

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

Original Application No. 21/640/2018 & MA 718/2018

**Reserved on: 20.02.2019
Pronounced on: 22.02.2019**

Between:

M.S.S. Ramachandra Murthy,
S/o. late Suryanarayana Murty,
Aged about 67 years, Hindu,
Retired Personnel Assistant to DGM (Marketing), Gr. B,
HMR Pride, 2nd Floor, F. No. 202, Manjeera Pipeline road,
Madinaguda, Hyderabad – 500 049.

... Applicant

And

1. The Union of India, Rep. by its Secretary,
(Department of Telecom),
20 Ashoka Road, Sanchar Bhavan,
Govt. of India, New Delhi – 110001.
2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Corporate Office, Personnel Branch – II,
4th Floor, Janapath, New Delhi -110001.
3. The Chief General Manager,
Telecom, Abids, Door Sanchar Bhavan,
Telangana Circle, Nampally, Hyderabad.

... Respondents

Counsel for the Applicant ... Party in Person

Counsel for the Respondents ... Mrs.K. Rajitha, Sr. CGSC
Mr. M.C. Jacob, SC for BSNL

CORAM:

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

ORDER

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

2. The applicant has filed the OA challenging the order No. 1-50/2008-PAT(BSNL) dated 05.03.2009 and Order No. 61-2/016-SU dated 28.03.2017 issued by the respondents.

3. Brief facts of the case are that the 2nd respondent issued the 2nd PRC (Pay Revision Commission) orders on 05.03.2009 in compliance with the orders of the 1st respondent issued on 27.02.2009 wherein the issue regarding E-1A and E-2A pay scales was discussed. In the said letter, it was stated that in respect of the Executives in E1A and E2A, their pay may be fixed in the revised E1 & E2 IDA scales of Rs.16400 – 40500 and Rs.20600 – 46500 respectively and these revised scales may also be used wherever specifying the pay scales is unavoidable till the time new scales are notified. The 1st respondent has issued the Presidential Order vide letter dt. 28.03.2017 conveying the approval to the 2nd respondent with reference to the proposal of the 2nd respondent for grant of replacement of scales for pre-revised E-1A, E-2A scales for JTOs, SDEs and equivalent cadres for implementation. E1pre-revised pay scale of Rs.9850-14600 revised as Rs.18850-40500 and E-2 pre-revised pay scale of Rs.11875-250-17275 revised as Rs.22800-46500. As per the version of the applicant, this Tribunal in OA No. 740/2014 vide order dated. 30.12.2014 observed that discrimination arises only when persons belonging to the same category are treated differently. The classification as well as implementation of the order clearly shows that there is discrimination. The respondents avoided implementation of the 2nd PRC w.e.f. 01.01.2007 in order to avoid payment of arrears for those executives who were on the rolls in BSNL between 01.01.2007 to 27.03.2017. The applicant made a representation to the BSNL authorities and others on 10.03.2018, which was rejected. Therefore, the OA.

4. The contentions of the applicant are that the BSNL has raised pay scales of E-1 cadre of certain Executives and fixed above E-2 pay scale and also granted advance increments to certain Executives beyond the pay scale

prescribed in 2nd PRC when the issue for grant of replacement scales for pre-revised E1A and E2A pay scales for JTOs, SDEs and equivalent cadres was pending revision with DOT/DPE, New Delhi. Thus, BSNL has shown discrimination. The impugned Presidential Order dt. 28.03.2017 is given prospective effect from 28.03.2017 instead of 01.01.2007 even though the Hon'ble Apex Court judgment dt. 08.12.2017 is in favour of the applicant. As per the Hon'ble Supreme Court judgment in Union of India Vs. Balbir Singh Turn in CA Diary No. 3744 of 2016 & batch, the 2nd PRC benefit should be given effect from 01.01.2007 along with other Executives. The applicant is deprived of getting legitimate revision of pay scales w.e.f. 01.01.2007 and consequent drawl of arrears of pension, etc. Thus, the respondents have violated Articles 14, 16, 21 and 300-A of the Constitution of India.

5. The respondents inform that the applicant joined the 1st respondent organization as Group D on 07.09.1973 and rose up to the rank of Personnel Assistant in the executive cadre on 01.01.2004. The applicant retired on 31.12.2011. Respondents further inform that the Government has set up a Pay Revision Committee (2nd PRC) to consider the pay revision of Board level executives and Non-Unionised Supervisors in the Central Public Sector Enterprises (CPSE) in the IDA pattern pay scales w.e.f. 01.01.2007. After due consideration of the recommendations, a decision has been conveyed vide Office Memo. dt. 26.11.2008 with details of the pay scales in each grade from E0 to E9 and top executives, fitment method and applicability of the recommendations to the CPSE. The order clearly mentions that the revision is based on affordability of the CPSE and financial implication on account of pay revision has to be borne by the concerned CPSE from own resources and no budgetary support will be

provided. After following the due process, as directed in the OM dt. 26.11.2008, the 1st respondent by order dt. 27.02.2009 communicated the approval of the President for the proposal of BSNL for pay revision of the employees. Following the said order, the 1st respondent issued Office Order dt. 05.03.2009 for grades of E1A and E2A in the pre-revised IDA scales of Rs.9850-14600 and Rs.11875-17275, note is attached to the effect that revised pay scale will be notified later and till the new scales IDA scales are announced, revised pay should be in E-1 and E-2 scales of Rs.16400-40500 and Rs.20600-46500. Based on the said revision, the pay scale of the applicant was revised to in E2 Rs.20600-46500 and fixed the pay at Rs.26720/-. The applicant retired from service on 31.12.2011 and his pension, gratuity and other benefits were determined based on the emoluments he received in the BSNL at the time of his retirement as per Rule 37-A of the CCS (Pension) Rules, 1972. The pension payment authority issued revised Pension Payment Order dt.17.10.2017 with monetary benefits w.e.f. 10.06.2013. The 1st respondent by order dt. 28.03.2017 granted replacement scales for pre-revised E1A and E2A grades with a condition that BSNL has to bear additional financial implications on account of any pay revision from the order from its own resources and no budgetary support will be provided by the Government. The applicant submitted a representation dt. 10.03.2018 addressed to the 1st and 2nd respondents seeking implementation of the order dt. 28.03.2017 along with other grievances. To the above representation, the 2nd respondent by proceedings dt. 21.05.2018 intimated the applicant that above Presidential order is not yet implemented and BSNL requested DOT to reconsider the decision in view of the DPE guidelines and the reply is not yet received. The applicant was advised to forward his grievance to the concerned officer, where he retired.

6. Heard the Applicant in person and the learned Standing Counsel for the respondents and perused the documents submitted by both sides. Party in person has also submitted written arguments.

7(I) With regard to the issue about implementation of the 2nd PRC w.e.f. 01.01.2007, the respondents have drawn the attention of this Tribunal to the Office Memo. dt. 26.11.2018 issued by the Department of Public Enterprises, wherein it is stated as under:

“3. *Affordability for implementation of pay revision*:- The revised pay scales would be adopted, subject to the condition that the additional outgo by such revision for a period of 12 months should not result in more than 20% dip in profit before tax (PBT) for the year 2007-08 of a CPSE in respect of executives as well as non-unionised supervisory staff taken together in a CPSE. CPSEs that cannot afford to pay full package, can implement with either part PRP or no PRP. These CPSEs may pay the full package subsequently, provided the dip in the profit (PBT) is fully recouped to the original level.”

4. The CPSEs, which are not able to adopt revised pay scales (2007), may give an increase on the basic pay plus DA drawn in the pre-revised scale as on 01.01.2007, with a uniform lower fitment of 10% or 20%, depending upon their affordability, with the approval of their Ministry/ Department.”

Respondents have submitted that after receipt of the Presidential Order, 2nd respondent requested the 1st respondent to reconsider the decision as the direction is not in consonance with the DPE guidelines and the same was intimated to the applicant. As such, the order dt. 28.03.2017 issued by the 1st respondent has not reached finality. The applicant contested the same and stated that it is not true. He has produced Office Memo. dated 29.08.2018 issued by the Department of Public Enterprises. The applicant being in possession of the document of the DPE should have enclosed and represented to the respondents. Since he has submitted the same to the Tribunal, it would be proper and appropriate for the respondents to examine the same and pass a reasoned order

keeping in view the Office Memo. dt. 29.08.2018 and the affordability clause cited supra. Besides, observation of the 2nd respondent in para 4 of his letter dt. 13.12.2013 about the additional burden in regard to pension payable need also to be reckoned.

II. In view of the facts discussed above, the respondents are directed to examine the material submitted by the applicant including the OM dt. 29.08.2018 of the Department of Public Enterprises and pass a speaking and reasoned order with regard to the claim of the applicant within a period of five months from the date of receipt of this order. OA is disposed with the above directions. MA No. 718/2018 stands disposed. There shall be no order as to costs.

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

Dated, the 22nd day of February, 2019

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