

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/391/2018

Reserved on: 14.06.2019

Pronounced on: 26.06.2019

Between:

N.R. Deshpande, S/o. R.J. Deshpande,
Aged about 76 years,
Occ: Retired Deputy General (A/T), Gr. A,
BSNL, Hyderabad, under T & D Circle,
Jabalpur, R/o. H. No. 3-4-368, Lingampally,
Kacheguda, Hyderabad – 500 027.

... Applicant

And

1. Union of India, Rep. by its Secretary.
Department of Telecommunications,
20, Ashoka Road, New Delhi.
2. The Bharat Sanchar Nigam Limited,
Rep. by its Chairman and Managing Director.
BSNL Corporate Office, Barakumba Road,
Statesman House, New Delhi -1.
3. The Chief General Manager, BSNL,
T & D Circle, Vikas Bhavan,
Residency Road, Jabalpur – 482 001.
4. The Deputy Controller of Communication Accounts (Pension),
Madhya Pradesh Telecom Circle, 1st Floor,
Door Sanchar Bhavan, Hoshangabad Road,
Bhopal – 462 015.

... Respondents

Counsel for the Applicant ... Dr. A. Raghu Kumar

Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC
Mrs. A.P. Lakshmi, SC for BSNL

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed challenging the rejection of the applicant's request for restoration of pension for the service rendered in Dept. of Telecom (DOT).

3. Applicant retired from service from the respondent's organisation (BSNL) as Deputy General Manager on 31.7.2001. On the formation of BSNL in 2000, all the employees were transferred to the Company on as-is-where-is basis. Employees working in Govt Departments, which were converted into Public Sector Undertakings (for short "PSU"), were granted prorata pension and pensionary benefits in accordance with Dept. of Pension and Pensioners' Welfare (DOP&PW) OM dated 5.7.1989. Later, another Memo was released by DOP&PW on 30.9.2000, which permitted pensionary benefits to be granted based on the combined service rendered by an employee in Govt. Department and PSU or as per rules prevailing in the PSU as on date of retirement of the employee. Under the said circumstances, applicant approached Hon'ble Bangalore Bench of this Tribunal in OA No.170/00105/2015 which was disposed of with a direction to dispose of the representation of the applicant. The representation of the applicant was rejected by an order dt. 17.06.2016 and aggrieved by the same, the applicant approached the Hon'ble Bangalore Bench of this Tribunal in OA 783/2016 wherein it was directed to examine the issue which the respondents did and rejected the

request vide order dt. 15.12.2017. Aggrieved, the present OA has been filed before this Tribunal.

4. The contentions of the applicant are that he has been absorbed in BSNL w.e.f 1.10.2000 as per respondents letter dated 7.11.2005. As per amended sub-rule 8 of Rule 37-A of CCS (Pension) Rules, 1972 (for short "Pension Rules"), he is eligible for refixation of pension. Rule 8 was introduced without any time limit and it applies to the case of the applicant. Legislative intention being clear and the statutory provision being in favour of the applicant, it is unfair on part of the respondents to deny the benefit sought.

5. Respondents oppose the contentions of the applicant by stating that the applicant retired on 31.7.2001 from BSNL and his pension was fixed based on CDA scales as per rule 37-A of Pension Rules. Applicant on being absorbed in BSNL w.e.f. 01.10.2000, vide order dated 7.11.2005, his pension was refixed based on IDA scales. Following Sub-Rule 9 of Rule 37-A of CCS (Pension) Rules, 1972 the applicant pension was fixed as per IDA scales. Seeking revision of pension based on CDA scales would mean revocation of his absorption into BSNL some 5 years back. Such switch over will invite applications from all over the country for similar relief from thousands of pensioners. 6th Central Pay Commission recommendations have made the CDA scales beneficial and hence the applicant is asking for the same. However, CCS (Pension) Rules, 2008 apply to those who retire from 1.1.2006 and not to those who retired earlier to this date.

6. Heard both the counsel and perused the material papers placed on record. Certain interesting facets pertaining to the pension in regard to employees of Govt. departments who joined PSUs and got absorbed have been thrown up in this case. Analysing each one of them by going into the basics would help in arriving at a fair and just solution to the vexatious issue on hand.

7. I) Can an option exercised be treated as final?

It is not in dispute that the applicant was granted pension based on CDA scales when he retired on 31.7.2001. Later, when he was absorbed in BSNL vide order dated 7.11.2005, w.e.f 1.10.2000, pension was revised based on IDA scales, which was accepted by the pensioner since it was beneficial to him at that instant of time. In fact, applicant had a choice to remain with the CDA scales but he chose not to do so. Once an option is exercised, it is final. The option was not forced on the applicant by the respondents. Hence, in the said circumstances is it proper for the applicant to change his option after more than 5 years. We find an answer to the query in the observation of the Hon'ble Punjab and Haryana H.C in

Post Graduate Institute of Medical Education and Research, Chandigarh v. Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others in CWP No. 8910 of 2015, decided on May 7, 2015, which reads as under:

“20. The audit has deliberately or otherwise overlooked the fact that the employees were asked to exercise option to adopt the Punjab pay pattern or AIIMS pattern. They had opted for the Punjab pattern. Not only this, when the Institute at a later stage on

their retirement wanted the employees to switch over the Central Government pattern for better retiral benefits, it was the Central Government who objected to it on the ground that once an option was exercised, it could not be reviewed or revoked. The same principle which the authorities applied against the employees, is enforceable against the authorities too. “

Applicant made a choice to have his pension with IDA scales, though his pension was drawn under CDA scales initially and now he cannot turn around and ask the respondents to change his option which was not found to be proper by the Hon'ble Punjab and Haryana High Court in the case cited supra. Only difference is that the role of the respondents and the applicant got juxtaposed in the instant case.

II) The second question which follows the previous one is that if the decision is a conscious one, can it be rescinded?

Applicant made a conscious decision to go in for IDA scales. Conceding to his request, respondents have granted pension based on IDA scales. Applicant was aware that only as a BSNL employee he is eligible for IDA scales otherwise he would not. Hence after making a conscious decision to be a BSNL employee, applicant cannot claim benefits under CDA scales which are applicable to Govt. employees. We draw support from the observation of the Hon'ble Supreme Court observation in ***Punjab State Power Corpn. Ltd. v. Rajesh Kumar Jindal***, (2019) 3 SCC 547: (2019) 1 SCC (L&S) 503: 2019 SCC OnLine SC 26 at page 566, reproduced hereunder:

“32. On behalf of the appellant Board, the learned Senior Counsel has drawn our attention to the various promotional avenues available to the Internal Auditors and the sharp rise in the scale of pay in such promotional position. The Circle Assistants had been

asked to exercise their option to go in the channel of promotion of Head Clerks or in the channel of Internal Auditors. Those who have chosen the channel of Internal Auditors post on 3-10-1990 have consciously chosen to exercise the option of Internal Auditors being mindful of the fact that the pay scale of the Head Clerks is higher than that of Internal Auditors; yet they have chosen to exercise the option of Internal Auditors. Those who have exercised their option for the post of Internal Auditors post on 3-10-1990, in our considered view, cannot make a grievance about their revised scale of pay at Rs 1800-3200 which is not on a par with the Head Clerks.

34. The grievance of the respondents is that since the order dated 3-10-1990 has been given retrospective effect with effect from 1-1-1986, those of them who have exercised their option as Internal Auditors between 1-1-1986 to 3-10-1990 are deprived of the parity of pay scale. It was further submitted that had such a disparity of pay scale between the Head Clerks and the Internal Auditors was in force from the year 1986 onwards, the Circle Assistants/ARAs would not have exercised their option for promotion as Internal Auditors and they might have chosen to exercise their option for promotion as Head Clerks. This contention though appears to be attractive, by consideration of the same, it lacks merit for more than one reason. As rightly submitted by the learned Senior Counsel for the appellant Board, exercise of option for promotion as Internal Auditor was a "conscious option". Further, it was always open to the appellant Board to revise the scale of pay in terms of Regulation 3(g) of the Punjab State Electricity Board (Revised Pay) Regulations, 1988."

Thus, as is clear from the Hon'ble Apex Court observation, once a conscious option has been made to opt for IDA scales the applicant's request to revert to CDA scales and get his pension revised lacks merit. It is not ruled out that the IDA scales may turn out to be beneficial as years pass by.

III) Continuing on the concept of exercising option, is there a limit to exercise the option or is it is open ended to keep changing options to suit the convenience of the applicant?

It is the general norm that once an option is given it cannot be changed as expounded above. BSNL has not provided for any change of option nor did the applicant produce one, ordered by BSNL. The details reveal that the applicant originally was sanctioned pension with CDA scales applicable for Govt. employees on his retirement but he opted for IDA scales which govern PSU employees on being absorbed as BSNL employee, since the latter were attractive. Having opted for the same, it may not be proper and reasonable for the applicant after a lapse of more than 5 years, to revert to CDA as they were found to be lucrative due to the advent of 6th CPC. At this rate, every time, whenever a Pay Commission is announced, a pensioner can flip flop between the IDA and the CDA to suit his convenience, under the guise of amended sub rule 8 of Rule 37–A of CCS (Pension) Rules, 1972 which, *de facto* is not applicable to his case. By permitting such flip flops, there will be chaos in the administrative echelons. Thousands of pensioners similarly placed will make a beeline to get the pension re-fixed. If applicant were to continue with the pension as per CDA scales as originally fixed, he had a case. After consciously opting for IDA scales, desiring to go back to the greener pastures of CDA is natural, but the rules of the game have to be followed. The choice was his to be a BSNL employee and he has to sail with it come what may, by being within the contours of the rules framed by BSNL. Trying to get the better of the two worlds as and when it suits him is unfair. It is like sailing on two boats, which is not advisable. Sailing on one will take us to the shore or there will be uncalled for turbulence to face, as is experienced by the applicant in the instant case. A balance has to be struck between the interests of the respondents and

the applicant. In the instant case, the balance of convenience is in favour of the respondents for reasons expounded and for those to follow.

IV) Apart from choosing an option, the fundamental question which seeks an answer is as to whether the applicant continues to maintain an employer-employee relationship with Govt to seek CDA scales granted to Govt. Employees?

The applicant after being absorbed as a BSNL employee, ceased to be a Govt. employee. Hence, the applicant has no employer –employee relationship with Govt. There could be orders issued by Govt. but it is left to the PSUs which are independent juristic entities which have to take the call of applying the Govt. orders in respect of their organisations. PSUs are indeed independent entities and have full freedom to decide in the best interests of the organisation. The respondents in the instant case have not taken a decision as to whether the amended Sub-Rule 8 of Rule 37-A of CCS (Pension) Rules 1972 is to be adopted. The Tribunal relies on the observation of the Hon’ble Supreme Court, reproduced hereunder in *State of H.P. v. Rajesh Chander Sood*, (2016) 10 SCC 77 : 2016 SCC OnLine SC 1002 at page 164, in affirming the view expressed:

“95. The respondent employees comprise of all those employees of corporate bodies, who had opted for the 1999 Scheme, immediately on its having been introduced; all those, who were deemed to have opted for the 1999 Scheme by not having exercised any option; and all those who were appointed after the introduction of the 1999 Scheme. The first issue that arises is, whether any express right or obligation existed between the respondent employees and the State Government. One can understand such a claim arising out of an obligation between an employer and his employees, where there is a quid pro quo — a

trade-off based on a relationship (as between, an employer and employee). We have, however, concluded that there was no such relationship between the State Government, and the respondent employees. All the corporate bodies in which the respondent employees were/are engaged, are independent juristic entities. It is, therefore, apparent that the claim raised by the respondent employees, is not based on any right or obligation between the parties. “

Therefore, there being no relationship with Govt., the applicant's claim lies with the respondents management. It is they, who have to decide on the operability of amended sub rule 8 of Rule 37-A of Pension Rules to their organisation. To reiterate, since applicant is fully absorbed in BSNL, he is governed by the BSNL Rules and not CCS (Pension) Rules. Having become a BSNL employee, the umbilical cord with DOT is cut. The situation is simulus to the circumstances wherein once adoption takes place, the relationship with the natural parents ceases with no provision for reversion. Hence the question of revision of pension based on CCS (Pension) rules 1972 does not arise.

V) Relevance and application of DOPT Memo dated 30.9.2000 to the applicant?

Clause 7 of the memo dated 30.9.2000 issued by DOPT, on which the applicant has banked heavily, makes it explicit that employees who opt for permanent absorption in PSU shall, from the date of absorption, will be governed by the rules and regulations of the PSU. Clause 8 does make a mention that the employee can make an option for the type of pension he is looking for. Further, as per clause 9, the pension of the employee under sub-rule 8 shall be calculated on the basis of the last ten

months average pay. Clause 2 does provide a window of opportunity to the employees transferred en-masse to a PSU to revert to the Govt. or get absorbed. Applicant has been absorbed as BSNL employee and hence BSNL rules apply to him. He has exercised the option to receive pension based on IDA scales, which was acted upon. Pension has been fixed on last 10 months average pay, which is also envisioned under sub rule 9 of Rule 37-A, which holds the ground even till today. He did not revert to the Govt. though such an option was open to him. Therefore, on all counts revision of relief as sought by the applicant is as per the discretion of BSNL since applicant is no more a Govt. Servant to be governed by Govt. Rules.

VI) One more contention raised by the applicant is that MTNL which comes under the same Ministry has granted similar relief to some pensioners?

As was pointed out in the previous paras, BSNL and MTNL are independent juristic entities with different managements. Therefore, decision taken by MTNL need not necessarily be followed by BSNL. Each has its own policies and strategies to pursue in different areas of Organisational interest. Hence, some MTNL pensioners got the relief sought does not come to the rescue of the applicant's cause.

VII) Lastly, can the Tribunal interfere in matters of Policy?

Fixation of pay, pay scales, revision/re-fixation of pension involve major financial implications calling for policy decisions to be taken. Therefore, the issue raised by the applicant is a policy matter. Respondents have

taken a policy stand that since the applicant is a BSNL pensioner norms of BSNL would apply. Revision of pension will have fiscal repercussions demanding a considered policy decision to be taken. It is open to the respondents to take a view in the matter. It is not for the Tribunal to direct the respondents on matters of policy as observed by Hon'ble Supreme Court in *Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1*, as under:

“37. The Indian courts have scrupulously refrained from entering into the domain of policy determination or policy evaluation while exercising the power of judicial review. This Court has emphasised that it does not sit in appeal over a policy decision and does not substitute nor does it examine the wisdom of the policy choice. It interferes with policy decision only when it finds the policy to be palpably arbitrary, mala fide or discriminatory.”

The policy stand taken by the respondents in regard to rules to be applied and the decision not to permit applicant to revert to CDA scales for restoring pension are neither discriminatory, malafide or palpably arbitrary, warranting any intervention by this Tribunal.

VIII) To conclude, applicant on being absorbed as BSNL employee, got his original pension fixed on par with DOT employees consciously re-fixed as per BSNL norms since it was in his interests at that interval of time. Hence, BSNL rules prevailing at the time of his retirement will thus apply. The same were applied by the respondents. If the amended sub rule 8 of Rule 37-A of the Pension Rules is to be applied, the absorption of the applicant as a BSNL employee comes to a nought, which is not the case. Option once exercised cannot be changed, unless BSNL provides for such an option, which it did not. Besides, the

observations of the higher judicial forums referred to above do not support the cause of the applicant.

IX) Based on the aforesaid, the OA lacking in merits, merits only dismissal, which Tribunal orders, however, with no orders as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 26th day of June, 2019

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