

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00859/2017

DATED THIS THE 14TH DAY OF NOVEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C V SANKAR, MEMBER (A)

K.V. Nalini,
Aged about 62 years,
TES Gr. B, Staff No. 16165 (retired),
Bharat Sanchar Nigam Limited,
Hassan – 573 201,
Karnataka.
Residing at Door No. 48,
“IBBANI”, SBM Colony,
Arasikere Road, B. Katihally,
Hassan – 573 201,
Karnataka.

.....Applicant

(By Advocate Shri K. Hanifa)

Vs.

1. The Secretary,
Department of Telecom (Pension Section),
516-Sanchar Bhavan,
20-Ashoka Road,
New Delhi – 110 001.

2. The Chairman Managing Director,
BSNL,
BSNL Corporate Office,
Janapath,
New Delhi – 110 001.

3. The Controller of Communication Accounts,
DOT Cell, Karnataka Telecom Circle,
2nd Floor, Amenity Block,
CMX Compound, Palace Road,
Bangalore – 560 001.

4. General Manager Telecom,
BSNL, Hassan, BSNL Bhavan,
B.M. Road,
Hassan – 573 201

.....Respondents

(By Shri V.N. Holla, Senior Panel Counsel for R-2 & 4 and
Shri K. Gajendra Vasu, Senior Panel Counsel for R-1 & 3)

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

Heard. In fact we had passed an order earlier on the same person in
O.A. No. 91/2013 on 15.12.2015 which we quote:

“Heard. The matter relates to weightage to be given to a retiring employee under the consolidated general terms and conditions for absorption of Group-A. It is issued vide file No. A-11013/I/2005-Admn.II/Absorption Cell Ministry of Communication and Information Technology dated 04.10.2005 wherein it is clarified that “It is clarified that wherever BSNL/MTNL do not have their own service conditions/rules, the existing rules of the govt, shall apply mutatis mutandis till such time BSNL/MTNL frame their own rules.” It further says in paragraph 18 sub clause (iii) “An additional 5 years of qualifying service would be available to those absorbed officers who seek voluntary retirement from BSNL/MTNL on completion of 20 years of combined service, as per the provisions of Rules 48-A and Rule 48-B of CCS (Pension) Rules, 1972. It is clarified that the benefit of weightage of 5 years to qualifying service will be available only to such absorbees who give their option for pro-rata pension.” Therefore, we had queried whether the applicant had sought for pro-rata pension. Apparently the answer is in the negative.

2. We had also gone through Annexure-A23 and A-24 which relate to Smt. Manjula M.V. who is also similarly situated person, weightage of 5 years was granted so that she will complete 32 years. Similarly for Smt. K.V. Saraswati 3 years and 3 months had been granted so that she will complete 32 years. The idea behind is that when a person after long service opts voluntary retirement the benefit of qualifying service of that period must be made available. The applicant also being similarly situated and blessed by rules and precedence is entitled to the same. Therefore, there will be a mandate the respondents to grant the benefit of 32 years service to the applicant and pay whatever consequences to be paid within 2 months next. OA is allowed. No order as to costs.”

2. At that time the benefit of 32 years of service was the required period but then thereafter the Government issued Annexure-A4 which we quote:

“OFFICE MEMORANDUM

Sub:- Revision of pension of pre-2006 pensioners — delinking of revised pension from qualifying service of 33 years.

The undersigned is directed to say that as per Para 4.2 of this Department's OM of even number dated 1.9.2008 relating to revision of pension of pre-2006 pensioners w.e.f. 1.1.2006, the revised pension w.e.f. 1.1.2006, in no case, shall be lower than 50% of the sum of the minimum of pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. A clarification was issued vide DoP&PW OM of even number dated 3.10.2008 that the pension calculated at 50% of the minimum of pay in the pay band plus grade pay would be calculated at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay scale.

2. *Several petitions were filed in the Central Administrative Tribunal, Principal Bench, New Delhi inter alia claiming that the revised pension of the pre-2006 pensioners should not be less than 50% of the minimum of the pay band + grade pay, corresponding to the pre-revised pay scale from which pensioner had retired, as arrived at with reference to the fitment tables annexed to Ministry of Finance, Department of Expenditure OM No. 1/1/2008-IC dated 30th August, 2008, Hon'ble CAT, Principal Bench, New Delhi vide its common order dated 1.11.2011 in OA No.655/2010 and three other connected DAs directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006 based on the Resolution dated 29.8.2008 of the Department of Pension & Pensioners' Welfare and in the light of the observations of Hon'ble CAT in that order.*

3. *Orders were issued vide this Department's OM of even number dated 28.1.2013 for stepping up of pension of pre-2006 pensioners w.e.f. 24.9.2012 to 50% of the minimum of pay in the pay band and grade pay corresponding to pre-revised pay scale from which the pensioner retired. Para 5 of this OM provides that in case the consolidated pension/family pension calculated as per para 4.1 of O.M. No.38/37/08- P&PW (A) dated 1.9.2008 is higher than the pension/family pension calculated in the manner indicated in the O.M. dated 28.1.2013, the same (higher consolidated pension/family pension) will continue to be treated as basic pension/family pension.*

4. *Subsequently, in compliance of the order dated 1.11.2011 of the Hon'ble CAT, Principal Bench in OA No. 655/2010, order dated*

29.4.2013 of Hon'ble High Court of Delhi in WP (C) No. 1535/2012 and order dated 17.3.2015 of Hon'ble Supreme Court in SLP (C) No. 36148/2013, order were issued vide this Department's OM of even number dated 30.7.2015 that the pension/family pension of all pre — 2006 pensioners/family pensioners may be revised in accordance with this Department's O.M. No.38/37/08-P&PW(A) dated 28.1.2013 with effect from 1.1.2006 instead of 24.9.2012.

5. In accordance with the order issued in implementation of the recommendation of the 6th CPC, the pension of Government servants retired/retiring on or after 1.1.2006 has been delinked from qualifying service of 33 years. In OA No. 715/2012 filed by Ski. M.O. Inasu, a pre-2006 pensioner, Hon'ble CAT, Ernakulam Bench, vide its order dated 16.8.2013 directed that the revised pension w.e.f. 1.1.2006 under para 4.2 of OM dated 1.9.2008 would not be reduced based on the qualifying service of less than 33 years. The appeals filed by Department of Revenue in the Hon'ble High Court of Kerala and in the Hon'ble Supreme Court have also been dismissed. Similar orders have been passed by Hon'ble CAT/High Court in several other cases also.

6. The matter has been examined in consultation with the Ministry of Finance (Department of Expenditure). It has-now been decided that the revised consolidated pension of pre-2006 pensioners shall not be lower than 50% of the minimum of the pay in the Pay Band and the grade pay (wherever applicable) corresponding to the pre-revised pay scale as per fitment table without pro-rata reduction of pension even if they had qualifying service of less than 33 years at the time of retirement. Accordingly, Para 5 of this Department's OM of even number dated 28.1.2013 would stand deleted. The arrears of revised pension would be payable with effect from 1.1.2006.

7. Ministry of Agriculture, etc. are requested to bring the contents of these orders to the notice of Controller of Accounts/Pay and Accounts Officers and Attached and Subordinate Offices under them for revising the pension of all those pre – 2006 pensioners who had rendered less than 33 years of qualifying service at the time of retirement in the manner as indicated above on top priority. Revised Pension Payment Orders in all these cases may also be issued immediately.

8. All pension disbursing offices/banks are also advised to prominently display these orders on their notice boards for the benefit of pensioners.

9. This issues with the approval of Ministry of Finance, Deptt. of Expenditure vide ID Note No. 2(9)/EV/2015, dated 15.3.2016.

10. Hindi version will follow.

(Seema Gupta)
Deputy Secretary to the Government of India

To

1. All Ministries/Departments of Government of India. (as per standard mailing list).
2. All SCOVA Members
3. All identified Pensioners Association

Copy to (i) NIC Cell for uploading on the website of the Department.
(ii) AD (OL), DoPPW for Hindi Version"

3. That makes some difference. In that, it had brought in for all pre-2006 retirees service requirement of 33 years. The rule concerned is Rule 48-B which we quote:

"48-B. Addition to qualifying service on voluntary retirement

(1) The qualifying service as on the date of intended retirement of the Government servant retiring under Rule 48 (1) (a) or Rule 48-A or Clause (k) of Rule 56 of the Fundamental Rules or Clause (i) of Article 459 of the Civil Service Regulations, with or without permission shall be increased by the period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.

(2) The weightage of five years under sub-rule (1) shall not be admissible in cases of those Government servants who are prematurely retired by the Government in the public interest under Rule 48 (1) (b) or FR 56 (j)."

4. It says that in such cases a weightage has to be given not exceeding 5 years. So, the intent is that, after dedicated service for so many years, the weightage should be commensurate with the need for the pensioner to get full benefit. That being so, the soul and spirit of our order also has to be understood in that way. Therefore the applicant is eligible to count not 1 year 8

months 26 days to complete 32 years but one more year as addition which is within the span of 5 years granted by Rule 48-B in order to help her to get full pension.

5. The OA is allowed. Benefits to be made available within two months next. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No.170/00859/2017

Annexure-A1: Copy of the order in O.A. No. 91/2013 dated 15.12.2015

Annexure-A2: Copy of the representation dated 28.04.2016

Annexure-A3: Copy of the letter dated 26.05.2016

Annexure-A4: Copy of the OM dated 06.04.2016

Annexure-A5: Copy of the representation dated 30.08.2016

Annexure-A6: Copy of the letter dated 20.09.2016
Annexure-A7: Copy of the PPO dated 02.06.2017
Annexure-A8: Copy of the representation dated 21.06.2017
Annexure-A9: Copy of the Memo dated 22.06.2017
Annexure-A10: Copy of the order dated 22.06.2017 in CP No. 154/2016
Annexure-A11: Copy of the grievance status dated 21.08.2017
Annexure-A12: Copy of the representation dated 29.08.2017
Annexure-A13: Copy of the Grievance Status dated 29.09.2017
Annexure-A14: Copy of the representation dated 12.05.2017
Annexure-A15: Copy of the letter dated 07.11.2017
Annexure-A16: Copy of the CCS Pension Rules, 1972
Annexure-A17: Copy of the letter dated 28.11.2013
Annexure-A18: Copy of the letter dated 30.11.2013

Annexures with reply statement

Nil
