

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No.050/00380/2017

Reserved on: 27.08.2018
Date of Order: 24.09.2018

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER

Bimla Kumari W/o Janmejay Singh, Resident of Mohalla- H.No.-16A, Chitragupta Puri near Punjabi Colony, Anishabd, Police Station- Gardanibad, District- Patna.

..... Applicants.

By Advocate : Shri V. Jha with Shri Ajit Kumar

-Versus-

1. Union of India through the Secretary, Ministry of Telecommunication, Government of India, New Delhi-11001.
2. The Bharat Sanchar Nigam Limited (Government of India Enterprise) represented through the Chief General Manager, Bharat Sanchar Nigam Ltd. Meghdoot Bhawan, Patna-800001.
3. The Principal General Manager, Telephone Department, Patna, Telephone Bhawan, R. Block, Patna-800001.
4. The Controller of Communication Accounts, Bihar Telecom Circle, CCA Building, Budha Marg, Patna-800001.
5. The Senior Account Officer, O/o Controller of Communication Accounts, Bihar Telecom Circle, CCA Building, Budha Marg, Patna-800001.
6. The Accounts Officer (TA) Pension Cell, BSNL Office of Principal General Manager, Telephone Department, Patna, Telephone Bhawan, R. Block, Patna-800001.

..... Respondents.

By Advocate(s) :- Shri H.P. Singh.

O R D E R

Per Mr. Jayesh V. Bhairavia, M (J) :- The applicant in this

O.A prays for the following relief(s) :-

"[8.a] This application is being filed for directing the respondents to modify/rectify the Pension Payment Order to the extent where the Pay Scale lastly drawn by the applicant has not been taken into account and in place of Up-graded Pay Scale of Rs.16,390-33,830/- granted with effect from 22.02.2012 by competent authority has been replaced with the illusionary Pay Scale of Rs.16,370-30,630/- which scale the applicant was never provided during her entire service career and consequently, brining loss of pensionary benefit to the

tune of Rs.1,07,000/- without any authority of law for which appropriate direction is required to be issued by interfering to the extent indicated aforesaid by requiring the authorities to fix the pension in terms of Upgraded Pay Scale granted to the applicant as well as similarly situated persons vide Letter dated 14.02.2013 on which scale the applicant finally got superannuated and resultant thereto, the authorities would be obliged to modify all such benefits accrued to the applicant on account of superannuation and to pay arrears of Pension in such terms which has been followed in case of similarly situated persons on the basis of last pay drawn alongwith interest.

[8.b] For further kind indulgence of this Hon'ble Central Administrative Tribunal, Patna Bench, Patna to look into the matter and the concerned respondents may be directed to produce all connected records for perusal of the same for passing an appropriate order and reaching to the just conclusion.

[8.c] For any other relief/reliefs which the Hon'ble Central Administrative Tribunal, Patna Bench, Patna may grant in the interest of the Petitioner/Applicant that may be deemed appropriate and necessary in this case."

2. The brief facts of the case as submitted by the applicant is as below :-

2.1 The applicant had initially joined the department of Telecom in the post of Lady Telecom Operator on 09.11.1973 and her services were confirmed on 01.03.1977. In view of the Time Bound Scheme, the applicant received 1st Time Bound Promotion in the scale of 1400-2300- w.e.f. 10.11.1989 and thereafter 2nd Time Bound Promotion under BCR in the pay scale of 5500-9000/- was granted w.e.f. 01.01.2000. Thereafter, on absorption in BSNL, The substantive pay scale of the applicant as on 1.10.2000 was IDA pay scale Rs. 7800-225-12215. On introduction of time Bound Non-executive policy (NEPP) by the BSNL vide their letter dated 23.10.2010, the applicant, being non-executive, was granted upgraded first IDA pay scale 8570-245-12245 w.e.f 1.1.2004 vide order dated 26/29.10.2010. Subsequently, as per modified NEPP dated 11.9.2012, the applicant was granted second financial upgradation i.e second IDA pay scale of Rs. 16390-33830 (NE-12). The applicant superannuated on 30.11.2014 from the post of EX-SR TOA (P) in Group 'C' service. She served the department for about 41 years and 22 days. and her entire period of service was unblemished. The applicant has placed reliance on the appreciation certificate

issued on 30.11.2014 for the purpose of service record. (Annexure A/1 refers).

2.2 The applicant further contended that the Pay Scale of applicant as on 01.10.2000 was in Pre-revised Pay Scale of Rs.7800-225-11175/- (NE-10) which was later upgraded to Rs.8570-245-12245/- (NE-11) w.e.f. 01.10.2004 vide order dated 26/29.10.2010 issued by the AGM (Admn.) , O/o the PGMTD, Patna (Annexure A/2 refers), and accordingly, the applicant continued to draw salary in the upgraded Pay Scale Rs.8570-245-12245/- w.e.f. 01.10.2004. (Annexure A/2 refers).

2.4 It is further contended that consequent upon the introduction of Time Bound Non Executive Promotion Policy (NEPP) by the BSNL Corporate Office vide their letter dated 23.03.2010 and clarification issued vide letter dated 11.09.2012 the competent authority had issued an order dated 14.02.2013 whereby the 2nd upgraded pay scale was granted to all such persons who were discharging the duties as Non-Executive upgraded IDA pay scale in their original post without any promotion and accordingly the substantive Pay Scale [pre-revised (NE-10) and revised date of 1st up-gradation (NE-11)] was upgraded in the 2nd upgraded pay scale of Rs.16390-33830 (NE-12) w.e.f. 22.02.2012. (Annexure A/3).

The petitioner got similar upgraded pay scale (NE-12) under Non-Executive Promotion policy by BSNL Corporate office w.e.f. 22.02.2012 along with all the similarly situated employees (Annexure A/3). The applicant continued to draw salary in the pay scale of Rs.16390-33830/- which would be evident from the salary of October, 2014 (Annexure A/4 and A/5 refers).

2.5 The applicant further contended that the other employees alongwith the applicant have been extended the same benefit of NEPP and on their retirement the pensionary benefits have been settled as per their last pay drawn (pay scale Rs.16,390-33,830/-) as such their gross pension was fixed to Rs. 31,880/-. However, in the case of

the applicant at the time of final settlement of her pension, the amount of his pay scale has been reduced from Rs. 16390-33830/- to Rs.16370-30630/- and instead of his last drawn pay of Rs. 31,880/- it has been reduced to Rs.31,130/- arbitrarily, without any reason and without any show cause notice which caused a loss of Rs.1,07,000/- to the applicant (Annexure A/6 refers).

- 2.6 On receipt of Pension Payment Order (PPO) dated 10.09.2015, the applicant came to know about reduction of her pay from Rs. 31,880/- to Rs. 31,130/- and fixation of her pension was done on the basis of reduced pay. Therefore, she represented before the competent authority for making modification/rectification in the said PPO on 28.01.2016, 09.03.2016 and 22.08.2016 (Annexure A/7 series refers). The applicant had also sought information under the RTI Act. In response to it the applicant was informed vide letter dated 25.05.2016 that her application/representation has been forwarded to the concerned office for providing necessary information and supplied the copies of pay fixation statement (Annexure A/8 refers). It is contended that despite the matter having been agitated before the appropriate authorities, the grievance of the applicant was not redressed.

Subsequently, the applicant was informed by the Senior Accounts Officer (Pension) vide letter no. -730 dated 09.05.2017 that the fixation of pension has been done based on certificate of last pay drawn as RS.31,130/- and accordingly her pension has been fixed. (Annexure A/9 refers). The said communication/order dated 09.05.2017 is impugned in the present OA.

The learned counsel for the applicant submitted that the action of the respondents for reduction of the pay of the applicant at the time of her retirement is arbitrary, discriminatory and also against the settled principle of law.

The learned counsel further submitted that admittedly the applicant was drawing salary in the pay scale of Rs. 16,390-33,830/- at the time of her retirement and as such the applicant was entitled to settlement of her pension on the basis of her last pay drawn, i.e. Rs. 31,880/-. However, the respondent authorities instead settling the pension on the said amount have erroneously settled the pension on the pay scale of Rs. 16370-30630/- and accordingly last pay has been quantified as Rs. 31,130/- which scale the applicant had never received during entire career of her service. Therefore, the impugned order is bad in law.

The learned counsel further submitted that the Account Office of the respondents erroneously fixed her pay scale of Rs. 16,370- 30,630/- in place of pay scale of Rs. 16,390-33,830/- (the 2nd upgradation pay scale) which the applicant was drawing w.e.f. 22.02.2012 as per the order passed by the competent authority vide order dated 14.02.2013 (Annexure A/3 refers) and therefore the PPO dated 10.09.2015 deserves to be modified/rectified.

It is further submitted that the similarly situated employees who had joined the service along with the applicant and also granted similar benefit of Time Bound Promotion along with the applicant and also granted further upgraded pay scale under Non-Executive Promotion Policy (NEPP) to all including the applicant and on retirement of those identically situated employees their pensionary benefits have been settled in the pay scale lastly drawn in Rs. 16,390-33,830/- and their gross pension was quantified to Rs. 31,880/- while in the case of the

applicant though she also retired with last drawn pay of Rs. 16,390-33,830/- the same pay scale has been reduced without any show cause notice and arbitrarily fixed her gross pension quantified to Rs. 31,130/- vide impugned order. The said action of the respondents is in violation of principles of natural justice as also discriminatory. Therefore, the prayer sought by the applicant needs to be allowed.

3. On behalf of the respondent no. 2 and 3, i.e. BSNL their learned counsel Shri K.P. Narayan appears and submitted that the respondents BSNL would like to rely upon the written statement filed by the respondents no. 1,4 and 5. The said submission made on behalf of respondent no. 2 and 3 has been recorded by this Tribunal vide its order dated 27.08.2018.

4. The respondent no. 1, 4 and 5 (i.e. Department of Telecommunication, the Controller of Communication (Accounts), Bihar Telecom Circle, Patna and the Sr. Accounts Officer, O/o the Controller of Communication (Accounts), Bihar Telecom Circle, Patna) have filed their written statement dated 01.02.2018 whereby they have denied the statements and claim made by the applicant in his O.A and further the learned Senior Standing Counsel Shri H.P. Singh for the respondents submitted as under:-

4.1 The Pension Paper Order was issued on 10.09.2015 and the applicant has filed the present OA on or after 27.06.2017. Thus, the OA is barred by law of limitation as per Section 21 of the AT Act, 1985.

4.2 The applicant was allowed stepping up of her pay with that of one Shri Brijnandan Prasad, Ex. Sr. TOA, retired on 30.09.2003 vide order dated 28.10.2004 (Annexure R/1) which was irregular as no stepping up is admissible with the senior and in view of the same, the matter was brought to the notice to BSNL, Bihar Circle, Patna vide letter dated 05.06.2015 (Annexure R/2) and the irregularities was rectified by the BSNL and last pay certificate was issued in respect of the applicant vide letter dated 26.03.2016 (Annexure R/3) for a sum of Rs.31,130/- instead of Rs.31,880/- and the pension case of applicant was settled on revised LPC of Rs.31,130 and Rs.1,06,995/- being the excess paid amount of pay and allowances was recovered from the amount of Gratuity. Hence, the applicant is not entitled for any relief as prayed for in this O.A, therefore this O.A. may be dismissed.

4.3 It is further submitted that as such there is no punitive order has been issued against the applicant. The irregularities in the pay fixation has been rectified by the BSNL, Patna vide their letter dated 26.03.2016 and accordingly the pensionary benefits has been settled on the basis of revised LPC issued by the BSNL. Hence, the applicant is not entitled to get any relief as sought in the instant OA.

5. In response to the written statement filed by respondent no. 1,4 and 5, which is relied upon by the respondent no. 2 and 3 the applicant had filed his rejoinder reiterating the earlier submission and further stated as under:-

5.1 It is submitted that after receipt of PPO the applicant had submitted various representations for redressal of his grievance. However, the respondents had not modified the pay of the applicant as per the last drawn pay. The claim of the applicant for fixation of his correct pay and also the pension accordingly is continuous cause of action and therefore the objection raised by the respondents with respect to delay in filing the present OA is totally misconceived.

5.2 It is submitted that the submission/contention of respondents that applicant was allowed stepping up of her pay vide order dated 28.10.2004 with that of Brijnandan Prasad Ex-Sr. TOA who retired on 30.09.2003 was irregular and therefore the said irregularities was rectified. In this regard, it is submitted that vide order dated 26/29.10.2010 (Anneuxre A/2) the competent authority placed the applicant along with similar non-executive officers working as Sr. TOA(P) with Telecom District, Patna, their pre-revised pay scale as on 01.10.2000 was upgraded from 01.10.2004, vide the said Brijnandan Prasad was no more in service and such upgradation was done by the BSNL consequent to the issue of Time Bound Non-executive promotion policy which was introduced by the BSNL vide their letter dated 23.10.2010. Therefore, the stand of the respondents that the applicant was allowed stepping up is misconceived and on the backdrop of detailed chart showing substantive pay scale as on 01.10.2000 and upgraded pay scale w.e.f. 01.10.2004 while granting such upgraded pay scale to the applicant along with similarly situated employees. The name of the said Brijnandan Prasad nowhere find place in the letter dated 26/29.10.2010

(Annexure A/2) in the upgraded 1st IDA pay scale. the said action of the respondents is against the constitutional mandate in so much so neither the applicant was show caused prior to making such rectification nor any opportunity of hearing was ever provided to the applicant for persuading the authorities before taking impugned action.

5.3 It is also contended by the applicant that the financial upgradation which has been allowed in favour of the employees who were serving with BSNL was in the form of personal promotion being granted as a matter of financial progression to the employees working under the establishment for which a time/period was prescribed for granting financial upgradation at second stage completion of fixed period as stipulated under the scheme which would borne out from the order granting such upgradation. In view of this fact it is not open for the respondents, i.e. Department of Telecommunication as well as BSNL, to not adhere to their own scheme. Therefore, the ground stated by the respondents for reduction in the pay of the applicant and fixation of pension accordingly is bad in law.

5.4 The I/c for applicant further contended that the Pay Scale claimed by the applicant was introduced by the BSNL as New NE-12 Pay Scale for Non-Executive working in BSNL and it is on that basis second upgradation followed with first one was granted w..f. 22.02.2012 on an interval of 8 years and therefore it is a benefit which is granted to the employee who is facing stagnation and therefore the stand taken by the respondents with regard to stepping up is not tenable in the eye of law . A

copy of order dated 11.09.2012 is annexed herein as Annexure A/3.

5.5 The I/c for applicant further contended that in the Policy approved by the BSNL Management it has been categorically mentioned that the Time Bound Promotion Policy in respect of Non-Executing Employees of BSNL shall be made applicable and a letter to this effect was issued by the authorized officer being Deputy General Manager (Establishment) to all heads of Telecom Circles in which it has been mentioned that the persons appointed by DOT prior to 01.10.2000 will as a concession be considered for Time Bound IDA Pay Scale. In terms of the Policy and guidelines issued, the applicant alongwith other similarly situated was granted Financial Up-gradation which has not been disputed by the BSNL. It is vehemently submitted that after due verification of the Service Book as per the condition no. 7 stipulated in the order dated 14.02.2013 (Annexure A/3) the upgraded IDA pay scale NE-12, i.e. Rs. 16,390-33,830/- has been confirmed upon the applicant and the said pay scale was drawn lastly by the applicant on his retirement. Therefore, it is not open for the respondents to snatch away the benefit already granted to the applicant at a later stage that too without any show cause notice.

5.6. The learned counsel for the applicant additionally submitted that it was conscious decision by the Board of Director of BSNL to extend the benefit to the applicant along with similarly situated person as per the office order dated 26/29.10.2010 as well as order dated 14.02.2013 (Annexure A/2 and A/e refers). The said orders were based on the policy

decision of the respondents vide office order dated 11.09.2012 (Annexure A/12 and A/13 refers). Therefore, the impugned order is contrary to the decision and policy of respondents. Therefore the impugned order is bad in law and the applicant is entitled for the reliefs sought in this OA.

6. Heard the parties and perused the records and considered their submissions.

7. In the present case, it reveals that the applicant had joined the post of Telecom Operater in the Telecommunication Department on 09.11.1973. Her service was confirmed on 01.03.1977. The applicant superannuated on 30.11.2014 from the post of Ex-SR TOA(P) in Group 'C' service from the office of BSNL, Patna. It is noticed that vide order dated 28.10.2004 under the provisions of Rule 8 CCS(RP) Rules, 1986 the date of next increment (DNI) of the applicant along with other co-employees was fixed w.e.f 01.06.1986 with consequential benefits (Annexure R/1 refers). Subsequently, as per the option exercised by the applicant, she was allowed to join her duty in BSNL w.e.f. 01.01.2000. Accordingly, the applicant was placed under substantive IDA pay scale of Rs. 7800-225-11175 (NE-10). The said IDA pay scale NE-10 was recognized by the respondents BSNL as her substantive pay as on 01.10.2000. Thereafter, on introduction of Time Bound Non Executive Promotion Policy (NEPP) by the BSNL on 23.10.2010, and as per the terms of the said policy the competent authority vide their order dated 26/29th October, 2010 placed the Non Executives working as Sr. TOA(P) in the upgraded 1st IDA pay scale of Rs. 8570-215-12245/- w.e.f. 01.10.2004. In the said order along

with other similarly senior TOA(P)s the name of the applicant was placed at sl. no. 14 and accordingly her pay was upgraded from 7800-225-11175 (NE-10) to Rs.8570-245-12245/- (NE-11) w.e.f. 01.10.2004 (Annexure A/2 refers).

It further reveals from the record that the applicant had received the said 1st upgraded pay scale. Subsequently, on modification of said policy i.e NEPP, for the Non- Executives working in IDA pay scale NE-11 Accordingly, the respondents BSNL have issued an order dated 14.02.2013 granting the 2nd upgraded IDA pay scale of Rs. 16390-33830/- (NE-12) to the Sr. TOA(P)s w.e.f. 22.02.2012 wherein the name of the applicant was also placed at sl. no. 6 (Annexure A/3 and Annexure A/12 and A/13 refers).). Resultantly, the applicant had started receiving the same second IDA pay scale of Rs. 16390-33830/- and the said pay scale was continuously drawn by the applicant till her retirement on 30.11.2014. The salary slip of October, 2014 also indicates that the applicant was drawing the said 2nd upgraded IDA pay scale (Annexure A/4 and A/5 refers).

8. It is noticed that on her retirement the respondents have settled her pension vide PPO order dated 10.09.2015 whereby the pay of the applicant was reduced by the respondents and it was fixed at Rs. 31,130/- in the Pay Band 16370-30630/- instead of her last drawn pay, i.e. Rs. 31,880/- . It is noticed that the reason advanced by the respondents for such reduction in pay at the time of settlement of pension and retirement dues was due to the stepping up of pay granted earlier to her vide order dated 28.10.2004 (Annexure R/1 refers) vis-à-vis Brijnandan Prasad which was found irregular as

she was not senior to the said Brijnandan Prasad as per letter dated 05.06.2015 issued by the office of respondents no. 4 and 5 with reference to the fixation of pension on retirement of the applicant (Annexure R/2).

It is also noticed that the respondents had recognized the IDA pay scale of Rs. 7800-225-11175/- (NE-10) as substantive pay scale of the applicant as on 01.10.2000 which was effective from 01.10.2004 while granting benefit of time bound non executive promotion policy introduced for Non Executives [Senior TOA(P)] with respect to grant of upgraded 1st IDA pay scale vide order dated 26/29.10.2010. Subsequently, the respondents have also found the applicant eligible to receive 2nd upgradation in the pay scale of NE-12, i.e. Rs.16390-33830/- vide order dated 14.02.2013.

It is apt to note that the benefit of financial upgradation was extended to all such employees appointed prior to 01.10.2000 including the applicant as also similarly situated employees w.e.f. 01.10.2004 by the respondents BSNL. The said policy relates to BSNL and the applicant had been granted the benefit of the same as contended by the Department of Telecommunication, i.e. respondent no. 1, 4 and 5. The said contention has not been rebutted by the respondents BSNL. Under the circumstances, it is not open for the respondents BSNL to go contrary to their own decision whereby the applicant along with similarly situated employees working as Sr. TOA(P) were declared eligible to receive financial upgradation and accordingly their pay scale was fixed.

It is also seen that the similarly situated Sr. TOA(P)s who had been granted benefit of 1st financial upgradation as well as 2nd as per Annexure A/2 and A/3 the said employees superannuated with pay scale of Rs.16390-33830/- (NE-12) and considering the said pay scale the respondents had fixed their pay at Rs. 31880/- and accordingly pension was fixed. The applicant's case cannot be said to be different from them as such the respondents are not justified in reducing the pay of the applicant which she was drawing till her retirement. The reduced pay so fixed by the respondents BSNL vide their decision dated 26.3.2016 (Annexure R/3) was never drawn by the applicant. It is also required to be considered that the applicant was declared beneficiary of NEPP scheme introduced by the respondents BSNL in the year 2010 and vide order dated 26/29.10. 2010, the applicant was granted first upgraded IDA pay scale w.e.f. 1.10.2004. Subsequent to it, the second upgraded IDA pay scale was also granted w.e.f. 22.2.2012 vide order dated 14.2.2013. The said up-gradation was granted to the applicant in her personal capacity, being the beneficiary of NEPP Scheme, that too after verification of the service record of the applicant, as stipulated in the said order dated 26/29.10.2010 and 14.2.2013.

In view of the above factual matrix of the case, this Tribunal is of the opinion that the impugned decision of the respondents reducing the pay of the applicant from Rs. 31,880/- to Rs. 31,130/- is erroneous and the same cannot be sustained in law.

Moreover, it is a settled principle of law that the pay of the employee cannot be reduced without any show cause notice. In the present case it is evident that no such show cause was ever issued giving opportunity to the applicant to present her case; hence violative of principle of natural justice. It is also evident that there is nothing on record that the applicant has ever misrepresented her case before the competent authority regarding fixation of pay.

It is also evident that all fixations of pay of the applicant were carried out under the scheme of the respondents (BSNL). Therefore, the recovery of Rs. 1,07,000/- from gratuity amount on the ground of excess payment paid to the applicant by way of pay fixation is also erroneous and also contrary to the law laid down by the Hon'ble Supreme Court in the case of State of Punjab & ors Vs. Rafiq Masih (White washer). Thus, such illegal action on the part of the respondents cannot be allowed to be sustained under the law.

9. In view of the above discussion, the OA is allowed. The respondents are directed to modify/rectify the Pension Payment Order dated 10.09.2015 including fixation of pension based on last pay drawn by the applicant at the time of her retirement, i.e. Rs. 31,880/- within two months from the date of receipt of this order. It is further directed that the recovered amount of Rs. 1,07,000/- from the applicant's gratuity be refunded to the applicant along with 8% interest within the stipulated period as indicated above. No order as to costs.

[Jayesh V. Bhairavia]
Judicial Member

Mks/Srk

