

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

Original Application No.21/813/2017 & MA 355 of 2018

**Reserved on: 05.12.2018
Order pronounced on: 10.12.2018**

Between:

M.S.S. Ramchandra Murthy
S/o. late Suryanarayana Murthy,
Aged about 66 years, Hindu,
Retired Personnel Assistant to DGM (Marketing),
HMR Pride, 2nd Floor, F. No. 202, Manjeera Pipeline Road,
Madinaguda, Hyderabad – 500 049.

...Applicant

And

1. Union of India, Rep. by its Secretary,
Department of Telecom,
20 Ashoka Road, Sanchar Bhavan,
Govt. of India, New Delhi – 110 001.
2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Corporate Office, Personnel Branch – II,
4th Floor, Janapath, New Delhi – 110 001.
3. The Chief General Manager Telecom,
Bharat Sanchar Nigam Limited, Abids,
Hyderabad – 500 001.

...Respondents

Counsel for the Applicant	...	Mr. M.S.S. Ramachandra Murthy (PIP)
Counsel for the Respondents	...	Mrs.K. Rajitha, Sr. CGSC Mr. M.C. Jacob for RR 2 & 3

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
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ORDER

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

The OA is filed for non revision of IDA (Industrial Dearness Allowance) based pension of the applicant as per 7th CPC.

2. Brief facts of the case are that the applicant after serving the Dept. Of Telecom for 28 years and BSNL for more than 10 years had retired on 31.12.2011 with a pension of Rs 15,500 w.e.f 1.1.2012 from the respondents Organisation. The applicant represented on 10.9.2016 for implementation of 7th CPC recommendation as they are applicable to those who are governed by the CCS (Pension) Rules 1972 as per Ministry of Personnel, Public Grievances & Pension OM dt 4.8.2016. As there was no response from the respondents, the applicant approached this Tribunal in OA 12/ 2017 and when the respondents were directed to dispose of the representation, they did by rejecting the same. Hence the O.A.

3. The contentions of the applicant are that he was not given any pro-rata retiral benefits for the service rendered in Dept. of Telecom after being absorbed in BSNL on 1.10.2000. The pension contribution for the entire service is paid to Government under FR 116 by BSNL for making pension payment treating the combined service in Govt. and BSNL as Govt. service is the version of the applicant. Pension is a property and as per Article 300-A of the Constitution no person can be deprived of the property without the authority of law. Some pensioners of the Dept. of Telecom were paid pension as per 7th CPC and hence not paying him is discriminatory. As per CCS (Pension) Rules 1972 the applicant claims that he is eligible. Pension payment order does indicate that the pensioner is eligible for additional quantum of pension from time to time. BSNL employees are Govt. servants for the purpose of pension under Rule 37 –A of CCS (Pension) Rules, is the assertion of the applicant.

4. Respondents contend that B.S.N.L was constituted as a Public sector undertaking on 1.10.2000 and options were called from the employees to continue with the Govt. or join B.S.N.L. Accordingly, the applicant on having opted for BSNL, his pay was fixed with IDA (Industrial Dearness Allowance) pay scale of Rs.7,100-10,100 applicable to B.S.N.L. employees from 1.10.2000 with a pay of Rs.8100 . Thereafter on being finally promoted as Personnel Assistant, the applicant was placed in the pay scale of Rs.9850-14,600 w.e.f 1.1.2004. The applicant was also given the first financial upgradation under Assured Career Progression scheme in the next higher IDA pay scale and as per Department of Public Enterprises, O.M dt 26.11.2008 the pay scale of the applicant was revised to Rs.20,600-46,500 and a pay of Rs.26,720 was granted w.e.f 1.1.2007. Further, when the applicant retired on 31.12.2011, Pension was worked out based on the emoluments he received in BSNL following rule 37-A of Central Civil Services (CCS) Pension Rules, 1972. The pension was revised to those pensioners who retired prior to 10.6.2013 w.e.f. 1.1.2007 and accordingly that of the applicant was revised and revised pension payment order was issued on 17.10.2017 with financial benefits w.e.f. 10.6.2013. The respondents affirm that the 7th CPC recommendations are applicable to Govt. Servants. Applicant ceases to be a Govt. Servant on being absorbed as BSNL employee as per Rule 37-A referred to. The rules and regulations of BSNL apply to the applicant. None of the BSNL employees were given any revision of pay as per the recommendations of the 7th CPC. Therefore the prayer of the applicant has no merit to consider.

5. Heard the party in person and the counsel for the respondents. Their averments were in line with the written submissions made.

6. Facts on record do make it lucid that the applicant has been absorbed as a BSNL employee from 1.10.2000. On being absorbed in BSNL, based on IDA, applicant has been granted pay scales and pay was regulated from time to time, as per rules and regulations of BSNL. As per Rule 37-A of CCS (Pension) Rules, an employee on permanent absorption into a public sector undertaking ceases to be a Government servant from the date of absorption. Rules of the PSU will thereafter apply. As per sub rule 8 of Rule 35-A, such absorbed employees and family are eligible for pensionary benefits including commutation, gratuity, family pension on the basis of combined service in accordance with the formula in force at the time of his retirement from the Public Sector Undertaking or at his option, to receive benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government. Further sub rule 10 of Rule 35-A specifies that an absorbed employee who has opted for pension on the basis of combined service is eligible for dearness relief as per the Industrial Dearness Allowance pattern. The applicant having become a BSNL employee his pension was naturally drawn based on his last pay drawn in BSNL. The applicant is under the impression that Rule 37-A continues to treat him as a Government Servant, which is not the case as per the reading of the said rule. The rule clearly distinguishes two aspects viz service benefits as per the orders pertaining to Public Sector undertakings and pension benefits as per CCS (Pension) Rules. Had the applicant opted for retirement benefits from DOT the scenario would have been different! However, since the applicant has opted for combined service the rules of the game are different. Moreover, the respondents categorically state that after 1.10.2000, BSNL employees are not provided with pension excepting to those who have been absorbed from

D.O.T. The applicant contended that D.O.T employees are getting the benefit of 7th CPC. They do because they are Govt. employees. Besides, as claimed by the applicant Pension is a property but it was not denied to him. It was and is being paid as per rules adopted by BSNL. The applicant cannot seek application of rules selectively, of both Government and BSNL, in order to take advantage of the best among the better of the rules in the two institutions. Being a BSNL employee the applicant cannot compare himself with DOT employee and allege discrimination. One is a Govt. department and the other is a PSU. Therefore no parallels can be drawn in regard to the issue in question. Applicant also represented for gratuity under Gratuity Act which was allowed by this tribunal. On challenging the same by the respondents by way of a writ petition in the Honourable High Court and it was allowed. The applicant filed a writ appeal but it was dismissed on the ground that the applicant is covered under Rule 37-A of CCS (Pension) Rules. The pay and allowances of BSNL employees are revised as per the recommendations of Pay Revision Committee (PRC) of Public Sector Undertakings. Accordingly the applicant has been granted pensionary benefits as per 2nd PRC recommendations. PRC has no relation to the 7th CPC. Thus there is a separate system altogether to deal with the pay & allowance and pension of public sector employees like BSNL. The OMs and judgments cited by the applicant have been gone through and found them to be irrelevant to the issue in question. Hence they are not broached upon. The OMs of the Central Government when they are adopted by BSNL such benefits get extended to the BSNL employees. Otherwise not, as we have seen in the present case. To sum up, the applicant is not a Government employee and hence he does not come under the ambit of 7th CPC. The norms for revision of pension are decided by

the pay revision committee of public undertakings and not by pay commissions. Therefore there is no reason for this Tribunal to intervene on behalf of the applicant, as his prayer cannot be acceded to as per rules on the subject.

7. Therefore the OA is dismissed. MA stands disposed. No order to costs.

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

Dated, the 10th day of December, 2018

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