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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

KOLKATA BENCH

O.A. No. 350/826 of 2017 with M.A. 350/680/2018

IN THE MATTER OF:

An application under Section 19 of the Central
Administrative Tribunal Act, 1985;

PARTICULARS OF THE APPLICANT : Ashis Kumar Das, Son of Late Santosh Kumar Das, residing at Purbasha [Subhasnagar], 46, R.N.Avenue, Sodepur, North 24-Parganas, Kolkata-700 110, P.S.: Khardah, West Bengal retired as chief Accounts officer /Calcutta Telephones, BSNL..

..... Applicant

VERSUS

PARTICULARS OF THE RESPONDENTS :

1. The Union of India
Service through the Secretary, Ministry of Communication, Department of Telecommunications Sanchar Bhawan, 20, Ashoka Road, New Delhi- 110 001
2. Bharat Sanchar Nigam Limited Service through its Chairman and Managing Director 4th Floor, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.
3. Calcutta Telephones
Service through its Chief General Manager, Telephone Bhawan, 34 B.B.D Bag(S), Kolkata-700 001.

4. The Communication Accounts officer,
Service through its Pr. Controller of
Communication Accounts , Calcutta
Telephones, 8 Hare Street , Kolkata- 700 001

..... Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O.A/350/826/2017
M.A./350/680/2018

Date of Order: 13.06.2019

**Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. N. Neihsial, Administrative Member**

**ASHIS KUMAR DAS
VS.**

**UNION OF INDIA & OTHERS
(BSNL)**

For the applicant : Mr. A.K. Ghosh, counsel
For the respondents : Ms. M. Bhattacharya, counsel

ORDER

Bidisha Banerjee, Member (J):

M.A.350/680/2018 has been preferred by respondent authorities seeking deletion of Respondent No.1 from the array of the respondents.

2. The applicant in this O.A. has sought for the following reliefs:-

"8.a) **DIRECTION** do issue upon the concerned respondent quashing and setting aside the impugned orders vide no 31-1/2013-Pen(B)/97 dated 02.12.2016 of BSNL CO, respondent 2, along with the enclosure (being Annexure "A-24") of disposing off the grievance of your applicant.

b) **DIRECTION** do issue upon the concerned respondent quashing and setting aside the impugned order of refixation of pay after retirement vide No. BSNL/EXE/MIS/HQ dated 30.07.2012 issued by Calcutta Telephones/BSNL being Annexure 'A-15' and any other consequential adverse orders derived from it.

c) **DIRECTION** do issue upon the concerned respondent quashing and setting aside the impugned pay fixation memo vide No. TA/GE/D-194 dated 30.04.2016 of Calcutta Telephones / BSNL with a claim to deposit Rs. 1, 19, 093/- as excess payment (being Annexure "A-21")

B

d) **DIRECTION** do issue quashing and setting aside the impugned PPO vide Sr. CCA/CTD/P-13512 dated 01.06.2011 issued by the CCA/CTD, DOT cell, (being Annexure A-14) and also the impugned revised PPO vide CCA/CTD/P-13512 dated 17.07.2014 based on impugned pay fixation memo of CTD/BSNL.

e) **DIRECTION** do issue upon the concerned respondent and more specially CCA/CTD, DOT Cell, the respondent no 4 herein, to restore the pension and all other consequential pensionary benefits strictly according to the clarification on fixation of pay by CTD/BSNL vide reply TA/GE/D194 dated 31.05.2011 (being Annexure A-13).

f) **DIRECTION** do issue upon the concerned respondents and more specially CITD/BSNL, the respondent no 3, to restore the fixation of pay dated 15.01.2010 which was sent to the CIC New Delhi (Annexure A-12') and to remain truthful to its own orderly reply vide TA/GE/D194 dated 31.05.2011 by restoring the basic pay to Rs. 44040/- as was issued in the last salary Slip for MAY '2011 (Annexure A-13) and accordingly to issue fresh last pay certificate (LPC) to facilitate the pension and pensionary benefits as mentioned in 'remark of office' column in the relevant page of the minutes (Sl. No.-12) of RTI information vide CCA/CTD/RTI(Pension)/Corr/2013-14 dated 13.02.2015 of LD.2nd Pension Adalat held on 21.11.2014 (being Annexure A-19) as if there had been no such impugned orders vide No. BSNL/EXE/MIS/HQ dated 30.07.2012 of the concerned respondents.

g) **INJUNCTION** do issue restraining the respondent authorities from acting in any manner or any further manner on the basis of the order vide no 31-1/2013-Pen(B)/97 dated 02.12.2016 of BSNL CO being Annexure "A-24" hereto and order TA/GE/D-194 dated 30.04.2016 being Annexure "A-21." Hereto and order vide No. BSNL/EXE/MIS/HQ dated 30.07.2012 being Annexure 'A-15'.

h) **DIRECTION** in the nature of certiorari do issue upon the respondent authorities directing them to produce and/or cause to be produced the entire records of the case and thereupon to pass necessary orders for rendering conscientiable justice by passing necessary orders;

i) Cost and costs incidental hereto;

j) And/or to pass such other or further order or orders as to Your Lordships may deem fit and proper."

3. The case of the applicant in brief goes thus:-

The applicant joined Calcutta Telephones under P&T Department in 1976 which later on was referred to as Department of Telecommunications(DOT in short). On 01.10.2000 the employees of DOT were enmasse transferred to newly formed BSNL and were finally absorbed. The applicant was permanently absorbed under the

Presidential order dated 04.03.2004(Annexure A/3) and retired from BSNL on superannuation, as Chief Accounts Officer on 31.05.2011. The applicant has contended that during the period of service rendered between setting up of BSNL i.e. 01.10.2000 until his final absorption in the BSNL i.e. 04.03.2004, he was subjected to CCS(CCA) Rules in terms of order dated 30.09.2000. He was promoted on regular basis to the higher post of Senior Accounts Officer w.e.f. 23.06.2001. His pay was regulated under FR vide pay fixation memo dated 29.04.2003 issued by Jharkhand Telecom Circle/BSNL where he was posted at the material time. After his absorption IDA scale of pay was announced vide order dated 18.03.2004. He opted to get his pay fixed to the higher post of Senior Accounts Officer in accordance with para 5 of the Presidential order dated 04.03.2004. His pay was fixed and regulated by Jharkhand Telecom Circle/BSNL vide order dated 12.05.2004 read with clarificatory order dated 24.09.2004 and 11.01.2005. He is aggrieved in regard to refixation of his pay after his retirement vide order dated 30.07.2012, non issuance of last pay certificate according to the last salary slip for May, 2011, arbitrary action of Calcutta Telephones in traversing illegally by refixing the pay, reducing the pension vide PPO dated 01.06.2011 ignoring the clarification given by CTD/BSNL on 31.05.2011(Annexure A/13) and revised PPO dated 17.07.2014 against revised LPC(Annexure A/16).

The applicant has averred that he lodged a complaint with the Pension Adalat and even served legal notices on the Chief General

Manager, CTD, BSNL on 17.08.2016 which failed to elicit any response, hence he has preferred this O.A.

4. Per contra the respondents have submitted as under:-

The applicant, Ex-CAO/CTD got promotion to the grade of Sr. A.O. w.e.f. 23.10.2001. At the time of promotion he exercised option to re-fix his pay from the date of DNI in the lower post i.e. 01.07.2001 as per FR 22(1)(a)(1) which is as follows:-

"In case of promotion to the HAG Scale of Rs. 67000-79000, if a government servant opts to have his pay fixed under FR22(1)(a)(1), on the date of the promotion, his pay will be fixed by adding an amount of Rs.2,000/- to his basic pay. Further re-fixation will be done on the date of the next increment of the government servant concerned; i.e. 1st of July. On that day, he will be granted two increments, one annual increment and the second on account of promotion. While computing these two increments, the basic pay prior to date of promotion shall be taken into account."

Then the officer was posted in O/o the GMTD, Ranchi, Jharkhand Telecom Circle in the year.

After formation of BSNL on 01.10.2000, Group "B" absorption order was issued in the year 2004 vide BSNL, CO, ND Order No 1-5/2004-PAT(B) dated 30.06.2004 referring the order dated 18.03.2004 stated that an option is available to the employees who come over the service condition of the Public Sector Unit (PSU) from the date of their regular promotion or retirement (which is earlier) in terms of Para 4 of DOP&PW,2 OM No. 4/18/87-P&PW(D) dated 05.07.1989 and they will retain their CDA pay scale till the exercise of his option. On being absorbed in BSNL w.e.f. 01.10.2000 the applicant opted to regulate pay as per para 5 of Presidential Order No. CCA/Bihar/Absorption/Accounts/Group-B/2004 dated 04.03.2004.

In the instant case the officer exercised option to retain his CDA pay scale upto the date of promotion i.e. upto 22.06.2001 and his pay has been converted from CDA to IDA Pay (from pay scale 8000-275-13500(CDA) to pay scale 13000-350-18250 (IDA) w.e.f. 23.06.2001 i.e. from the date of promotion to the grade of Sr. A.O. and accordingly the DNI of the officer had fallen due on completion of one year service in the promoted scale of pay as per FR 26(i) which stands in order.

At the time of Retirement on superannuation of the applicant, Ex-CAO/CTD, CCA Office, Deptt. of Telecommunication, Kolkata did not agree with the modalities of pay regulation what has been followed by BSNL in case of the applicant. Ex-CAO in para 22 of Audit Enforcement No. CCA/CTD/P-13512 dated 26.05.2011 directed BSNL/CTD for proper verification of the pay anomaly of the retired officer with observation that the re-fixation of pay on his DNI i.e. 01.07.2001 in Sr. A.O. Cadre was fully contradictory as the ex-officer held the Sr. A.O. post w.e.f. 23.06.2001 and his DNI in Sr. A.O. post could never be on 01.07.2001(para 3 of the letter no. CCA/CTD/P-13512 dated 15.06.2012).

In pursuance of the orders contained in BSNL, CO, ND memo No. 400-61/2004-Pers-I dated 18.01.2007, Memo No.400-29/2007-Pers-I dated 30.05.2007 and subsequent clarification order No. 400-175/2007-Pers-I dated 19.02.2010, No. 400-11/2011-Pers-I(Pt.) and objection raised by CCA/Dept. of Telecom/Kolkata, the case has been re-examined and it is noticed that no re-fixation can be carried from

01.07.2001 once migration of pay has been done from the date of promotion and accordingly pay has been regularized. Subsequently the last day pay as Rs. 43100/- has been accepted by the Department of Telecom Cell and accordingly the pension has been revised in pension Memo No. CCA/CTD/P13512 dated 17.07.2014 and by this process it is found that an amount of Rs. 105253/- has been paid in excess for OD of pay and allowances during the period from June, 2001 to May 2011 and Rs. 13840/- paid in excess for leave Encashment at the time of retirement.

Now, the total recoverable amount comes down to Rs. 74235/- From 119093 (105253 + 13840) due to benefit of date of effect of upgradation extended to the retired officer as per recent order."

5. At hearing, Id. counsel for the applicant would invite our attention to the salary slip for the month of May, 2011 which confirms his basic pay as Rs.44040/- and the fixation of original pension at Rs.21,125/- on 01.06.2011 vide Annexure A/14 which in relation to the last pay drawn i.e. Rs.44040/- ought to be fixed at Rs.22020 instead of Rs.21,125/-. The reduction in pay retrospectively that resulted in reduction of his pension is without notice.

6. The respondents in their reply have stated that the last pay drawn by the applicant was Rs.43100/- and have communicated that the total recoverable amount has come down to Rs.74,235/- from Rs.119093/- due to benefit of upgradation extended to retired officers of BSNL.

7. According to the applicant the pay of Rs.44040/- has been rightly fixed by adding 3% increment w.e.f. 07.04.2010 which was not required to be reduced due to any alleged wrong fixation, which he could never place before the authorities.

8. Ld. counsel for the applicant would also rely upon the decision rendered in **State of Punjab and Others vs. Rafiq Masih(White Washer) and Others** reported in (2015)2 Supreme Court Cases(L&S) 33 and the decision of C.A.T., Madras Bench in O.A.No.700/2009, to contend that verification of correctness of emoluments for the period beyond 24 months preceding the date of retirement and refixation of pay and pension is not within the purview of Rule 59(1)(b)(iii) of CCS(Pension) Rules.

9. We heard the ld. counsel for the parties and perused the materials on record.

10. We have considered the implications of the decisions cited in **State of Punjab and Others vs. Rafiq Masih(White Washer) and Others** wherein the Hon'ble Apex Court has succinctly held as under:-

"12. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employees, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would for outweigh the equitable balance of the employer's right to recover."

In O.A.No.700 of 2009, C.A.T., Madras Bench held as under:-

"7. The applicants have also raised the ground that as per Rule 59 (2)(b)(III) of CCS(Pension) Rules, 1972 the third respondent has no authority to refix the pay sue motu. As per this provision, the emoluments for the last 10 months of service have been correctly shown in the service book at the employee concerned. The Head of the Department can verify the records only for the period of 24 months preceding the date of retirement of the employee concerned and not for any period prior to that date. The applicants have cited the findings of this Tribunal in O.A. No. 203/2009 in support of this contention. This Tribunal in this O.A. has held that verification of correctness of emoluments for the period beyond 24 months preceding the date of retirement and refixing pay and pension is not within the purview of Rule 59(1)(b)(III) of CCS (Pension) Rules. In this case, the pay of the applicants was fixed in accordance with the Office Order No.1-5/2004-PAT(B) dated 30.6.2004 much before the 24 months period mentioned in the above Rule. Therefore as per these provision also the third respondent could not have refixed the pay and reduced the pension and other retiral benefits."

11. From the materials on record we failed to decipher any justification why the last pay drawn would be reduced from Rs.44040/-.

Therefore, in our considered opinion, fixation of pension at Rs.21,125/- instead of Rs.22020/- (Half of basic pay of Rs.44040/-) was bad.

12. We, therefore, dispose of this O.A. with a direction upon the respondent authorities to issue appropriate reasoned order on the representation dated 24.01.2017 as contained in Annexure A/25 to justify the refixation by applying the ratio laid down in the case of Rafiq

Masih(White Washer) and Others (supra) that recovery from retired employees or employees who are due to retire within one year of the order of recovery would be impermissible in law as well as the decision of the Madras Bench in O.A.No.700 of 2009 that "*verification of correctness of emoluments for the period beyond 24 months preceding the date of retirement and refixing pay and pension is not within the purview of Rule 59(1)(b)(III) of CCS (Pension) Rules*" above and refund the recovered amount in accordance with law. No costs.

(N. Neihstal)
Member (A)

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(Bidisha Banerjee)
Member (J)