

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

OA No.136 of 2017

Date of Reserve:26.04.2019

Date of Order:10.05.2019

**CORAM:**

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER(A)

DraupadiHarichandan, aged about 41 years, W/o. Late Bishnu KumarHarichandan, At-Jayamangala, P.O. Sarua, Dist. Khurda.

...Applicant

By the Advocate (s)-M/s.S.Rath, S. Patra-1, S. Mohanty

-VERSUS-

1. Union of India represented through the Secretary< Ministry of Communications, Department of Telecommunications, New Delhi-110001.
2. The Controller of Communication Accounts (CCA), Odisha Telecom Circle, 4<sup>th</sup> Floor, CP,G Building, Bhubaneswar-751001. to Government of India, Ministry of Water Resources, River Development & Ganga Rejuvention, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001.
3. Bharat Sanchar Nigam Ltd., Represented through its Chairman-cum-Managing Director, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi-110001.
4. Chief General Manager (CGM), BSNL, Telcom Projects, Eastern Zone, Kolkata 2/5-A, Judges Court Road, Kolkata-700027.
5. Chief General Manager (CGM), BSNL, Odisha Telcom Circle, Bhubaneswar Unit-II, Bhubaneswar-751009.
6. Assistant General Manager (HR &A), O/o Chief General Manager, BSNL, Odisha Telcom Circle, Bhubaneswar Unit-II, Bhubaneswar-751009.
7. Senior General Manager (Presently known as Principal General Manager), Telcom District, BSNL, Unit-9, Bhubaneswar-751022.
8. Dy. General Manager, Microwave Project, Plot No.82, Sahid Nagar, , Bhubaneswar-751007, At Present known as;

The Additional General Manager, BSNL Microwave Project, Bhubaneswar, 3<sup>rd</sup> Floor, CPMG Building, Bhubaneswar-751001.

....Respondents

By the Advocate(s)-Mr. D.K. Mallick (R-1 to 2 ), Mr. S.B. Jena (R-3 to 6)

**O R D E R**

**PER MR.GOKUL CHANDRA PATI, MEMBER(A) :-**

The OA has been filed under section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

“(i) Orders dated 04.04.2016, 08.05.2009 & 29.08.2007 under Annexures-A/14, A/11 & A/10 be quashed after declaring them illegal.

(ii) The respondents may be directed to pay family pension and death gratuity w.e.f. 03.04.2006 as per the CCS (Pension) Rules, 1972 and other death benefits along with arrears with 18% interest per annum.

(iii) The respondents may be directed to pay compensation and damages to the Applicant's for her suffering due to failure of the Respondents in giving family pension and other death benefits.

(iv) Pass any other order(s)/direction(s) as deemed fit and proper.”

2. The applicant claims that her deceased husband was first engaged as a casual labourer since 15.6.1993 under the respondents, who was regularized w.e.f. 1.10.2000 vide the order dated 14.2.2001(Annexure-A/3) in pursuance to the circular dated 29.2.2000 (Annexure-A/2)and vide the Presidential Order dated 4.2.2002 (Annexure-A/5), the deceased husband of the applicant was designated as a regular Mazdoor as stated in the OA vide order dated 28.2.2001 (Annexure-A/5). The applicant's case is that the deceased husband of the applicant was working under the Central Government from 15.6.1993 till 1.10.2000 forenoon and from 1.10.2000, he was absorbed in the BSNL. Then on 3.4.2006, the husband of the applicant died while in service of the BSNL.

3. After death of the applicant's husband, the applicant applied for the family pension, which was refused by the respondents vide letter dated 29.08.2017 (Annexure-A/10) on the ground that the ex-official had started his service in BSNL from 1.10.2000 and he was not be eligible for family pension. Against the order, the applicant preferred an appeal before the CGM, Bhubaneswar (respondent no.4), who referred the case to the respondent no.2, who vide order dated 8.5.2009 (Annexure-A/11) rejected the claim of family pension of the applicant. The applicant again on 5.10.2015 submitted a representation to the respondent no.7 with copy to the respondent no.5, which was referred to the respondent no.4, who rejected the claim vide order dated 4.4.2016 (Annexure-A/14), which is impugned in this OA along with other orders of rejection of the claim for family pension.

4. It is mentioned in the OA that the presidential order should be regarded as the conclusive proof that the applicant's husband had fulfilled all conditions for family pension and the said order should be treated as final. The said Presidential order was in force when the applicant's husband expired and subsequent letters dated 20.10.2006 and 4.5.2007 were issued after death of the applicant's husband, for which these letters are not sustainable under law. It is further mentioned in para 5.9 of the OA that Smt. G. Kamala Devi wife of Late G. Danda ex-Regular Mazdoor was allowed family pension although he was similarly situated as the applicant and both were regularized by the same order of regularization w.e.f. 1.10.2000. It is further submitted that the executive instructions of the respondents will have prospective effect.

5. Counter has been filed by the respondents stating that the status of the deceased husband of the applicant as on 30.9.2000 was a casual labourer, not a casual labourer with temporary status and hence, the Presidential Order regularizing him w.e.f. 1.10.2000 could not have been issued. It is stated that the Presidential order dated 4.2.2002 (Annexure-A/5) was void. Hence, the applicant is not entitled for family pension.

6. It is also stated in the counter that after formation of BSNL w.e.f. 01.10.2000, the staffs to be transferred to BSNL were asked to exercise option either for permanent absorption in BSNL or to continue with Government as per the provisions of Fundamental Rules. But the employees do not include casual labourers. The casual workers transferred to PSU are not considered as Government Servants, as they are not entitled for permanent absorption in BSNL. They were transferred as casual workers to BSNL. It was classified vide letter dated 20.10.2006 (Annexure-R/4) that only those casual workers with temporary status on or before 30.09.2000 would be absorbed in BSNL for their 50% of temporary status period can be included for pensionary benefits. Some orders were issued erroneously for absorption in BSNL which are void. The Judgment of Hon'ble Karnataka High Court dated 17.09.2012 in the case of Managing Director and Chairman of BSNL and Others Vs. Smt. Renuka P. Garag has been enclosed at Annexure-R/5 in support of this stand of the respondents.

7. The applicant has filed Rejoinder stating that her husband was a full time casual labourer since 15.06.1993 and was entitled for a temporary status as regularization of service as per the existing circular dated 29.02.2000 (Annexure-A/2).

But due to inaction of the respondents such orders were not issued prior to 01.10.2000. Her husband should be presumed to have temporary status w.e.f. 01.08.1998. It is further stated that the Presidential order cannot be treated as rule and vivid.

8. The matter was heard on 26.04.2019. Learned Counsels reiterated same stand as in their respective pleadings. Applicant's counsel also filed a copy of the order dated 11.09.2012 of the Ernakulam Bench of CAT in O.A. No.289/2012 in the case of Rajilamoni O.A. Vs. UOI & Others, in which similar benefits were allowed by the Tribunal.

9. The pleadings as well as documents on record and the submissions of Learned Counsels for both the parties are duly considered by me. Factually, the applicant's husband (referred hereinafter as 'ex-employee') was working as a full time casual labourer prior to 01.10.2000 (the date when the BSNL was set up and Department of Telecommunication staffs were transferred to BSNL) and he was eligible for being granted temporary status as stated by the applicant in the O.A. as well as in the Rejoinder. The only point of dispute between the parties in this case as to whether the ex-employee was eligible for regularization as per the Presidential Order dated 04.02.2002 (Annexure-A/5). The respondents have averred that the ex-employee was not entitled for regularization or permanent absorption in BSNL w.e.f. 01.10.2000 as per rules since he was not conferred temporary status prior to 1.10.2000 and hence, the Presidential order dated 04.02.2002 (Annexure-A/5) has been wrongly issued, for which it is deemed as null and void. It is stated in the counter that the Ministry has issued order dated 20.10.2006 (Annexure-R/4) to the counter filed by respondent No.1 & 2) in supersession of earlier orders to clarify that those casual workers having temporary status on or before 30.09.2000 and regularized on 01.10.2000 will be absorbed in BSNL w.e.f.; 01.10.2000.

10. Respondents Nos. 1 & 2 in their counter have enclosed the judgment dated 17.09.2012 of Hon'ble Karnataka High Court in the case of St. Renuka P.Garag (supra) to resist the claim of the applicant in the O.A. It is seen that the concerned employee, who is the respondent in the writ petition in the case of Smt. Renuka P. Garag (supra), was a part time casual labourer. Paragraph 3 & 4 of the judgment dated 17.09.2012 states as under:-

“3. The husband of the applicant-Late Pramod C. Garag was engaged by Hubli SSA as Part Time Mazdoor for the purpose of sweeping on temporary basis, initially for a limited period of 1 hour per day in the year 1991-1995. Later, the working hours was enhanced to 2 hours per day. The case of the respondent is that he continued as Part Time Mazdoor/sweeper up to 19.04.2001. Thereafter, he was treated as Full time Temporary Casual Employee on 20.04.2001 and his service was regularized in BSNL on the same day in terms of the instructions issued by the Department of Telecommunications dated 29.09.2000. However, the applicant contends Rule 37-A incorporated in the CCS (Pension ) Rules, 1972 and as per the government of India, Department of Pension and Pensioners’ Welfare notification dated 30.09.2000, the benefits of pension and family pension are available even to temporary/quasi permanent transferred Government Servant after they have been confirmed in BSNL. The benefit of this rule is equally applicable to an employee appointed by the BSNL after 01.10.2000 if made permanent before death. the applicant’s husband was appointed in group-D post by BSNL with effect from 20.04.2001 i.e, after formation of BSNL ( the date of formation of BSNL is 01.10.2000) and was made permanent with effect from 20.04.2003. As the applicant’s husband was working as Part Time Mazdoor (less than 4 hours) and was converted to full time mazdoor with effect from 20.04.2003 and regularised on the day vide order dated 12.07.2001, he became employee of BSNL from 20.04.2001 only. After BSNL came into existence, presidential order was issued inadvertently absorbing the husband of the applicant. however, in view of the fact that subsequently clarification issued by the BSNL Corporate Office clarifying the fact in case of casual mazdoors, it is clarified that all those mazdoors who have been regularised after to 01.10.2000 were entitled for absorption. A presidential order absorbing the service of the applicant’s husband has been withdrawn subsequently. The applicant’s husband was a BSNL recruited employee and was not eligible for any pension and pensionary benefits. All casual labourers/temporary casual employees/workers are regularised as per the BSNL order dated 3<sup>rd</sup> January, 2001. The applicant’s husband was regularised on 20<sup>th</sup> April 2001 after formation of BSNL and as per the DOT letter dated 13.09.2000 he was treated as BSNL employee and hence he is not liable for pensionary benefits. By DOT letter dated 13.09.2000, it is clarified by DOT that all those casual mazdoors who have been regularised after 1.10.2000 are BSNL employees and there is no need to issue presidential order in their case. The presidential order was issued in case of applicant’s husband inadvertently.

4. The Tribunal on consideration of the rival contentions, looking into the Scheme as well as 37-A of the Pensions Rules, referring the letter dated 28.09.2000 was of the view that even if the applicant's case do

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not fall under Item 3 i.e., he was not converted to Full Time Casual Labour, he should have been converted to Full Time Casual labour as per the order dated 25.08.2000 before formation of BSNL with effect from 1.10.2000. This means that the submission of the respondent that he was not a Full Time Casual Labour as on 1.10.2000 is not correct. In short, Late P.C. Garg was a regular Mazdoor in the DOT and was then transferred to BSNL on 1.10.2000. Thus, though the order of regularisation of service was issued with effect from 20.04.2001 the said date was modified to 1.10.2000 by the Presidential order by the Department of Telecommunication. The BSNL have no authority to withdraw the presidential order issued by the Department of Telecom. Thus, the claim of the respondent that Late P.C. Garg continued as Part Time Mazdoor in BSNL and was only regularised after formation of BSNL is not correct. Even in the morning of 1.10.2000 the employees woke up as DOT employees and then were deputed to BSNL. Thus, on the date of formation of the BSNL, Late P.C. Garg was regular employee of DOT and he has the right to be governed by the provisions of Rule 37-A of the Pension Rules and therefore, they held that the applicant is eligible for family pension of Rule 54 (2)(a)(a) of the CCS Pension Rules. It is against this order, the present writ petition is filed."

11. It is clear from above that the respondent-employee before before Hon'ble Karnataka High Court was a part time casual employee working for 2 hours per day and he was treated as full time casual employee and his services were regularized w.e.f. 20.04.2001 by BSNL after 1.10.2000. He was not eligible for regularization as per the circular dated 29.09.2000 at Annexure-A/2. However, the presidential order was issued in favour of the respondent-employee inadvertently, as observed in Para 3 of the judgment. But in case of the present O.A., the ex-employee (deceased husband of the applicant) was a full time casual labourer since 1993 and he was eligible for temporary status and regularization as per the circular dated 29.09.2000 (Annexure-A/2), although he was not formally granted temporary status prior to 1.10.2000. Thus, the cited case of Smt. Renuka P. Garag (supra) is factually distinguishable from the present.

12. In the present O.A., the respondents have relied on the letter dated 20.10.2006 (Annexure-R/4 to the counter) to state that the presidential order dated 04.02.2002 (A/5) has been wrongly issued & hence, it is null and void. The letter dated 20.10.2006 (R/4) stated as under :-

"In supersession to previous orders for absorption in respect of Temporary Status Mazdoors (TSMs), it has been decided that those Temporary Status Mazdoors who have been regularized in pursuance of this office letter No.269-94/98-STN-II dated 29.09.2000 were to be

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absorbed in BSNL w.e.f. 1.10.2000 as per their status existing on 30.09.2000. Accordingly Presidential Orders may be issued in respect of those Temporary Status Mazdoors who were having TSM status prior to 30.09.2000 so as to allow them benefit of counting of 50% of the TSM period for pensionary benefits. Related service matters of these TSMs absorbed in BSNL w.e.f. 01.10.2000 may be resolved accordingly. It is further clarified that in respect of those Casual Labourer who were not having TSM status as on 30.09.2000 and who have been regularized in BSNL after 1.10.2000, their status will be of a PSU appointee and therefore Presidential Order need be issued in such cases.

Prior to issue of Presidential Orders, the cases of eligible TSMs may be examined and forwarded through BSNL HQ for approval for issue of Presidential Orders. In individual Presidential Orders will be issued at circle level under the signature of the Director (Estt.) designated for the issue of P.O."

It is seen from above that the Presidential Orders of eligible temporary status casual workers are to be issued after careful examination by BSNL. It does not specify any thing regarding the casual workers entitled for temporary status as per the circular dated 29.09.2000 (A/2), but not granted such temporary status. There is nothing on record to prove that the Presidential Order dated 04.02.2002(A/5) has been issued inadvertently or wrongly in respect of the applicant, who, based on the materials on record, was entitled for regularization as per the circular dated 29.09.2000 and hence, his services were rightly regularized w.e.f. 1.10.2000 by the Presidential order dated 04.02.2002 (Annexure-A/5).

13. The applicant's counsel has cited the order dated 11.12.2012 Ernakulam Bench of the Tribunal in O.A. No.289/2012. In O.A. No.289/2012, the employee who also a casual worker under Government, was absorbed in BSNL as per the Presidential order. It was held by the Tribunal in O.A. No.289/12 as under:-

"3. We have heard the learned counsel for the parties and perused the records.

4. The fact that the applicant was a casual employee in the Department of Telecommunication prior to the formation of BSNL is beyond dispute. That a policy decision was taken by the Government of India. Department of Telecommunication to absorb the casual employees in the order of preference as mentioned in Annexure A1. Applicant has

been given the benefit of Annexure A1 decision by Annexure A2 order passed by the BSNL themselves. In Annexure A2 reference is made to Annexure A6. Therefore, it is only a follow up action taken by the BSNL

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in appointing the applicant which appointment is only an absorption followed by the decision conveyed in Annexure A1. Annexure A3 the presidential order itself makes it abundantly clear that the applicant was itself given the benefit of a temporary status employee and her regularization stood confirmed by Annexure A3. It is not the case of the respondents that prior to the appointment of the applicant they issued any advertisement to show that she is a direct recruit employee. On the other hand as already mentioned earlier it is only the casual employment of the applicant with the Department of Telecommunication and the benefit of the decision conveyed in Annexure A1 that is implemented by Annexure A2 stood confirmed by the presidential order Annexure A3. In such circumstances we have no doubt in our mind to hold that the applicant is an absorbed employee of the BSNL with effect from 1.10.2000. in such circumstances she is to be governed by the pension rule as is stood applicable to the Department of Telecommunication as on the date of absorption and not the new scheme. The cancellation order Annexure A5 has no legal effect since Annexure A3 presidential order cannot be nullified by the Assistant General manager of BSNL. If at all there is any mistake in Annexure A3 order the competent authority to rectify the defect is the President itself and not an officer subordinate to it.”

From above, the facts in the present OA are similar to the facts in the OA No.289/2012.

14. The respondents have raised the issue of delay in filing the O.A. 11 years after death of her husband. Regarding the claim for family pension which is a recurring cause of action, the issue of delay will not apply except for the claim for arrears, as per the law laid down by Hon'ble Apex Court in the case of M.R. Gupta vs. Union of India and Ors. reported in AIR 1996 SC 669. In this case the cause of action arises every month the applicant is denied payment of family pension. Hence, the respondents' objection to the OA on the ground of delay is not tenable.

15. In this case as the ex-employee has been notified as permanent/temporary status employee in the Presidential Order dated 4.2.2002 and no documentary evidence has been furnished by the respondents to show that the Presidential order was wrongly or inadvertently issued. The claim of the applicant that her deceased husband was entitled for regularization as per the circular dated 29.09.2000 (A/2) and hence, his services have been accordingly regularized vide the Presidential order dated

04.02.2002 (A/5), has not been contradicted by the respondents by the respondents adducing appropriate documentary evidence. Hence, the contention of the

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respondents that the Presidential Order dated 04.02.2002 (A/5) in respect of the applicant is null and void is without any basis. There is also nothing on record to show that the presidential order in respect of the applicant has been cancelled subsequently.

16. In the factual circumstances as discussed above, I am of the considered opinion that the claim of the applicant that her deceased husband was an absorbed BSNL employee for which, she was entitled for family pension, has merit. Accordingly, the O.A. is allowed and the respondents are directed to sanction and disburse the family pension in favour of the applicant as per the rules, subject to the condition that the actual payment of family pension will be made w.e.f. 01.01.2016 in view of the delay on the part of the applicant to approach this Tribunal as discussed in Para 14 of this order. This order will be complied by the respondents within three months from the date of receipt of a copy of this order. The O.A. is allowed accordingly with no order as to cost.

(GOKUL CHANDRA PATI)  
MEMBER(Admn.)

K.B.