

**CENTRAL ADMINISTRATIVE TRIBUNAL
61/35, COPERNICUS MARG, NEW DELHI-110001**

Order Sheet

Item no.: 27

O.A./1272/2020 (DELHI)

[RETIRAL BENEFITS]

[SENIOR CITIZEN]

With

M.A./76/2021

DELETION OF RESPONDANT

Along With

O.A./1271/2020

RETIRAL BENEFITS

O.A./1329/2020

PENSION

Court No.: 5

No of Adjournment: 20

Order Dated: 13/07/2023

**ALL INDIA RETIRED BHARAT SANCHAR NIGAM LIMITED EXECUTIVE WELFARE
ASSOCIATION THROUGH ITS GENERAL SECRETARY PRAHLAD RAI**

Vs

BHARAT SANCHAR NIGAM LIMITED

For Applicant(s) Advocate : Ms. Gauri Puri with Ms. Aditi Gupta, Mr. Sanjay Ghose (Sr. Adv.) with Mr. Gautam Narayan, Ms. Ashmita Singh, Mr. Rohan Mandol & Ms. Akriti Arya

For Respondent(s) Advocate : Mr. R V Sinha with Mr. A S Singh, Mr. N D Kaushik, Mr. S N Verma, Mr. Amit Sinha , Mr. Mohd Faisal

Order of The Tribunal

Mr. Sanjay Ghose, learned Senior Counsel for the applicants reiterates that the claim preferred by the applicants in this Original Application is fully covered under the Central Civil Services (Pension) Amendment Rules 2000, wherein Rule 37 A has been inserted. He argues that while provision for a pension fund to be managed by trust has been incorporated in the said Amendment Rules, there is a specific dispensation with respect to the erstwhile employees of Department of Telecommunications who was absorbed in BSNL. He quotes Rule 21 of the said Rules which

reads as under:-

"(21) Nothing contained in sub-rules (12) to (20) shall apply in the case of conversion of the Departments of Telecom Services and Telecom Operations into Bharat Sanchar Nigam Limited, in which case the pensionary benefits including family pension shall be paid by the Government."

He further draws attention to a communication dated 09.11.2000 which reads as under:-

"Subject: Entitlement for Pension, other Retirement Benefits, Job Security and Carry over of Leave in respect of Employees to be Absorbed in BSNL.

It has been decided by the Government that the employees of DOT who will be absorbed in Bharat Sanchar Nigam Limited (BSNL) will be entitled to the Government's scheme of pension/family pension even after their absorption in BSNL. Payment of pension will be made by the Government and for this, arrangements, are being worked out for obtaining pension contribution from BSNL to be deposited with the Government. It has also been decided that dismissal or removal from service of an employee after his absorption in the PSU for any subsequent misconduct shall not amount to forfeiture of the retirement benefits for the service rendered under the Government and in the event of his dismissal, removal or retrenchment the decisions of BSNL shall be subject to review by the Administrative Ministry. The Government has already issued Notification dated 30.9.2000 to this effect wherein the pension framework has been made part of the CCS (Pension) Rules, amending Rule 37 using powers under Article 309 of the Constitution of India (Copy enclosed).

It has further been decided that the Earned Leave and the Half Pay Leave at the credit of the employees on the date of absorption shall stand transferred to the PSU.

may be widely circulated in your circle/ unit so that the employees are duly informed of the decision taken by the Government"

In addition, he refers to a clarification issued by the Department of Pension & Pensioners' Welfare on 27.04.2009, with respect to the applicability of revised rules for determining qualifying service of

ex-DOT employees who were absorbed in BSNL. The said communication reads as under:-

"Subject: Regarding clarification about the applicability of revised rules with effect from 01.01.2006 with reference to 6th CPC on enhanced amount of DCRG, calculation of emoluments for pension/family pension, Commutation of pension and qualifying service to ex-DOT employees absorbed in BSNL, whose pensionary benefits are regulated under Rule 37-A of CCS (Pension) Rules, 1972.

The Department of Telecom is requested to refer to their ID No. 40-31/2008-Pen (T) dated 18.3.09 for clarification on applicability of DoP&PW O.M. dated 2.9.2008. The Department of Telecom has submitted as under:

Consequent upon the implementation of the Government decision on the recommendation of 6th Central Pay Commission and as per Department of Pension and Employees Welfare OM dated 01.09.2008 (read 2.9.2008), rule regarding limit of DCRG, Calculation of emoluments for pension/ family pension Commutation of pension and qualifying service etc. have changes with effect from 01.01.2006.

In this connection, it is submitted that the Explanation given under Sub-Rule (8) of Rule 37-A of CCS (Pension) Rules, 1972 says that the amount of pension/family pension of the absorbed employees on superannuation from PSU/AB shall be calculated in the same way as would be the case with a Central Government servant retiring on superannuation, on the same date it is worthwhile to add that SNI is the only PSU that has been granted a special dispensation under sub rule (21) of Rule 37-A of CCS (Pension) Rules, 1972 to the effect that the pensionary benefits including family pension to the absorbed employees of BSNL is paid by the Government. This Department is of the view that the change as per DoP&PW's OM dated 02.09.2008 mentioned in para 2 above are also applicable to IDA pensioners of BSNL.

2 The en-mass transferred absorbees opting for pension for combined service in Govt. and PSU/CAB are entitled for pension in terms of Rule 37A(8) "in accordance with the formula for calculation of pension/family pension under these rules as may be in force at the time of his retirement from the PSU/CAB". The formula applicable to Central Govt. pensioners has been changed vide DoP&PW OM. dated 2.9.2008 and therefore, the changed formula provided in OM. dated 2.9.2008 is applicable to such absorbees also. The DoP&PW OM

dated 1.9.2008 referred to in Deptt. Of Telecommunication reference has no relevance as this OM contains instructions for revision of pension of pre 2006 central Government pensioners only."

He argues that it is abundantly clear that not only is the claim of pension of the applicants being Ex-employees of DOT who were absorbed in BSNL to be determined strictly on the pattern of entitlement of regular Government employees but it is to be revised from time to time strictly on the same analogy.

Ms. Gauri Puri, learned counsel for the applicants in **O.A. Nos. 1271/2020** and **1272/2020** argues that right from the stage of deputation of the applicants from DOT to BSNL till the clarification of 2009, each and every communication/document/notification establishes that the applicants are to be governed by pension and family pension in accordance with the entitlement for regular Government employees. She emphatically states that their initial terms of deputation leading to absorption have specific terms and conditions to this effect. Reversing the situation now amounts to denying legitimate expectation. These employees agreed to get absorbed in BSNL only on account of assurance of social security by way of pension which was made applicable to them in their status as the Government servants. She also draws attention to the Office Memorandum dated 20.07.2016 which states that pension liability in respect of employees of DOT who were absorbed in BSNL and retired on 01.10.2000 is solely to be borne by the Government of India; she clearly mentions that BSNL has no liability in respect of these employees. She further submits that the condition imposed earlier that the liability of pension shall not consists more than 60% of the annual revenue has also been rescinded. Alleging discrimination she submits that all the benefits of revision on

account of recommendations of the 7th Central Pay Commission have been extended to absorbed BSNL and MTNL employees except for the ones who had retired. This is in contravention to what has been set forth in the amended Central Civil Services Pension Rules, specifically Rule 37 A. Learned counsel for the applicants in all the three OAs have concluded their arguments and confirm that, at this stage, they have nothing further to add. However, we shall afford them liberty to contest any of the arguments put forth by the learned counsel for the respondents.

Vehemently contesting the averments and the arguments put forth by the learned counsel for the applicants, Sh. S N Verma, learned Senior Central Government Standing Counsel, draws attention to the Rule 375 of CCS (Pension) Rules, 2020 and submits, once the applicants opted to be absorbed in BSNL, they ceased to be Government employees with effect from the date of such absorption. The provisions of CCS Pension Rules which provide for fixation and subsequent revision of pensions is a general provision applicable on the Government pensioners. Once the applicants have ceased to possess the status of the Government employee and got absorbed in a public sector, they would be outside their purview. The provision of revision of pension pursuant to the recommendation of Central Pay Commission was incorporated to redress the anomaly in pension between past and future retirees. In the instant case, if the applicants' prayer is allowed, such anomalies are likely to be created once again. He submits that once the applicants have been absorbed in BSNL, they cannot claim to be governed under CCS Pension Rules as the service in BSNL is not pensionable. The reason these employees continue to get pension is solely on account of their being erstwhile DOT employees. They cannot claim open-ended and indefinite

benefit of the provisions of CCS Pension Rules considering the fact that when they retired, they were not Government employees but BSNL employees. The provisions of Rule 37 being quoted by the applicants through their learned counsel is a special dispensation given to these employees and they continue to enjoy the same. However, revision on account of Central Pay Commission cannot be automatically extended to their favour. The Central Pay Commission domain is only for Government employees and not employees of public sector undertakings even though they may have been absorbed, he adds. He further argues that these employees having retired, in this case from BSNL, are already enjoying a different set of benefits and rewards as are extended to PSU employees. Sh. Verma further submits that the issue under consideration in this OA has been a subject of O.A. No. 346/2018 decided on 30.10.2019 by the Ernakulam Bench as also another O.A. No. 116-134/2018 dated 27.11.2019 of the Bangalore Bench. Both these Benches have held that BSNL was a commercial and corporate entity, and once an employee has consciously chosen to opt for absorption in a corporate body, he could not claim the benefits available to a Government employee nor can he claim parity in any other respect.

Sh. N D Kaushik, learned counsel for the respondents while supporting the arguments put forth by Sh. S N Verma, learned counsel, further informs that the issue has been settled by the Hyderabad Bench of this Tribunal in O.A. No. 813/2017 dated 11.01.2019, besides the Ernakulam Bench and Bangalore Bench and the said Benches have also identically said that once absorbed in a public sector undertaking, the applicants cannot be claiming the benefits available to the Government employees. He also places on record, for our consideration, judgment of Hon'ble Apex Court

in Civil Appeal No. 3520/1991 decided on 25.07.1997. The said judgment has extensively discussed the doctrine of precedence and impressed upon maintaining consistency and uniformity in judicial verdicts. He reiterates that once the co-ordinate Benches of the Tribunal have adjudicated this issue, we are bound to adjudicate it on similar lines.

Learned counsels for the respondents too have concluded their arguments.

List on 16.08.2023 for final hearing as '**Part heard**'.

We make it clear that we deem the arguments from both the sides of the parties to be complete. However, on the next date of hearing if there are any gaps to be filled or some issues to be clarified, we shall seek the indulgence of the learned counsels for the parties to answer our queries, if any.

Pratima K Gupta
Member (J)

Tarun Shridhar
Member (A)

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