

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

Thursday the 12th day of August Two Thousand Ten

P R E S E N T

The Hon'ble Mr.M.Kanthaiah, Judicial Member
AND

The Hon'ble Mrs.O.P.Sosamma, Administrative Member

Original Application No.700/2009

- 1.A.Venkataraman
- 2.P.Kumar
- 3.R.Perumal
- 4.A.Shamsudeen
- 5.P.M.Vijayan
- 6.R.Sundararaman
- 7.K.Sukumar
- 8.A.Sugumaran
- 9.M.Ramasamy
- 10.M.Munavar khan
- 11.K.Kajapathy
- 12.T.Natarajan

Applicants

Vs.

- 1.Union of India rep. by
Secretary to Govt.
Ministry of Communications
Department of Telecommunication
No.20, Ashoka Road
Sanchar Bhavan
New Delhi 110 001.

- 2.The Chairman and Managing Director
Bharath Sanchar Bhavan
Harishchandra Mathur Lane
Janpath
New Delhi - 110 001.

- 3.The Controller of Communication
Accounts
Office of the Principal CCA
Tamil Nadu Telecom Circle
4th Floor, No.80 Anna Salai
Chennai - 600002.

Respondents

Counsel for the applicants

M/s.Karthik & Mukundan

Counsel for the respondents

Mr.S.Muthuswamy



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(Order pronounced by Hon'ble Mrs.O.P.Sosamma,
Administrative Member)

The applicants in this O.A. are aggrieved by the re fixation of their pay and consequent reduction in pension and retiral benefits.

2. The applicants who were employee of Govt. in the Telecom Engineering Service in the Department of Telecommunication were absorbed as Executives in BSNL with effect from 1.10.2000 when the BSNL was formed. On absorption, the applicants exercised the option to continue in CDS scale (Govt. scale) till they were promoted on regular basis and thereafter to come to the IDA scale (BSNL scale) in accordance with para 4 of DOP &PW OM No. 4/18/87 dated 5.7.1989. Their pay was fixed and regulated in terms of the option exercised and they retired on superannuation. But at the time of working out their pension and other terminal benefits, the third respondent raised the objection that fixation of pay of the applicants was not properly done and that the pay has to be revised on the basis of the pay drawn on the day prior to the applicants' promotion. Consequently the last pay drawn and average emoluments for the last ten months prior to the retirement was reduced and hence pension and other terminal benefits payable to the applicants was also reduced.

2. The applicants' claim is that the re fixation of pay and consequent reduction in pension and retiral benefits without giving any notice to them is illegal and therefore has filed this O.A. Seeking the following reliefs:

"To direct the respondents to revise the pension and all other terminal benefits payable to the applicants in accordance with the actual pay drawn by them in the last 10 months prior to their retirement and further pay the arrears of such pension and other



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terminal benefits within a time limit to be stipulated by this Hon'ble Tribunal with interest and costs "

3. The main ground raised by the applicants is that the action of the respondents in refixing the pay of the applicants in the IDA pay scale is a gross violation of the terms and conditions of absorption as laid down in the Presidential order of absorption. They point out that as per para 5 of the absorption order, the applicants pay on absorption would be regulated in terms of para 4 of DOP and PW OM No.44/18/87-P&PW(D) dated 5.7.1989. The relevant portion of the OM No.4/18/87-P&PW dated 5.7.1989 is indicated below:

"4. The Public Sector Undertaking/Autonomous Body will formulate the terms and conditions of service in the new body at the earliest possible date. The employees will however have an option to retain Govt. pay scales till their promotion or retirement (whichever is earlier) or to come over to the service conditions of PSU/Autonomous Body. However, until the exercise of this option, they will continue to be governed by the pay scales, leave entitlements and terminal benefits under the Government."

4. The applicants have cited the orders of BSNL 1-5/04 PAT(B) dated 30.6.2004. The pay fixed by the respondents originally was correct. The clarificatory letter issued by the BSNL is quoted below:

"In continuation of this office order of even number dated 18.3.2004 on the above subject, it is stated that an option is available to the employees to come over to the service condition of the PSU from the date of their promotion or retirement (whichever is earlier) and until then they will continue to be governed by the pay scales, leave entitlements and terminal benefits under the Govt. as per Para of DOP&PW OM No.4/18/87 P&PW(D) dated 5.7.1989.

This option is admissible to those employees, who are regularly promoted in the higher grade, for fixation of their pay in IDA pay scale of the promoted post."

5. The instructions of the DOP&T and clarificatory letter issued by the BSNL make it clear that the applicants had option to come over to the service conditions of PSU from the date of their promotion or

retirement and to draw their pay in the Govt pay scale till then.

6. This same issue was raised before the Central Administrative Tribunal, Ernakulam Bench in T.A.No.05/2009 dated 14.6.2010. The facts of the case and the issues involved in this OA are the same as those raised in TA No.05/2009. Therefore, the findings of the CAT Ernakulam Bench is applicable in this case also:

7. The applicants have also raised the ground that as per Rule 59 (1)(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 of 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.

8. In the result, the O.A. is allowed. The respondents are directed to sanction the penslinary benefits of the applicants on the basis of



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the actual pay drawn by the applicants for the 10 months period, prior to the date of retirement and to regulate further payment of pensionary benefits accordingly and to make payment of consequential arrears along with interest @ 9% per annum from the dates of retirement of the applicants till the actual date of payment within a period of three months from the date of receipt of a copy of this order.

9. There shall be no order as to costs.

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