

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos.260/368 & 260/369 of 2018

Date of Reserve: 15.05.2019
Date of Order: 08.08.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

IN O.A.No.260/368/2018

Khatu Bhoi, S/o. Late Bhaga Bhoi, aged about 72 years, retired as Sr. Section Supervisor, office of General Manager Telecom District, Sambalpur, Bharat Sanchar Nigam Ltd., permanent resident of Danipali Chinmaya Vihar, PO-Budharaja, Dist-Sambalpur-768 004.

...Applicant

By the Advocate(s)-M/s.R.N.Parija
S.P.Nayak
-VERSUS-

Union of India represented through:

1. Secretary to the Government of India, Ministry of Communication & I.T., Department of Telecommunications, 20, Ashoka Road, Sanchar Bhawan, New Delhi-110 001.
2. Chairman & Managing Director, Corporate Office, Statesman House, Barakhamba Road, New Delhi-1.
3. The Chief General Manager, Bharat Sanchar Nigam Ltd., Odisha Circle, Bhubaneswar, Dist-Khurda.
4. The Controller of Communication Accounts, Department of Telecommunication, Odisha Circle, 4th Floor, CPMG Building, Bhubaneswar-751 001.

...Respondents

By the Advocate(s)-Mr.S.Behera
Mr.C.M.Singh
Mr.R.N.Pal

IN O.A.No.260/369/2018

Surjya Narayan Dash, S/o. Late Rahas Bihari Dash, aged about 73 years, retired as Sr.Telegraph Master, office of General Manager Telecom District, Sambalpur, Bharat Sanchar Nigam Ltd., permanent resident of OMKAAR Bhawan, Modipara, Sambalpur, Dist-Sambalpur-768 002.

...Applicant

By the Advocate(s)-M/s.R.N.Parija
S.P.Nayak

-VERSUS-

1. Secretary to the Government of India, Ministry of Communication & I.T., Department of Telecommunications, 20, Ashoka Road, Sanchar Bhawan, New Delhi-110 001.

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...Respondents

By the Advocate(s)-Mr.C.M.Singh
Mr.R.N.Pal

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Grievance of the applicant being identical, both the above mentioned Original Applications were heard analogous and are being disposed of through this common order. Applicants in the both the OAs are retired employees under the BSNL and they have challenged the legality and validity of order No.OR/CCA/pension Adalat/2017-18 dated 18.09.2017 passed by Respondent No.4, which reads as follows:

"A kind reference is invited to your grievances cited above, as regards counting of extra increment for pensionable benefits. It is to intimate that as per GOI, DoT letter No.40-12/2004-Pen(T) dated 01.11.2011, the proposal regarding grant of one extra increment to BCR Grade-III officials of BSNL who had reached maximum of the scale of were drawing stagnation increment one year prior to their retirement if they were unable to be promoted to BCR Grade-IV and reckoning the said extra increment towards calculation of pension and other pensionary benefits is not admissible".

2. Applicants have also challenged the communication dated 04.11.2011(A/8) made by the Director (Estt.), Government of India, Department of Telecommunications, Ministry of Communication & IT addressed to the Chairman-cum-Managing Director, BSNL, New Delhi, which reads as follows:

"Subject: Grant of extra increment to BCR Gr.III officials of BSNL who had reached maximum of the scale or were drawing stagnation increment, one year prior to their retirement –regarding:

I am directed to refer your No.27-8/03-TE-II(Pt.) dated 6.9.2011 on the above subject, and to state that the proposal regarding grant of one extra increment to BCR Grade-III officials of BSNL who had reached maximum of the scale or were drawing stagnation increment one year prior to their retirement if they were unable to be promoted to BCR Grade-IV and reckoning the said extra increment towards calculation of pension and other pensionary benefits have been examined in the Department of telecommunications and has not been agreed to".

3. It is the case of the applicants that similarly situated persons in the state of Kerala, who had reached the maximum scale of Rs.11,4000/- in BCR Grade-III and were unable to get promotion to Grade-IV have been granted extra increment prior to their retirement for pensionary benefits whereas in Odisha, the Respondents have adopted step motherly attitude, which per se is illegal and discriminatory. Applicants have pointed out that CAT, Ernakulam Bench in O.A.No. 91/2011 had decided the issue and directed grant of extra increment towards calculation of pension and other pensionary benefits to the eligible retired employees. The said order of the CAT, Ernakulam Bench was upheld by the Hon'ble Kerala High Court. The respondents vide their letter dated 27.05.2016 implemented the orders of CAT, Ernakulam Bench in O.A.No.91/2011 as upheld by the Hon'ble Kerala High Court by issuing order dated 24.05.2016 (A/9). In view of this, the applicants have urged that since the point to be decided in the present OAs is no longer res integra, similar orders should be passed.

4. On the other hand, respondent Nos. 1 & 4 and Nos. 2 &3 by filing separate counter have opposed the prayer of the applicants. In the counter filed by Respondent Nos. 1 & 4, it has been submitted that prior to retirement, both the applicant were working in the pre-revised scale of Rs.7800-11175/-. They were stagnating at Rs.11175/- with effect from 01.04.2005 and as such, extra increment was allowed to them on 01.05.2005 in view of stagnation.

5. In the counter filed by Respondent Nos. 2 & 3, it has been submitted that the applicants are BSNL absorbed employees and while working as Sr.S.S. retired on superannuation on 30.04.2006 (applicant in O.A.No.260/368/2018) and on 30.04.2005 (applicant in O.A.No.269/369/2018). At the time of retirement, their pay scale was Rs.7800-225-11,175/-, the last pay being Rs.11,400/- The last pay included the Basic Pay of Rs.11,175 and the extra increment of Rs.225/- which was given to them being covered under the BSNL Circular dated 18.11.2003 under Annexure-A/1. After retirement, pension calculation sheet was prepared by the GMTD, BSNL, Sambalpur and was sent to the office of the Controller of Communication Accounts, Odisha Telecom Circle, Bhubaneswar, i.e., Respondent No.4 for information and taking further necessary action vide Memo No.PENSION-0135/SMB/10 dated 08.06.2006. Thereafter, pension papers were processed and the Pension Payment Orders were issued by the office of Respondent No.4 taking the last pay as Rs.11,175/- after deducting the extra increment from Rs.11,400/-. They have pointed out that the claim of the applicants to reckon the extra increment towards calculation of pension and other pensionary benefits was not admissible in view of the Department of Telecom, Govt. Of India Letter No.30-12/2004-Pen.(T) dated 04.11.2011, wherein it is clarified that one extra increment to BCR Grade-III officials of BSNL who had reached maximum of the scale or were drawing stagnation increment one year prior to their retirement, if they were unable to be promoted to BCR Grade-IV cannot be taken into account for calculation of pension and pensionary benefits.

6. Learned counsel for the respondents in support of their contentions have relied on the decision of this Tribunal in O.A.No.260/00605/2011 disposed of on 26.09.2017.

7. Heard the learned counsels for the respective parties and perused the records as well as the decisions relied upon by both the sides. In the decision cited by the respondents in O.A.No.260/00605/2011 decided by this Tribunal on 26.09.2017, it appears that in pursuance of letter dated 16.03.1994 (Annexure-A/1), the applicant therein had exercised his option to switch over to TOA pattern from LDC-UDC pattern and accordingly, he was placed in the TOA cadre with effect from 5.3.1991. Thereafter, the applicant was absorbed in BSNL with effect from 1.10.2000. He was promoted to the next higher grade of TOA(G) Gr.III w.e.f. 07.04.2003 under the BCR Scheme of the restructured cadre. His grievance was that by virtue of order dated 18.11.2003 issued by the BSNL Corporate Office, he was entitled to one extra increment in BCR Grade-III from a date one year prior to his retirement at par with the employees who were in BCR Gr.III and were unable to get BCR Grade-IV promotion. This Tribunal vide Paragraph-5 held as under:

"5. Applicant could have been granted a benefit of one increment had been working in Pre-Restructured Cadre. Since there is no OTBP/BCR Scheme in the Restructured Cadre, naturally the officials who had opted for Restructure cadre are not eligible for one extra increment. Since the applicant himself had opted for a Restructured Cadre, he cannot be permitted to reap the benefit of a scheme applicable to official working in Pre-Restructured Cadre. In the said letter dated 28.05.2009, it has been clearly averred that the present applicant had opted for the Restructured Cadre and as such not eligible for being granted the benefit of one extra increment in BCR Grade-III one year prior to his retirement".

8. It is not the case of the respondents in their counter that the applicants in both the OAs at the time of their retirement were working in Pre-Restructured Cadre. Therefore, the facts in O.A.No.260/00605/2011 being distinguishable from the facts of the present OAs, the decision of this Tribunal as relied upon by the Respondents is not applicable.

9. As regards the decision of CAT, Ernakulam Bench in O.A.No.91/2011, as upheld by the Hon'ble Kerala High Court, the respondents have pointed out that the order dated 15.03.2012 of CAT, Ernakulam Bench was in respect of All India Pensioners Association & Ors. Vs. UOI & Ors. in which the present applicants were not the members. They have also submitted that the orders of the CAT, Ernakulam Bench was implemented vide order dated 24.05.2016 consequent upon dismissal of OP(CAT) No.4133/2012 by the Hon'ble Kerala High Court vide judgment dated 03.07.2015. Respondents have also pointed out that the applicants in O.A.No.260/368/2018 and O.A.No.260/369/2018 having retired from service on attaining the age of superannuation with effect from 30.04.2006 and 30.04.2005, respectively, the reliefs sought for should not be granted since both the OAs are hopelessly barred by limitation.

10. In this connection, it is to be noted that the respondents have candidly admitted that after dismissal of OP(CAT) No.4133/2012 by the Hon'ble Kerala High Court vide judgment dated 03.07.2015, they implemented the decision of CAT, Ernakulam Bench vide 24.05.2016. If that be so, granting the same relief to the similarly situated persons like the applicants herein cannot be said to be barred by limitation, as a cause of action for the applicants, by any stretch of imagination arises only after the implementation of the orders of the CAT, Ernakulam Bench by the Respondents.

11. We have considered the present issue in the light of the decision of the Hon'ble Kerala High Court. It is an admitted position that the applicants in the present O.As retired from service under the respondent-BSNL while working in BCR Grade.III. Applicants before the CAT, Ernakulam Bench are similarly situated persons like the applicants in the present O.As. The grievance of the applicants before the CAT, Ernakulam Bench they being the BCR Grade III

were not granted one extra increment based on a settlement arrived at in the meeting of National Council and as approved by the BNSNL on certain conditions under Annexure-A/1 dated 18.11.2003 to the present OAs. For the sake of clarity, Paragraphs-5 & 6 of the judgment of the Hon'ble Kerala High Court are reproduced hereunder:

"5. An argument advanced on behalf of the establishment based on Annexure R2(5) is that the extra increment granted to BCR grade-III employees one year prior to their retirement beyond maximum of pay scale is inadmissible (emphasis supplied). This argument is far fetched. Exts.A1 to A4 do not admit such an exception or rider. The benefit is granted to those employees who are in BCR Grade-III and are unable to get grade IV promotion. It is a benefit granted to those employees based on settlement. The establishment does not have a case that by receiving the extra increment those employees ceased to be BCR grade III or went to grad IV. Whether those employees draw maximum of pay sale applicable to BCR grade III or below that is immaterial and irrelevant consideration. Whether they are in BCR grade III and satisfy the conditions specified in Annexure A1 along are relevant and material. Since they satisfy them, they are entitled to that increment and that should be counted for fixing their pension and other retirement benefits. Annexure R1(5) reads something which does not exist in Annexures A1 to A4. Therefore, the argument so advanced is rejected".

6. The learned CAT has considered the matter in its right perspective. We find no illegality or infirmity with the order passed by CAT, this Original Petition is devoid of any merits and hence, it is dismissed".

12. Admittedly, the order passed by the CAT, Ernakulam Bench as confirmed by the Hon'ble Kerala High Court has been implemented by the Respondents. The contention of the learned counsel for the respondents that the order of CAT, Ernakulam Bench as confirmed by the Hon'ble Kerala High Court should not be relied upon for the purpose of grant relief to the applicants herein on the ground that the said judgment is not in rem. This Tribunal, on the other hand is of the firm view that the said judgment is binding on the respondents and also the applicants in this case. Although this

Tribunal accepts the submission of the applicant that fixation of pay is a recurring cause of action and in this regard, the applicant has placed reliance on the decision of the Hon'ble Supreme Court in M. R.Gupta vs. Union of India & Ors. (1995) 5 Supreme Court Cases 628 to strengthen his case, but, following the ratio decided by the Hon'ble Supreme Court in Shiv Dass vs. Union of India & Ors. [2007)9) SCC 274], the relief sought by the applicants is restricted to three years preceding to the filing of these O.As. In view of this, we quash the communication dated 18.09.2017 (A/9) in both the OAs. Respondents are therefore, directed to grant extra increment in favour of the applicants prior to one year of their respective date (s) of retirement, which shall be calculated notionally and the arrears financial dues shall be granted to them three years preceding to the filing of both the OAs.

13. In the result, both the OAs are allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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