

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.313/2017

Date of Decision: 01.02.2019.

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Dr.V.N. Shenoy
Retired Chief General Manager (WTP)
BSNL, Admn Bldg., Juhudanda
Santacruz (W), Mumbai 400 054.
R/at Flat No.9, 2nd Floor, Chandar Niwas
Plot No.186, Road 28/A Sion (E),
Mumbai 400 022.

(Advocate Shri G.B. Kamdi)

... ***Applicant***

VERSUS

1. Bharat Sanchar Nigam Ltd
Through Chairman & Managing Director,
Bharat Sanchar Bhawan HC Mathur
Lane Janpath, New Delhi 110 001.
2. The Chief General Manager,
BSNL Maharashtra Circle, Admn Bldg.,
Juhudanda Santacruz (W), Mumbai 54.
3. The Deputy General Manager,
BSNL Telecom District Raigad
Sector 13 Plot No.11, New Panvel 410 206.
4. The Chief General Manager (WTP)
BSNL Admn. Bldg., Juhudanda,
Santacruz (W), Mumbai 400 054.
5. The Union of India, Through
The Secretary of the Govt. of India,
Ministry of Communication,
(Department of Telecommunications)
Sanchar Bhawan, New Delhi 110 001.

(Advocate Shri V.S. Masurkar)

... ***Respondents***

ORDER (Oral)

Per : R. Vijaykumar, Member (A)

Heard the learned counsels for the parties. MA 69/2017 filed by the respondents for taking sur-rejoinder is **allowed**

2. This Application has been filed on 19.04.2017 seeking the following reliefs:

"8.a This Hon'ble Tribunal be pleased to call for record and after examining the legality, validity and propriety of the same be pleased to declare the action of the respondent regarding not replying the representation and recovery of Rs.1,54,585/- is illegal, arbitrary and bad in law.

8.b This Hon'ble Tribunal may direct the respondent to refund the amount of Rs.1,54,585/- which is recovered illegally and violating the terms of para 9 of the circular dated 26.08.2008, i.e. the condition for the absorption in MTNL/BSNL.

8.c Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

8.d The cost of this original application be provided."

3. The Applicant was absorbed in the BSNL w.e.f. 01.10.2000 in orders passed in No.403-02/2011-STG-III dated 08.02.2012. The issue in question in this OA is on the recovery stated to have been made from the applicant in respect of difference of pay between pay as computed based on CDA scale

of pay and IDA scale of pay after 01.01.2006 as fixed by the 6th Pay Commission for a period of one year till 31.12.2006. The total amount of recovery for this period is stated to be Rs.1,54,585/-. As stated by the respondents, this amount was adjusted against the excess amount due for the period from 01.10.2000 to 31.12.2005 when the IDA scales were higher than the CDA scales and by virtue of the Presidential order, the applicant becomes entitled to IDA scale from 01.10.2000. It is also ascertained during the hearing that from 01.01.2007, the IDA scale again become higher than the CDA scales.

4. During arguments, the learned counsel for the applicant takes recourse to the orders in OA No.1963/2005 of the Principal Bench decided on 31.10.2005 in ***Indian Telecom Service .. Vs. Union of India & Ors.*** and specifically refers to para 37 of these order which records as below;

"...37. As regards the grievance regarding recovery of ad hoc amount of Rs.2750 per month paid to Group A officers w.e.f. 01.10.2000 or from actual dates of joining in BSNL, whichever is later, the learned ASG assured that in fact no such

recovery would basically become due as alleged by applicants. However, as the corresponding IDA pay scales available on absorption would be higher than the existing CDA pay scales, the ad hoc amounts paid to applicants shall be adjusted and not recovered as already clarified vide communication dated 21.05.2004, contents whereof have already been noticed hereinabove.

Reference has been made in this para to a letter of BSNL dated 17.06.2004 as amended in letter dated 21.05.2004 which reads as below:

"..(i) The ad-hoc amount will be paid to all Group 'A' officers who have not been given offer for absorption in BSNL along with Group 'B' officers for the period for which they worked in BSNL after 01.10.2000, irrespective of their absorption or otherwise as and when option for absorption in BSNL are called for from Group 'A' officers.

(ii) The said ad-hoc amount so paid to the officers who opt for Government service or do not exercise any option shall be restricted upto the last date for submission of option form for absorption in BSNL as and when called for from Group 'A' officers."

5. Learned counsels were heard and the records have been carefully perused.

6. The Respondents have produced a statement of difference in terms of arrears and adjustments made over this period upto date of orders of absorption. These are extracted below:-

"...(e) The details of arrears paid to the officer on fixation of pay in IDA scale is as under:

Pay arrears from 01.10.2000 to 31.12.2006
(after adjusting excess payment of Rs.1,54,585/-
for the period 01.01.2006 to 31.12.2006). Rs.3,07,233/-

Pay arrears from 01.01.2007 to 31.05.2011 Rs.4,04,076/-

Pay arrears from 01.06.2011 to 31.03.2012 Rs. 66,186/-

Total Rs. 7,77,495/-

7. From the above, it is apparent that the applicant has enjoyed grant of excess of IDA scale of Pay over the CDA scale of pay from 01.01.2000 to 31.12.2005 and from 01.01.2007 to 31.03.2012 and he is only resisting the adjustments made on account of the fact that the CDA scales had exceeded the IDA scales for the period of 12 calendar months from 01.01.2006 to 31.12.2006. It is not justifiable for the applicant to seek the best of both worlds and he would necessarily have to make a choice whether he would like to have the IDA scale from 01.10.2000 to the date of orders of absorption or he would like to have CDA scales for that period. Since the IDA scales are beneficial in the over all context as set out in the table given by the respondents in their reply, if the applicant wishes to adopt the CDA scales for these

period, he would be put to considerable loss and amounts already paid to him will need to be recovered. We are convinced that this would not suit the applicant and if he disagrees, he is at liberty to propose as much to the respondents and act accordingly. The applicant's case lacks all reasonable basis and the OA is accordingly dismissed as not maintainable without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

dm.

Jw
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