

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

Original Application No. 45/2013 & 252/2013

Date of Order : 19.06.2019

O.A.No. 45/2013 :

Between :

D.Pandari, S/o Late D.Kistaiah,
Aged about 60 years,
Occ : Retired Sub Divisional Engineer, BSNL,
O/o Assistant General Manager (Transmission Installation),
Telephone Bhavan, Hyderabad,
R/o H.No.18-464, Mallikarjuna Nagar,
Malkajagiri, Hyderabad – 500 047. ... Applicant.

And

1. The Union of India, Rep. by its Secretary,
Department of Telecommunications,
20 Ashoka Road, New Delhi – 110 001.
2. The Chief Controller of Communication Accounts
Department of Telecommunications, 3rd Floor,
Triveni Complex, Hyderabad – 500001.
3. Bharat Sanchar Nigam Limited, rep. by its
Chairman cum Managing Director,
Harischandra Mathur Lane, Janpath,
New Delhi – 110001.
4. The Chief General manager, Telecom,
A.P.Circle, BSNL, Door Sanchar Bhavan,
Nampally Station Road, Abids, Hyderabad-1.

5. The Principal General Manager,
Hyderabad Telecom District,
BSNL Bhavan, Adarshnagar, Hyderabad.

6. The Secretary,
Department of Public Enterprises,
Ministry of Heavy Industries and Public Enterprises,
Government of India, CGO Complex,
Lodhi Road, New Delhi.

7. The Secretary,
Department of Personnel and Training,
Ministry of Personnel, Public Grievances & Pensions,
New Delhi. ... Respondents

O.A.No.252/2013 :

B.V.Sankara Rao, S/o B.P.K.Subbaiah,
Aged about 60 years, HRMS No.197503421,
Occ : Retired Deputy General Manager, BSNL,
Hyderabad Telecom District, Hyderabad,
R/o Flat No.416, B-Block, Paragon Venkatadri
Apartments, Barkatpura, Hyderabad – 500 027. ... Applicant

And

1. The Union of India, Rep. by its Secretary,
Department of Telecommunications,
20 Ashoka Road, New Delhi – 110 001.

2. The Chief Controller of Communication Accounts
Department of Telecommunications, 3rd Floor,
Triveni Complex, Hyderabad – 500001.

3. Bharat Sanchar Nigam Limited, rep. by its
Chairman cum Managing Director,
Harischandra Mathur Lane, Janpath,
New Delhi – 110001.

4. The Chief General manager, Telecom,
A.P.Circle, BSNL, Door Sanchar Bhavan,
Nampally Station Road, Abids, Hyderabad-1.

5. The Principal General Manager,
Hyderabad Telecom District,
BSNL Bhavan, Adarshnagar, Hyderabad.

6. The Secretary,
Department of Public Enterprises,
Ministry of Heavy Industries and Public Enterprises,
Government of India, CGO Complex,
Lodhi Road, New Delhi.

7. The Secretary,
Department of Personnel and Training,
Ministry of Personnel, Public Grievances & Pensions,
New Delhi.

... Respondents

Counsel for the Applicants	...	Dr. A. Raghu Kumar
Counsel for the Respondents	...	Mrs. K. Rajitha, Sr. CGSC
		Mrs.Ch.Lakshmi Kumari, SC for BSNL (OA.45/2013)
		Mrs. T. Bala Jayasree, Adv for RR 3, 4 & 5 (OA.252/2013)

CORAM:

Hon'ble Mr.Justice L.Narasimha Reddy	...	Chairman
Hon'ble Mr. B.V.Sudhakar	...	Member (Administrative)

ORAL ORDER
{ As per Hon'ble Mr. Justice L. Narasimha Reddy, Chairman }

The applicants were initially the employees of the Department of Telecommunications. On formation of BSNL, they exercised option to become its employees and accordingly, they were absorbed w.e.f. 01.10.2000. They were extended the promotions, and other benefits, due to them. Through an order dated 17.12.2008, the Ministry of Communication, Department of Telecom clarified that if an employee, absorbed in BSNL has earned promotion, while in Department of Telecommunication, he shall be entitled to exercise the option to defer his promotion till the date of his next increment, if the same is before 01.10.2000, and not otherwise.

2. The applicants contend that they were promoted while in the service of DOT and on exercising option by them, the promotions were effected from the date on which their next increment fell due, which is subsequent to 01.10.2000 and on account of impugned memo dated 17.12.2008, the benefits that were extended to them are taken away. They contend that on principle of estoppel or otherwise, the action cannot be sustained in law.

3. Union of India on one hand and BSNL on the other hand filed separate counter affidavits. They reiterated the principle contained in Fundamental Rules and

submit that no prejudice was caused to the applicants, in issuing the impugned order and that the consequential steps do not contravene any provision of law.

4. Heard Dr.A.Raghu Kumar, learned counsel for the applicants and Mrs.K.Rajitha, Sr.CGSC for Union of India and Mr. Mahanti representing Mrs.Ch.Lakshmi Kumari, learned standing counsel for BSNL.

5. The impugned O.M. dated 17.12.2008 reads as under :

“This department issued OM No.1-1(1)/06-PAT dated 12/9/2006 on the method of pay fixation in IDA pay scale in respect of absorbed officials of BSNL who were promoted prior to 1/10/2000 but opted for fixation in the promoted scale on the date of their next increment in the lower grade under FR 22(I)(a)(i), which falls after 1/10/2000. Thereafter a number of references were received from various Controllers of Communication Accounts expressing their observations and seeking further clarification on the issue.

The case was re-examined in consultation with the nodal department of PSUs i.e. Department of Public Enterprises. The Department of Public Enterprises has clarified that “The option of fixing the pay from the next increment date available under FR 22 will not be available for the employees of BSNL since their status changed on 1.10.2000. Hence their pay will have to be fixed on the date of their promotion as per then existing rules prior to 1/10/2000 and no re-fixation can be permitted on the next increment date which is falling after 1/10/2000”.

Therefore, in supersession of this department's OM No.1-1(1)/06-PAT dated 12/9/2006 , the undersigned is directed to say that the pay of the absorbed employees of BSNL who were promoted prior to 1/10/2000 but opted for fixation in the promoted scale on the date of their next increment in the lower grade under FR 22(I)(a)(i), which falls after 1/10/2000, may be re-fixed in IDA pay scale as per the above clarification of the Department of Public Enterprises.

This issues with the concurrence of the Telecom Finance, vide their Diary No.280/ADG(F)/08 dated 5/12/2008.”

6. It is not uncommon that if an employee is promoted to higher post, he can defer the promotion till he earns the next increment, so that the salary in the promotional post would be relatively higher. The same situation emerged in the case of the applicants also. They earned promotion while in the service of DOT, but their next increment fell subsequent to 01.10.2000, i.e. the date on which the absorption took place. Once the status of an employee has undergone a substantial change, the benefit of deferring the promotion to a date subsequent to 01.10.2000 is found untenable. The reason is that their employer is different from that date onwards. The memorandum extracted above has clarified only this aspect. Further FR 22 was not made available to the employees of the BSNL. Under these circumstances, no exception can be taken to the impugned order. Added to it, this Tribunal in OAs.115 to 128 of 2013 declined to interfere with the orders of similar nature.

7. Learned counsel for the applicants submits that the respondents may be directed to refund the amount already deducted from the applicants on the basis of the impugned order. Reliance is placed upon the Judgement of Hon'ble Supreme Court of India in ***State of Punjab Vs. Rafiq Masih in Civil Appeal No.11527/2014 dated 18.12.2014.***

8. Firstly, the recovery has already been effected in the instant case. The judgement of the Hon'ble Supreme Court did not direct refund of the amount which was found to have been paid in excess of the entitlements. Secondly, the judgement of the Hon'ble Supreme court delivered long after the impugned order was passed and the recovery was effected.

9. We do not find any merit in these OAs. Accordingly, both the OAs are dismissed. There shall be no order as to costs.

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

(JUSTICE L.NARASIMHA REDDY)
CHAIRMAN

sd