

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.485/2017

Dated this Wednesday the 6th March, 2019

CORAM: RAVINDER KAUR, MEMBER (J)

Shri Ashok Sakharam Kesale
Sub Divisional Enginner (Retd)
O/o. GMT BSNL Latur - 413 512
Residing - B-4, Swami Samarth Mandir,
Agroya Nagar Old MIDC Road,
Latur - 413 512. ... **Applicant**

(By Advocate Shri G.B. Kamdi)

VERSUS

1. Bharat Sanchar Nigam Ltd
Through Chairman & Managing Director,
Bharat Sanchar Bhawan H C Mathur
Lane Janpath, New Delhi - 110 001.
2. The Chief General Manager,
BSNL, Telecom Maharashtra Circle,
Admn Bldg. Juhu Road Santacruz (W)
Mumbai - 400 054.
3. The General Manager,
BSNL Latur Telecom District,
Latur - 413 512. ... **Respondents**

(By Advocate Shri V.S. Masurkar)

O R D E R

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(a) To allow the Original Application.

(b) This Hon'ble Tribunal may be pleased to call for record of the case and after going through its propriety and legality be pleased to direct tot eh respondent to pay the penal interest at the rate of 10% for the period from the date of his retirement to the date of actual payments Gratuity and leave encashment.

(c) To pass any other just and appropriate orders this Hon'ble Tribunal may deem fit , proper and necessary if the facts and circumstances of the case.

(d) The cost of this Original Application please be provided."

2. The applicant was working as Sub Divisional Engineer in the office of General Manager, BSNL Latur Telecom, District Latur, Maharashtra Circle. He retired from the service on superannuation w.e.f. 31.08.2015. Vide letter dated 03.08.2015 (Annexure A-2), he stood struck off from the strength of SSA. It is stated that as per Rule 58 and Rule 59 of CCS(Pension) Rules, 1972, the pension papers were required to be prepared two years before the date of retirement, however the respondents did not undertake this work and that there was no query about service or pay fixation of the applicant during his service tenure. After the retirement of the applicant, the respondents raised query about fixation of the pay which was against the Rules. It is further stated that as per Rule 65 of CCS (Pension) Rules, the pension and Gratuity was to be authorised one month

advance of the date of retirement of the Government servant but the letter of authorisation of pension and Gratuity was issued by the respondents in the month of March, 2016 i.e. after six months of the retirement of the applicant. That in terms of the provision of Rule 64 of CCS(Pension) Rules 1972, the respondents did not even start the provisional pension of the applicant and he was deprived of this benefit till the month of May, 2016. The applicant has placed on record the copies of Rules 58, 59, 64 and 65 of the CCS(Pension) Rules, 1972 as Annexure A-3 colly. The applicant claims that he was deprived from monthly pension, Gratuity as well as leave encashment. He made representations to the respondents for settlement of pensionary benefits vide letters dated 31.12.2015 and 21.01.2016 respectively (Annexure A-4).. The respondent No.4 vide letter dated 02.02.2016 (Annexure A-5) informed that his pension case was resent to Pension Cell, Mumbai with revised pension calculation. It is stated that the respondents had authorised and sanctioned the payment vide letter dated 23.03.2016 (Annexure A-6) after lapse of a

period of six months of his retirement which is against the Rule 65 of CCS(Pension) Rules. The amount of Gratuity and leave encashment was credited to his account in the month of March 2016 and June, 2016 respectively. As per the applicant there is delay of 6 months in payment of gratuity amount, 10 months in leave encashment and 8 months in grant of monthly pension without any reasons. In support of his claim he has placed on record the bank passbook Annexure A-7 showing the relevant entries. The applicant made representation vide letter dated 06.09.2016 (Annexure A-8) to the respondents to pay the interest on the delayed payment. However, since he did not receive any response to the said representation, he filed OA No.127/2017 (Annexure A-9) whereby this Tribunal had directed the respondents to pass reasoned and speaking order on the representation of the applicant within six weeks of the receipt of copy of the order. However, the respondents passed order dated 13.04.2017 (Annexure A-1) which is neither reasoned nor speaking order on his representation. It is stated that the applicant had taken the issue of pay fixation

and OTBP well in advance while he was still in service and made several representations to the respondents to settle the issue before his retirement. It is stated that the applicant did not give the option earlier since his pay fixation was not done and promotion order was issued. Therefore, he made request to settle the earlier pay fixation and then he will give the option after considering the revised pay and date of promotion but the respondents did not do so. The applicant raised the issue of Time Bound Promotion and fixation of pay vide representations dated 27.11.2007, 27.11.2009, 13.10.2011, 22.09.2012, 29.09.2014 and 17.03.2015 (Annexure A-10 colly). Relying upon Rule 68 of CCS(Pension) Rules, the applicant has sought direction to the respondents to pay penal interest @10% for the period from the date of his retirement to the date of actual payment of gratuity and leave encashment.

3. The respondents have filed detailed affidavit in reply and have claimed that there was no delay on their part in disbursing the amount of pension, gratuity and leave encashment to the applicant but the delay was on account of

inaction on his part as he had not approached the respondents in time for Time Bound Promotion.

4. I have heard the arguments addressed by Shri G.B. Kamdi, learned counsel for the applicant and Shri V.S. Masurkar, learned counsel for the respondents and perused the material available on record.

5. It is argued by learned counsel for the applicant that after completion of all the formalities, the pension case of the applicant was sent to CAO (CCA), Mumbai on 27.06.2015 but the same was returned back on 12.10.2015 vide letter dated 01.10.2015 on the grounds that the increment due on 01.10.2014 and Time Bound Promotion E-4 to E-5 was not drawn. It is vehemently argued by learned counsel for the respondents that the applicant had failed to submit the proper option for Time Bound Promotion in time and later on he requested for the same vide letter dated 17.03.2015 for which which guidelines were called from Circular office vide letter dated 27.03.2015 and the same were received on 30.11.2015. Thereafter, the pension case was resubmitted to CAO (CCA),

Mumbai on 11.02.2016. However, learned counsel for the applicant has brought to our notice that the applicant had not applied for Time Bound Promotion on 17.03.2015 for the first time but he had been raising the issue of his promotion and pay fixation since the year 2007. He has drawn attention of the Tribunal to his various representations made to the respondents in this regard, which are Annexure A-10. These representations are dated 27.11.2007, 27.11.2009, 13.10.2011, 22.09.2012, 29.04.2014, 17.03.2015 etc. All these representations were made by the applicant much before the date of his superannuation but no action was taken by the respondents with regard to his Time Bound Promotion or the increment due. Now they cannot be allowed to shift burden upon the applicant that he was responsible for delay in any manner.

6. Similarly, it was the responsibility of the respondents to grant the applicant, increment due with effect from 01.10.2014 within reasonable time and to do pay fixation accordingly. The contention of the respondents that since the applicant was posted at Osmanabad and was transferred to Latur and that his

service book was received from Osmanabad SSA on 20.01.2015, hence there was delay in grant of increment w.e.f. 01.10.2014, is of no consequence as there was enough time available to the respondents from 20.01.2015 to 31.08.2015 (when applicant superannuated), to grant him increment due and process the documents for his pension. The grant of Time Bound Promotion, increment and pay fixation is an administrative process which must be completed within the requisite time unless the employee is not co-operating. In the present case there is nothing on record to suggest that the applicant in any manner contributed to the delay in processing his retiral benefits.

7. The conduct of respondents in not granting provisional pension to the applicant in the meantime is also not appreciated as it is against the principles of natural justice and violative of Rules 59 and 64 of CCS Pension Rules. Rule 59 of CCS(Pension) Rules deals with the three stages for the completion of pension papers. 1st stage relates to verification of service from the service book of the Government servant which exercise is required to be

completed first in time. In the 2nd stage, it is the responsibility of the Head of Office that while scrutinising the certificates of verification of service, he shall also identify if there are any other omissions, imperfections or deficiencies which have a direct bearing on the determination of emoluments and the service qualifying for pension. This rule further says that for the purpose of calculation of average emoluments the Head of Office shall verify from the service book, the correctness of the emoluments drawn or to be drawn during the last 10 months of service. As soon as the said 2nd stage is completed, in any case not later than 10 months prior to the date of retirement of the Government servant, the Head of office shall take the following actions under Rule 59 (c) CCS (Pension) Rules:-

"(i) He shall furnish to the retiring Government servant a certificate regarding the length of qualifying service proposed to be admitted for the purpose of pension and gratuity as also the emoluments and the average emoluments proposed to be reckoned with for retirement gratuity and pension. In case the certified service and emoluments as indicated by the Head of Office are not acceptable to him, he shall furnish to the Head of Office the reasons for non-acceptance, inter alia, supported by the relevant documents in support of his claim.

(ii) In case of any difficulty in determining the length of qualifying service on account of non-availability of service records, the retiring Government servant shall be asked to

file a written statement of service as provided in Clause (ii) of sub-rule(1) and sub-rule(2) of Rule 64.

(iii) Forward to the retiring Government servant Form 4 and Form 5 advising him to submit the same duly completed in all respects so as to reach the Head of Office not later than eight months prior to his date of retirement.

(2) Action under Clauses (a), (b) and (c) of sub-rule (1) shall be completed eight months prior to the date of retirement of the Government servant."

Thus it is crystal clear from Rule 59 that all the actions mentioned therein shall be completed eight months prior to the date of retirement of Government servant and the provisions are mandatory in nature. However, in the present case, the directions contained in this Rule have not been complied with.

8. Further, it is observed that the applicant was not provided with provisional pension till the documents for his pension were processed. Rule 64 of CCS(Pension) Rule deals with the provisional pension and is reproduced as under:-

"64:Provisional pension

(1) *The various stages of action laid down in Rule 59 shall be strictly followed by the Head of Office. There may be an isolated case where, in spite of following the procedure laid down in Rule 59, it may not be possible for the Head of Office to forward the pension papers referred to in Rule 61 to the Accounts Officer within the period prescribed in sub-rule (4) of that rule or where the pension papers have been forwarded to the Accounts Officer within*

the prescribed period but the Accounts Officer may have returned the pension papers to the Head of Office for eliciting further information before issue of pension payment order and order for the payment of gratuity. If the Head of Office in such a case is of the opinion that the Government servant is likely to retire before his pension and gratuity or both can be finally assessed and settled in accordance with the provisions of these rules, he shall without delay, take steps to determine the qualifying years of service and the emoluments qualifying for pension after the most careful summary investigations that may be made. For this purpose, he shall -

- (i) rely upon such information as may be available in the official records, and
- (ii) ask the retiring Government servant to file a written statement on plain paper stating the total length of qualifying service including details of emoluments drawn during the last ten months of service but excluding the breaks and other non-qualifying period of service.

(2)

(3) The Head of Office shall thereafter determine the qualifying years of service and the emoluments qualifying for pension in accordance with the information available in the official records and the information obtained from the retiring Government servant under sub-rule (1). He shall, then determine the amount of provisional pension and the amount of provisional (retirement gratuity).

(4) After the amount of pension and gratuity have been determined under sub-rule(3), the Head of Office shall take further action as follows:-

- (i) 100 per cent of pension as determined under sub-rule (3) as provisional pension for a period not exceeding six months to be reckoned from the date of retirement of the Government servant; and
- (ii) 100 per cent of the gratuity as provisional gratuity as determined under sub-rule(3) withholding (ten per cent of gratuity)

(b)

(i)

(ii).....

(5)

(6)(a) (i)(ii).....

(b).....

(c)(i)(ii).....

(7)(8)..... ”.

9. The Rule 64 referred above has not been followed by the respondents and no provisional pension was provided to the applicant on his retirement for a period of eight months.

10. In these circumstances, the applicant has claimed that the respondents shall pay penal interest @10% for the period from the date of his retirement to the date of actual payment of gratuity and leave encashment.

11. Learned counsel for the respondents has argued that the interest can only be paid on the delayed payment of gratuity in terms of Rule 58 and not on the leave encashment amount.

12. In the facts and circumstances of the case, I am of the view that the entire exercise of the respondents has been marred by incompetence and by grave impropriety which in certain circumstances can also be interpreted as malafides. In the circumstances of the case, it is appropriate to direct the respondents to pay interest as per rules of Gratuity at not less than 8% per annum for the delayed payment of Gratuity and @ 9% per annum on the delayed payment of leave encashment. The respondents are directed to pay the interest in above terms

within a period of eight weeks to the applicant.

13. With these directions, the Original Application is allowed. No order as to costs.

(Ravinder Kaùr)
Member (J)

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