants as employees of the Public Sector Undertaking or Autonomous Body 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.”

10. Further, Rule 43 of the 2006 Rules, governs the service condition of the DoT staff on permanent absorption in BSNL. The same reads as under:

“Rule 43 SPECIAL PROVISIONS IN RESPECT OF D.O.T. STAFF ON PERMANENT ABSORPTION IN BSNL – CONFERRING SAFEGUARDS RELATING TO SECURITY OF SERVICE ON DISMISSAL/REMOVAL.

The D.O.T. employees on absorption in BSNL shall be governed by these rules from the date of their absorption in the company/date of issue of these rules. However, dismissal/removal from the service of BSNL after absorption, for any subsequent misconduct shall not amount to forfeiture of his retirement benefits for the service rendered in the Central Govt. Also in the event of dismissal/removal of such an employee from BSNL (i.e. D.O.T. staff permanently absorbed in BSNL), the employee concerned will be allowed protection to the extent that D.O.T. will review such order before final decision is taken by BSNL.”

11. It has been submitted by the applicant that the Disciplinary Authority, i.e. respondent No.3 has passed the order dated 30.12.2015, which is against the sub rule (4) and 24 (c) of Rule 37-A of Pension Rules. Furthermore, the impugned order is against Rule 43 of 2006 Rules, and is therefore, arbitrary and *void-ab-initio*. It has been further submitted that while taking action, the

Disciplinary Authority did not follow the provision of Rule 40 of 2006 Rules, which prescribes for taking action on any employee convicted on a criminal charge or on the strength of facts or conclusion arrived by a judicial trial. However, in the present case, the respondents have taken action under Rule 9 of the Pension Rules and Rule 61 of 2006 Rules, which is illegal and contrary to law.

12. It is an admitted fact that the applicant remained employee of the DoT w.e.f. 27.04.1977 to 01.10.2000, which is clear as per Annexure A-1 and as per Para 4 of order at Annexure A-1, he shall be eligible for pensionary benefits including gratuity as per the provisions of Rule 37-A of the Pension Rules. If Rule 37-A, particular sub rule (4) is seen, it clearly specifies that the permanent absorption of the Government servants as employees of the Public Section Undertaking or Autonomous Body 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. So, the applicant has been permanently absorbed w.e.f. 01.10.2000 and as per Rule

37-A of the Pension Rules, the applicant deemed to have retired from Government service, i.e. the Department of Telecom.

13. It is also admitted fact that the applicant stood retire on superannuation on 31.12.2008 from the BSNL department. He was trapped red handed on 01.04.2008 by CBI authorities, Jabalpur under Crime No. RC0092008A003 for the offence of demanding and accepting illegal gratification of Rs.10,000/- (Ten Thousand only) other than legal remuneration from one Shri Mohammad Nabi and Special Case No.05/2010 was registered in the Court of CBI on 22.07.2008. The applicant was convicted under Section 7 and 13 (2) of the Prevention of Corruption Act, 1988 vide order dated 28.09.2012 and he was sentenced for rigorous imprisonment of two years and fine of Rs.10,000 and Rs.1000/- for each offence. It is also admitted fact that a show cause notice dated 05.02.2013 was served upon the applicant under the provision of Rule 9 of Pension Rules and Rule 61 of 2006 Rules and ultimately vide Annexure A-6 the penalty of; (i) forfeiture of pension in full permanently, and; (ii) forfeiture of retirement gratuity in full, have been imposed by the BSNL vide order dated 30.12.2015.

14. As per Annexure A-1, the applicant has been held to be eligible for pension/gratuity as per the provisions of Rule 37-A of the Pension Rules. Moreover, there is protection under Rule 37-A (Annexure A-10) to the effect that the Government servant shall be deemed to have retired from the Government service, which shall take effect from the date on which the options have been accepted by the Government servant. Further, as per Annexure A-10, sub rule 24(c) of Rule 37-A of Pension Rules also provides further protection, which is as under:

“(24)(c) the dismissal or removal from service of the Public Sector Undertaking or Autonomous Body of any employee after his absorption in such undertaking or body 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 or body shall be subject to ¹[confirmation] by the Ministry Administratively concerned with the undertaking or body.”

Thus, this provision itself makes it clear that after absorption in such undertaking or body, any subsequent misconduct shall not amount to forfeiture of the retirement benefits for the service rendered under the Government. Since, the misconduct of the applicant is after absorption in BSNL, therefore, the applicant is protected as per sub rule 24 (c) of Rule 37-A of Pension Rules.

15. The reply of the respondents that as per Annexure R-1, the BSNL authority has acted after receiving ratification communication from DoT and the penalty of forfeiture of pension and gratuity on permanent basis from the applicant has been imposed, however, if the provision of sub rule 24(c) of Rule 37-A of Pension Rules is seen minutely, it clearly spelt out that 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 or body shall be subject to confirmation by the Ministry Administratively concerned with the undertaking or body. The present case is not a case of dismissal or removal from service. But the BSNL authority has imposed the penalty of forfeiture of pension in full permanently and forfeiture of retirement gratuity in full, which is not the essence of sub rule 24(c) of Rule 37-A of Pension Rules. So, the submission of counsel for the respondents that the ratification has been procured as per Annexure R-1 from the DoT, is not tenable, and hence, rejected straightaway.

16. Moreover, under Rule 33 of 2006 Rules, the type of penalties (minor/major), have been prescribed and no such penalty is prescribed in the 2006 Rules for which the applicant has been penalized. Thus, the action of the respondents-BSNL is totally illegal and unlawful and contrary to the rules as discussed above.

17. Resultantly, the O.A is allowed and the impugned orders dated 30.05.2015 (Annexure A-6) and 28.09.2016 (Annexure A-9) are quashed and set aside. The respondents are directed to pay all the terminal benefits, including pension and gratuity from due date to the applicant, within a period of 60 days from the date of receipt of certified copy of this order. No costs.

**(Ramesh Singh Thakur)
Judicial Member**

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