

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

Order Sheet

Item no.: 31
O.A./1272/2020 (DELHI)
[RETIRAL BENEFITS]
[SENIOR CITIZEN]
With
M.A./1581/2020
Along With

O.A./1271/2020
RETIRAL BENEFITS
O.A./1329/2020
PENSION
Court No.: 5

No of Adjournment: 19

Order Dated: 10/07/2023

**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, Ms. Aditi Gupta and ms. Vishakha Gupta (OA No. 1272/2020 and OA 1271/2020), Mr. Sanjoy Ghose, Senior Advocate with Mr. Gautam Narayan, Ms. Asmita Singh, Mr. Rohan, Mr. Harshit Goel

For Respondent(s) Advocate : Mr. RV Sinha and Mr. AS Singh (OA 1272/2020 and OA 1329/2020), Mr. SN Verma (OA 1271/2020 and OA 1272/2020) , Mr. Mohd Faisal (OA 1271/2020), Mr. ND Kaushik (OA 1329/2020) with Mr. Raj Kumar, Director (Est.)

Order of The Tribunal

1. We have heard the learned counsel for the parties at great length.
2. Learned counsel for the applicant draws attention to the General Terms and Conditions governing the absorption of erstwhile employees of the Department of Telecommunication into BSNL/MTNL. Particular attention is drawn to clause 5,

which reads as under:-

“5. Payment of Pension

The officers who opt for permanent absorption in BSNL would be governed by the provisions of Rule 37 – A of CCS (Pension) Rules, notification for which was issued by the Department of Pension & Pensioners Welfare on 30.09.2000. For the purpose of reckoning emoluments for calculation of pension and pensionary benefits, the emoluments as defined in CCS (Pension) Rules, in PSU in the IDA pay scales shall be taken.

DOT has already clarified that the word “formula” mentioned in clause 8 of Rule 37 –A means payment of pension as per Government Rules in force at that time. BSNL will not dismiss/ remove an absorbed officer without prior approval of the Administrative Ministry/Department.”

3. Learned counsel would argue that in view of the unambiguous provision contained in the said clause, the respondents cannot absolve themselves of the obligation of making an appropriate revision of the pension of the applicants in accordance with such a revision which has been extended in favour of regular government pensioners. Further

attention is drawn to the a notification dated 21.12.2012 vide which Central Civil Services (Pension) Rules have been amended. The amendment to Rule 37A of the CCS (Pension) Rules has been done vide Rule 10 of the Amendment Rules. The relevant extract of which reads as under:-

“37A. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Public Sector Undertaking. –

(1) On conversion of a department of the Central Government into a Public Sector Undertaking, all Government servants of that Department shall be transferred en-masse to that Public Sector undertaking, on terms of foreign service without any deputation allowance till such time as they get absorbed in the said undertaking, and such transferred Government servants shall be absorbed in the Public Sector Undertaking with effect from such date as may be notified by the Government.”

“(22) Nothing contained in sub-rules(13) o(21) 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.”

4. Learned counsel would argue that it may be noted that a specific provision has been placed in the said amendment rules with respect to those employees who were absorbed in BSNL from the Department of Telecommunication (DOT). The amendment categorically states that the liability of pension in case of such employees vests with the Government through the concerned Ministry.

5. Learned counsel reiterates the arguments put forth on the last date of hearing that the Ministry of Personnel, Pensioners and Public Grievances under the DoP&T had also categorically sought a clarification from DOT as to why the benefit of revision of pension was not extended in favour of employees who have been absorbed in BSNL/MTNL from DOT. Learned counsel has clarified that pursuant to the recommendations of the 7th CPC all other benefits except for pension have been extended in favour of the applicants.

6. Mr. SN Verma, learned counsel for the respondents submits that showing any indulgence to the claim of applicants is going to result in discrimination against another set of

employees of BSNL/MTNL. Further, what the applicants seeks is a benefit of both the Government as also the PSU. Once they had consciously opted for absorption under a Public Sector Undertaking (PSU), they shall be governed under the provisions of salary, allowances and pension governing such public sector employees. He argues that, in fact, what the applicants seek is the benefit of higher scales of PSU and the benefit of better pensionary award of the Government. And they cannot be allowed to choose what suits them at a particular juncture. He draws strength from the averments made in the counter-reply, specifically, in para 2 and 3.

7. Mr. ND Kaushik, learned counsel for the respondents submits that the relief being sought by the applicants is not maintainable. Drawing strength from the averments made in the counter reply he too argues that what the applicants are seeking is preferential treatment to the detriment of other employees of BSNL and the same organisation cannot be creating two sets of employees in terms of financial benefits. Assisted by Mr. Raj Kumar, Director (Establishment) in the Department of Telecommunication, he clarifies that right now BSNL is not in a position to bear a financial liability of pension and in case, the relief sought for by the applicants is awarded in their favour, similar demand on the ground of discriminatory treatment is likely to be raised by other BSNL

employees, thus, placing unbearable financial burden on BSNL, which is already reeling under losses.

8. Learned counsel appearing on behalf of BSNL and MTNL submit that in terms of the relief sought and the rules governing the same, the issue is to be decided by the Government and in case there is a financial liability, the same is to be borne by the Government. BSNL and MTNL have neither any role to play nor any responsibility / obligation to discharge.

9. Learned counsel for the parties confirm that at this juncture they have nothing further to add. However, since they have drawn attention to a large number of judgments of coordinate Benches of this Tribunal specifically to the judgments of the Hyderabad Bench, Ernakulam Bench and the Bangalore Bench, which have been placed on record. It would be appropriate to give a short adjournment to enable all of us to go through the said judgments and see to what extent they carry any relevance in adjudication of the present matter.

10. Accordingly, list on 13.07.2023 as 'Part-Heard'.

11. It is made clear we have deemed the arguments to be complete so we shall be allowing only a time of five minutes to each of the counsel and show any further indulgence if we

consider it appropriate if some issues require more information.

12. We place on record our appreciation for Mr. Raj Kumar, Director (Establishment), Department of Telecommunication, for very effective assistance he has rendered to us in understanding the issue at stake.

Pratima K Gupta
Member (J)

Tarun Shridhar
Member (A)

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