

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 21/942/2018

Date of Order: 20.03.2019

Between:

Gobburu Rangaiah, S/o. Kistaiah,
Aged: 67 years, Occ: Retd. SDE BSNL, Group C,
R/o. H. No. 8-3-53/8/B, Teachers Colony,
Mahabubnagar – 509 001.

... Applicant

And

1. Union of India, rep. by its Secretary,
(Department of Telecom),
20, Ashoka Road, Sanchar Bhavan,
New Delhi – 110 001.
2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Corporate Office, Personal Branch-II,
4th Floor, Janpath, New Delhi – 110 001.
3. The Chief General Manager Telecom,
BSNL, TS Telecom Circle, Nampally Station Road,
Door Sanchar Bhavan, Hyderabad – 500 001.
4. The Principal Controller of Communication Accounts,
Telephone Exchange Building, Bholakpur,
Kavadiguda, Hyderabad – 500 080.
5. The General Manager Telecom,
BSNL, Sanchar Bhavan, Mahabubnagar- 509 001.

... Respondents

Counsel for the Applicant	...	Applicant in person
Counsel for the Respondents	...	Mrs. K. Rajitha, Sr. CGSC
		Mrs. A.P. Lakshmi, SC for BSNL

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

ORAL ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. The OA is about reckoning enhanced DA in releasing gratuity and leave encashment to the applicant on his retirement.

3. Brief facts are that the applicant has retired from BSNL on 31.12.2009. Applicant was paid gratuity and leave encashment with DA @ 25.3% prevailing on 31.12.2009 instead of DA @ 30.9 % prevalent on 1.1.2010 against the orders of this Tribunal and Hon'ble High Court on the subject. Hence applicant represented on 6.3.2017 & 17.6.2017 but of no avail. Hence the OA.

4. The contentions of the applicant are that as per the Hon'ble High Court of A.P in Principle Accountant General of A.P, Hyderabad v. C.Subba Rao and the verdict of this Tribunal in OA 252/2015 he is eligible. Even Rule 5 (2) of CCS (Pension) Rules, 1972 provides for grant of relief sought.

5. Respondents inform that the applicant has earlier moved this Tribunal in OA 34/2016 wherein it was directed to dispose applicant's representation dt 17.6.17 and accordingly the same was examined and rejected. BSNL claims that the applicant is not eligible as per norms and that DOT which is the nodal Ministry has also rejected the claim. Therefore unless DOT clears the request and directs BSNL accordingly, the relief sought cannot be granted.

6. Heard both the counsel and perused documents as well as material papers placed on record.

7. I) The issue is about working out Gratuity and Leave salary as per the DA rate prevalent on the next day of retirement. On retirement of an employee he is eligible for triple pensionary benefits namely pension, gratuity and P.F. Thus Gratuity is a pensionary benefit whereas leave salary is not. Leave salary is paid based on the relevant leave accumulated by the employee while in service. Hence DA existing on the last day of retirement is applicable for leave salary. Therefore the action of the respondents in allowing the DA rate on the date of retirement of the applicant cannot be found fault with. In case of gratuity it is a

part of the pensionary benefit. The question of allowing enhanced DA on pension and pensionary benefits was examined by the superior judicial forums. The instant case to the extent of gratuity, being a pensionary benefit, is fully covered by a recent Order of this Tribunal in OA Nos. 1109/2016 & batch dated 10.12.2018 where in enhanced DA relief sought was allowed. In that order, a reference was made to the judgment rendered by a Full Bench of the Hon'ble High Court of Andhra Pradesh in W.P No.22042/2003 & batch dt 27.1.2005, wherein it was observed as under:

“The question would arise only in Writ Petition No 22042 of 2003 as the respondent therein also claimed DA instalments at 49%. As held by us supra, a Government servant who would be retiring on the last day of the month would cease to be the Government Servant by mid-night of that day and he would acquire status of pensioner and therefore he would be entitled for all the benefits given to a pensioner with effect from first day of the succeeding month. In Banerjee case (supra), the Supreme Court laid down that as soon as first day of the succeeding month commenced, petitioner retired and gave the benefit of enhanced DA. The same view has been consistently followed in subsequent decisions as well. To that extent it must be held that the learned Tribunal has taken correct view.”

II) Further, while delivering the verdict in OA Nos. 1109/2016 & batch, the observations of the Hon'ble Supreme Court in S. Banerjee Vs. Union of India, AIR 1990 SC 285; Chief General Manager, Telecom & Anr. Vs. K.J. George & Ors in CA No. 2907/2005 & 2908/2005, dt.22.02.2007 and Achhaibar Maurya vs State of Uttar Pradesh & Others in CA No 5877/07 [2008 (1) SCC (L&S) 519] were also kept in view.

The issue was dealt at length by deliberating in regard to law and rules, in OA 1109/2016 & batch by this Tribunal. The final conclusion was to allow the relief sought in regard to gratuity as is being claimed in the present OAs. Being a covered case the details have not been reiterated.

III) However, when a similar claim made by similarly situated employees was allowed by this Tribunal in OA No. 213/2014 vide order dt. 24.06.2015, the same has been stayed by the Hon'ble High court in WP No. 4742/2016 vide order dt. 01.04.2016. Keeping the interim order of stay granted by the Hon'ble High Court in view, this Tribunal in OA Nos.1109/2016 & batch vide order dt.10.12.2018 has granted relief to similarly placed persons subject to the outcome of the WP No. 4742/2016 pending before the Hon'ble High Court. Following the order of this Tribunal in OA Nos.1109/2016 & batch dt.10.12.2018, the first respondent is directed to consider as under:

- i) To re-fix the gratuity of the applicant as per enhanced eligible D.A from the date he has become a pensioner and pay arrears along with any consequential benefits subject to the outcome of the judgment of the Hon'ble High Court in W.P No.4742/2016 filed against OA No. 213 of 2014.
 - ii) In case the verdict of the Hon'ble High Court is in favour of the applicant, the respondents to work out the arrears of gratuity calculated on enhanced D.A from the first day of retirement till the date of payment, at the highest Bank rate of interest allowed for term deposits of 3 years and beyond by S.B.I prevailing as on the date of the verdict of the Hon'ble High Court.
6. OA is accordingly allowed to the extent stated with no orders as costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 20th day of March, 2019

evr