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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

Original Application No.350/00909/2014

HON'BLE SMTI MANJULA DAS, JUDICIAL MEMBER

HON'BLE DR.NANDITA CHATTERJEE, ADMINISTRATIVE MEMBER

Shri Ganesh Ram,
Son of Late Gaya Ram
Working as Assistant General Manager (Marketing)
CFA,(now retired), Calcutta Telephones,
Permanently residing at 133, J.N.Mukherjee Road
Ghusuri, Howrah-711107

...applicant

-Vs-

1. Union of India service through the Secretary,
Ministry of communication & Information Technology,
Department of Telecommunications
Sanchar Bhavan, 20,Ashoka Road
New Delhi-110001.
2. The Director (H.R)
BSNL, Bharat Sanchar Bhawan
Janpath, New Delhi-110001
3. The Chief General Manager (CTD)
Bharat Sanchar Nigam Ltd.
34,B.B.D Bag, Telephone Bhawan
Kolkata-700001.
4. The Principal Controller of Communication Account.
Department of Telecommunication
Calcutta Telephones
34, B.B.D Bag, Telephone Bhawan (3rd Floor)
Kolkata-700001

[Signature]

OA.350/00909/2014

5. The Controller of Communication Accounts

Office of the CCA
Telephone House, 8, Hare Street, 2nd Floor
Kolkata-700001.

6. Accounts officer (Wages & Bills/CS)

Bharat Sanchar Nigam Ltd. Kolkata-700001.
Calcutta Telephones
Telephone Bhawan, 1st Floor
Kolkata-700001

7. Sub-Divisional Engineer (H & R Admin)

Calcutta Telephones
Telephone Bhawan, 3rd Floor
Kolkata-700001.

Respondents

Advocate for the applicant: Mr.B.R.Das
Mr.S.Ram

Advocate for the Respondents:- Mr.L.K.Chatterjee
Mr.M.K.Ghura
Mr.A.K.Gupta

Heard on: 22.05.018

Date or Order: 20 , 09.2018

ORDER

MANJULA DAS, MEMBER (J):

The applicant approached before this Tribunal vide this O.A. under Section 19 of the CAT, 1985 with the following reliefs:-

a) Rescind, recall, withdraw and/or cancel the order AI in so far as it reduces the pay of the applicant and fixes the last pay as



Rs.45,470/- and order being Annexure-A7 directing recovery from the leave salary.

- b) Re-fix/restore the last pay on the basis of his existing pay and as drawn on 01.01.2013/31.01.2013 and recalculate the pensionary benefits on the basis of such pay.
- c) Allow the petitioner all arrears on account of relief (i) and (ii), above forthwith suitable interest thereon.

2. Though the matter was earlier heard and reserved on 18.01.2018, the case was again directed to be listed before the court as "To Be Spoken To" for some clarification. Accordingly, the case was listed before the court again on 22.05.2018 and was heard.

3. Heard Mr. B. R. Das assisted by Mr. S. Bhattacharya, learned counsel for the applicant and Mr. L. K. Chatterjee, along with Mr. M. K. Ghara, learned counsel for Respondent No. 1, 4 & 5 and Mr. A. K. Gupta learned counsel for Respondent No. 2, 3 & 6.

4. The applicant is aggrieved with the order dated 05.04.2013. whereby the department reduced the pay of the applicant by fixing the last pay from Rs.46,850/- to 45,470/- and sought to be adjusted the excess amount of Rs.1,21,260/- from his leave salary encashment of the applicant.



5. The facts, in a nut shell, as narrated by the applicant are that he was initially appointed as Engineering Supervisor (later re-designated as Junior Telecom Officer) in the Department of Telecommunication (DOT) on 30.12.1974. Thereafter, he was promoted as Sub-Divisional Engineer by DOT w.e.f.30.05.2000. Applicant exercised his option under FR 22(I)(a)(i) for fixation of his pay in the promotional grade w.e.f.01.01.2001 as from that day, he was entitled to an increment in the feeder grade in the pay scale of Rs.7500-250-12000/-. Accordingly, his pay was fixed in the CDA scale w.e.f.01.01.2001 in the promoted post of SDE as per his option with the date of next increment (DNI in short) at 01.01.2002. He was absorbed permanently in BSNL retrospectively w.e.f.01.10.2000 vide an order dated 12.02.2004 issued by DOT.

6. The applicant was later on inducted in the IDA pay scale pursuant to an order dated 18.03.2004 issued by the BSNL and thereafter he had been receiving pay and allowances accordingly till this superannuation on 31.01.2013. The BSNL authorities after his retirement came out with an order dated 05.04.2013 annulling his deferred option exercised on promotion as SDE w.e.f.31.05.2000 and for DNI on 01.01.2000 by way of re-fixation of pay on promotion. This had the

effect of reduction of last pay received from Rs.46,850/- to 45,470/-.

Representation on being made the applicant was made to understand that the deferred option, as exercised by him, cannot be acted upon as the status is permanently changed on 01.10.2000 due to absorption in BSNL which is a Corporate Body. The applicant sought information under RTI and he was informed by BSNL authorities that his pay was re-fixed acting on the O.M of DoT dated 17.12.2008. The DOT authorities directed to revise the pay and reopen the same by wrongful exercise of jurisdiction as he was long ceased to be an employee of DOT after his option dated 23.09.2003 for absorption in BSNL. As a follow up of the impugned order dated 05.04.2013, the authorities again passed an order dated 21.08.2013 informing recovery of Rs.1,21,260/- from the Leave salary amount of the applicant on the ground of purported overdrawal of pay since 01.01.2001. Hence this OA.

7. Mr. B.R. Das, learned counsel appearing for the applicant submitted that while the applicant was waiting for his retiral benefits to be settled, the respondents came out with an order dated 05.04.2013 issued by respondent No. 6 purporting to revise and reduce his pay with



effect from 01.01.2001 which had the effect of reducing his pay on superannuation i.e. on 31.01.2013 from Rs.46,850/- to Rs.45,470/-.

8. According to the learned counsel, the said impugned order dated 05.04.2013 revising and reducing the last pay of the applicant consequent upon cancelling the deferred option and annulling the lawful fixation made under Rule FR 22 (I) (a) (i) w.e.f.01.01.2001 and subsequent order dated 21.08.2013 intimating recovery of Rs.1,21,260/- sought to be adjusted from the leave salary of the applicant on the ground of purported overdrawal of pay since 01.01.2001 is not at all permissible under law.

9. It was submitted by the learned counsel that on seeking information under RTI Act the applicant was informed that the pay of the applicant was purportedly regulated under O.M. dated 17.12.2008 vide which it was directed that the date of next increment in fixation of pay in cases of persons in DOT opting for date of fixation on promotion falling after 01.10.2000 could not be permitted as the status of the employee gets changed. It was submitted that the aforesaid O.M. issued under authority of Respondent No.1 in supersession of its earlier O.M. dated 12.09.2006 had the effect of annulling the earlier fixation whereby the

applicant was duly allowed to fix his DNI on 01.01.2001 and all his pay and allowances having been accordingly drawn till superannuation on 31.01.2013.

10. The applicant did make representation dated 02.08.2013 with a request that his all retiral benefits be re-calculated on the basis of last basic pay as drawn by him which was Rs.46,880/- (46,850/-) and that he did at no point of time receive any excess pay.

11. According to the learned counsel the respondents acted with material irregularity inasmuch as the applicant after due promotion opted for fixation of date of next increment on 01.01.2001 under FR 22 (I) (a) (i) and such option having been duly acted upon cannot be withdrawn.

12. It was further submitted that the reduction in pay and a substantial amount sought to be recovered from the leave salary, particularly when the order of the Respondent No. 1 coming after 8 years of the applicant having been relieved from the control of the said authority, cannot be enforced against the petitioner.

13. Mr. Das further submitted that respondents acted in an unjust manner inasmuch as the applicant was not served with any notice prior to reduction of his pay, hence the impugned order is bad in law. It is submitted by the learned counsel that the respondents have erred in law in holding the order as fixing the pay of the applicant at Rs.10,000/- with date of next increment on 01.01.2001 as unsustainable inasmuch as the Department of Public Enterprises had intervened to reopen the fixation of pay of the applicant. According to the learned counsel, the Department of Public Enterprises does not have any occasion to intervene in the matter of re-fixation of pay of the applicant whose fixation was made lawfully by the competent authority while working as a Government employee. It was further submitted by the learned counsel that the O.M. dated 17.12.2008 is manifestly bad and perverse having been issued purportedly on the advice of the Department of Public Enterprises who has acted patently in colourable exercise of jurisdiction.

14. Mr. L.K. Chatterjee, learned counsel assisted by Mr. M.K. Ghara, filed reply on behalf of Respondents No. 1,4 & 5 on 22.04.2015. Learned counsel also filed a written argument. By filing the written



argument on behalf of them learned counsel submitted that the applicant was permanently absorbed vide order dated 12.02.2004 w.e.f. 01.10.2000 in BSNL. The applicant was drawing Rs.9250/- at CDA scale (7500-250-12,000). The next date of increment (DNI) was 01.01.2001.

15. It was further submitted by the learned counsel that the applicant had opted to fix his pay on the date of his next increment i.e., on 01.01.2001 but in terms of the Department of Telecommunication O.M. dated 17.12.2008 and clarification vide letter dated 19.12.2013 the pay of applicant has been directly fixed on the date of his promotion. In the O.M. dated 17.12.2008 it is clear that the re-fixation of pay of the absorbed employees of BSNL who were promoted prior to 01.10.2000 and opted for fixation in the promoted scale on the next increment in the lower grade under FR 22(I) (a) (i) cannot be permitted for those employees where date of increment falls on 01.10.2000 as the status has been changed on that date.

16. Mr. A.K. Gupta, learned counsel on behalf of the Respondent Nos. 3, 4, 6 & 7 filed their reply to the O.A. on 10.02.2015. It was submitted by Mr. Gupta that the applicant has joined as SDE/CTD on 31.05.2000 (F/N) in the CDA scale of Rs. 7500-250-12,000/- and as per



his option, his pay was fixed at the stage of Rs.9,750/- (CDA) and his pay has been re-fixed on 01.01.2001 at the stage of Rs. 10,000/- CDA (Rs.14,875/-IDA) with DNI on 01.01.2002.

17. According to the learned counsel, the applicant was promoted from the post of JTO (CDA Scale Rs.6,500-200-10,500/-) to the post of SDE (CDA scale Rs.7,500/-250-12,000/-) on 31.05.2000 (FN) vide order No. 3-75/2000-STG-IV dated 26.04.2000 of DG, DTS, New Delhi. As per his option, his pay was fixed at the stage of Rs.9,750/-(CDA) under FR-22 (I) (a) (i) on 31.05.2000 and re-fixed on 01.01.2001 at the stage of Rs.10,000/- CDA (Rs.14,875/-IDA (Industrial Dearness Allowance) with DNI (Date of next increment) on 01.01.2002.

18. Learned counsel submitted that the Bharat Sanchar Nigam Limited (BSNL) was formed w.e.f. 01.10.2000 and the applicant was permanently absorbed in BSNL from the same date and his CDA pay scale of Rs.7500-250-12,000/- had been changed into IDA pay scale of Rs.11,875-300-17,275/- w.e.f. 01.10.2000. As regards, refixation of pay of the applicant from 31.05.2000 and consequent recovery, learned counsel submitted that same was done in accordance with the OM dated 17.12.2008.



19. Having heard the learned counsel, perusal of the pleadings, and materials placed before us, we need to discuss the following issue involved in the present case:-

- (i) Whether the reduction of pay of the applicant w.e.f. 31.05.2000 on the basis of O.M. dated 17.12.2008 is permissible to be made in the year 2013 that too after retirement of the applicant?
- (ii) Whether the recovery amounting to Rs.1,21,260/- vide letter dated 21.08.2013 held as excess payment adjusted from Leave Salary Encashment from retrial benefit of the retired employee (applicant) is justified?

20. The applicant, who was a JTO in the DOT, was promoted as SDE by DOT w.e.f. 31.05.2000. The applicant exercised deferred option to re-fix his pay under FR 22 (I)(a)(i) w.e.f. 01.01.2001. The Ministry of Communication Department Telecommunication, Government of India, vide order dated 10.09.2000 formed a Corporation, namely, BSNL) w.e.f 01.10.2000. The applicant, who was the employee of the DOT, vide his option dated 29.03.2008 opted for permanent absorption in BSNL under the control of Director, BSNL, New Delhi retrospectively from the same date of his selection. In pursuance of his option, the applicant was absorbed permanently in BSNL with retrospective effect from 01.10.2000 vide order dated 12.02.2004.



21. The BSNL came into existence under Public Sector undertaking from the 01.10.2000. The applicant was drawing CDA scale Rs.7,500-250=12,000 since promoted on 31.5.2000. His next date of increment (DNI) was 01.01.2002. Till 30.09.2000, the applicant was drawing salary as CDA scale. The scale of CDA is lower than IDA on the formation of BSNL w.e.f. 01.10.2000. The applicant started drawing IDA Scale i.e., Rs.11,870-300-17,275/- On 01.01.2001, the applicant was drawing Rs.14,875/- as his pay was fixed in accordance with his exercise of option made under Rule FR 22 (I) (a) (i). The applicant got the first and second upgradation under EPP w.e.f. 01.10.2004 and 01.10.2009 respectively in IDA pay scale. The applicant retired from service on superannuation w.e.f. 31.01.2013 (A/N) from BSNL.

22. The impugned revised re-fixation was made vide order dated 05.04.2013, on the basis of Audit Remarks of CCA, DOT Cell (No.CCA/CDT/P-14673 dated 24.01.2013) and O.M. No.1-1(I)/06-PAT, issued by the Government of India, Ministry of Communication and IT, Department of Telecommunication dated 17.12.2008. The said O.M. clarified as here under:-

"The option of fixing the pay from the next increment date available under FR 22 will not be available for the employees

of BSNL since their status changed on 1.10.2000. Hence their pay will have to be fixed on the date of their promotion as per the existing rules prior to 1.10.2000 and no re-fixation can be permitted on the next increments date which is falling after 1.10.2000."

23. The said clarification was issued in supersession of the department's O.M. No.1-1(1)06-Pt dated 12.09.2006 which says that the pay of the absorbed employees of BSNL who are promoted prior to 01.10.2000 but opted for fixation in promoted scale on the date of their increment in the lower grade under Rule FR 22 (I) (a) (i), which falls after 01.10.2000 may be re-fixed in IDA pay scale. The O.M. dated 17.12.2008 was issued in concurrence of Telecom Finance dated 05.12.2008. Thus, the employee absorbed in BSNL who were promoted prior to 01.10.2000 but opted for fixation in the promoted scale on the date of their next increment in the lower grade under Rule FR 22 (I) (a) (i) which falls after 01.10.2000 should be fixed in IDA pay scale.

24. On perusal of the OM dated 17.12.2008, it appears that the Department had earlier issued O.M. dated 12.09.2006, on the method of pay fixation in IDA pay scale in respect of IDA officer of BSNL who promoted prior to 01.10.2000 but opted for fixation on the date of their next increment on the lower grade under Rule FR 22 (1) (a) (i). In the

present case, we have noted that the re-fixation and reduction of pay was made in case of the applicant since 01.10.2000, whereas the method of fixation of the notification was issued only on 12.09.2006. We note that the clarification vide the OM dated 17.12.2008 is silent as regards its date of effect. We further note that applicant has neither challenged the OM dated 17.12.2008 in the OA nor the learned counsel for the applicant, during his argument, pleaded for setting aside for the aforesaid OM.

25. It is candid clear that the re-fixation or revision of pay and consequential reduction of pay is not either for the fault or for mistake or due knowledge or for any lapse on the part of the applicant. It is the respondents on whose fault or mistake events of recovery started, which in our view, is not at all permissible under the law.

26. In the case of **State of Maharashtra Vs. Jagannath Achyout Karandikar, 1989 Supp (1) SCC 393**, the Hon'ble Apex Court held as under:-

“Employees should not suffer for the default or lapse on the part of the Government.”



27. Respectfully following aforesaid law laid down by the Hon'ble Apex Court, we are of the opinion that applicant who retired in 2013 cannot be made to suffer financially right from 2000 on the basis of clarification of 2008 for no fault of his own. Accordingly, we are not convinced that the clarification dated 17.12.2008 will be in retrospective effect, and in our view, same can only be have prospective effect in the case of the applicant.

28. Accordingly, we hold that the department has wrongly re-fixed the pay of the applicant from 01.10.2000 on the basis of clarification dated 17.12.2008 and therefore, reduction of pay of the applicant is not justified till 16.12.2008. So far, re-fixation of pay for the remaining period i.e., from 17.12.2008 to 01.01.2013 done as per OM dated 17.12.2008 is concerned, we do not find any irregularity, illegality or infirmity.

29. We therefore, direct the respondents to re-fix the pay of the applicant correctly from 17.12.2008, i.e., the date of issue of the said OM in the light of our observation made above. The first issue is hereby replied accordingly.



30. The second issue is regarding the recovery of alleged excess amount of Rs.1,21,260/- adjusted from the Leave Salary Encashment of the applicant vide communication dated 21.08.2013. Undisputedly, alleged excess amount was calculated from 31.05.2000 and the recovery order was issued to the applicant after retirement of the applicant which is consequent to the revised pay order dated 05.04.2013. Accordingly, recovery order dated 21.08.2013 is set aside. Respondents are directed to refund the amount already recovered, if any, from the applicant. We further make it clear that respondents shall not make any recovery from the retirement benefits of the applicant including the amount which may accrue after the re-fixation to be done afresh in terms of our direction at paragraph 29 above.

31. Subject to above observation and direction, the OA is partly allowed. There shall, however, be no order as to costs.

(DR.NANDITA CHATTERJEE)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICAIL MEMBER

/LM/