



**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A. No. 350/01073/2013

Date of Order: 22-4-19

Present: **THE HON'BLE SMT. MANJULA DAS, MEMBER (A)**
THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE (A)

SRI MAKHAN LAL SAHA
 Son of Late Harendra Mohan Saha
 Residing at 47/1, Ashoke Road
 Ganguli Bagan, Kolkata – 700084
 Working as Divisional Engineer
 External, Ranikuthi
 In the office of the Deputy General Manager (NW-OP)
 Jadavpur, 154, N.S. C. Bose Road
 Kolkata – 700040

...Applicant

-Versus-

1. Union of India, service through
 The Managing Director, BSNL Corporate Office
 Bharat Sanchar Bhawan, R.C. Mathur Lane
 10, Janpath, New Delhi – 110001.
2. The Chief General Manager
 Calcutta Telephones, Bharat Sanchar Nigam Limited
 Telephone Bhawan, 34, B.B.D. Bag
 Kolkata – 700001.
3. Deputy General Manager (HR & Admn.)
 BSNL, Calcutta Telephones, Telephone Bhawan
 Kolkata – 700014
4. Deputy General manager (NW-OP), Jadavpur, BSNL
 154, N.S.C. Bose Road, Kolkata – 700040
5. Accounts officer (Cash), Jadavpur, BSNL
 154, N.S.C. Bose Road, Kolkata – 700040
6. Sub-Divisional Engineer (Staff), BSNL
 Jadavpur, 154, N.S. C. Bose Road
 Kolkata – 700040

.....Respondents

7. SHRI NILRATAN DUTTA
 Working as D.E. (Officiating)
 In the office of Deputy General Manager (NW-OP), BSNL
 Jadapur, 254, N.S.C. Bose Road, Kolkata – 700040

.....Proforma Respondent

For the Applicant : Mr. B.R. Das

For the Respondents : Mr. S. Panda

ORDER

NEKKHOMANG NEIHSIAL, MEMBER (A):

This O.A. No. 350/01073/2013 has been filed by the applicant under Section 19 of the Administrative Tribunals Act 1985 seeking the following main reliefs:-

- "8.i) Rescind, recall and/or cancel the orders being Annexure AI & A2 for all intents and purpose.
- ii) Issue revised fixation of pay in IDA scale of Rs. 11,875-17-275/- with effect from his regular promotion on 16.01.2002 and as regulated and fixed at Rs. 8500.00 in CDA scale of Rs. 7500-250-12,000/-.
- iii) Refund all the amount deducted as per Annexure-AI with suitable interests thereupon, forthwith.
- iv) Certify and transmit the entire records and papers pertaining to the applicant's case so that after the causes shown thereof concessionable justice may be done unto the applicant by way of grant of reliefs as prayed for in (i) to (iii), above.

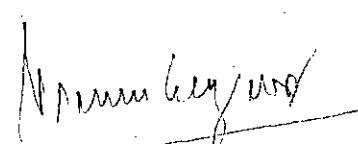
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 (Signature)

- v) Pass such other order/orders and/or direction/directions as deemed fit and proper.
- vi) Costs."

The applicant also prayed for interim order, which on the record has not been granted by this Tribunal.

2. Heard Mr. B.R. Das, learned counsel for the applicant and Mr. S. Panda, learned counsel for the respondents.

3. Mr. B.R. Das, learned counsel appearing on behalf of the applicant submitted that the applicant was an employee of the then Indian P & T Department (later Department of Telecommunication) in the capacity of a Wireless Operator on or about 21.8.1978 in the North East Telecom Circle where from he was promoted as Junior Telecom Officer on or about 26.12.1991, as Sub-Divisional Engineer (Officiating) w.e.f. 10.11.1999 and came to be promoted in the said post in substantive capacity w.e.f. 16.01.2002. Consequent upon the Department having been corporatized as BSNL, the applicant stood absorbed in the said corporate body w.e.f. 01.10.2000. According to Mr. Das, the applicant who was regularized in the capacity of SDE with effect from 16.01.2002 while working in Itanagar in Arunachal Pradesh in N.E. Circle came to be posted under the Respondent No. 2 in the pay scale of Rs. 7500-250-12,000/- in the Central D.A. pay scale with basic pay at Rs. 8500/-



w.e.f. 14.05.2003 having been released by the outgoing Department on 07.05.2003.

4. Mr. Das further submitted that the respondent No. 1 came out to introduce the Industrial D.A. pay scale w.e.f. 01.10.2000 in replacement of existing CDA pay scales for Group B executive staff absorbed from DOT in BSNL vide its order No. 1-5/2004-PAT(BSNL) dated 18.03.2004 and by way of a follow-up office order, it was made clear on behalf of the said authority in BSNL that an option was available to the concerned employees to come over to the service condition of the PSU from the date of promotion or retirement whichever is earlier and until then they would continue in the Government pay scale. According to Mr. Das, in pursuance of the aforesaid orders, the applicant submitted an application dated 30.04.2004 to the Respondent No. 6 opting for IDA scale from the date of promotion of the petitioner to the Group 'B' post of Sub-Divisional Engineer i.e. 16.01.2002. In other words, the applicant sought his pay in CDA scale which was Rs. 7500-250-12000/- to be revised and fixed in IDA scale being Rs. 11,875-300-17,275/- on and from 16.01.2002. However, pay fixation of the applicant has been objected by the Audit on the ground that his pay was wrongly fixed in the scale of the officiating post instead of the scale of regular post which the applicant as holding. Accordingly, his pay was re-fixed resulting excess payment and that has been recovered from his pay

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from time to time. The applicant also alleged that due to wrong re-fixation of his pay, one of his juniors has been drawing higher pay than the applicant.

5. The above contention of the applicant has been vehemently denied by the respondent authorities in the written statement filed by them on 05.03.2014. In reply to the aforesaid contentions, they have submitted as under:

- (i) That the present application is not maintainable in its present form and since suffers from suppression/concealment of material facts in the Court Proceeding and principle of waiver and acquiescence and the same is also speculative, purported and harassing and hopelessly barred by laws of limitation also and the petition is liable to be dismissed in limini.
- (ii) That since the applicant did not exercise option properly and in proper time his scale was fixed in I.D.A. Scale with effect from 01.10.2000.
- (iii) That no receiving stamp of this office, No recommendation and forwarding to this office by then controlling officer. As per departmental rules options should be submitted within one month after issuing of order.
- (iv) That no written representation dated 39.04.2004 was addressed to the respondents for opting I.D.A. Scale from the date of promotion of the petitioner to the Group-D post of Sub-Divisional Engineer i.e. 16.01.2002 was made as from the said written representation which has been annexed as annexure it can be seen that there has been no seal, signature or any forwarding note or recommendation made by the Controlling Officer on such representation and accordingly it is evidently clear that the said representation is a manufactured and concocted one and no reliance should be placed on the same.
- (v) That the respondent No. 7 namely Sri Nil Ratan Dutta worked as D.E. Officiating has been revised

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and there has been also a deduction due to his violating of irregular option.

(vi) That Head Quarter's letter dated 30.06.2004 CTDS collect letter, the date of promotion 16.01.2002, General Rule is FR 22 G-10 (14). The applicant has given option even on 30.04.2004 which is much before the promulgation of promotion order dated 30.06.2004 and as such on that date no option should have been given since the order of promotion was not in existence or at all and it is understood that the applicant has been trying to justify one wrong and supplementing another wrong for the same.

(vii) That no junior are getting higher scale than the applicant. The applicant's pay was Rs. 12,175/- basic in I.D.A. w.e.f. N.R. Dutta's basic I.D.A. was Rs. 11,875/- w.e.f. 16.01.2002, the applicant's scale become Rs. 11,875-300-17,275/- and N.R. Dutta's scale become Rs. 7,500-250-12,000/-. Moreover, after current revision of N.R. Dutta's scale, he has been drawing lesser scale than the subsequent period as on 01.01.2013, applicant's scale is Rs. 38,120/- whereas N.R. Dutta's scale was Rs. 36,980/-.

6. In reply to the counter affidavit filed by the respondents, the applicant submitted his rejoinder on 08.04.2014. He has responded among others as follows:-

(i) The applicant as per his option exercised with all others in erstwhile Telecom Department opted for absorption in the BSNL w.e.f. 01.10.2000 much prior to introduction of the IDA Scale in BSNL vide order dated 18.03.2004 issued under authority of respondents.

(ii) That the order dated 18.03.2004 as regards IDA Scale ex-facie suffers from the infirmity in that it did not provide for exercise of option from its employees to come over to the newly introduced pay scale and if so from which date.

(iii) That it is a mistake of fact as well as law to conceive that an employee absorbed in BSNL w.e.f. 01.10.2000 should be deemed to have opted for revised IDA scale from the said date

when such scale of pay was non est at the material time.

- (iv) That the applicant who found it ~~beneficial to opt~~ for the IDA scale immediately upon his regular promotion as a Group B officer on 16.01.2002 and not from 01.10.2000 had to liaise with the staff office and it was on 30.06.2004 upon being apprised of the order by the respondent No. 6 upon personal approach he submitted the letter to the said authority who was infact his counterpart as SDE in the Staff Office.
- (v) That the option as sought to be exercised by letter dated 30.06.2004 by all implications was treated as valid and the pay of the applicant was fixed at Rs. 13,075/- in IDA Scale corresponding to his pay of Rs. 8,500.00 as fixed in CDA Scale on 16.01.2002 upon regular promotion as SDE, a Group B Executive on the same day.
- (vi) That the Sr. Audit Officer, P&T Audit, vide its report, received by respondent No. 6 on 18.02.2011, sought to observe that the pay of the applicant had been wrongly fixed on 16.01.2002 leading to purported excess payment.

7. We have gone through the submissions made by both parties as well as records and pleadings. It is seen from the records that the main contention between the two parties is whether the applicant had opted for fixation of his pay from the date of his regular promotion to Sub-Divisional Engineer w.e.f. 16.01.2002. This point has been contested by the respondents that the option paper submitted by the applicant was dated 30.04.2004. This is not acceptable to them as the same has never been submitted to any authority for acceptance. This is particularly more so on the ground that the option for pay fixation from the date of regular promotion could not be submitted by the applicant before the order for

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exercising option was issued on 30.06.2004. In fact, the applicant has submitted a letter which is non-existence in the records of the respondent authorities. As such, the claim of the applicant of exercising option is of manufactured document and accordingly they have right to fix his pay correctly and make recovery of excess payment.

8. We have considered the above issues carefully. It is indeed illogical that one could have give option for fixation of pay before the order for exercising option has been issued by the department. This logic is ironically supported by the contention of the applicant in para 6(ii) (supra) where he had highlighted that the circular/order dated 18.03.2004 did not contain any provision for exercising any pay fixation option. In the absence of that option, he could not have exercised any option. At best he could have protested. Moreover, his claimed option paper does not refer to any circular or order on the subject. Accordingly, it is felt that the contention of the applicant that he had submitted his option on 30.04.2014 is not acceptable form and not valid document. Accordingly, it is liable to be rejected.

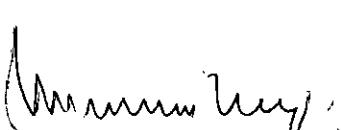
9. As regards to the recovery of excess payment as claimed by the respondents, it is matter of the principle of natural justice. It was the department who actually had fixed the pay on the officiating pay scale of the applicant. The role of the applicant in this

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fixation of pay in the wrong pay scale has not been specifically highlighted by the respondents. It is therefore, considered not fair to recover the excess payment particularly for a period which is of a very long duration. If it is found wrongly fixed, the department should have rectified it immediately. Therefore, recovering of excess payment running into more than Rs. 3 lakhs is considered not fair and would cause undue hardship to the applicant. Keeping in view of the above, the O.A. is partly allowed.

10. The claim of the applicant in regards to the pay fixation is dismissed but do not allow recovery of the excess payment we hereby direct the respondents to maintain the revised fixation as done by them but not recover the excess payment due to wrong fixation; and if any recovery has been done, the same shall be refunded to the applicant immediately on receipt of this order.

12. There is no order to the cost.


 (NEKKHOMANG NEIHSIAL)
 MEMBER (A)


 (MANJULA DAS)
 MEMBER (J)