 <p><b>BSNL</b> <i>Connecting Bharat</i> Security • Affordability • Reliability</p>	<p><b>BHARAT SANCHAR NIGAM LIMITED</b> (A GOVERNMENT OF INDIA ENTERPRISE) WS&amp;I Cell, Corporate Office 8th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-110001 Phone: (011)23734343</p>
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No: BSNLCO-SR/13(12)/3/2024-WS & I

Dated: 12.06.2025

To,

1. All Head of Circles, BSNL.
2. Cadre Controlling Units, BSNL Corporate Office,  
CGM(BW)/ CGM(EW)/ CGM(Arch)/ PGM(Pers.)/ PGM(Estt.)/ PGM(EF).

**Subject: Forwarding of general comments for preparation of draft counter affidavit on behalf of BSNL in court cases seeking implementation of the Hon'ble Supreme Court order dated 26.07.2023 in Civil Appeal No. 1971-1973/2012 – reg.**

**References:**

1. BSNLCO-RSTG/22(11)/1/2024 -WS&I dated 24.04.2024
2. BSNLCO-SR/13(12)/3/2024 -WS&I dated 21.05.2024

This is in continuation to this office letters cited under reference above. In this regard, please find enclosed herewith DoT letter No. 03-35/2023-SNG dated 24.04.2025, wherein general comments have been issued for preparation of draft counter affidavits to be filed in court cases seeking implementation of the Hon'ble Supreme Court judgment dated 26.07.2023 in Civil Appeal No. 1971-1973/2012.

It is requested to take appropriate action as per the contents of the aforesaid DoT letter in all similar cases .

This is issued with the approval of competent authority.

Encl: As above

  
DGM (WS&I)  
O/oPGM(WS&I/SR/Restg.)

Copy To:-CS & GM (Legal), BSNL CO, New Delhi for information please.

**No.03-35/2023-SNG**  
**Government of India**  
**Ministry of Communications**  
**Department of Telecommunications**  
**(SNG Section)**

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419, Sanchar Bhawan, 20, Ashoka Road  
New Delhi-01, Dated: 24-04-2025

**OFFICE MEMORANDUM**

**Subject: Forwarding of general comments for preparation of draft counter affidavit on behalf of DoT/UoI in court cases seeking for implementation of the Hon'ble Supreme Court order dated 26.07.2023 in Civil Appeal No. 1971-1973/2012 – reg.**

The undersigned is directed to refer to the above-mentioned subject and to say that recently a number of court cases/legal notices/representations/contempt petitions are being received in this department from different CCAs/LSAs wherein the Applicants have prayed for implementation of the Hon'ble Supreme Court order dated 26.07.2023 passed in Civil Appeal No. 1971-1973/2012.

2. The matter has been examined in this department. Upon examination, it is noticed that the following categories of cases/orders are referred to this department by offices of CCAs/LSAs for instructions/guidelines:-

(i) The cases in which order have been passed by the various Ld. CAT/Courts in applicant's favour without going into the merit of the case but merely referring to the Orders of the CAT Chandigarh/High Court upheld by the Supreme Court in Civil Appeals No. 1971-1973/2012.

(ii) The cases relating to compassionate ground appointment wherein the applicant has approached or is approaching the different CATs/Court after much delayed stage ( i.e. after the prescribed time limit under Section-21 of CAT Act, 1985) and after the decision of the Hon'ble Supreme Court order dated 26.07.2023 in Civil Appeals No. 1971-1973/2012 claiming to be similar situated employees.

3. In this regard, it is stated that the similar matter/Court cases is pending for final adjudication before the Hon'ble Supreme Court of India in Civil Appeal No. 51/2016 (BSNL Vs. Bharat Kumar Kumawat), (BSNL Vs. AA Abdul Rasheed) and other tagged matters on similar issues of Compassionate Ground Appointment (CGA) appointees of deceased DoT employee and the Supreme Court of India has stayed operation of the impugned orders/judgments of the lower courts/Tribunals/High Courts. Thus, order of the lower courts at this stage seem to be untenable in view of pending C.A. No. 51/2016.

4. In view of the above, the Competent Authority has decided the following:-

(i) All cases relating to/ arising out of compassionate ground appointment as stated in para-2 (i) & (ii) above may be challenged/defended on the basis of the comments/grounds (enclosed) of this department to

safeguard the interest of the Government and take further necessary action to defend the case accordingly.

(ii) The comments may be used for preparing a suitable draft counter affidavit on behalf of DoT/UoI in all such cases in consultation with the Ld. Govt. Counsel after doing suitable modification as per the facts/merit of the individual case and send the draft thus prepared to this office for legal vetting.

This issues with approval of the Competent Authority.

Encl: As above

Digitally signed by  
Sunil Kumar  
Date: 24-04-2025  
11:50:33

(Sunil Kumar)

Under Secretary to the Govt. of India  
Tele. 011-23036226

To

All Heads of CCAs/LSAs  
Department of Telecommunications  
Ministry of Communications

Copy to :-

DDG(Estt.), DoT Hq, Sanchar Bhawan, New Delhi-01.

**General Comments for incorporating in the preparation of draft counter affidavit on behalf of DoT/UoI in cases filed before the various benches of Ld. Tribunal/High Courts.**

1 . **Delay and latches:** The applicants have claimed the benefits of GPF/Rule 37A of CCS (Pension) Rules by citing order dated 22.01.2010 of the Ld. CAT, Chandigarh/ Hon'ble High Court of Punjab and Haryana in Raj Kumar and Ors. against which SLP/Civil Appeal No. 1971-1973/2012 has been upheld by the Hon'ble Supreme Court of India vide its order dated 26.07.2023 in peculiar facts and circumstances while keeping the questions of law open. **(Annexure-R/1).**

Considering the *in personam* nature of judgement/order, the benefits may not be extended to the applicants automatically as it is matter of records that letter dated 16.01.2003 issued by BSNL giving coverage of GPF to CGA appointees of deceased DOT employees, was withdrawn in 2007 by BSNL itself vide letter No.500-85/CA II/BSNL/EPF/Vol.III dated 25 May 2007. It may be noted that various clarificatory letters were also issued by BSNL vide letters dated 10.04.2006, 04.05.2007 & 10.05.2007 before finally withdrawing the letter dated 16.01.2003 vide letter dated 25.05.2007. **(Annexure-R/2).** Had the applicants being aggrieved by conversion from GPF to EPF, they could have raised the claim within reasonable time prescribed under Section 21 of the Administrative Tribunals Act, 1985. That cause of action arose in 2007 has made the claim of the applicants dead and stale and certain rights settled in the meanwhile, may not be unsettled at such distant of point of time. Reliance is placed upon following judgements:-

**(a) In D.C.S. Negi Vs. Union of India and Others (SLP ( C) No. 7956/2011 decided on 7.3.2011 on the point of limitation.** *The Court held that a reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21 (1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3).*

(b) *In Ratan Chandra Sammanta and Ors vs. Union of India and Ors (JT 1993 (3) SC 418) wherein it was held that delay deprives the person of the remedy available in law. A person, who has lost his remedy by lapse of time, loses his right as well.*

(c) In *S.S. Rathore Vs. State of Madhya Pradesh* reported in AIR 1990 SC 10 **wherein it has been held by the Hon'ble Supreme Court that repeated representations do not extend the period of limitation.**

(d) In *Bhoop Singh Vs. UOI and Ors.* reported in 1992 (2)SLJ 103 SC decided by three Judges Bench **wherein it was held that 'inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner irrespective of the merit of his claim.** If a person is entitled to a relief, chooses to remain silent long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief'

(e) **In State of Uttaranchal versus Shri Shiv Charan Singh Bhandari (2014) 2 SLR (SC) 20**, the Hon'ble Apex Court observed and held as under.

*"13.....In C. Jacob v. Director of Geology and Mining and another[1], a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus: -*

*"Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."*

*14. In Union of India and others v. M.K. Sarkar[2], this Court, after referring to C. Jacob (supra) has ruled that when a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a*

court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

**15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action.**

The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In *Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another*[3], the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. In *State of Orissa v. Pyarimohan Samantaray* [4] it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in *State of Orissa v. Arun Kumar Patnaik*[5].

17. In *Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others*[6], a three-Judge Bench of **this** Court reiterated the principle stated in *Jagdish Lal v. State of Haryana* [7] and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

(f) **In *State of T.N. v. Seshachalam*, (2007) 10 SCC 137**, while testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefits, Hon'ble Apex Court ruled that:-

**"...filing of representations alone would not save the period of limitation.** Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

(g) **In Civil Appeal arising out of SLP No. 13459/2024 titled *Nikhila Divyang Mehta & Anr.s Vs. Hitesh P Sanghvi & Ors.* Judgement dated 15.04.2025, the Supreme Court has held that as follow :**

".....It is a complete fallacy to make any distinction between

*“knowledge” and “full knowledge”. First of all, the limitation has to run from the date when the cause of action first accrued and not any subsequent date for the cause of action.”*

**(h) In SLP No. 31248/2018 titled Pathapati Subba Reddy Vs. Spl. Dy. Collection Judgement dated 08.04.2024, the Supreme Court in para -26 of judgement held as follows:**

*(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*

*(vii) Merits of the case are not required to be considered in condoning the delay*

**2. Reliance is placed upon the following orders that have been passed in department's favour:-**

**( i ) In Diary No. 2184/2021 in the matter of Arif Saeed S/o M. Mohd. Shareef & 68 Ors. Vs UOI &Ors., the Hon'ble CAT Allahabad in its order dated 01.12.2021 observed that**

*“the applicants were appointed in the year 2003 in BSNL. It is beyond our understanding as to how when the applicants were appointed in BSNL can now claim that they should be appointed in DOT from the date of their initial appointment .The relief sought is itself without any sound basis and in our view does not deserve even a preliminary consideration. Moreover, if at all a cause of action is presumed, it would have arisen in 2003 at the time of applicants' initial appointment. It is after having served for eight years that they have approached the Tribunal with a prayer which is more than unreasonable. Therefore, there is no justification for condoning the delay also in this matter. Accordingly, delay condonation application No.1560/2021 is dismissed and the Diary Number is also obviously stands dismissed.”*  
**(Annexure –R-3)**

**(ii) In another similar matter titled Vikas Kumar & 27 Ors. Vs. Uoi & Ors. in WP(S) No. 2330/2022 order dated 07/16.11.2022, the Hon'ble High Court of Jharkhand at Ranchi while deciding the status of employees who were formally appointed by BSNL on the basis of the advertisement notified by Govt. of India (DoT) has passed the following order in favour of the department :**

*“We have considered the submission of learned counsel for the parties and taken note of the pleadings borne from the records. The claim of the petitioners for being treated as DoT employees stems from the only fact that the advertisement for recruitment was undertaken by the DoT. However, the entire exercise of recruitment was undertaken by the BSNL and the applicants also joined the services of BSNL on or around 16.09.2002/30.09.2002 after formation of the BSNL on 01.10.2000. Merely because of the fact that initially some GPF deductions were made from their salary, which was discontinued also, applicants cannot claims a legal rights to be treated as employees of DoT. On the formation of the BSNL by a gazette notification dated 30.09.2000 (Annexure-R-1) to the counter affidavit dated 26.07.2022), the assets and liabilities of the DoT was transferred to the BSNL, which came into existence*



on 01.10.2000. Petitioners' cause of action, if any, related to the time when they had joined BSNL. **Having accepted the offer of appointment and remained under BSNL for 19/20 years, only on account of rejection representation dated 21.09.2021, they cannot revive a state claim of cause of action.** No legitimate expectations can either accrue as their recruitment, appointment and joining and all subsequent events having been taken place under BSNL organisation. In view of the aforesaid reason and facts and circumstances noted herein, we do not find any error the impugned order of the Ld. CAT. The Writ petition is accordingly disposed of." (Annexure-R/4)

(iii) Order dated 07.03.2024 passed by the Hon'ble CAT Jabalpur in OA No. 200/00847 & 864/2017 in matter of Naval Singh Kushwaha & ors. wherein the Hon'ble CAT has held as follows:

" In these cases, we find that applicants were appointed by BSNL on 10.10.2001 and 21.11.2000 i.e. after the formation of BSNL on 01.10.2000. The applicants had wrongly exercised the option for absorption in BSNL. The DoT/DTS & DTO the employees who had been absorbed in BSNL en masse the effective date of their Presidential Order was 01.10.2000 the same was rewritten as 11.10.2001 in OA No. 847/2017. Being the employees of Central Public Enterprise the Applicants were eligible for EPF patronage and when mistake was noticed it was rectified by the respondents. Therefore, applicants have no right to retain their option which they had wrongly exercised as he was appointed by BSNL after due recruitment process on 10.10.2001 & 21.11.2000. There is no question of absorption of the applicants with BSNL as they were directly recruited employees of BSNL. Hence, we do not find any merit in both the cases. Accordingly, both Original Applications are dismissed being devoid of merits. No order as to costs." (Annexure-R/5)

3 . Per incuriam nature of the order of Ld. CAT, Chandigarh in the case of Shri Raj Kumar and Ors:-

In [Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd](#) (2003) 2 SCC 111 (vide para 59), [this](#) Court observed:-

*"It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision"*

Besides above, it is settled position of law that Article 14 is positive concept and may not be enforced in negative manner to perpetuate irregularities or illegalities committed in favor of others either administratively or through judicial orders.

**Reliance is placed upon**

*Chandigarh Administration and another v. Jagjit Singh and another [(1995) 1 SCC 745], Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and others [(1997) 1 SCC 35], Union of India [Railway Board] and others v. J.V. Subhaiah and others [(1996) 2 SCC 258], Gursharan Singh v. New Delhi Municipal Committee [(1996) 2 SCC 459], State of Haryana v. Ram Kumar*



*Mann [(1997) 1 SCC 35]Faridabad CT Scan Centre v. D.G. Health Services and others [(1997) 7 SCC 752], Style (Dress Land) v. Union Territory, Chandigarh and another [(1999) 7 SCC 89] and State of Bihar and others v. Kameshwar Prasad Singh and another [(2000) 9 SCC 94], Union of India and another v. International Trading Co. and another [(2003) 5 SCC 437] and Directorate of Film Festivals and others v. Gaurav Ashwin Jain and others [(2007) 4 SCC 737].*

**4. Present issue-** It is submitted that while examining the issue of conversion of GPF accounts of Shri Raj Kumar and Ors, the Ld. Tribunal as well as Hon'ble High Court noticed that letter dated 16.01.2003 was not withdrawn. However, letter dated 16.01.2003 was withdrawn by BSNL vide letter dated 25.05.2007. The important letter being overlooked, had rendered the judicial order *per incuriam*, which may not be cited as precedent to extend the similar benefits to the applicants as following important rules/instructions were not discussed/examined in the precedent:-

(i) BSNL being PSU had no authority to issue instructions relating to issuance of GPF accounts of any employee formally appointed by them (BSNL) as such powers are only vested with the Government of India under Article 309 of the Constitution and no delegation has been given to PSUs (in this case-BSNL) to open new GPF accounts under GPF Rules, 1960 (as amended upto date)..

(ii) Letter dated 16.01.2003 was withdrawn by the BSNL vide letter dated 25.05.2007.

(iii) CCS (Pension) Rules, 1972 (the then Rules in force), were applicable when pre-appointment formalities and actual appointment is made in Central Government. In present case, the Employer's legal authority has changed from Government (DoT) to PSU (BSNL). Therefore, any person, who was not having pensionable post in Central Government (in present matter erstwhile DTS/DTO/DOT) and got appointment in BSNL after completion of formalities, do not have any legal right to claim pension under CCS (Pension) Rules.

Reliance is placed upon following judgements of the Hon'ble Supreme Court which has categorically declared the law for receiving pension from the Consolidate fund of India:-

In **Prabhu Narain vs. State of U.P.19, (2004) 13 SCC 662**, the Hon'ble **Supreme Court held that to receive pension the employees must establish that they are entitled to pension under a particular rule or scheme**. The following has been held in para 5:

*"5. No doubt pension is not a bounty, it is a valuable right given to an employee, but, in the first place it must be shown that the employee is entitled*

to pension under a particular rule or the scheme, as the case may be."

**In UP Roadways Retired Officials and officers Association versus State of UP and Anr (Civil Appeal No. 894/2020 decided on 26.07.2024), while dealing with akin issue of conversion of Government Department into Corporation, observed as under.**

*35. The common thread in the above referred judgments of this Court is that pension is a right and not a bounty. It is a constitutional right for which an employee is entitled on his superannuation. However, pension can be claimed only when it is permissible under the relevant rules or a scheme. If an employee is covered under the Provident Fund Scheme and is not holding a pensionable post, he cannot claim pension, nor the writ court can issue mandamus directing the employer to provide pension to an employee who is not covered under the rules.*

Accordingly, in view of the above-mentioned settled precedents, the applicant who was not holding pensionable post **nor maintain lien against the post** in erstwhile DTS/DTO, may not be entitled to claim pension under CCS (Pension) Rules.

(5) **Settled rights under EPF/EPS may not be unsettled at such distant point of time:-** The EPF/EPS contributions in r/o applicant were remitted to EPFO authorities through his consent, which is apparent from the monthly contributions deducted from the employee part in addition to employer part. On monthly contributions, interest as per notifications issued by the Government of India (GOI) have been paid to the applicant. Under such circumstances, the applicant does not have any legal right to claim benefits of GPF or Pension under CCS (Pension) Rules, when he did not raise any objection at relevant point of time (within reasonable period of time) against EPF or EPS. Therefore, present OA is itself not maintainable in the eyes of law as the applicant benefitted himself from the corpus of employer by giving consent for EPF and Pension under EPF, 1995. The applicant is raising the claim at the verge of retirement/ (after 18 years from the cause of action) and therefore, from this perspective, his claim suffers from inordinate delay and latches, which has made the present issue as dead and stale. The unsettling of settled things would not only create public confusion but would lead to serious financial implications as possibility of undue benefits (i.e. receiving EPF contributions of Employer and interest thereupon and simultaneous GPF coverage) may not be ruled out if conversion from GPF to EPF is allowed at such distant point of time.

(6) It is a settled position of law that one can claim benefits of pension under Central Government pension rules if and only if he satisfies the provisions of Rules formulated under Article 309 of the Constitution of India. If he does not meet the criterion laid down in Rules or he is not holding pensionable post for pension in Government, he would not be entitled for the benefits of said welfare measure. In present case, the applicant was neither holding any

pensionable post nor was he working as Temporary Government servant on the date of incorporation. His appointment in BSNL would not make him entitled for the benefits of Pension under CCS (Pension) Rules as he was neither holding pensionable post in Government nor he raised any objection with regard to his enrolment in EPF/EPS in last 20 years. Since, he may not become of GPF and EPF simultaneously, his claim for GPF/Pension under CCS (Pension) Rules is liable to be rejected on both merits and delay.

(7) Further, in case of Raj Kumar and other they (the applicants) approached the Ld. Tribunal Chandigarh Bench in 2009 itself (i.e. at the time when cause arose). The Ld. Tribunal vide common order dated 22.01.2010 decided the matter in applicants' favour and the SLP filed in this case were disposed of by the Supreme Court of India vide its order dated 26.07.2023 on the basis of peculiar facts and circumstance involved in the matter keep the question of law open. Thus, it is quite obvious that the Hon'ble Supreme Court makes it clear that the benefits would restricted to the parties of the litigations in the peculiar facts and circumstances as certain rules/instructions could not form part of the pleading/trial at the initial stage before the Ld. Tribunal. The judgement of the Hon'ble Apex Court in Raj Kumar and Ors (CGA appointment) relied upon by the applicant are not applicable to present issue and it is pertinent to mention that the cited judgment does not lay down any general preposition of law with regard to payment of pension under CCS (Pension) Rules.

**(8) Besides above, it is submitted that the Hon'ble Supreme Court of India in Civil Appeal No. 51/2016 (BSNL versus Bharat Kumar Kumawat), (BSNL Vs. A A Abdul Rasheed) and other tagged matters on similar issues of CGA appointees of deceased DoT employees, have stayed the operation of impugned orders/judgements of the lower courts/Tribunals/High Courts. (Annexure-R/6)**

In view of the above mentioned grounds, the claim of the applicants who are approaching the Ld. Tribunal at such distant point of time are liable to be rejected both on merits and delay/latches.

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Reference No (4)

1

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CHANDIGARH BENCH

Date of decision : 22.01.2010

CORAM : HON'BLE MRS. SHYAMA DOGRA, MEMBER (J) AND  
HON'BLE MRS. PROMILLA ISSAR, MEMBER (A)

(1) T.A.NO.35-PB of 2009  
(C.W.P.No.18202 OF 2008)

1. Raj Kumar S/o Late Sh. Piara Lal R/o Village Dhilwan Post Office, Dakoha Rama Mandi, Jalandhar.
2. Jagjit Singh S/o Sh. Late Baldev Singh R/o V.P.O. Cholang Tehsil Jalandhar.

Applicants

(2) T.A.NO.37-PB-2009  
(CWP NO. 17041 OF 2008)

1. Baljinder Singh working as Sr. TOA (G), in the office of A.O. TRA son of Sardar Swaran Singh, V.P.O. Sekhpur Bhag, District Nawanshahar.
2. Harinder Singh working as Sr. TOA (G) in the office of A.O. TRA son of Sardar Dilbagh Singh, Resident of Dayal P.O. Siroha, District Nawanshahar.
3. Rakesh Kumar working as Sr. TOA (G), in the office of SDEG Son of Sh. Shri Ram, resident of VPO Mohar Tehsil Halli for District Nawanshahar.
4. Jaspal Singh working as TOA (G) at Jalandhar S/o Sh. Parkesh Singh, Resident of Opposite PNB, Adampur, Phogapur, Jalandhar.
5. Manjit Singh working as Sr. TOA (G) DOT Cell, Chandigarh S/o Kulwant Singh Sethi, Resident of 79, Shiv Partap Nagar, Mahesh Nagar, Ambala Cantt.
- ✓ 6. Sukhwinder Singh Working as Sr. TOA (G), CE Civil, Chandigarh S/o Late Sh. Sewak Singh, VPO Suhana, Tehsil and District Ropar.

Applicants

Sy

(3) T.A.NO.38-PB-2009  
(CWP NO. 18253 OF 2008)

1. Subhash Chander S/o Sh. Bhajan Singh, Waterman, working as D.T.O. Nawanshahr.
2. Ashwani Kumar S/o Sh. Kishan Lal, working as Safai Karamchari at SDOP Bhogpur District Nawanshahr.

Applicants

Versus

1. Union of India through its Secretary, Ministry of Communication, Department of Communication, New Delhi.
2. Bharat Sanchar Nigam Limited through its Chairman, 20 Ashoka Road, New Delhi.
3. Chief General Manager (Telecom), Punjab, Sector 34-A, Chandigarh.
4. Assistant Director (O&M) Office of Chief General Manager, Telecom, Punjab Circle, Sanchar Sadan, Sector 34-A, Chandigarh.
5. General Manager (Telecom) (SSA) Opposite Company Bag, Jalandhar.

Respondents in all three cases.

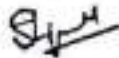
Present: Ms. Sonia G. Singh, for the applicants in all the three cases.  
Mr. D. R. Sharma for Respondents No.2 to 5 in all the three cases.  
Mr. R. P. Singh for Mr. Namit Kumar, Advocate for Respondent No. 1  
In T.A.No.35-PB-2009 and  
Mr.Navin Chopra for R.No.1 in T.A.No.37 & 38 -PB-2009.

ORDER(oral)

MRS.SHYAMA DOGRA, MEMBER(J)

All the Original Applications involve common questions of facts and law and as such these have been taken up for disposal by this common order. For the facility of reference the facts have been taken from T.A.No. 35-PB-2009 (CWP No.18202 of 2008) titled Raj Kumar & Another Vs. UOI etc.

2. It is the projected case of the applicants that their fathers were working in the Department of Telecommunication and died while in active service before 30.9.2000 i.e. before the formation of Bharat Sanchar Nigam Limited..The applicants were offered appointment on compassionate grounds in Group and D





vide order dated 17.11.2000 (Annexure P-4) by the office of Principal General Manager, Telecom., Bharat Sanchar Nigam Limited, Jalandhar. After completion of training, they joined their duties. Copies of pay slips of the Applicant no.1 are as at Annexures P-5 and P-6. The Department of Telecommunication was taken over by the Bharat Sanchar Nigam Limited and Group 'C' and 'D' employees were absorbed by BSNL. The conditions of absorption of Group 'C' and 'D' staff in BSNL is given in Notification dated 3.1.2001 (Annexure P-1). A clarification regarding GPF Scheme was issued on 16.1.2003 (Annexure P-2), indicating that "the Casual Labourers / Temporary Status Mazdoors who were regularized or persons who were appointed by BSNL on compassionate ground on or after 1.10.2000, as nominees of the employees of DOT/DTS/DTO died in harness up to 30.9.2000 were to come under GPF Scheme and not under EPF/CPF Scheme". This was reiterated vide clarification, Annexure P-3.

\* 3. The Applicants state that they were employees of Department of Telecommunication and they were asked to give their options for absorption in BSNL vide letter dated 30.1.2001. They submitted their consent for absorption. The Applicants were absorbed in BSNL by way of an order issued in the name of the President of India. One such order in respect of Applicant no.2 is Annexure P-7. The DoT employees absorbed in BSNL were entitled to benefits of CCS (Pension) Rules whereas BSNL employees receive benefits of Employees' Provident Fund. However, the respondents withdrew order dated 26.4.2006 vide

84/10/2006

order dated 3.7.2006 (Annexure P-8) treating the appointments of applicants during 2000-2001 as null and void. However, this order was withdrawn, as per written statement filed by respondents in CWP No. 10702 of 2006 (Annexure P-9). However, again vide order dated 8.8.2008 (Annexure P-10), the respondents withdrew the order and asked the Applicants to give back their Presidential Orders. The applicants have argued that once they were appointed by DoT and later on absorbed in BSNL, cancellation of Presidential Order is illegal and more so when it is in violation of principles of natural justice.

4. The applicants plead that they under-went training under DOT and were given appointments by DOT and as such they are entitled to benefits as per Annexure P-1. They were absorbed in BSNL on their option and were given benefit of CCS (Pension) Rules, which cannot be withdrawn now. The employees of DoT, absorbed in BSNL, are entitled to benefits provided under CCS (Pension) Rules. The applicants have prayed for quashing the order dated 8.8.2008. Annexure P-10.

5. The respondents have filed a reply. They submit that applicants were appointed on regular basis after completion of their training on 8.5.2001 i.e. after the formation of BSNL and, therefore, they cannot be termed as employees of DoT for the purpose of getting benefit as per policy, Annexure P-1 and P-2. Annexure P-4 is only a letter of approval and not an appointment order. Appointment becomes effective only after completion of training. Before their





appointment, the applicants were to under-go training and appointment letters were issued to them on 4.5.2001 i.e. after coming into force of BSNL. The pay slips of training allowances are of no help to the petitioners. The options were called in a routine manner. That will not change the date of regular appointment of the petitioners. The earlier cancellation order was not proper and as such new cancellation orders were issued. The fathers of the applicants were employees of DoT who died prior to the formation of BSNL i.e. 1.10.2000. Annexure R-1 is an appointment order issued after the training of the applicants vide which they have been appointed as Telecom Office Assistant w.e.f. 8.5.2001, in the pay scale of Rs.3200-4900 plus allowances. Annexure R-4 is the clarification dated 4.5.2007 which provides that options from persons appointed on compassionate grounds, in whose favour appointment orders were issued after 30.9.2000 by BSNL, will not be called for and such appointees will be treated as BSNL recruited employees only. As per Annexure R-5, dated 6.5.2008, the category of employees for whom appointment orders are issued by BSNL will be treated as BSNL recruited employees and will be covered under EPF Scheme.

6. The applicants have not filed any rejoinder.

7. We have heard learned counsel for the parties and perused the material on the file.

8. It is not in dispute that the first clarification was issued by Head Office of BSNL on 16.1.2003 (Annexure P-2) which clearly indicated that Casual

*By*

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Labourers/Temporary Status Mazdoors who are regularized by BSNL on or after 1.10.2000 and the persons who were appointed by BSNL on compassionate ground on or after 1.10.2000 as nominees of the employees of DOT/DTS/DTQ died in harness up to 30.9.2000 will be covered by General Provident Scheme and not by EPF/GPF Scheme. The persons appointed by BSNL on compassionate grounds on or after 1.10.2000 as nominees of employees of DOT/DTS/DTQ died in harness up to 30.9.2000 will come under GPF Scheme. This clarification has never been withdrawn by the respondents till date. The position that exists as on date on the basis of said instructions is that persons who were appointed on compassionate grounds on or after 1.10.2000, whose breadwinner, died in harness up to 30.9.2000, will come under the GPF Scheme. The category of persons coming under these instructions are a class by themselves.

9. Resultantly, the impugned order, Annexure A-10 dated 8.8.2008 is hereby quashed and set aside with direction to the respondents to restore the benefit of GPF Scheme to the applicants as per Rules applicable in their case. With these directions and observations, these three Original Applications stand disposed off. No costs.

(PRAMILLA ISSAR)  
MEMBER (A)

(SHYAMA DOGRA)  
MEMBER (J)

Place: Chandigarh.  
Dated: 22.01.2010

HC\*

92/11  
16

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 1971 OF 2012

BHARAT SANCHAR NIGAM LIMITED & ANR.

Appellant(s)

VERSUS

RAJ KUMAR & ORS.

Respondent(s)

WITH

CIVIL APPEAL NO. 1972 OF 2012

CIVIL APPEAL NO. 1973 OF 2012

O R D E R

After hearing learned counsel for the parties and considering the peculiar facts involved in these batch of cases, we are not inclined to interfere. The civil appeals stand dismissed.

However, the question of law is left open.

....., J.  
[ J.K. MAHESHWARI ]

....., J.  
[ K.V. VISWANATHAN ]

Signature Not Verified

Digitally signed by  
Nidhi Ahuja  
Date: 2023.07.28  
17:26:37 IST  
Reason: [ ]

New Delhi;  
July 26, 2023.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No. 1971/2012

BHARAT SANCHAR NIGAM LIMITED & ANR.

Appellant(s)

VERSUS

RAJ KUMAR & ORS.

Respondent(s)

WITH

C.A. No. 1972/2012 (IV)

C.A. No. 1973/2012 (IV)

Date : 26-07-2023 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.K. MAHESHWARI  
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Appellant(s) Mr. Atul Yeshwant Chitale, Sr. Adv.  
Ms. Tanvi Kakar, Adv.  
Mr. Madhav Chitale, Adv.  
Mr. Nirbhay Singh, Adv.  
Mrs. Suchitra Atul Chitale, AOR

For Respondent(s) Dr. Sanjay Gupta, Adv.  
Mr. Rajat Sharma, Adv.  
Mr. Dinesh Verma, Adv.  
Mr. Subhasish Bhowmick, Adv.  
Dr. (Mrs.) Vipin Gupta, AOR

Mr. Subhasish Bhowmick, AOR

Mr. Vikramjit Banerji, ASG.  
Mr. Rajan Kumar Chourasia, Adv.  
Mr. Prashant Rawat, Adv.  
Mr. Padmesh Mishra, Adv.  
Ms. Akansha, Adv.  
Mr. Arvind Kumar Sharma, AOR  
Mr. G. S. Makker, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

After hearing learned counsel for the parties and considering the peculiar facts involved in these batch of cases, we are not inclined to interfere. The civil appeals stand dismissed.

However, the question of law is left open.

(NIDHI AHUJA)

AR-cum-PS

(VIRENDER SINGH)

BRANCH OFFICER

[Signed order is placed on the file.]

(Open Court)

**Central Administrative Tribunal, Allahabad Bench,  
Allahabad**

\*\*\*\*

**Diary No. 2184/2021**

**This the 1st Day of December, 2021.**

**Hon'ble Mr. Tarun Shridhar, Member (A)**  
**Hon'ble Ms. Pratima K. Gupta, Member (J)**

Arif Saeed s/o M.Mohd. Shareef aged about 45 years HR No. 200301576 R/o SA House -2 Flat No. 2071415 & Civil Lines Kanpur-208001. Presently posted as Junior Telecom Officer in the O/o General Manager C.N. -T.N. BSNL, Kanpur, U.P. and 68 others.

.....Applicants

**By Advocate: Sri S.K. Pandey**

**Versus**

1. Union of India through its Secretary to Government of India, Ministry of Telecommunication and Information Technology, Department of Telecommunication, Sanchar Bhawan, New Delhi-110001.
2. Bharat Sanchar Nigam Limited, Statesman House, Barakhamba Road, New Delhi, through it's the Chairman-cum-Managing Director.
3. The Secretary, Ministry of Personnel, Public Grievance and Pension (Department of Personnel and Training), North Block, New Delhi.
4. Chief General Manager, Telecom, U.P.E Telecom Circle, Bharat Sanchar Nigam Limited, Lucknow, U.P.
5. Chief General Manager Telecom, Rajasthan Telecom Circle, Bharat Sanchar Nigam Limited, Jaipur Rajasthan.
6. Chief General Manager, Telecom, Bihar Telecom Circle, Bharat Sanchar Nigam Limited, Patna, Bihar.
7. Chief General Manager, Telecom, Assam Telecom Circle, Bharat Sanchar Nigam Limited, Guwahati, Assam.
8. Chief General Manager, Telecom, Maharashtra Telecom Circle, Bharat Sanchar Nigam Limited, Mumbai, Maharashtra.
9. Chief General Manager, Telecom, Gujarat Telecom Circle, Bharat Sanchar Nigam Limited, Ahamadabad, Gujarat.
10. Chief General Manager, Telecom, Punjab Telecom Circle, Bharat Sanchar Nigam Limited, Chandigarh, Punjab.
11. Chief General Manager, Telecom, Haryana Telecom Circle, Bharat Sanchar Nigam Limited, Ambala, Haryana.

..... Respondents

**By Advocate: Sri Chakrapani Vatsyayan for respondents No. 1 and 3 and Sri D.S. Shukla for respondents No.2, 4 to 11.**

**ORDER**

**By Hon'ble Mr. Tarun Shridhar, Member (A)**

Sri S.K. Pandey learned counsel for applicants and Sri Chakrapani Vatsyayan learned counsel for respondents No. 1 and 3 and Sri D.S. Shukla learned counsel for respondents No. 2,4 to 11 are present.

2. The relief sought in the O.A. is that the applicants who are employees of the Bharat Sanchar Nigam Limited (BSNL) now want to be appointed as the employees of Department of Telecom, Government of India retrospectively w.e.f. the date of their initial appointment in BSNL in the year 2003.

3. The O.A. has not been assigned a regular number and it is still at the diary stage because there is an application No. 1560/2021 for condonation of delay, which is yet to be decided.

4. The respondents have filed their objection to the application, to which the counsel for the applicants has also filed a reply.

5. At the outset, learned counsel for respondents points out that no cogent reason for delay in filing the O.A. has been furnished in the instant application. Moreover, there is no mention of a date when the cause of action arose. He also points out that the relief sought in the O.A. is beyond the scope of this Tribunal.

6. Sri S.K. Pandey, learned counsel for respondents argues that the cause of action is continuing, hence there is no delay. He further submits that the Department of Pension and PW circular No.57/04/2019-P&PW (B) dated 17<sup>th</sup> February, 2020, particularly the provisions of para 4 adequately cover the relief sought by the applicant.

7. We have heard learned counsel for the parties at length and also carefully examined the documents on record. We find that the applicants were appointed in the year 2003 in BSNL. It is beyond our understanding as to how when the applicants were appointed in the BSNL can now claim that they should be appointed in the Department of Telecommunication from the date of their initial appointment.

8. The relief sought is itself without any sound basis and in our view does not deserve even a preliminary consideration. Moreover, if at all a cause of action is presumed, it would have arisen in 2003 at the time of the applicants' initial appointment. It is after having served for eight years that they have approached the Tribunal with a prayer which is more than unreasonable. Therefore, there is no justification for condoning the delay also in this matter.

9. Accordingly, delay condonation application No. 1560/2021 is dismissed and the Diary Number also obviously stands dismissed.

10. No order as to costs.

**(Pratima K.Gupta)**  
**Member (J)**

**(Tarun Shridhar)**  
**Member (A)**

**HLS/-**



**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P.(S) No. 2330 of 2022**

- 1.Vikas Kumar Gupta
- 2.Ranjit Singh
- 3.Piyush Kumar Kishore
- 4.Neel Kant Mahato
- 5.Narsingh Mahto
- 6.Anil Kumar Singh
- 7.Saba Tarannum
- 8.Hanuman Prasad Tiwari
- 9.Ashok Kumar
- 10.Raj Kumar
- 11.Babita Prasad
- 12.Suneel Kumar Mishra
- 13.Ajay Kumar
- 14.Siddhartha Shankar Das
15. Rajiv Avinash Bara
- 16.Dinesh Kumar
- 17.Sunil Kumar Gupta
- 18.Tarkeshwar Sinha
- 19.Deenanath Bhagat
- 20.Ashok Kumar Prabhakar
- 21.Anand Kumar Sinha
- 22.Satish Kumar
- 23.Haresh Kumar Ravi
- 24.Suneel Kumar
- 25.Binod Kumar
- 26.Dilip Kumar
- 27.Ashutosh Kumar Sinha
- 28.Arbind Kumar
29. Lakshmeshwar Jha
- 30.Binod Kumar Bharatwasi
- 31.Anju Kumari
- 32.Manju Lata Jarika
- 33.Kundan Kumar Jha
34. Md. Nasim Akamal
- 35.Ashish Kumar Sinha
- 36.Santosh Prasad
- 37.Asit Kumar Sarkar
- 38.Dilip Kumar Mahto
- 39.Seema Gupta
- 40.Ravi Kumar
- 41.Rajesh Ram
- 42.Bhavesk Kumar Bharti
- 43.Nil Kanth Mandal
- 44.Ashok Kumar
- 45.Amit Kumar Sinha
- 46.Nagendra Prasad
- 47.Kunwar Singh
- 48.Ashok Kumar Singh
- 49.Hari Shankar Prasad
- 50.Shekhar Kumar
- 51.Ghanshyam Prasad
- 52.Jyotsna Dwivedi
- 53.Shilpi Shikha
- 54.Arun Kumar Singh

55.Bishwajit Shit  
56.Vikesh Kumar  
57.Rajesh Prasad  
58.Anjani Kumar  
59.Ajit Kumar Pandey  
60.Manoj  
61.Dinesh Kumar  
62.Vishal Raj  
63.Ajit Kumar  
64.Vishnu Kumar Kauntia  
65.Rajesh Kumar  
66.Dewanand Prasad  
67.Atul Kumar Rai  
68.Amit Gill

--- --- Petitioners

Versus

1.The Union of India through the Secretary, Dept. of Telecommunication,  
Ministry of Communications, New Delhi  
2.Government of India, Ministry of Personnel, Public Grievances of Pensions,  
Dept. of Pension and Pensioners' Welfare, New Delhi  
3.The Bharat Sanchar Nigam Limited through its Chairman cum  
Managing Director, New Delhi  
4.The Chief General Manager Telecom, Jharkhand Telecom Circle, Ranchi  
5.The AGM (Estt.), Office of the Chief General Manager Telecom,  
Jharkhand Telecom Circle, Ranchi  
6.The Chief General Manager Telecom, Bihar Circle, Patna  
7.The Chief General Manager Telecom, Haryana Telecom Circle, Haryana  
8. C.G.M. Core Network Transmission, BSNL, Kolkata, West Bengal

--- --- Respondents

.....

**CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH**  
**HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Petitioners : M/s B.K. Pathak, Sanjay Kr. Singh, Advocate  
For the Respondents : Mr. Prashant Kr. Singh, Advocate (for DOT)  
: M/s Arbind Kr. Jha, Ganesh Ram, Advocate (for BSNL)

07/16.11.2022 Heard learned counsel for the parties.

2. The applicants / petitioners are aggrieved by the dismissal of O.A. No. 051/00347/2021 (Annexure-12) vide order dated 18.04.2022 passed by learned Central Administrative Tribunal, Circuit Bench at Ranchi, on both counts as being devoid of merits and badly suffering from delay and latches.

3. The original application was made for the following reliefs:

a) *For setting-aside/Quashing the order No. For setting aside/Quashing the order No. the order No. St./5-111/JKD-2021/Misc/31, St/5-111/JKD-2021 Misc/32, St/5-111/JKD-2021/Misc/33 and St/5-111/JKD-2021/Misc/34, dated 22.09.2021, whereby request of the applicant no.1 and 2 for grant of status of Dot employee absorbed in BSNL and benefits under the rule 37A of CCS (Pension) Rule 1972 was rejected on ground that "applicants have joined BSNL after 01-10-2000 so he is BSNL recruited and Benefit under rule 37A of CCS Pension Rules, 1972 is not applicable to him."*

- b) *For issuance of direction/Direction(s) upon the respondents to granting the Status of DOT (Department of Telecom) employee of DoT employee absorbed in BSNL (Bharat Sanchar Nigam Limited) in view of the recruitment process was initiated by the Department of Telecom (DoT) and completed by the Bharat Sanchar Nigam Limited without any modification / rectification / of the advertisement.*
- c) *For the issuance of direction/Direction(s) upon respondents for getting all the benefits of old Pension cum GPF scheme in view of the fact that the recruitment has been done against the vacancy year 1999 and Regulated & Guided by the TTA Recruitment Rule 1998 (amended 1999).*
- d) *For issuance of direction/Direction(s) respondents to extend/cover the pension benefit according to upon the Rule 37-A of CCS Pension rule 1972 and O.M. No. 57/04/2019- P & PW (B) dated 17 February 2020, issued by the Government of India, Department of Pension and PW.*
- e) *For issuance of direction/Direction(s) upon the respondents to extend all consequential benefits according to TTA Recruitment Rule 1998 (Amended 1999).*
- f) *For grant of any other reliefs deemed fit and proper in the facts and circumstances of the case in favour of the applicants.*
- g) *Cost of the application may also be granted in favour of the applicants.*
- h) *The applicants may be allowed to file joint”*

4. Applicants argued that the advertisement under which they were appointed under BSNL in the year 2002, was issued by the Department of Telecom, Government of India. Their GPF was deducted initially from their salary but discontinued. Therefore, they bore a legitimate expectation of being treated as DOT employees. They persisted with representation before the respondents to treat them as DOT employees and grant them the benefit of Rule 37A of CCS (Pension) Rule, 1972. However, their representations were rejected finally on 22.09.2021. Thereafter the instant O.A. was preferred in the year 2021 itself.

5. The learned Tribunal after taking note of the case of the parties held as under:

*7. It is not disputed that examination was conducted and result was declared by BSNL and appointment letters were also issued by the BSNL. Appointment letter shows the status of applicant as BSNL employee and not the employee of DOT. Applicants were appointed in year 2002 and at that time they any objection of their being employee of BSNL. It is only in year 2021 they pressed the claim for granting status of employee of Department of Telecommunication (DOT) absorbed in BSNL. The representation which has been rejected vide impugned order, Annexure A/7 bears date 30/7/2021. It is not the case where the employee was appointee of DOT and later on was absorbed in BSNL, applicants were given appointment by BSNL and they legally have no right now to agitate that they are not employee of BSNL and that too after 19-20 years of their appointment. As far as contention of Id counsel that it is a case where legitimate*

*expectation of applicant to treat them as DOT employee needs to be considered relates, legitimate expectation for grant of relief must be of nature wherein in entirety of facts one can reasonably infer or believe existence of some facts and that inference should not be hyper technical or whimsical. Instant case is not of that nature wherein even a person of ordinary prudence could assume that he is the employee of DOT when the very appointment letter is that of BSNL. The O.A is not only devoid of merits but also badly covered by delay and latches. The OA deserves dismissal and hence is dismissed. Pending MA also stand disposed of accordingly.”*

6. Learned counsel for the petitioners submits that the learned Tribunal has committed an error in dismissing the O.A. The case of the applicants would not affect other employees of BSNL in different circles of the BSNL as they have been appointed by the advertisement issued by the BSNL itself after advertisement of the DOT was not acted upon or withdrawn. It is also contended that after issuance of the advertisement, the rules of game cannot be changed. A different employer cannot step into the shoes of the original employer who had issued the advertisement. Besides that petitioners have got their GPF deducted from their salary as if they were DOT employees for certain period. Applicants would only get the benefit of pension on being treated as employees of DOT. The O.A. was not barred by delay as the matter was being considered at the level of DOT.

7. Learned counsel for the Respondent has referred to the para 6 and 7 of the counter affidavit filed on 12.10.2022, which reads as under:

*6. That, it is humbly submitted that Department of Telecommunications, vide letter No.27-1/2001-SNG (Vol-III)/ Chennai TC (Pt) dated 27-02-2020 & 23-02-2021 has made it clear that (i) the language of Rule 37A of CCS (Pension) Rules, 1972 clearly states that only Government Employee (permanent or temporary) who were on the roles of Government before corporatization and transferred on deemed deputation upon corporatization of Government Department are covered under Pension Rules for payment of pension from Consolidated Fund of India. The language of the rule is quite clear and unambiguous, (ii) Any employee who has been formally appointed by BSNL on or after 01.01.2000 and joined BSNL is BSNL appointee. Therefore, the petitioner of the present Writ, who were appointed in BSNL on 16-09-2002/30-09-2002 are BSNL appointees and cannot be extended pension under CCS (Pension) Rules, 1972.*

*7. That, it is humbly submitted that recently in a similar case the Hon'ble CAT, Allahabad in its order dated 01-12-2021 in O.A. Diary No-2184/2021 in the matter of Arif Saeed, S/o- M. Mohd Shareef & 68 ors- Vs- Union of India & ors had observed that the applicants were appointed in the year 2003 in BSNL. It is beyond our understanding as to how when the applicants were appointed in BSNL can now claim that they should be appointed*

*in the Department of Telecommunications from the date of their initial appointment. The relief sought is itself without any sound basis and in our view does not deserve even a preliminary consideration. Moreover, if at all a cause of action is presumed, it would have arisen in 2003 at the time of applicants initial appointment. It is after having served for eight years that they have approached the Tribunal with a prayer which is more than unreasonable. Therefore, there is no justification for condoning the delay also in this matter. Accordingly delay condonation application No-1560/2021 is dismissed and the Diary number is also obviously stand dismissed.”*

8. Learned counsel for the respondent submits that BSNL was acting in its own capacity w.e.f. 1.10.2020 as per the Gazette resolution dated 23.01.2000. BSNL being a separate legal entity, the applicants having accepted joining under BSNL, cannot be allotted to agitate the claim of being treated as DOT employee and that too after 19-20 years of their appointment. Therefore, learned Tribunal has rightly rejected their prayer. Respondents have also indicated at para 11 of their counter affidavit the details of several applicants out of total 68. All these applicants had joined on 16.09.2002/30.09.2002 after formation of BSNL on 01.10.2000. Learned counsel for the respondent has also referred to different clarification dated 27.02.2020, 20.03.2020 and 13.09.2002, which is to the effect that any applicant who is formally appointed on or after 01.10.2000 and joined BSNL is a BSNL appointee. Therefore, claim of the petitioners for being treated as DOT employees being covered under 37A of the CCS (Pension) Rules, 1972 has been rejected.

9. Learned counsel for the petitioners has referred to the rejoinder affidavit filed on 2.11.2022, specifically para 4 thereof. He submits that before such clarifications were made by the BSNL, petitioners had already joined the organisation. The stand of the respondents therefore is not proper in the eye of law.

10. We have considered the submissions of learned counsel for the parties and taken note of the pleadings borne from the records. The claim of the petitioners for being treated as DOT employees stems from the only fact that the advertisement for recruitment was issued by the DOT. However, the entire exercise of recruitment was undertaken by the BSNL and applicants also joined the services of BSNL on or around 16.09.2002 /30.09.2002 after formation of the BSNL on 01.10.2000. Merely because of the fact that initially some GPF deductions were

made from their salary, which was discontinued also, applicants cannot claim a legal right to be treated as employees of DOT. On the formation of the BSNL by a gazette notification dated 30.09.2000 (Annexure-R1 to the counter affidavit dated 26.07.2022), the assets and liabilities of the DOT was transferred to the BSNL, which came into existence on 01.10.2000. Petitioners' cause of action, if any, related to the time when they had joined BSNL. Having accepted the offer of appointment and remained under the BSNL for 19/20 years, only on account of rejection of representation dated 21.09.2021, they cannot revive a stale claim of cause of action. No legitimate expectation can either accrue as their recruitment, appointment and joining and all subsequent events having been taken place under BSNL organization.

11. In view of the aforesaid reasons and facts and circumstances noted herein above, we do not find any error in the impugned order of the learned CAT. The writ petition is accordingly dismissed.

**(Aparesh Kumar Singh, J.)**

**(Deepak Roshan, J.)**

Case Number

 Diary Number

 Case Number

 AOR Code

 Party Name

 Court

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DIARY NO. - 40392/2015

BHARAT SANCHAR NIGAM LIMITED VS. BHARAT KUMAR KUMAWAT

Case Details	
DIARY NO. - 40392/2015	
BHARAT SANCHAR NIGAM LIMITED VS. BHARAT KUMAR KUMAWAT	
Case Details	
Diary Number	40392/2015 Filed on 02-12-2015 12:00 AM [ SECTION: XV] PENDING
Case Number	C.A. No. 000051 / 2016 Registered on 05-01-2016 S.L.P.(C)...CC No. 022452 / 2015 Registered on 17-12-2015 SLP(C) No. 000227 / 2016 Registered on 05-01-2016
Present/Last Listed On	06-11-2024 [HON'BLE MR. JUSTICE J.K. MAHESHWARland HON'BLE MR. JUSTICE RAJESH BINDAL]
Status/Stage	Pending (Final Hearing) List On (Date) (27-11-2024)-Ord dt:06-11-2024
Admitted	[ADMITTED ON : 21-09-2012]



		—
Category	0601-Service Matters : Retiral benefits	
Petitioner(s)	1 BHARAT SANCHAR NIGAM LIMITED MANAGING DIRECTOR 2 CHIEF GENERAL MANAGER (TELECOM), BSNL, RAJASTHAN CIRCLE THR. AGM (LEGAL)	
Respondent(s)	1 BHARAT KUMAR KUMAWAT 2 MANOJ KUMAR SHARMA 3 VIJAY BAHADUR PAL 4 UNION OF INDIA SECRETARY	
Petitioner Advocate(s)	SUCHITRA ATUL CHITALE	
Respondent Advocate(s)	ANKOLEKAR GURUDATTA[R-1] ANKOLEKAR GURUDATTA[R-2] ANKOLEKAR GURUDATTA[R-3]	
Impleaders Advocate(s)	ANKOLEKAR GURUDATTA[IMPL]	
<b>Argument Transcripts</b>		<b>+</b>
<b>Indexing</b>		<b>+</b>
<b>Earlier Court Details</b>		<b>+</b>
<b>Tagged Matters</b>		<b>+</b>
<b>Listing Dates</b>		<b>+</b>
<b>Interlocutory Application Documents</b>		<b>+</b>
<b>Court Fees</b>		<b>+</b>

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Notices	+
Defects	+
Judgement/Orders	+
Mention Memo	+
Drop Note	+
Office Report	+
Similarities	+
Caveat	+
Argument Transcripts	+
Indexing	+
Earlier Court Details	+
Tagged Matters	+
Listing Dates	+

**Interlocutory Application Documents****Court Fees****Notices****Defects****Judgement/Orders****Mention Memo****Drop Note****Office Report****Similarities****Caveat**[Back](#)

Case Number

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DIARY NO. - 40392/2015

BHARAT SANCHAR NIGAM LIMITED VS. BHARAT KUMAR KUMAWAT

Case Details	+
Argument Transcripts	+
Indexing	+
Earlier Court Details	+

Tagged Matters

Type	Case Number	Petitioner vs. Respondent	List	Status	Stat. Info.	IA
M	14983/2012 (12-05-2012 12:00 AM) C.A. No. 004690 / 2012 Registered on 12-05-2012 SLP(C) No. 015223 /	BHARAT SANCHAR NIGAM LIMITED vs. AMARTI DEVI	-	P		

Type	Case Number	Petitioner vs. Respondent	List	Status	Stat. Info.	IA
	2012 Registered on 10-05- 2012					
<b>C</b>	<b>29775/2012</b> (05-11-2012 12:00 AM) C.A. No. 007789 / 2012 Registered on 05-11- 2012 SLP(C) No. 031313 / 2012 Registered on 01-11- 2012	BHARAT SANCHAR NIGAM LIMITED vs. DALBIR SINGH	Y	P	FOR APPLICATION FOR DISPOSAL OF SLP BY THE RESPONDENT ON IA 213182/2023	1/2012(D) EXEMPTION FROM FILII 213182/2023(P) APPLICATION FOR DISP SLP BY THE RESPONDE
<b>C</b>	<b>40392/2015</b> (05-01-2016 12:00 AM) C.A. No. 000051 / 2016 Registered on 05-01- 2016 S.L.P. (C)...CC No. 022452 / 2015 Registered on 17-12- 2015 SLP(C) No. 000227 /	BHARAT SANCHAR NIGAM LIMITED vs. BHARAT KUMAR KUMAWAT	Y	P		1/2015(D) CONDONATION OF DEL/ FILING 9202/2018(P) PERMISSION TO FILE AI DOCUMENTS/FACTS/AI 9203/2018(P) EXEMPTION FROM FILII 83753/2023(P) INTERVENTION/IMPLEA 83759/2023(P) INTERVENTION/IMPLEA 103663/2023(P) INTERVENTION/IMPLEA

Type	Case Number	Petitioner vs. Respondent	List	Status	Stat. Info.	IA
	2016 Registered on 05-01- 2016					
L	<b>973/2021</b> (19-04-2021 12:00 AM) C.A. No. 001665 / 2021 Registered on 19-04- 2021 SLP(C) No. 006529 - / 2021 Registered on 19-04- 2021	BHARAT SANCHAR NIGAM LIMITED vs. ABDUL RASHEED A.A.	Y	P	FOR INTERVENTION APPLICATION ON IA 166186/2021	36695/2021(D) CONDONATION OF DEL/ FILING 36696/2021(P) EXEMPTION FROM FILII THE IMPUGNED JUDGM 45124/2021(P) PERMISSION TO FILE AI DOCUMENTS/FACTS/AI 166186/2021(P) INTERVENTION APPLIC, 32999/2024(P) WITHDRAWAL OF CASE APPLICATION 252045/2024(P) PERMISSION TO FILE AI DOCUMENTS/FACTS/AI

Listing Dates



Interlocutory Application Documents



Court Fees



Notices



Defects



**Judgement/Orders****Mention Memo****Drop Note****Office Report****Similarities****Caveat**[Back](#)



ITEM NO.7 Court 6 (Video Conferencing)

SECTION XI-A

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s).973/2021

(Arising out of impugned final judgment and order dated 13-11-2019 in OPCAT No. 63/2017 passed by the High Court of Kerala at Ernakulam)

BHARAT SANCHAR NIGAM LIMITED &amp; ORS.

Petitioner(s)

VERSUS

ABDUL RASHEED A.A. &amp; ORS.

Respondent(s)

(WITH I.R. and IA No.36695/2021-CONDONATION OF DELAY IN FILING and IA No.36696/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 19-04-2021 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. R.D Agrawala, Sr. Adv.  
Mr. Pradeep Kumar Mathur, AOR  
Mr. Sameer Agarwal, Adv.  
Mr. Chiranjeev Johri, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

- 1 Civil Appeal No 51 of 2016 (**BSNL v Bharat Kumar Kumawat**) is pending before this Court pursuant to the leave which was granted on 5 January 2016. A similar issue is involved in the present case.

Signature Not Verified  
Digitally signed by  
Sanjay Kumar  
Date: 2021.04.20  
10:46:44 IST  
Reason:

Delay condoned.

- 3 Leave granted.

- 4 Tag with Civil Appeal No 51 of 2016.
- 5 In the meantime, there shall be a stay of the operation of the impugned judgment and order dated 13 November 2019 of the High Court of Kerala in OP(CAT) No 63 of 2017.

**(SANJAY KUMAR-I)**  
**AR-CUM-PS**

**(CHETAN KUMAR)**  
**AR-CUM-PS**

ITEM NO.105

COURT NO.8

SECTION IV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.4690/2012

BHARAT SANCHAR NIGAM LIMITED

APPELLANT(S)

VERSUS

AMARTI DEVI

RESPONDENT(S)

WITH

C.A. No. 7789/2012 (IV)

( IA No. 213182/2023 - APPLICATION FOR DISPOSAL OF SLP BY THE  
RESPONDENT)

C.A. No. 51/2016 (XV)

IA No. 103663/2023 - INTERVENTION/IMPLEADMENT  
IA No. 83759/2023 - INTERVENTION/IMPLEADMENT  
IA No. 83753/2023 - INTERVENTION/IMPLEADMENT)

C.A. No. 1665/2021 (XI-A)

(IA No. 36696/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT  
IA No. 166186/2021 - INTERVENTION APPLICATION  
IA No. 45124/2021 - PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURES  
IA No. 32999/2024 - WITHDRAWAL OF CASE / APPLICATION)

Date : 06-11-2024 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.K. MAHESHWARI  
HON'BLE MR. JUSTICE RAJESH BINDAL

For Appellant(s)

105, 105.1, 105.2

Mr. Atul Yeshwant Chitale, Sr. Adv.  
Mr. Nirbhay Singh, Adv.  
Mr. Shaurya Pratap S., Adv.  
Mrs. Suchitra Atul Chitale, AOR

Mr. Dinesh Agnani, Sr. Adv.  
Mr. Pradeep Kumar Mathur, AOR  
Mr. Chiranjeev Johri, Adv.

Mr. Sitesh Kumar, Adv.

For Respondent(s) Ms. Sonia G Singh Samber, Adv.  
Mr. Amrendra Kumar Mehta, AOR  
Ms. Pallavi Daem, Adv.  
Ms. Gunjan Kumari, Adv.

Mr. Deepak M. Nargolkar, Sr. Adv.  
Mr. Narendra Hooda, Sr. Adv.  
Mr. Mukesh Kumar Singh, Adv.  
Mr. Ankolekar Gurudatta, AOR

Mr. Hariraj M R, Sr. Adv.  
Mr. Rajiv Shankar Dvivedi, AOR  
Mrs. Arti Dvivedi, Adv.  
Mr. S.k. Sarkar, Adv.  
Mr. Rishabh Jain, Adv.

Ms. Surabhi Guleria, AOR

UPON hearing the counsel, the Court made the following  
O R D E R

1. List on 27<sup>th</sup> November, 2024.
2. Soft copy of the paper books of Civil Appeal No. 1971/2012 shall be made available to the Bench on the next date of listing.

(POOJA SHARMA)  
COURT MASTER (SH)

(NAND KISHOR)  
COURT MASTER (NSH)

# Abdul Rasheed.A.A vs Union Of India on 13 November, 2019

Equivalent citations: AIRONLINE 2019 KER 1240

Bench: K.Vinod Chandran, V.G.Arun

CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

WEDNESDAY, THE 13TH DAY OF NOVEMBER 2019 / 22ND KARTHIKA, 1941

OP (CAT).No.63 OF 2017(Z)

AGAINST THE ORDER/JUDGMENT IN OA 504/2013 OF CENTRAL  
ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

PETITIONERS:

- 1 ABDUL RASHEED.A.A.  
S/O LATE SADAK ABDULLA, AGED 34 YEARS,WORKING AS  
JUNIOR ENGINEER O/O SDE OFC,OCB EXCHANAGE, TIRIR,  
RESIDING AT ACHIPRA HOUSE,VALLIKARRIRAM, NIRAMARUTHUR  
PO, TIRUR.676109.
- 2 ANWAR ALI P  
S/O LATE KHALID P, AGED 37 YEARS,WORKING AS SR. TOA,  
O/O GMT, BSNL, MARKETING (DVSN)UP HILL MALAPPURAM,  
RESIDING AT PUTHIYAKATH HOUSE,CHAKKALAKUTH, GANDHI  
NAGAR (84), NILAMBUR-679329,MALAPPURAM DISTRICT.
- 3 PRASOBH J NAIR  
S/O LATE E. JANARDHANAN NAIR, WORKING AS SR.TOA, O/O  
TELECOM CIVIL DIVISION,BSNL, CO-AXIAL STAFF QUARTERS,  
EAST HILL,BSNL, CALICUT-673005, RESIDING AT  
PRABHATHAM,PATTELTHAZHAM, P.O POKKUNNU,MAVKAVE,  
CALICUT.673007.
- 4 SUDHEER T  
S/O LATE BALAN T, AGED 42 YEARS,WORKING AS SR.TOA  
(G), O/O GMT,BSNL, MALAPPURAM, RESIDING AT  
SREERAGAM,PIDAKKOLIPARAMBU, EDAKKAD PO,KOZHICODE-  
673005.

- 5 VIJAYAMMA K.J.  
D/O LATE NARAYANA KURUP, AGED 55 YEARS,WORKING AS  
SER. TOA(G), CSC, CTO BUILDING,ALAPPUZHA-688001,  
RESIDING AT KURIKAVEEDU,MARARIKKULAM NORTH PO,  
ALAPPUZHA.

O.P(CAT) No.63 of 2017 - 2 -

- 6 VALSAMMA MATHEW  
D/O VARGHESE PV, AGED 50YEARS,WORKING AS  
SR.TOA(G), CSC, THYCATTUSSERY,POOCHAKKAL PO,  
CHERTHALA, ALAPPUZHA.688528,RESIDING AT  
SIHYALAYAM (PALLIPARAMBIL)PALLIPPURAM PO,  
CHERTHALA, ALAPPUZHA.688541.

- 7 SIVAPRASAD S  
S/O LATE P. SREEKUMARAN NAIR,AGED 33 YEARS,  
WORKING AS SR.TOA, O/O GMTD,BSNL BHAVAN,  
VELLAYITTAMBALAM, KOLLAM,RESIDING AT  
SREESHYLAM, KANJIRAMALA, PPM PO,PIN  
CODE.691332.

- 8 SASIKALA P  
W/O LATE SARATHCHANDRA BABU, AGED 47  
YEARS,WORKING AS SR. TOA, O/O GMT, BSNL  
BHAVAN,VELLAYITTAMBALAM, KOLLAM, RESIDING AT  
SREESHYLAM,THEKUMBHAGAM, CHAVARA SOUTH PO.

- 9 RAJNEESH S  
S/O LATE N. SIVARAJAN, AGED 31 YEARS,WORKING AS  
JAO, O/O GMT, BSNL BHAVAN,THIRUVALLA, RESIDING  
AT CHARUVILA PUTHEN VEEDU,PALACHEY PO, PUNALUR,  
KOLLAM-691331.

BY ADVS.  
SRI.M.R.HARIRAJ  
SMT.G.BINDU  
SRI.P.A.KUMARAN  
SMT.PRIYADA R MENON  
SRI.K.RAJAGOPAL

RESPONDENTS:

- 1 UNION OF INDIA  
REPRESENTED BY THE SECRETARY TO GOVT.OF  
INDIA,MINISTRY OF COMMUNICATIONS, NEW  
DELHI.PIN.110001.
- 2 BHARATH SANCHAR NIGAM LTD  
REPRESENTED BY CHAIRMAN & MANAGING DIRECTOR,  
SANCHAR BHAVAN, NEW DELHI.110001.

O.P(CAT) No.63 of 2017 - 3 -

- 3 THE CHIEF GENERAL MANAGER  
BHARATH SANCHAR NIGAM LTD, KERALA CIRCLE,  
THIRUVANANTHAPURAM.695033.
- 4 THE PRINCIPAL GENERAL MANAGER  
BHARATH SANCHAR NIGAM LTD, KOZHIKODE SSA,  
KOZHIKODE.673001.
- 5 THE GENERAL MANAGER  
BHARATH SANCHAR NIGAM LTD, ALAPPUZHA SSA,  
ALAPPUZHA-688001.
- 6 THE GENERAL MANAGER  
BHARATH SANCHAR NIGAM LTD, KOLLAM SSA, KOLLAM.  
691001.
- 7 THE GENERAL MANAGER  
BHARATH SANCHAR NIGAM LTD, MALAPPURAM SSA,  
MALAPPURAM.676505.
- 8 THE GENERAL MANAGER  
BHARATH SANCHAR NIGAM LTD, THIRUVALLA SSA,  
THIRUVALLA.

R1 BY ASSISTANT SOLICITOR GENERAL  
R1-2 BY SRI. JOHNSON GOMEZ, SC, BHARAT SANCHAR  
NIGAM LTD.  
R1 BY SRI.T.V.VINU, CGC

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 13-11-2019,  
THE COURT ON 13-11-2019 DELIVERED THE FOLLOWING:  
O.P(CAT) No.63 of 2017 - 4 -

CR

#### JUDGMENT

Dated, this the 12th day of November, 2019 Vinod Chandran, J.

Conversion of a Government Department into a public sector undertaking, whether would disable the persons recruited prior to the actual date of conversion from being considered as Government employees for reason of their appointment being after the new undertaking came into existence; is the question arising in the above case.

2. The Tribunal before whom the petitioners had first agitated the cause found against them. It was held that the Bharath Sanchar Nigam Limited (hereinafter for brevity 'BSNL') and Department of Telecom (hereinafter for brevity 'DoT') having interpreted the terms and conditions of creation of BSNL, absorption of staff etc there can be no reliance placed on the Presidential orders which conferred such status to Government employees, on the petitioners. The Tribunal found that though

they were recruited during the threshold of the conversion, they cannot be treated as DoT employees. Their appointment on completion of formalities and training was made after BSNL had come into existence. The applicants were found to be liable to concede to the position taken by the BSNL, in the matter of their status as government employees; which stood dis-allowed.

3. The learned Counsel for the petitioner Sri.M.R. Hariraj took us through the various documents which indicate that all of the applicants/petitioners were appointed under the compassionate scheme of appointment. They were issued with temporary appointment orders by DoT, subject only to their completion of training, for which they were deputed, also by DoT. While they were undergoing training, the conversion is said to have materialised on 01.10.2000. They completed the training and reported for duty with the new entity; the DoT having already been converted as BSNL. They were appointed under the BSNL just a few days after the crucial date of 01.10.2000. Only two of the petitioners were appointed after two months since their training commenced a little later. While they were so continuing, they were asked to exercise an option which is applicable to all the employees who were deputed from the DoT to the BSNL, as to whether they wish to continue in BSNL or seek repatriation back to DoT. All the petitioners exercised their option to continue in the BSNL based on which Presidential orders were issued allowing them to be continued in the BSNL. However, later these Presidential orders were interfered with by the Assistant General Manager of the BSNL which are produced as Annexure A9 and impugned in the original petition.

4. It is submitted that the applicants though only deputed for training were regularly recruited under the scheme and but for the unfortunate circumstance of the conversion to BSNL having intervened on 01.10.2000 they would have been treated as Central Government Employees. Other employees of the DoT, prior to the formation of BSNL, who were deputed and exercised options to be continued in the BSNL, when absorbed, their right to pension and their membership in the General Provident Fund were protected. The petitioners are also entitled to such protection but however, the same has been declined by cancellation of the Presidential orders which is challenged as without jurisdiction and issued in violation of the principles of natural justice.

5. The learned Standing Counsel appearing for the BSNL Sri Johnson Gomez would at the outset take us through Ext.R2(c) series of documents produced in the Original Petition which according to him is issued in cancellation of the Presidential orders by the Government of India itself. Rule 37-A of the Central Civil Services (Pension) Rules, 1972 (for brevity "CCS Pension Rules") relied on by the petitioner is specifically read out to point out that in the case of petitioners there was no transfer as contemplated in sub-rule(1) nor do the petitioners enjoy the status of a Government Servant as on the previous day of 01.10.2009. The recruitment rules produced as Annexure R2(c) along with reply statement before the Tribunal is specifically referred, to contend that the training is before appointment and the rules specifically speak of an appointment after the training is successfully completed. The appointment of the petitioners having occurred only after conclusion of the training, which is after 01.10.2000, they can only be deemed to be appointed to the BSNL. No status accrues to them of government servants transferred from the DoT To BSNL. Reference is also made to Ext.P2, Offer of Temporary Appointment, issued by DoT to further canvass the position that the petitioners were never appointed under the DoT. An Office Memorandum referred to by the Jaipur Bench of the Central Administrative Tribunal, in the order produced as Annexure A17, is pointed out



to contend that in a similar situation, the Government had come out with a specific scheme by which the persons who were sent for training were deemed to be appointed to the Government prior to 01.01.2004. A similar decision having not been taken in the case of the petitioners, they cannot claim the status of a government servant, asserts the learned Standing Counsel.

6. The learned Counsel for the petitioners in reply pointed out that the order of the Jaipur Bench of the Tribunal produced as Annexure A17 relied on the Memorandum pointed out by the learned Standing Counsel to allow a similar claim. The said judgment was unsuccessfully challenged before the High Court of Rajasthan. The learned Standing Counsel for BSNL and the learned Central Government Standing Counsel informs us that the same has been stayed by the Hon'ble Supreme Court. Hence we will not look into the judgment of the Rajasthan High Court which in any event has only a persuasive effect on us. The OM protected persons who were recruited and sent for induction training to the benefits due under the old pension rules which stood altered from 01.01.2004; after which date they were actually appointed. We cannot but observe that identical was their position with the petitioners here, with only the intervening circumstance being different. We'll not rely on that O.M alone because as pointed out, there is no identical protection specifically ordered in this case.

7. The admitted facts are that the petitioners were recruited under a compassionate scheme of appointment, for reason of they being dependents of employees of DoT who died in harness. The date of commencement of training with respect to petitioners 1 to 3, 5, 6 and 8 to 10 are similar, ie: 10.07.2000 and they joined BSNL on 10.10.2000. The petitioners 4 and 7 were deputed for training on 18.09.2000 and they joined in the BSNL on 18.12.2000. The training was for a period of three months. Annexure A1 series of documents are the communications issued to the petitioners offering them employment in relaxation of normal recruitment rules, on compassionate grounds. These also speak of verification of certificates of qualifications and request the petitioners to wait for further communication. After verification of such documents and certificates and also finding them to be eligible for appointment Annexure A2 series of communications were issued offering them temporary appointment and directing them to report for training. The regular appointment could only be after successful completion of training. All the petitioners completed the training successfully. However, by the time they completed the training and reverted to the employer, the BSNL came into existence and all of them joined as per Annexure A6 series of orders. Pertinent is the fact that only some of the activities of the DoT got converted and vested with the BSNL and the DoT remained as a department of the Union of India.

8. The petitioners continued on the basis of their appointment in BSNL and later were issued with option forms for absorption in BSNL or retention of Government Status, by repatriation. Annexure A7 series of documents are the options exercised, by which all the petitioners opted to remain in the BSNL. In accordance with that, Government of India (DoT) issued Annexure A8 orders which was under the order of President of India conveying the factum of acceptance of option and permanent absorption of the petitioners in BSNL; who were styled alternatively as permanent and temporary employees of the DoT. It is based on these orders they were continuing and it was while they were so continuing that out of the blue the petitioners were issued with Annexure A1 orders by various officers of the BSNL canceling the Presidential order. We have to immediately notice that no such

cancellation could have been effected by the BSNL and the said ground has been accepted by the Official respondents insofar as the DoT, far later in the year 2017, issued Ext.R2 orders produced in the Original Petition again canceling the Presidential Orders accepting the fact that the earlier orders were incompetent. This was also much after the order of the Tribunal was passed, the sustainability of which we will look at a little later; on all aspects and not confined to this one ground.

9. The claim as to retention of government employee status is based on the benefit available to the DoT employees who were later absorbed in the BSNL, for pension from Government of India itself. Rule 37-A of the CCS Pension Rules as pointed out by the learned Counsel for the petitioners is very relevant. Sub-rule (1) speaks of enmasse transfer of government servants in a Department to a Public Sector Undertaking [PSU] or autonomous body on terms of foreign service without any deputation allowance, till they get absorbed to the said undertaking, on conversion of a Department into a PSU or an autonomous body. Sub-rule (2) and (3) speaks of an option available to a transferred government servant to revert back to the Government or seek permanent absorption in the new undertaking. As per sub-rule (4) the permanent absorption of the government servants as employees of the PSU takes effect only from the date on which their options are accepted by the Government. They cease to be government servants from the date of such acceptance and continue as employees of the PSU, but their right to pension as a government employee and the membership in the GPF remains protected.

10. Sub-rule (4) is very relevant insofar as the status of the government servant prior to the acceptance of an option exercised by such servant. As we noticed earlier, all the petitioners were deputed for training by the DoT and later when they joined for duty after successful completion of training the BSNL had been formed. The obligation to grant them appointment under the compassionate appointment scheme was of the Government under which the DoT was a department. They were also recruited by the DoT and the training too was conducted by the DoT. The BSNL was created, by virtue of the conversion of DoT, a Department of the Government, or certain activities being vested on the PSU. BSNL discharged the obligation of the Government of India in making appointments of these petitioners, recruited earlier by DoT. The BSNL could not have taken an independent decision regarding their appointment nor was there any question of verification of their eligibility or qualifications; it was automatic, being an imperative obligation and an imprimatur of the terms of conversion. It cannot hence be said that as on the date of formation of BSNL they were not government servants by reason of their appointments having not been made regularly.

11. We come back to the rule, to pertinently observe that sub-clause (4) of Rule 37-A makes it clear that till the option of the petitioners were accepted by the Government of India they continued as government servants. Hence on their appointment after successful training and continuance in the BSNL they retained their status of government servants. Fully recognising their status, the DoT issued them with the formats of application forms, for exercising option, either to be retained in the BSNL or to be reverted back to DoT. It is very clear that if they had exercised an option to be reverted back, they would have been taken back and accommodated in the DoT under the GoI itself; which then would have been irreversible at this distance of time. The vexing question is, if the

exercise of one option was irreversible, would the exercise of the other, be open to reversal on administrative vagaries? This impossibility of reversal of acceptance of exercise of option, further validates their claim of having government servant status even when they joined the BSNL and continued there in the very same status; prior to acceptance of the option exercised by them for retention in the BSNL.

12. We also have to take note of the arguments of the learned Standing Counsel appearing for the BSNL, with reference to the recruitment rules. The rules produced as Ext.P5 speak specifically of the training and the bond to be executed, as per Rule 7. It is the mandate of Rule 7 that direct recruits and promotees, before appointment shall undergo training for a period of three months. These recruits shall also before proceeding for training execute a bond in the form specified in the appendix to the rules. During the period of training they are entitled to a training allowance as seen from Annexure A2 and not regular scales of pay. Annexure A2 also requires furnishing of a security of Rs.10,300/- for disbursement of training allowance. All these indicate that the DoT sent the selected candidates for training with the rigour of joining back for appointment, which appointment is only subject to the successful completion of training. The terms of appointment after completion of training are explicit in paragraph 3 of Annexure A2. Ann:A2, while making it clear that appointment is temporary and does not confer any title to permanent appointment, speaks in the same breath as to the permanent appointment being subject to availability of vacancies; which is the only impediment, if and when the recruit successfully completes the training. Paragraph 7 only speaks of the candidates name being removed from the list of approved candidates, if the acceptance of temporary appointment is not specifically communicated. This does not reduce the status of the candidate who reports for training, to merely an approved one. On successful completion of training subject to availability of vacancies there is a mandate on the DoT to give appointment and the BSNL which took over the DoT also appointed the petitioners on completion of training; discharging their obligation as per the terms of conversion thus fulfilling the promise of appointment held out by the DoT.

13. In this context, we also refer to the Fundamental Rules (FR) as pointed out by the learned Counsel appearing for the petitioners. 'Duty' as per the definition in sub-rule 6(a)(i) of FR9 includes service as a probationer or apprentice provided such service is followed by confirmation. Sub-rule 6(b) also enables a course of instruction or training in India to be treated as duty of a government servant. It is also pertinent that FR26 enables such period to be counted for other purposes; sub-clause (a) of which says "All duty in a post on a time-scale counts for increments in that time-scale"(sic). There can hence be no dispute that the service of the petitioners is deemed to have commenced from the date of joining for training for the purpose of pension and grant of increments.

14. The BSNL places heavy reliance on Annexure R2(a) series of documents, produced in the original petition, to assert that the Presidential orders have been canceled. It is reiterated that the purported cancellation is in the year 2017 when the OP was pending before this Court. The order is passed by the DoT, Government of India. It is specifically stated therein that the impugned orders in the OA, passed by the Officers under the BSNL cannot be sustained since they are not vested with the power to cancel a Presidential order. The first reference in Ext.R2(a) is the Presidential order issued to the petitioners accepting their exercise of option which is produced as Annexure A8, in the

OA. The operative portion of Annexure R2(a) speaks of the cancellation having been issued by the Director, Establishment of Kerala, of the DoT by the power vested with him vide order under reference (2). That is also an order of the DoT dated 29.06.2017 which has not been produced before us, nor the Presidential sanction to cancel; in which event we are entitled to draw an adverse inference.

15. Be that as it may; even if we accept it, then the question is what is the effect of the cancellation; leaving aside, for the moment, our finding on the irreversibility of the acceptance of an option. In this context we note Annexure A8, the first order issued by the DoT, on sanction from the President, which is termed as the Presidential order. We extract the said order from one of those produced in Annexure A8 series. No.27-1KRL/Chief Engineer (Civil)/247/2002 Dated 13.3.2002 ORDER Sub: Permanent absorption of Shri Prasobh J Nair, TOA(G)I, staff No.4040 in Bharat Sanchar Nigam Limited

1. Pursuant to letter No.BSNL/4/SR/2000 dated 2.1.2001 on the above subject, and in accordance with the provisions of Rule 37-A of CCS (Pension) Rules, as amended from time to time, sanction of the President is hereby conveyed to the permanent absorption of Sri. Prasobh J Nair, a permanent employee of the Department of Telecommunications, in BSNL, with effect from the date and under the terms and conditions as indicated below.

2. Date of effect:-The permanent absorption shall take effect from 01.10.2000, forenoon.

3. Pension/Gratuity:- Shri Prasobh J Nair shall be eligible for pensionary benefits including gratuity as per the provisions of Rule 37-A of the CCS(Pension) Rules, 1972, as amended from time to time.

4. Family Pension:- The family of Shri Prasobh J Nair shall be eligible for family pension as provisions of Rule 37-A read with Rule 54(13-B) of CCS(Pension) Rules, 1972, as amended from time to time.

5. Regulation of pay on absorption:- To be regulated in terms of para 4 of DOP & PW O.M. No4/18/87-P&PW(D) dated 5.7.1989

6. Leave:- The Earned Leave and Half Pay Leave at the credit of Shri Prasobh J Nair stands transferred to BSNL on the date of absorption as provided for under Sub-rule 24(b) of Rule 37-A of the CCS (Pension) Rules.

7. Provident Fund:- The amount of subscription together with interest there on standing to the credit of Shri Prasobh J Nair in the General Provident Fund account will be transferred to his new Provident Fund Account under the BSNL as provided for under Sub-rule 24(a) of Rule 37-A of the CCS (Pension) Rules, as amended from time to time.

(A.SUKUMARAN) DIRECTOR (Estt-Kerala) DEPARTMENT OF TELECOM

16. The order is only insofar as the permanent absorption of the petitioners permanently in BSNL. They were alternatively described as permanent or temporary employees of the DoT in the order. They were also granted protection under Rule 37-A of the CCS (Pension) Rules. The cancellation of such an order would only result in their being reverted to Government service under the DoT. The question would be as to whether after long years of such service in BSNL, they can be reverted back to the DoT. As we noticed earlier, the option exercised by the employees whether it to be reversion back to DoT or for permanent absorption in BSNL, when accepted by the Government of India is irreversible and there could be no cancellation effected thereat especially after long years. We also notice that cancellation has been effected subsequent to the acceptance of option, without notice to the parties and in contravention of the specific rules referred to by us herein above.

17. We do not hence find any reason for Union of India to take a view, in the case of the petitioners who were recruited and dispatched for induction training, from being considered differently from those positioned identically when there was a change effected in the pension rules with effect from 01.01.2004; as revealed from the O.M relied on by the Jaipur Bench of the Administrative Tribunal.

18. On the factual background and the legal reasoning as above we find it difficult to sustain the order of the Tribunal and set it aside declaring the petitioners to be Government Servants as employed under the DoT, who were transferred and later absorbed in the BSNL. The petitioners have lost their status of government servants only when their options for retention in BSNL were accepted by the Government by an order with sanction from the President of India, as is seen from Annexure A8 series. This cannot be easily meddled with, especially since the consequence will be a reversion to government service and is hence irreversible. What has been canceled even if we assume it to be with Presidential-sanction is the absorption in the BSNL, not the status accrued to the petitioners of government servants.

The Original Petition (CAT) is allowed and so is the OA, declaring the petitioners, servants of Union Of India under the DoT, who on creation of BSNL, were transferred and permanently absorbed there under Rule 37-A, with all the protections available there under. We leave the parties to suffer their respective costs.

Sd/-

K. Vinod Chandran, Judge Sd/-

V.G. Arun, Judge jma APPENDIX PETITIONER'S/S EXHIBITS:

EXHIBIT P1 A TRUE COPY OF THE FINAL ORDER DATED 21.7.2016 IN OA NO.504/2013 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM.

EXHIBIT P2 A TRUE COPY OF THE ORIGINAL APPLICATION IN O.A NO.504/20132 WITH ANNEXURES. ANNEXURE A9(A) TRUE COPY OF THE CANCELLATION OF PRESIDENTIAL ORDER NO.ST-1/PRE-

ORD/2006/PT DATED 14/02/2008 ISSUED BY 3RD RESPONDENT.

ANNEXURE A9(B) TRUE COPY OF THE CANCELLATION OF PRESIDENTIAL ORDER NOSTA-11/19/05-06/81 DATED 07/09/2010 ISSUED BY THE 7TH RESPONDENT.

ANNEXURE A9(C) TRUE COPY OF CANCELLATION OF PRESIDENTIAL ORDER NO.F.NO.ST-160/HRD/120 DATED 21/07/2011 ISSUED BY THE 5TH RESPONDENT.

ANNEXURE A9(D) TRUE COPY OF CANCELLATION OF PRESIDENTIAL ORDER NO.ST-F/BSNL OPTION/III/57 DATED 10/04/2012 ISSUED BY 6TH RESPONDENT.

ANNEXURE A9(E) TRUE COPY OF ORDER NO.Q-2632/TLA/2012- 13/68 DATED 04/01/2013 ISSUED TO THE 10TH APPLICANT.

ANNEXURE A1 TRUE COPIES OF THE OFFER OF COLLECTIVELY APPOINTMENTS ISSUED TO THE APPLICANTS BY THE 3RD RESPONDENT BEARING NO.RECTT/9-1157/2000 DATED 30/05/2000, LETTER NO.RECTT/9-1158/2000 DATED 30/05/2000, LETTER NO. RECTT/9-1046/99 DATED 17/05/2000, LETTER NO. RECTT/9- 10241/98 DATED 11/08/2000, LETTER NO. RECTT/9-1167/2000 DATED 19/05/2000, LETTER NO. RECTT/9-15/2000 DATED 11/08/2000, LETTER NO. RECTT/9- 1163/2000 DATED 20/06/2000, LETTER NO. RECTT/9-1165/2000 DATED 20/06/2000 AND LETTER NO. RECTT/9-1162/2000 DATED 01/06/2000.

ANNEXURE TRUE COPIES OF THE OFFER OF TEMPORARY A2 COLLECTIVELY APPOINTMENT NO.SRT 7495/14 DATED 14/06/2000, NO.SRT 7500/16 DATED 13/06/2000 AND NO. SRT 7487/29 DATED 04/09/2000 ISSUED BY THE ASSISTANT GENERAL MANAGER (ADMN) OFFICE OF THE 4TH RESPONDENT.

ANNEXURE A3 A TRUE COPY OF LETTER NO.SAT 2001/56 DATED 05/07/2000.

ANNEXURE A4 TRUE COPY OF THE ORDER N. SAT-2001/66 DATED 27/07/2000 ISSUED BY THE 4TH RESPONDENT.

ANNEXURE A4(A) TRUE COPY OF NO.HRD NO.1-6/99-2000 DATED 19/07/2000 ISSUED BY THE 3RD RESPONDENT.

ANNEXURE A5(A) TRUE COPY OF LETTER NO.SAT 2001/91 DATED 11/09/2000 ISSUED BY THE 4TH RESPONDENT.

ANNEXURE A5(B) TRUE COPY OF LETTER NO.STB/OA TRG/1/99 DATED 05/09/2000 ISSUED BY THE 6TH RESPONDENT.

ANNEXURE A6 TRUE COPY OF THE ORDERS NO.SGN-9022/98- COLLECTIVELY 2000/35 DATED 09/10/2000, NO.STB/43- 5/2000 DATED 10/10/2000, NO.E.13/RECTT/II/89 DATED 09/10/2000 AND MEMO NO. ST-B/OA TRG/100 DATED 08/10/2000 ISSUED BY 4TH, 5TH, 3RD AND 6TH RESPONDENTS.

ANNEXURE A6(A) A TRUE COPY OF ORDER NO.SAT-2001/117 DATED 15/12/2000 ISSUED BY THE 4TH RESPONDENT.

ANNEXURE A7 TRUE COPIES OF OPTION FORM SUBMITTED BY COLLECTIVELY THE 1ST, 2ND, 4TH AND 7TH APPLICANTS. ANNEXURE A8 TRUE COPIES OF THE ORDERS CONVEYING THE COLLECTIVELY SANCTION OF THE PRESIDENT FOR PERMANENT ABSORPTION IS ISSUED BY THE DEPARTMENT OF TELECOM.

ANNEXURE A10 A TRUE COPY OF THE RELEVANT PORTION OF THE MINUTES OF THE 25TH MEETING OF THE NATIONAL COUNCIL OF THE BSNL.

ANNEXURE A11 A TRUE COPY OF LETTER NO.BSNLEU/204(NCo DATED 23/01/2012.

ANNEXURE A12 TRUE COPIES OF THE REPRESENTATIONS SUBMITTED BY THE APPLICANTS TO THE RESPONDENTS.

ANNEXURE A13 TRUE COPY OF LETTER NO.ST.F/BSNL-

OPTION/III/61 DATED 16/04/2012, LETTER NO.ST-F/BSNL-OPTION/III/60 DATED 16/04/2012 ISSUED TO THE 7TH AND 9TH APPLICATION.

ANNEXURE A14 A TRUE COPY OF THE PAY FIXATION MEMO DATED 30/09/2004 ISSUED TO THE 3RD APPLICANT BY THE ACCOUNTS OFFICER, TELECOM ELECTRICAL DIVISION, CALICUT. ANNEXURE A15 A TRUE COPY OF THE FINAL ORDER DATED 11/12/2012 IN OA 289/2012 ON THE FILES OF THIS HONOURABLE TRIBUNAL.

ANNEXURE A16 A TRUE COPY OF THE OFFICE MEMORANDUM NO.38/58/06-PENSION AND PENSIONER'S WELFARE (A) DATED 05/03/2008 ISSUED BY THE DIRECTOR, PENSION AND PENSIONER'S WELFARE.

EXHIBIT P3 A TRUE COPY OF THE MISCELLANEOUS APPLICATION NO.616/2013.

EXHIBIT P4 A TRUE COPY OF THE REPLY STATEMENT IN MA DATED 25.11.2013 ALONG WITH THE ANNEXURES.

ANNEXURE R1 A COPY OF THE LETTER NO.BSNL/4/SR/2002 VOL.III DATED 04/05/2007 OF BSNL CORPORATE OFFICE.

ANNEXURE R2 A TRUE COPY OF THE BSNL CORPORATE OFFICE, NEW DELHI LETTER 500-85/CA II/BSNL EPF/VOL.III DATED 21/06/2007. ANNEXURE R3 A TRUE COPY OF THE DOT 27/01/2001 SNG (VOL-II)/ KERALA DATED 29/04/2013. EXHIBIT P5 A TRUE COPY OF THE REPLY STATEMENT DATED 14.3.2014 ALONG WITH THE ANNEXURES.

ANNEXURE R2(A) A TRUE COPY OF THE LETTER NO.BSNL/4/SR/2002 VOL.III DATED 04/05/2007 ISSUED BY THE BSNL CORPORATE OFFICE.

ANNEXURE R2(B) A TRUE COPY OF THE LETTER NO.500-85/CA II/BSNL/EPF/VOL. III DATED 21/06/2007 ISSUED BY THE BSNL CORPORATE OFFICE. ANNEXURE R2(C) A TRUE COPY OF THE RECRUITMENT RULES 1988 OF TOA.

ANNEXURE R2(D) A TRUE COPY OF THE LETTER NO.HR-I/PRE-

ORDER/06/DT/51 DATED 21/10/2011 ISSUED TO THE THIRD RESPONDENT.

ANNEXURE R2(E) A TRUE COPY OF THE GRIEVANCE ACTION STATUS AS ON 04/09/2013 SUBMITTED BY THESE RESPONDENTS TO THE DOT.

ANNEXURE R2(F) A TRUE COPY OF THE NO.27/01/2001-SNG (VOL.II)/KERALA DATED 29/04/2013 ISSUED BY THE DOT.

EXHIBIT P6 A TRUE COPY OF THE REJOINDER DATED 17.11.2014.

EXHIBIT P7 A TRUE COPY OF THE MA NO. 104/2014 WITH ANNEXURES.

ANNEXURE A17 A TRUE COPY OF THE ORDER IN OA 361/2013 DATED 15/10/2014.

RESPONDENT'S/S EXHIBITS:

ANNEXURE P2A THE TRUE COPY OF THE ORDER NO.

27/01/DIR(ESTT) /DOT/KRL/2009/124 DATED 07.11.2017 CANCELLING THE PRESIDENTIAL ORDER ISSUED TO THE 1ST PETITIONER ANNEXURE P2B THE TRUE COPY OF THE ORDER NO.

27/01/DIR(ESTT)/DOT/KRL/2009/125 DATED 07.11.2017 CANCELLING THE PRESIDENTIAL ORDER ISSUED TO THE 2ND PETITIONER ANNEXURE P2C THE TRUE COPY OF THE ORDER RNO.

27/DIR(ESTT)/DOT/KRL/2009/120 DATED 07.11.2017 CANCELLING THE PRESIDENTIAL ORDER ISSUED TO THE 3RD PETITIONER ANNEXURE P2D THE TRUE COPY OF THE ORDER NO.



27/1/DIR(ESTT)/DOT/KRL /2009/122 DATED 07.11.2017 CANCELLING THE  
PRESIDENTIAL ORDER ISSUED TO THE 4TH PETITIONER.

ANNEXURE P2E THE TRUE COPY OF THE ORDER NO.

27/1/DIR(ESTT)/DOT/KRL /2009/111 DATED 07.11.2017 CANCELLING THE PRESIDENTIAL  
ORDER ISSUED TO THE 5TH PETITIONER ANNEXURE P2F THE TRUE COPY OF THE ORDER  
NO. 27/1- DIR(ESTT) DOT/KRL/2009/112 DATED 07.11 .2017 CANCELLING THE  
PRESIDENTIAL ORDER ISSUED TO THE 6TH PETITIONER ANNEXURE P2G THE TRUE COPY  
OF THE ORDER NO.

27/1/DIR(ESTT)/DOT/KRL/2009/117 DATED 07.11.2017 CANCELLING THE PRESIDENTIAL  
ORDER ISSUED TO THE 8TH PETITIONER. ANNEXURE P2H THE TRUE COPY OF THE  
ORDER NO.

27/1DIR(ESTT)/DOT/KRL /2009/119 DATED 07/11/2017 CANCELLING THE PRESIDENTIAL  
ORDER ISSUED TO THE 9TH PETITIONER. ANNEXURE P2I THE TRUE COPY OF THE ORDER  
NO.27/1/DIR(ESTT)/DOT/KRL/2009/137 DATED 07/11/2017 CANCELLING THE  
PRESIDENTIAL ORDER ISSUED TO THE 9TH PETITIONER.

## **B.S.N.L. & Another. vs Bharat Kumar Kumawat & Others. on 27 July, 2015**

**Author: Ajay Rastogi**

**Bench: Ajay Rastogi**

D.B.Civil Writ Petition No.3941/2015.  
B.S.N.L. & Another. VERSUS Bharat Kumar Kumawat & Others.  
27.07.2015.  
HON'BLE MR.JUSTICE AJAY RASTOGI  
HON'BLE MR.JUSTICE J.K.RANKA

Mr.Neeraj Batra, Counsel for petitioners.

\*\*\*\*\* Instant petition is directed against order of the Id.Central Administrative Tribunal dt.15.10.2014.

All the three respondents jointly filed Original Application before the Id.Tribunal with the grievance that they all are dependents of the deceased employees of Department of Telecommunications (DOT) and offer of appointment was made by the Department of Telecommunications vide order dt.29.01.2000 and being appointees of Department of Telecommunications (DOT) are entitled to seek benefit of R.37-A of the CCS (Pension) Rules, 1972 and after undergone three months' theoretical training and by the time they completed their training, the Department of Telecommunications was converted into Bharat Sanchar Nigam Limited w.e.f. 01.10.2000 and on successful completion of three months' training, their original order of appointment dt.29.01.2000 was confirmed by the Bharat Sanchar Nigam Limited vide order dt.16.11.2000.

It appears that employees of the Department of Telecommunications were absorbed after creation of Bharat Sanchar Nigam Limited, Government of India Enterprise and they were entitled for certain benefits u/R.37-A of the CCS (Pension) Rules, 1972 but the appellant was no extending the benefit of R.37-A of the Rules, 1972 to the respondents on the premise that they were offered final order of appointment on 16.11.2000, indisputably after creation of the Bharat Sanchar Nigam Limited w.e.f. 01.10.2000 and they being employees of Bharat Sanchar Nigam Limited, benefit of R.37-A of the Rules, 1972 could not be extended to them.

A joint Original Application was filed before the Id.Tribunal by the three respondents and their grievance was that all of them were offered appointment as dependents of the deceased Government employees after adjudging their overall suitability by the then Department of Telecommunications on 29.01.2000 and each of them has completed three months' of training and after completion of

training, the offer of appointment was confirmed by the Bharat Sanchar Nigam Limited by passing of order dt.16.11.2000 but their appointment shall remain the same as offered to them at the first instance by the Department of Telecommunications vide order dt.29.01.2000 and being the employees of DOT and absorbed in the Bharat Sanchar Nigam Limited, on its creation w.e.f. 01.10.2000, they are entitled for certain benefits which are admissible to the employees of the Department of Telecommunications u/R.37-A of the Rules, 1972.

The defence of petitioner-respondent before the Id.Tribunal was that final offer of appointment was subsequent to the creation of Bharat Sanchar Nigam Limited vide order dt.16.11.2000, as such, the benefits which are extended to Department of Telecommunications could not be extended to them after their order of appointment dt.29.01.2000 was confirmed by the Bharat Sanchar Nigam Limited vide order dt.16.11.2000.

Ld.Tribunal, after hearing the parties was of the view that offer of appointment was made to each of the respondents-employees by the Department of Telecommunications vide order dt.29.01.2000 and all of them were dependents of the deceased employees of Department of Telecommunications and after successful completion of three months' training, their appointment was confirmed by the Bharat Sanchar Nigam Limited vide order dt.16.11.2000, as such, all the three employees shall be treated as the employees of Department of Telecommunications and upon their absorption, after creation of Bharat Sanchar Nigam Limited w.e.f. 01.10.2000, all the three respondents are entitled to the benefits extended to employees of the Department of Telecommunications provided u/R.37-A of the CCS (Pension) Rules, 1972.

We have heard counsel for the petitioner and after going through the order passed by the Id.Tribunal dt.15.10.2014, impugned in the instant proceedings, we do not find any manifest error being committed by the Id.Tribunal under order impugned which may call for interference by this court.

Consequently, the instant petition is devoid of merits, accordingly stands dismissed.

(J.K.RANKA) , J .

(AJAY RASTOGI) , J .

All corrections made in judgment/order have been incorporated in the judgment/order being emailed.  
Solanki DS, Sr.P.A.

MIN - PB CO

Bharat Sanchar Nigam Limited  
(A Govt of India Enterprise)  
Corporate Accounts Section  
Statesman House 11<sup>th</sup> floor

148-B Barakhamba Road, New Delhi-110001

A-22/10/2021  
60No:500-05/CA II/BSNL/5-12 Dated at New Delhi the 16<sup>th</sup> January, 2003

To

All Heads of Telecom Circles

Bharat Sanchar Nigam Limited

Sub: Opening of General Provident Account -Clarification reg.

Ref Orders issued by SR Section of BSNL having No.

- (1) BSNL /4/SR-2000 dt.05-03-2001
- (2) BSNL/4/SR-2000 dt.30-04-2001

Several references have been received from BSNL Circles for opening of GPF or EPF Account in respect of Casual Labourers/Temporary Status Mazdoors/ Compassionate appointees. In view of the orders under reference the following clarifications are issued.

1. The Casual Labourers /Temporary Status Mazdoors who are regularized /will be regularized by BSNL on or after 1.10.2000 in pursuance of the order No. 200-04/98-STN-II dt 29.08.2000 will be covered by General Provident Scheme and not by EPF /CPF Scheme.
2. The persons who are /will be appointed by BSNL on Compassionate ground on or after 1.10.2000 as nominees of the employees of DOT/ DTS/DTO died in harness up to 30.09.2000 will come under General Provident Scheme and not under EPF/ CPF Scheme.

-Ed-

(A.S.Ray)

DDG (Corporate Accounts)

A.S.Ray



20/1/2  
AGM (HR)  
BSNL, O/o GMTO  
Chandigarh 160022

True Copy

A.S.R.

2739350/2023/WS&amp;I - BSNL CO

BIHARAT SANCHARNIGAM LIMITED  
A GOVERNMENT OF INDIA ENTERPRISE  
CORPORATE OFFICE  
102-B, STATESMAN HOUSE, NEW DELHI-110 001  
(PERSONNEL DIVISION)

File No. 269-5/2005-Pers-IV  
Dated: 10<sup>th</sup> April, 2006

To

All Heads of Circles,  
BSNL.

Sub: Clarifications regarding Temporary Status Mazdoors and Casual Labourers regularized in BSNL on or after 1.10.2000 - reg.

A number of references have been received from various Circles/Units on the issues of whether Temporary Status Mazdoors as well as Casual Labourer regularized on after 1.10.2000 are to be treated as BSNL Employees, whether Presidential orders are to be issued and whether such employees will be covered under the GPF or EPF Act?

2.0 The above issues have been considered in consultation with the Department of Telecom and the Finance Wing of BSNL and it has been decided that all TSMs/Casual Labourers including those appointed on compassionate grounds who have been regularized on or after 1.10.2000, will be treated as BSNL Employees and as such, Presidential Orders for absorption in BSNL are not required to be issued.

3.0. In view of above, further necessary orders relating to terminal/retirement benefits, Leave, EPF etc shall be issued by the concerned branches of the Corporate Office, separately.

*P. Venkatraman*  
(P.S. VENKATRAMAN)  
ASSTT. DIRECTOR GENERAL (PERS-IV)  
TEL. NO. 23734152  
FAX NO. 23725255

- Copy to: 1 P.S. to CMD, BSNL.  
2 P.S. to all Directors, BSNL  
3. Sr. DDG (Pers/FP/BW/Elect/Arch)  
4. DDG (SR)/DDG (TF)/DDG (CA)/DDG (EF)/DDG (Admin), BSNL CO.  
5. General Secretary, BSNL EU.  
6. AD (OL), BSNL CO with request to kindly provide Hindi version.





**BSNAT SANCHAL NIGAM LTD.**  
(A GOVERNMENT OF INDIA ENTERPRISE)  
6<sup>th</sup> Floor, 'A' Wing, Statesman House  
Barakhamba Road, New Delhi -110 001.  
(SR Cell)

No. BSNL/4/SR/2002 Vol.III

Dated 04 05 2007

To

ALL CGMs, BSNL

Subj:- Absorption in BSNL in respect of casual labours, P/T employees, Ayas etc and employees appointed on compassionate ground clarification -reg.

Ref:- 1. No. BSNL/4/SR-2000 dated 05.03.2001 (Issue No. 1&2 ).  
2. No. BSNL/4/SR-2000 dated 30.04.2001 ( Issue No. (ii)&(iv) )

Kindly refer to this office letters under reference vide which certain clarifications were issued relating to regularized casual labours and compassionate appointees in BSNL. Further clarification were issued vide DOT letter no. 27-1/2001-SNG dated 13.09.2002 and BSNLCO letter 269-5/2005-Pers-IV dated 10.04.2006.

Keeping in view the clarification issued vide the above mentioned letters as well as BSNLCO letter no. 269-5/2005-Pers-IV dated 31.10.2006 regarding counting of past service of TSMs, the following amendments are issued in respect of the letter under reference.

SR Section Reference	Issue	Existing Clarification	Revised Clarification
BSNL/4/SR-2000 dated 5.3.01 (Issue 1)	Whether Casual Labours, P/T employees, Ayas etc. regularized on or after 1.10.2000 are to be allowed to exercise their option for BSNL?	As per the decision taken earlier, Casual labours regularized in pursuance of letter No.269-94/98-STN-II dated 29.09.2000 would remain government employees and option is required to be asked from them.	Options from Casual Labours having Temporary Status in DOT prior to 1.10.00 who are regularized in BSNL is to be treated in accordance with BSNL letter No.269/5/2005-Pers-IV dated 31.10.06. Options from Casual Labour regularized in BSNL who were not having TSM status in DoT will not be called for and such regularized casual labours will be treated as BSNL recruited employee only. In case option from any such casual labour has been called for and PO issued, it shall be treated as null and void.
BSNL/4/SR-2000 dated 30.04.01 (Issue (ii) )	Casual Labours, after being regularized in pursuance of letter No.269-94/98-STN-II dated 29.9.00 on a subsequent date after 31.03.2001 wants to submit their option. Whether their option will be accepted or not?	Yes, the option date will be the date of regularization.	

SR Section Reference	Issue	Existing Clarification	Revised clarification
BSNL/4/SR-2000 dated 5.3.01 (Issue 2)	Whether the employee appointed on compassionate ground and the inter departmental transferees joined on or after 1.10.2000 are to be permitted to exercise their option for BSNL?	As per the decision taken earlier, approval of Secretary DOT is finally required for compassionate appointments. Therefore, options are to be asked for from Compassionate appointees.	Options from Compassionate Ground Appointment case where appointment order issued after 30.08.00 by BSNL will not be called for and such appointees will be treated as BSNL recruited employee only. In case option from any such appointee has been called for and PO issued, it shall be treated as null and void.
BSNL/4/SR-2000 dated 30.04.01 (Issue (iv) )	Compassionate Ground Appointment cases where appointment order issued after 31.03.2001 and wants to submit option. Whether their option will be accepted or not ?	Yes, the date of appointment will be the date of option.	

*(Signature)*  
04.05.07  
(Jagdish Narain)  
ADG(SR-I)BSNLCO

## Copy to:-

1. PS to Director(HRD) BSNL Board.
2. DDG(Extt), DOT, Sanchar Bhawan, New Delhi
3. Sr.DDG(Extt) /Sr.DDG(SPF) /Sr.DDG(BW) /Sr.DDG(Elect) /Sr.DDG(Arch) /DDG(Pers.)  
DDG(TF) /DDG(CA) /DDG(EF) BSNL Corporate office for information please.
4. G.S. BSNLEU

**BSNARAT SANCHAR NIGAM LIMITED**  
(A Government of India Enterprise)  
Corporate Accounts Section  
11<sup>th</sup> Floor, Statesman Building  
148-B, Barakhamba Road, New Delhi 110001

No: 500-B5/CA II/BSNL/EPF/Vol III

dated 10<sup>th</sup> May, 2007

To,

Chief General Manager,  
All BSNL Circles.

Sub: Introduction of EPF Scheme -reg.

Ref: No BSNL/4/SR/2002 Vol III dated 04.05.2007 of ADG(SR-I), C.O.BSNL

Kindly refer to the letter cited above, in which the status of certain category of employees has been clarified. As per the said clarification, the under mentioned category of employees have been treated as BSNL recruited employees only.

- (a). Casual Labours not having Temporary status in DOT prior to 01.10.2000 who are regularized in BSNL
- (b). Employees appointed on compassionate ground where appointment order has been issued after 30.09.2000 by BSNL.

In view of the clarification, necessary action may kindly be taken to introduce EPF Scheme 1952 in respect of employees mentioned at serial (a) and (b) above.

  
(S. Gangopadhyay)  
Jt. DDG (CA)

Copy forwarded for kind information and necessary action thereto:

1. P.S. to all Directors, BSNL.
2. Sr DDG/DDG(Estt/SR/EF/Perp/FP/BW/Elect/Area) CO BSNL
3. Shri V A N. Namboodiri, General secretary, BSNL Employees Union, Dada Ghosh, Bhavan, 1, Patel Nagar Road, New Delhi-110008
6. All GM (F)/IFA, CPAO(ITI BILLS/CAO(TCO)/ADG(R&P)

c/c ——— TSK ——— pm



**BHARAT SANCHAR NIGAM LIMITED**  
(A Government of India Enterprise)  
Corporate Accounts Section  
11<sup>th</sup> Floor, Statesman Building  
148-B, Barakhamba Road, New Delhi 110001

No: 500-85/CA II/BSNL/EPF/Vol III

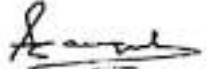
dated 25<sup>th</sup> May, 2007.

To,  
Chief General Manager,  
All BSNL Circles.

Sub: Applicability of EPF/GPF in respect of employees appointed on/after  
01/10/2000 as nominee of the ex-DOT/DTS/DTO employees died-in-  
Harness before 01.10.2000.

Ref: 500-85/2002/CA I/BSNL dated 16.01.2003.

Kindly refer to the letter cited above. In this regard it is clarified that the  
order issued vide this office letter no.500-85/CA II/BSNL/EPF/Vol III dated  
10.05.2007 will supersede the order issued earlier vide this office letter no. 500-  
85/2002/CA I/BSNL dated 16.01.2003.

  
(S.Gangopadhyay)  
Jt.DDG (CA)

Copy to: (1) GM(Finance)/IFA, All BSNL Circles for kind information.  
(2) CPAO (ITI Bills)/CAO (TCO)/ADG(R&P),CO BSNL for information.

2023/Office of DDG(Estt)

Indiabroadcast

CORPORATE ACCOUNTS SECTION  
11<sup>th</sup> FLOOR, STATE MAN HOUSE  
NARAHAMBA ROAD  
NEW DELHI - 110 001  
TEL 2373 4110, 2373 4306, 2373 4109 (Fax)



भारत संचार निगम लिमिटेड

BHARAT SANCHAR NIGAM LIMITED

(A Govt. of India Enterprise)

dated 21<sup>st</sup> June, 2007

No: 500-85/CA II/BSNL/EPF/Vol III

To,

The Chief General Manager,  
All BSNL Circles.

Sub: Introduction of EPF Scheme -reg.

Ref: This office letter of even no. dated 10.05.2007

Kindly refer to the letter mentioned above vide which it was clarified that the following categories of employees will be treated as BSNL recruited employees only.

- Casual Labours not having Temporary status in DOT prior to 01.10.2000 who are regularized in BSNL
- Employees appointed on compassionate ground where appointment order has been issued after 30.09.2000 by BSNL.

In view of the above clarification, it is once again requested to kindly ensure that the EPF dues payable up to May 2007 in respect of above categories of employees' as admissible from the date of their appointment should be deposited to EPF Organization by 30.06.2007 positively.

(S.Gangopadhyay)  
Jt.DDG (CA)

Copy forwarded for kind information and necessary action thereto  
1. All GM (F)/IFA, CPAO (ITI BILLS/CAO(TCO)/ADG(R&P)

**Reserved****CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**JABALPUR****Original Applications No.200/00847 & 864/2017**Jabalpur, this Thursday, the 07<sup>th</sup> day of March, 2024**HON'BLE SHRI JUSTICE AKHIL KUMAR SRIVASTAVA, JUDICIAL MEMBER**  
**HON'BLE SHRI KUMAR RAJESH CHANDRA, ADMINISTRATIVE MEMBER**

Naval Singh Kushwaha S/o Shri Prabhu Lal Kushwaha DBO  
15.06.1971 Mob.No.9425037345 R/o Village Khargawali Raisen  
District Raisen (MP) 464551 **-Applicant in O.A. No.847/2017**

Shivraj Singh Thakur, S/o Late Amol Singh DOB 13.07.1974  
Present Post Sr. TOA Mob. No.9407534929 R/o Village Type III  
BSNL Campus Bhegamganj District Raisen 464881 (MP)

**-Applicant in O.A. No.864/2017**(By Advocate –**Shri N.K. Salunke in both O.As**)**Versus**

1. Union of India, Through its Secretary Govt. Of India,  
Department of Telecommunication Sanchar Bhawan, New  
Delhi 110001
2. Chief Managing Director Bharat Sanchar Nigam Ltd. HC  
Mathur Lane Janpath New Delhi 110001
3. The Chief General Manager MP Telecom Circle Bharat  
Sanchar Nigam Ltd. Hoshangabad Road, Bhopal 462018  
(MP)
4. The General Manager, (Adm.) MP Telecom Circle Bharat  
Sanchar Nigam Ltd. Hoshangabad Road, Bhopal 462018  
(MP)
5. The General Manager (Finance) MP Telecom Circle  
Bharat Sanchar Nigam Ltd. Hoshangabad Road, Bhopal  
462018 (MP)



6. The Zonal General Manager, Bharat Sanchar Nigam Ltd.  
4-B Saket Nagar, Bhopal 462024 (MP)

7. The Telecom District Engineer BTS Bhawan, Bhopal  
Road, District Raisen 464551 (MP) - Respondents

(By Advocate –**Dr. Ku. Vijaya Bhatnagar** in O.A. No.847/2017 and  
**Shri Alok Tapikar** for respondents No.2 to 7 in O.A. No.  
864/2017)

(Date of reserving the order: 14.12.2023)



### **COMMON ORDER**

**By Justice Akhil Kumar Srivastava, JM:**

Applicants in both Original Applications have sought quashing of order dated 17.08.2017 and 29.06.2017 and prayed for direction to respondents to continue applicants with benefit of GPF patronage by treating them as employee of DOT absorbed in BSNL through presidential order by antedating their date of appointment as per the recommendation by the authority in the year 1999.

2. The issue involved in these Original Applications is the same. Hence, these are disposed off by a common order.

#### **O.A. No.847/2017**

3. Briefly stated the facts of the case are that the applicant was serving respondent department i.e. DOT as Casual Driver prior to 1999 and against an outsider vacancy he got successful in interview dated 25.09.2001 and appointed on the post of Regular Motor/Jeep Driver in the pay scale of Rs.3050-75-3950-



80-4590 (Annexure A/2). He was asked to fill the option form for absorption in BSNL or retention of Govt. status and he accordingly filled the option form on 05.11.2001 (Annexure A/3). The applicant gained the status of permanent absorption in BSNL w.e.f.11.10.2001 as per provisions of Rule 37A of CCS Pension Rules, 1972. Thus Presidential Order dated 08.01.2002 was passed. The applicant was allowed to avail the patronage of General Provident Fund and his contribution towards GPF started to be deducted from his salary from 2002 to 2017. All of the sudden applicant was informed that as he was appointed after the formation of BSNL i.e. 10.10.2001 and all formalities were completed on 10.10.2001. Therefore, he could not seek patronage and benefits of GPF Scheme vide order dated 29.06.2017 (Annexure A/7).The applicant preferred representation dated 07.07.2017 (Annexure A/8 followed by reminder dated 04.08.2017 (Annexure A/9). Hence this Original Application.

4. Respondents in their reply have submitted that the applicant was employed by BSNL against the outsiders' vacancy following due selection procedure and after being selected he was appointed on the post of Motor Driver on the approval of competent authority on 10.10.2001. The applicant was not an



employee of DOT, DTS and DTO. He had erroneously exercised his option for permanent absorption in BSNL and erroneously accepted and presidential order was released erroneously. When it came to notice of department, further necessary action was initiated for making it null and void vide letter dated 26.12.2017.

The competent authority had cancelled the said presidential order. Remedial action for commutation of his GPF patronage into EPF patronage was taken and initiated deduction of EPF contribution w.e.f. July 2017 and the same was informed to him vide letter dated 29.06.2017.

5. Applicant has filed rejoinder to the reply filed by the respondents reiterating the averments made in the Original Application.

**O.A. No.864/2017**

6. The facts of the case are as follows:-

6.1 That the father of the applicant was serving in DOT, expired during his service. After the death of his father applicant was considered for compassionate appointment.

6.2 The applicant completed his training w.e.f. 21.08.2000 to 20.10.2000 (Annexure A/2). The respondents approved the appointment of the applicant as a TOA (G) under relaxation of normal recruitment rules vide order dated 17.11.2000 (Annexure



A/3). He was directed to fill option form and according to option applicant was absorbed in BSNL as per provisions of Rule 37A read with Rule 54 (13-B) of CCS (Pension) Rules, 1972.

**6.3** Thereafter BSNL issued order dated 04.05.2007 (Annexure A/7) stating that options from compassionate ground appointees where appointment order issued after 30.09.2000 by BSNL will not be called for and such appointment will be treated as BSNL recruited employee only. In case option from any such appointee was called for and PO issued it shall be treated as null and void.

**6.4** In pursuance to order, respondents issued letter dated 10.05.2007 (Annexure A/8) to take necessary action regarding introduction of employees Provident Fund Scheme 1952 in respect of employees who were appointed on compassionate grounds and were issued appointment order dated 30.09.2000 by the BSNL.

**6.5** Applicant preferred representations to respondents to treat him recruited by DOT and to continue his GPF subscription as per rules which was forwarded to respondent No.5 but to no avail. Thereafter applicant submitted many representations followed by reminders. Hence this Original Application.

**7.** Respondents in their reply have submitted that the applicant was employed by BSNL on compassionate ground on





24.11.2000 i.e. after formation of BSNL. He was sent for pre appointment training. The applicant was not an employee of DOT, DTS and DTO. He had erroneously exercised his option for permanent absorption in BSNL and erroneously accepted and presidential order was released erroneously. When it came to notice of department, further necessary action was initiated for making it null and void vide letter dated 26.12.2017. The competent authority had cancelled the said presidential order. Remedial action for commutation of his GPF patronage into EPF patronage was taken and initiated deduction of EPF contribution and the same was informed to him vide letter dated 29.06.2017.

8. Applicant has filed rejoinder to the reply filed by the respondents reiterating the averments made in the Original Application.

9. Heard the learned counsel for the parties and perused the pleadings and documents annexed therewith in both O.As.

10. In these cases, we find that applicants were appointed by BSNL on 10.10.2001 and 21.11.2000 i.e. after the formation of BSNL 01.10.2000. The applicants had wrongly exercised the option for absorption in BSNL. The DOT, DTS and DTO employees who had been absorbed in BSNL en masse the effective date of their Presidential order was 01.10.2000 the



same was rewritten as 11.10.2001 in O.A No.847/2017. Being the employees of Central Public Sector Enterprise the applicants were eligible for EPF patronage and when mistake was noticed it was rectified by the respondents. Therefore applicants have no right to retain their option which they had wrongly exercised as he was appointed by BSNL after due recruitment process on 10.10.2001 and 21.11.2000. There is no question of absorption of the applicants with BSNL as they were directly recruited employees of BSNL. Hence, we do not find any merit in both the cases.



**11.** Accordingly both Original Applications are dismissed being devoid of merits. No order as to costs.

**(Kumar Rajesh Chandra)**  
**Administrative Member**

**(Akhil Kumar Srivastava)**  
**Judicial Member**

kg/-

**No.03-35/2023-SNG**  
**Government of India**  
**Ministry of Communications**  
**Department of Telecommunications**  
**(SNG Section)**

\*\*\*\*

419, Sanchar Bhawan, 20, Ashoka Road  
New Delhi-01, Dated: 24-04-2025

**OFFICE MEMORANDUM**

**Subject: Forwarding of general comments for preparation of draft counter affidavit on behalf of DoT/UoI in court cases seeking for implementation of the Hon'ble Supreme Court order dated 26.07.2023 in Civil Appeal No. 1971-1973/2012 – reg.**

The undersigned is directed to refer to the above-mentioned subject and to say that recently a number of court cases/legal notices/representations/contempt petitions are being received in this department from different CCAs/LSAs wherein the Applicants have prayed for implementation of the Hon'ble Supreme Court order dated 26.07.2023 passed in Civil Appeal No. 1971-1973/2012.

2. The matter has been examined in this department. Upon examination, it is noticed that the following categories of cases/orders are referred to this department by offices of CCAs/LSAs for instructions/guidelines:-

(i) The cases in which order have been passed by the various Ld. CAT/Courts in applicant's favour without going into the merit of the case but merely referring to the Orders of the CAT Chandigarh/High Court upheld by the Supreme Court in Civil Appeals No. 1971-1973/2012.

(ii) The cases relating to compassionate ground appointment wherein the applicant has approached or is approaching the different CATs/Court after much delayed stage ( i.e. after the prescribed time limit under Section-21 of CAT Act, 1985) and after the decision of the Hon'ble Supreme Court order dated 26.07.2023 in Civil Appeals No. 1971-1973/2012 claiming to be similar situated employees.

3. In this regard, it is stated that the similar matter/Court cases is pending for final adjudication before the Hon'ble Supreme Court of India in Civil Appeal No. 51/2016 (BSNL Vs. Bharat Kumar Kumawat), (BSNL Vs. AA Abdul Rasheed) and other tagged matters on similar issues of Compassionate Ground Appointment (CGA) appointees of deceased DoT employee and the Supreme Court of India has stayed operation of the impugned orders/judgments of the lower courts/Tribunals/High Courts. Thus, order of the lower courts at this stage seem to be untenable in view of pending C.A. No. 51/2016.

4. In view of the above, the Competent Authority has decided the following:-

(i) All cases relating to/ arising out of compassionate ground appointment as stated in para-2 (i) & (ii) above may be challenged/defended on the basis of the comments/grounds (enclosed) of this department to

safeguard the interest of the Government and take further necessary action to defend the case accordingly.

(ii) The comments may be used for preparing a suitable draft counter affidavit on behalf of DoT/UoI in all such cases in consultation with the Ld. Govt. Counsel after doing suitable modification as per the facts/merit of the individual case and send the draft thus prepared to this office for legal vetting.

This issues with approval of the Competent Authority.

Encl: As above

Digitally signed by  
Sunil Kumar  
Date: 24-04-2025  
11:50:33

(Sunil Kumar)

Under Secretary to the Govt. of India  
Tele. 011-23036226

To

All Heads of CCAs/LSAs  
Department of Telecommunications  
Ministry of Communications

Copy to :-

DDG(Estt.), DoT Hq, Sanchar Bhawan, New Delhi-01.

**General Comments for incorporating in the preparation of draft counter affidavit on behalf of DoT/UoI in cases filed before the various benches of Ld. Tribunal/High Courts.**

1 . **Delay and latches:** The applicants have claimed the benefits of GPF/Rule 37A of CCS (Pension) Rules by citing order dated 22.01.2010 of the Ld. CAT, Chandigarh/ Hon'ble High Court of Punjab and Haryana in Raj Kumar and Ors. against which SLP/Civil Appeal No. 1971-1973/2012 has been upheld by the Hon'ble Supreme Court of India vide its order dated 26.07.2023 in peculiar facts and circumstances while keeping the questions of law open. **(Annexure-R/1).**

Considering the *in personam* nature of judgement/order, the benefits may not be extended to the applicants automatically as it is matter of records that letter dated 16.01.2003 issued by BSNL giving coverage of GPF to CGA appointees of deceased DOT employees, was withdrawn in 2007 by BSNL itself vide letter No.500-85/CA II/BSNL/EPF/Vol.III dated 25 May 2007. It may be noted that various clarificatory letters were also issued by BSNL vide letters dated 10.04.2006, 04.05.2007 & 10.05.2007 before finally withdrawing the letter dated 16.01.2003 vide letter dated 25.05.2007. **(Annexure-R/2).** Had the applicants being aggrieved by conversion from GPF to EPF, they could have raised the claim within reasonable time prescribed under Section 21 of the Administrative Tribunals Act, 1985. That cause of action arose in 2007 has made the claim of the applicants dead and stale and certain rights settled in the meanwhile, may not be unsettled at such distant of point of time. Reliance is placed upon following judgements:-

**(a) In D.C.S. Negi Vs. Union of India and Others (SLP ( C) No. 7956/2011 decided on 7.3.2011 on the point of limitation.** *The Court held that a reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21 (1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3).*

(b) *In Ratan Chandra Sammanta and Ors vs. Union of India and Ors (JT 1993 (3) SC 418) wherein it was held that delay deprives the person of the remedy available in law. A person, who has lost his remedy by lapse of time, loses his right as well.*

(c) *In S.S. Rathore Vs. State of Madhya Pradesh reported in AIR 1990 SC 10 wherein it has been held by the Hon'ble Supreme Court that repeated representations do not extend the period of limitation.*

(d) *In Bhoop Singh Vs. UOI and Ors. reported in 1992 (2)SLJ 103 SC decided by three Judges Bench wherein it was held that 'inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner irrespective of the merit of his claim. If a person is entitled to a relief, chooses to remain silent long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief'*

(e) **In State of Uttaranchal versus Shri Shiv Charan Singh Bhandari (2014) 2 SLR (SC) 20**, the Hon'ble Apex Court observed and held as under.

*"13.....In C. Jacob v. Director of Geology and Mining and another[1], a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus: -*

*"Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."*

*14. In Union of India and others v. M.K. Sarkar[2], this Court, after referring to C. Jacob (supra) has ruled that when a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a*

court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

**15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action.**

The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In *Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another*[3], the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. In *State of Orissa v. Pyarimohan Samantaray* [4] it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in *State of Orissa v. Arun Kumar Patnaik*[5].

17. In *Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others*[6], a three-Judge Bench of **this** Court reiterated the principle stated in *Jagdish Lal v. State of Haryana* [7] and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

(f) **In *State of T.N. v. Seshachalam*, (2007) 10 SCC 137**, while testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefits, Hon'ble Apex Court ruled that:-

**"...filing of representations alone would not save the period of limitation.** Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

(g) **In Civil Appeal arising out of SLP No. 13459/2024 titled *Nikhila Divyang Mehta & Anr.s Vs. Hitesh P Sanghvi & Ors.* Judgement dated 15.04.2025, the Supreme Court has held that as follow :**

".....It is a complete fallacy to make any distinction between

*“knowledge” and “full knowledge”. First of all, the limitation has to run from the date when the cause of action first accrued and not any subsequent date for the cause of action.”*

**(h) In SLP No. 31248/2018 titled Pathapati Subba Reddy Vs. Spl. Dy. Collection Judgement dated 08.04.2024, the Supreme Court in para -26 of judgement held as follows:**

*(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*

*(vii) Merits of the case are not required to be considered in condoning the delay*

**2. Reliance is placed upon the following orders that have been passed in department's favour:-**

**( i ) In Diary No. 2184/2021 in the matter of Arif Saeed S/o M. Mohd. Shareef & 68 Ors. Vs UOI &Ors., the Hon'ble CAT Allahabad in its order dated 01.12.2021 observed that**

*“the applicants were appointed in the year 2003 in BSNL. It is beyond our understanding as to how when the applicants were appointed in BSNL can now claim that they should be appointed in DOT from the date of their initial appointment .The relief sought is itself without any sound basis and in our view does not deserve even a preliminary consideration. Moreover, if at all a cause of action is presumed, it would have arisen in 2003 at the time of applicants' initial appointment. It is after having served for eight years that they have approached the Tribunal with a prayer which is more than unreasonable. Therefore, there is no justification for condoning the delay also in this matter. Accordingly, delay condonation application No.1560/2021 is dismissed and the Diary Number is also obviously stands dismissed.”*  
**(Annexure –R-3)**

**(ii) In another similar matter titled Vikas Kumar & 27 Ors. Vs. Uoi & Ors. in WP(S) No. 2330/2022 order dated 07/16.11.2022, the Hon'ble High Court of Jharkhand at Ranchi while deciding the status of employees who were formally appointed by BSNL on the basis of the advertisement notified by Govt. of India (DoT) has passed the following order in favour of the department :**

*“We have considered the submission of learned counsel for the parties and taken note of the pleadings borne from the records. The claim of the petitioners for being treated as DoT employees stems from the only fact that the advertisement for recruitment was undertaken by the DoT. However, the entire exercise of recruitment was undertaken by the BSNL and the applicants also joined the services of BSNL on or around 16.09.2002/30.09.2002 after formation of the BSNL on 01.10.2000. Merely because of the fact that initially some GPF deductions were made from their salary, which was discontinued also, applicants cannot claims a legal rights to be treated as employees of DoT. On the formation of the BSNL by a gazette notification dated 30.09.2000 (Annexure-R-1) to the counter affidavit dated 26.07.2022), the assets and liabilities of the DoT was transferred to the BSNL, which came into existence*

on 01.10.2000. Petitioners' cause of action, if any, related to the time when they had joined BSNL. **Having accepted the offer of appointment and remained under BSNL for 19/20 years, only on account of rejection representation dated 21.09.2021, they cannot revive a state claim of cause of action.** No legitimate expectations can either accrue as their recruitment, appointment and joining and all subsequent events having been taken place under BSNL organisation. In view of the aforesaid reason and facts and circumstances noted herein, we do not find any error the impugned order of the Ld. CAT. The Writ petition is accordingly disposed of." (Annexure-R/4)

(iii) Order dated 07.03.2024 passed by the Hon'ble CAT Jabalpur in OA No. 200/00847 & 864/2017 in matter of Naval Singh Kushwaha & ors. wherein the Hon'ble CAT has held as follows:

" In these cases, we find that applicants were appointed by BSNL on 10.10.2001 and 21.11.2000 i.e. after the formation of BSNL on 01.10.2000. The applicants had wrongly exercised the option for absorption in BSNL. The DoT/DTS & DTO the employees who had been absorbed in BSNL en masse the effective date of their Presidential Order was 01.10.2000 the same was rewritten as 11.10.2001 in OA No. 847/2017. Being the employees of Central Public Enterprise the Applicants were eligible for EPF patronage and when mistake was noticed it was rectified by the respondents. Therefore, applicants have no right to retain their option which they had wrongly exercised as he was appointed by BSNL after due recruitment process on 10.10.2001 & 21.11.2000. There is no question of absorption of the applicants with BSNL as they were directly recruited employees of BSNL. Hence, we do not find any merit in both the cases. Accordingly, both Original Applications are dismissed being devoid of merits. No order as to costs." (Annexure-R/5)

3 . Per incuriam nature of the order of Ld. CAT, Chandigarh in the case of Shri Raj Kumar and Ors:-

In [Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd](#) (2003) 2 SCC 111 (vide para 59), [this](#) Court observed:-

*"It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision"*

Besides above, it is settled position of law that Article 14 is positive concept and may not be enforced in negative manner to perpetuate irregularities or illegalities committed in favor of others either administratively or through judicial orders.

### **Reliance is placed upon**

*Chandigarh Administration and another v. Jagjit Singh and another [(1995) 1 SCC 745], Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and others [(1997) 1 SCC 35], Union of India [Railway Board] and others v. J.V. Subhaiah and others [(1996) 2 SCC 258], Gursharan Singh v. New Delhi Municipal Committee [(1996) 2 SCC 459], State of Haryana v. Ram Kumar*



*Mann [(1997) 1 SCC 35]Faridabad CT Scan Centre v. D.G. Health Services and others [(1997) 7 SCC 752], Style (Dress Land) v. Union Territory, Chandigarh and another [(1999) 7 SCC 89] and State of Bihar and others v. Kameshwar Prasad Singh and another [(2000) 9 SCC 94], Union of India and another v. International Trading Co. and another [(2003) 5 SCC 437] and Directorate of Film Festivals and others v. Gaurav Ashwin Jain and others [(2007) 4 SCC 737].*

**4. Present issue-** It is submitted that while examining the issue of conversion of GPF accounts of Shri Raj Kumar and Ors, the Ld. Tribunal as well as Hon'ble High Court noticed that letter dated 16.01.2003 was not withdrawn. However, letter dated 16.01.2003 was withdrawn by BSNL vide letter dated 25.05.2007. The important letter being overlooked, had rendered the judicial order *per incuriam*, which may not be cited as precedent to extend the similar benefits to the applicants as following important rules/instructions were not discussed/examined in the precedent:-

(i) BSNL being PSU had no authority to issue instructions relating to issuance of GPF accounts of any employee formally appointed by them (BSNL) as such powers are only vested with the Government of India under Article 309 of the Constitution and no delegation has been given to PSUs (in this case-BSNL) to open new GPF accounts under GPF Rules, 1960 (as amended upto date)..

(ii) Letter dated 16.01.2003 was withdrawn by the BSNL vide letter dated 25.05.2007.

(iii) CCS (Pension) Rules, 1972 (the then Rules in force), were applicable when pre-appointment formalities and actual appointment is made in Central Government. In present case, the Employer's legal authority has changed from Government (DoT) to PSU (BSNL). Therefore, any person, who was not having pensionable post in Central Government (in present matter erstwhile DTS/DTO/DOT) and got appointment in BSNL after completion of formalities, do not have any legal right to claim pension under CCS (Pension) Rules.

Reliance is placed upon following judgements of the Hon'ble Supreme Court which has categorically declared the law for receiving pension from the Consolidate fund of India:-

In **Prabhu Narain vs. State of U.P.19, (2004) 13 SCC 662**, the Hon'ble **Supreme Court held that to receive pension the employees must establish that they are entitled to pension under a particular rule or scheme**. The following has been held in para 5:

*"5. No doubt pension is not a bounty, it is a valuable right given to an employee, but, in the first place it must be shown that the employee is entitled*

to pension under a particular rule or the scheme, as the case may be."

**In UP Roadways Retired Officials and officers Association versus State of UP and Anr (Civil Appeal No. 894/2020 decided on 26.07.2024), while dealing with akin issue of conversion of Government Department into Corporation, observed as under.**

*35. The common thread in the above referred judgments of this Court is that pension is a right and not a bounty. It is a constitutional right for which an employee is entitled on his superannuation. However, pension can be claimed only when it is permissible under the relevant rules or a scheme. If an employee is covered under the Provident Fund Scheme and is not holding a pensionable post, he cannot claim pension, nor the writ court can issue mandamus directing the employer to provide pension to an employee who is not covered under the rules.*

Accordingly, in view of the above-mentioned settled precedents, the applicant who was not holding pensionable post **nor maintain lien against the post** in erstwhile DTS/DTO, may not be entitled to claim pension under CCS (Pension) Rules.

(5) **Settled rights under EPF/EPS may not be unsettled at such distant point of time:-** The EPF/EPS contributions in r/o applicant were remitted to EPFO authorities through his consent, which is apparent from the monthly contributions deducted from the employee part in addition to employer part. On monthly contributions, interest as per notifications issued by the Government of India (GOI) have been paid to the applicant. Under such circumstances, the applicant does not have any legal right to claim benefits of GPF or Pension under CCS (Pension) Rules, when he did not raise any objection at relevant point of time (within reasonable period of time) against EPF or EPS. Therefore, present OA is itself not maintainable in the eyes of law as the applicant benefitted himself from the corpus of employer by giving consent for EPF and Pension under EPF, 1995. The applicant is raising the claim at the verge of retirement/ (after 18 years from the cause of action) and therefore, from this perspective, his claim suffers from inordinate delay and latches, which has made the present issue as dead and stale. The unsettling of settled things would not only create public confusion but would lead to serious financial implications as possibility of undue benefits (i.e. receiving EPF contributions of Employer and interest thereupon and simultaneous GPF coverage) may not be ruled out if conversion from GPF to EPF is allowed at such distant point of time.

(6) It is a settled position of law that one can claim benefits of pension under Central Government pension rules if and only if he satisfies the provisions of Rules formulated under Article 309 of the Constitution of India. If he does not meet the criterion laid down in Rules or he is not holding pensionable post for pension in Government, he would not be entitled for the benefits of said welfare measure. In present case, the applicant was neither holding any

pensionable post nor was he working as Temporary Government servant on the date of incorporation. His appointment in BSNL would not make him entitled for the benefits of Pension under CCS (Pension) Rules as he was neither holding pensionable post in Government nor he raised any objection with regard to his enrolment in EPF/EPS in last 20 years. Since, he may not become of GPF and EPF simultaneously, his claim for GPF/Pension under CCS (Pension) Rules is liable to be rejected on both merits and delay.

(7) Further, in case of Raj Kumar and other they (the applicants) approached the Ld. Tribunal Chandigarh Bench in 2009 itself (i.e. at the time when cause arose). The Ld. Tribunal vide common order dated 22.01.2010 decided the matter in applicants' favour and the SLP filed in this case were disposed of by the Supreme Court of India vide its order dated 26.07.2023 on the basis of peculiar facts and circumstance involved in the matter keep the question of law open. Thus, it is quite obvious that the Hon'ble Supreme Court makes it clear that the benefits would restricted to the parties of the litigations in the peculiar facts and circumstances as certain rules/instructions could not form part of the pleading/trial at the initial stage before the Ld. Tribunal. The judgement of the Hon'ble Apex Court in Raj Kumar and Ors (CGA appointment) relied upon by the applicant are not applicable to present issue and it is pertinent to mention that the cited judgment does not lay down any general preposition of law with regard to payment of pension under CCS (Pension) Rules.

**(8) Besides above, it is submitted that the Hon'ble Supreme Court of India in Civil Appeal No. 51/2016 (BSNL versus Bharat Kumar Kumawat), (BSNL Vs. A A Abdul Rasheed) and other tagged matters on similar issues of CGA appointees of deceased DoT employees, have stayed the operation of impugned orders/judgements of the lower courts/Tribunals/High Courts. (Annexure-R/6)**

In view of the above mentioned grounds, the claim of the applicants who are approaching the Ld. Tribunal at such distant point of time are liable to be rejected both on merits and delay/latches.

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**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
**SPECIAL LEAVE PETITION (CIVIL) NO. 31248 OF 2018**

**PATHAPATI SUBBA REDDY (DIED)**  
**BY L.Rs. & ORS.**

**...PETITIONER(S)**

**VERSUS**

**THE SPECIAL DEPUTY COLLECTOR (LA)**

**...RESPONDENT(S)**

**J U D G M E N T**

**PANKAJ MITHAL, J.**

1. Some land in village Gandluru, District Guntur, Andhra Pradesh was acquired some time in 1989 for Telugu Ganga Project. Not satisfied by the compensation offered under the award, the claimants (16 in number) preferred a reference under Section 18 of Land Acquisition Act (hereinafter for short the 'Act') i.e., L.A.O.P. No. 38 of 1990 titled Juvvala Gunta China Chinnaiah (dead) and Ors. vs. Special Deputy Collector (Land Acquisition) Telugu Ganga Project, Podalakur

at Nellore. Out of the 16 claimants in the above reference, claimants No. 1, 3 and 11 died during the pendency of the reference before the Court of Addl. Senior Civil Judge, Gudur. No steps were taken to substitute the heirs and legal representatives of the above deceased persons. The said reference was dismissed on merits along with some other references vide common judgment and order dated 24.09.1999 upholding the award of the collector.

- 2.** After the lapse of more than 5/6 years, an appeal was proposed to be filed in the High Court Under Section 54 of the Act challenging the dismissal of the reference. The said appeal was proposed to be filed only by some of the heirs and legal representatives of the deceased claimant No. 11 in the reference i.e., Pathapati Subba Reddy. No other claimant or their legal heirs from amongst the other 15 who were parties in the reference joined the heirs and legal representatives of claimant No. 11 in filing the appeal. They did not even prefer any separate or independent appeal of their own. In other words, out of the 16 claimants, 15 of them impliedly accepted the judgment and order of the reference court and it is only

the heirs and legal representatives of claimant No. 11, who feel aggrieved and have proposed to file the appeal.

- 3.** The above appeal, as stated earlier, was preferred with the delay of 5659 days. Accordingly, an application supported by an affidavit of the surviving daughter of the deceased claimant No. 11 was filed for condoning the delay in filing the proposed appeal. It was averred in the said application that the proposed appellants are the heirs and legal representatives of the deceased claimant No. 11 i.e. Pathapati Subba Reddy, who died on 15.05.1995 during the pendency of the reference but they were not brought on record before the decision of the reference. The said deceased claimant No.11 was survived by his two daughters. The elder one died and that the proposed appellants are the surviving second daughter and her descendants. Since she was living in her matrimonial house, she had no knowledge of the above reference. It was only on 28.05.2015 when one of the grandsons of the said daughter of the deceased claimant visited the office of the L.A.O. for the purpose of obtaining submersion certificate to secure a job that he came to know

that there was a reference which was dismissed on 24.09.1999, whereupon the proposed appeal was immediately filed along with an application to condone the delay in its filing.

- 4.** There is no dispute to the fact that in L.A.O.P. No. 38 of 1990 there were 16 claimants in all. During the pendency of the aforesaid reference, claimants No. 1, 3 and 11 were dead but the heirs and legal representatives of none of them were brought on record. None of the other claimants or their heirs and legal representatives made any effort to challenge the order of the dismissal of the reference except the proposed appellants which indicates that the others have accepted the same. It is only one of the surviving daughters of the deceased claimant No. 11 and her descendants who have sought to prefer the proposed appeal against the judgment and order dated 24.09.1999 with an inordinate delay of 5659 days. The High Court not being satisfied by the explanation furnished in preferring the proposed appeal beyond limitation, refused to condone the delay in filing the proposed

appeal and consequently dismissed it as barred by time by the order impugned dated 18.01.2017.

5. The present Special Leave Petition has been filed challenging the judgment and order dated 18.01.2017 of the High Court passed in L.A.A.S.M.P. No. 714 of 2016 in L.A.A.S. (SR) No. 6950 of 2015 whereby the High Court has dismissed the application of the petitioners herein for condoning the delay of 5659 days in filing the proposed appeal.
6. The moot question before us is whether in the facts and circumstances of the case, the High Court was justified in refusing to condone the delay in filing the proposed appeal and to dismiss it as barred by limitation.
7. The law of limitation is founded on public policy. It is enshrined in the legal maxim "*interest reipublicae ut sit finis litium*" i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a



dichotomy if the litigation is made immortal *vis-a-vis* the litigating parties i.e. human beings, who are mortals.

8. The courts have always treated the statutes of limitation and prescription as statutes of peace and repose. They envisage that a right not exercised or the remedy not availed for a long time ceases to exist. This is one way of putting to an end to a litigation by barring the remedy rather than the right with the passage of time.
9. Section 3 of the Limitation Act in no uncertain terms lays down that no suit, appeal or application instituted, preferred or made after the period prescribed shall be entertained rather dismissed even though limitation has not been set up as a defence subject to the exceptions contained in Sections 4 to 24 (inclusive) of the Limitation Act.
10. Section 3(1) of the Limitation Act, for the sake of convenience, is reproduced hereinbelow:

**“3. Bar of limitation.-** (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.”

- 11.** Though Section 3 of the Act mentions about suit, appeal and application but since in this case we are concerned with appeal, we would hereinafter be mentioning about the appeal only in context with the limitation, it being barred by time, if at all, and if the delay in its filing is liable to be condoned.
- 12.** In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word 'shall' in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act but we are concerned only with the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives 'sufficient cause' for not preferring the appeal within the

period prescribed. In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish 'sufficient cause' for not filing it within time. The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.

13. It is very elementary and well understood that courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.
14. It may also be important to point out that though on one hand, Section 5 of the Limitation Act is to be construed liberally, but on the other hand, Section 3 of the Limitation Act, being a substantive law of mandatory nature has to be interpreted in a strict sense. In ***Bhag Mal alias Ram Bux***

***and Ors. vs. Munshi (Dead) by LRs. and Ors.***<sup>1</sup>, it has been observed that different provisions of Limitation Act may require different construction, as for example, the court exercises its power in a given case liberally in condoning the delay in filing the appeal under Section 5 of the Limitation Act, however, the same may not be true while construing Section 3 of the Limitation Act. It, therefore, follows that though liberal interpretation has to be given in construing Section 5 of the Limitation Act but not in applying Section 3 of the Limitation Act, which has to be construed strictly.

- 15.** It is in the light of the public policy upon which law of limitation is based, the object behind the law of limitation and the mandatory and the directory nature of Section 3 and Section 5 of the Limitation Act that we have to examine and strike a balance between Section 3 and Section 5 of the Limitation Act in the matters of condoning the delay.
- 16.** Generally, the courts have adopted a very liberal approach in construing the phrase ‘sufficient cause’ used in Section 5 of

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<sup>1</sup> (2007) 11 SCC 285

the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In ***Collector, Land Acquisition, Anantnag and Ors. vs. Katiji and Ors.***<sup>2</sup>, this Court in advocating the liberal approach in condoning the delay for ‘sufficient cause’ held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day’s delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of ‘sufficient cause’ for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases ‘liberal approach’, ‘justice-

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<sup>2</sup> (1987) 2 SCC 107 = AIR 1987 SC 1353

oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.

17. It must always be borne in mind that while construing 'sufficient cause' in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.
18. This Court as far back in 1962 in the case of **Ramlal, Motilal And Chhotelal vs. Rewa Coalfields Ltd**<sup>3</sup> has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is

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<sup>3</sup> A.I.R. 1962 SC 361

the discretionary jurisdiction vested with the court. The court, despite establishment of a 'sufficient cause' for various reasons, may refuse to condone the delay depending upon the *bona fides* of the party.

- 19.** In ***Maqbul Ahmad and Ors. vs. Onkar Pratap Narain Singh and Ors.***<sup>4</sup>, it had been held that the court cannot grant an exemption from limitation on equitable consideration or on the ground of hardship. The court has time and again repeated that when mandatory provision is not complied with and delay is not properly, satisfactorily and convincingly explained, it ought not to condone the delay on sympathetic grounds alone.
- 20.** In this connection, a reference may be made to ***Brijesh Kumar and Ors. vs. State of Haryana and Ors.***<sup>5</sup> wherein while observing, as above, this Court further laid down that if some person has obtained a relief approaching the court just or immediately when the cause of action had arisen, other persons cannot take the benefit of the same by

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<sup>4</sup> A.I.R. 1935 PC 85

<sup>5</sup> 2014 (4) SCALE 50



approaching the court at a belated stage simply on the ground of parity, equity, sympathy and compassion.

**21.** In ***Lanka Venkateswarlu vs. State of Andhra Pradesh & Ors.***<sup>6</sup>, where the High Court, despite unsatisfactory explanation for the delay of 3703 days, had allowed the applications for condonation of delay, this Court held that the High Court failed to exercise its discretion in a reasonable and objective manner. High Court should have exercised the discretion in a systematic and an informed manner. The liberal approach in considering sufficiency of cause for delay should not be allowed to override substantial law of limitation. The Court observed that the concepts such as ‘liberal approach’, ‘justice-oriented approach’ and ‘substantial justice’ cannot be employed to jettison the substantial law of limitation.

**22.** It has also been settled vide ***State of Jharkhand & Ors. vs. Ashok Kumar Chokhani & Ors.***<sup>7</sup>, that the merits of the

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<sup>6</sup> (2011) 4 SCC 363

<sup>7</sup> AIR 2009 SC 1927

case cannot be considered while dealing with the application for condonation of delay in filing the appeal.

**23.** In ***Basawaraj and Anr. vs. Special Land Acquisition Officer***<sup>8</sup>, this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression 'sufficient cause' as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of *bona fide* is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.

**24.** It would be beneficial to quote paragraph 12 of the aforesaid decision which clinches the issue of the manner in which equilibrium has to be maintained between adopting liberal

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<sup>8</sup> (2013) 14 SCC 81

approach and in implementing the statute as it stands.

Paragraph 12 reads as under:

**“12.** It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.”

**25.** This Court in the same breath in the same very decision vide paragraph 15 went on to observe as under:

**“15.** The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning

such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

(emphasis supplied)

**26.** On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;
- (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;
- (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;
- (vii) Merits of the case are not required to be considered in condoning the delay; and
- (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and

condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.

- 27.** It is in the light of the above legal position that now we have to test whether the inordinate delay in filing the proposed appeal ought to be condoned or not in this case.
- 28.** The submission of learned counsel for the petitioners is that in somewhat similar situation, delay in filing appeal for the enhancement of compensation had been condoned by this Court. He placed reliance upon the case of ***Dhiraj Singh (Dead) through Legal Representatives & Ors. vs. State of Haryana & Ors.***<sup>9</sup>. In this case, delay in filing appeal was condoned as in other appeals compensation awarded at the rate of Rs.200/- per sq. yd. was upheld and the proposed appellants were also held entitled to the same benefit of compensation at the rate of Rs.200/- per sq. yd. instead of Rs.101/- per sq. yd. as awarded but with the rider that they

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<sup>9</sup> (2014) 14 SCC 127

will not be entitled for interest for the period of delay in approaching the High Court.

- 29.** The other decision relied upon in this regard is the case of ***Imrat Lal & Ors. vs. Land Acquisition Collector & Ors.***<sup>10</sup>.

In this case also the matter was regarding determination of compensation for the acquired land and there was a delay of 1110 days in filing the appeal for enhancement of compensation. Despite findings that no sufficient cause was shown in the application for condoning the delay, this Court condoned the delay in filing the appeal as a large number of similarly situate persons have been granted relief by this Court.

- 30.** The aforesaid decisions would not cut any ice as imposition of conditions are not warranted when sufficient cause has not been shown for condoning the delay. Secondly, delay is not liable to be condoned merely because some persons have been granted relief on the facts of their own case. Condonation of delay in such circumstances is in violation of

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<sup>10</sup> (2014) 14 SCC 133



the legislative intent or the express provision of the statute. Condoning of the delay merely for the reason that the claimants have been deprived of the interest for the delay without holding that they had made out a case for condoning the delay is not a correct approach, particularly when both the above decisions have been rendered in ignorance of the earlier pronouncement in the case of **Basawaraj** (*supra*).

31. Learned counsel for the petitioners next submitted on the basis of additional documents that in connection with the land acquisition in some other Special Leave Petitions, delay was condoned taking a lenient view and the compensation was enhanced with the rider that the claimants shall not be entitled for statutory benefits for the period of delay in approaching this Court or the High Court. The said orders do not clearly spell out the facts and the reasons explaining the delay in filing the appeal(s) but the fact remains that the delay was condoned by taking too liberal an approach and putting conditions which have not been approved of by this Court itself. In the absence of the facts for getting the delay condoned in the referred cases, *vis-à-vis*, the facts of this

case, it cannot be said that the facts or the reasons of getting the delay condoned are identical or similar. Therefore, we are unable to exercise our discretionary power of condoning the delay in filing the appeal on parity with the above order(s).

**32.** Moreover, the High Court, in the facts of this case, has not found it fit to exercise its discretionary jurisdiction of condoning the delay. There is no occasion for us to interfere with the discretion so exercised by the High Court for the reasons recorded. First, the claimants were negligent in pursuing the reference and then in filing the proposed appeal. Secondly, most of the claimants have accepted the decision of the reference court. Thirdly, in the event the petitioners have not been substituted and made party to the reference before its decision, they could have applied for procedural review which they never did. Thus, there is apparently no due diligence on their part in pursuing the matter. Accordingly, in our opinion, High Court is justified in refusing to condone the delay in filing the appeal.

**33.** In the above situation, we do not deem it proper and necessary to interfere with the decision of the High Court

refusing to condone the inordinate delay in filing the proposed appeal.

- 34.** The Special Leave Petition, as such, lacks merit and is dismissed.

..... J.  
(BELA M. TRIVEDI)

..... J.  
(PANKAJ MITHAL)

**NEW DELHI;  
APRIL 8, 2024.**



2025 INSC 485

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL No.                      OF 2025**  
**(Arising out of S.L.P. (C) No. 13459 of 2024)**

**NIKHILA DIVYANG MEHTA & ANR.**

**...APPELLANT(S)**

**VERSUS**

**HITESH P. SANGHVI & ORS.**

**...RESPONDENT(S)**

**J U D G M E N T**

**PANKAJ MITHAL, J.**

- 1.** Leave granted.
- 2.** Heard Shri Gaurav Agarwal, learned senior counsel for the appellants and Shri Bhadrish S. Raju, learned counsel for the respondent(s).
- 3.** The plaint of the civil suit was rejected by the court of first instance on an application of the defendants filed under Order VII Rule 11 of the Code of Civil Procedure<sup>1</sup>. The High Court has

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SNEHA D.A.  
Date: 2025.04.15  
17:43:00 IST  
Reason: [ ]

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<sup>1</sup> In short 'CPC'

reversed the aforesaid order and has allowed the appeal of the defendant restoring the plaint for decision on merits.

4. The impugned judgment and order of the High Court dated 08.02.2024 setting aside the order dated 23.10.2018 of the Chamber Judge, City Civil Court, Ahmedabad, and directing to restore the Civil Suit No.1758/2017 for decision on merits in accordance with law, has been assailed in this appeal.
5. The plaintiff-Shri Hitesh P. Sanghvi instituted Suit No.1758/2017 in the City Civil Court, Ahmedabad, against four persons including Smt. Harshaben Vijay Mehta, Smt. Nikhila Divyang Mehta, Smt. Ami Rajesh Parikh and Shri Nilav Divyang Mehta as defendant Nos.1, 2, 3 and 4 respectively seeking direction from the court to declare the Will dated 04.02.2014 and the Codicil dated 20.09.2014 executed by his late father Pramod Kesurdas Sanghavi and all consequential actions thereof to be null and void as also for grant of permanent injunction restraining the defendants from entering into any transaction in furtherance of the aforesaid Will and Codicil.

- 6.** The plaint categorically states that the plaintiff-Shri Hitesh P. Sanghvi is the son of deceased Pramod Kesurdas Sanghavi who died at his residence on 21.10.2014. He was survived by his wife, his three daughters-defendant Nos.1, 2 and 3 and a grandson-defendant No.4 (son of defendant No.2). The plaint further categorically, in unequivocal terms, states that the deceased took his last breath on 21.10.2014. Then in the first week of November, 2014, defendant Nos.1, 2 and 3 revealed to the plaintiff that the deceased had executed a Will and a Codicil as referred to above and he was taken by surprise.
- 7.** The plaintiff further stated that the cause of action for the suit had arisen on three occasions, first on 04.02.2014 i.e., when the Will executed by his father was registered, again on 20.09.2014 i.e., when the Codicil was registered and then finally on 21.10.2014 when his father died.
- 8.** The dispute *per se* in the suit is *inter se* the family members i.e., the son and daughters of the deceased Pramod Kesurdas Sanghavi in connection with his Will and Codicil and for the purposes of seeking the reliefs claimed in the plaint i.e., for declaration of the Will and the Codicil to be null and void, the

plaintiff contended that the cause of action for such a suit arose first on 04.02.2014, secondly on 20.09.2014 and lastly on 21.10.2014.

- 9.** In the above background, defendant No.2 moved an application (*Exh.25*) purported to be under Order VII Rule 11 CPC for the rejection of the plaint on the allegation that the plaintiff had not made any averment with regard to the suit to be within limitation and it is the primary duty of the plaintiff to show that the suit was instituted within the prescribed period of limitation. In the absence of such pleadings, the plaint is liable to be rejected under Order VII Rule 11 CPC.
- 10.** A similar application was filed by defendant No.3 again under Order VII Rule 11 (*Exh.28*) for the rejection of the plaint contending that the suit has not been instituted within the prescribed period of limitation and the plaintiff has failed to aver, show and establish that the suit has been filed within time. The plaintiff had acquired knowledge of both the Will and the Codicil in the first week of November, 2014, but the suit was not instituted within three years from the first week of



November, 2014, rather it was filed on 21.11.2017 and as such is *ex-facie* barred by limitation.

- 11.** Another application (*Exh. 33*) to the same effect was filed by defendant No.4, contending that it is the primary duty of the plaintiff to show that the suit is *prima facie* instituted within the prescribed period of limitation. As the suit was filed on 21.11.2017, it was more than three years after the plaintiff came to know about the Will and the Codicil and as such is clearly barred by law of limitation on the plain reading of the averments of the plaint.
- 12.** The plaintiff filed response to the above applications contending that the suit was instituted within time and that the parties should be allowed to adduce the evidence to prove as to whether the same is within time or beyond the period of limitation.
- 13.** The above three applications (*Exh. 25, 28 and 33*) under Order VII Rule 11 came up for consideration before the City Civil Court, Ahmedabad. The court, upon the plain reading of the averments made in the plaint, held that the action for the suit first arose in the first week of November, 2014 whereas the suit

was filed on 21.11.2017. As per the averments made by the plaintiff that he had come to know of the Will and the Codicil in the first week of November, 2014, in view of Article 58 of the Limitation Act, 1963,<sup>2</sup> the suit ought to have been filed within three years when the right to sue first accrued. Since the suit was not filed within three years i.e., by the first week of November, 2017, it is patently barred by limitation. Accordingly, applications *Exh.25, 28 and 33* were allowed and the plaint was ordered to be rejected under Order VII Rule 11 CPC.

- 14.** The above judgment and order was, however, reversed by the High Court by the impugned judgment and order dated 08.02.2024 for the reason that the parties ought to have been permitted to lead evidence on the point of limitation and that the plaint was not liable to be rejected in part, as apart from seeking declaration of the Will and the Codicil to be null and void, there were other reliefs which were sought in the plaint.
- 15.** In the above factual background, we have been called upon in this appeal to express our opinion if the suit instituted on

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<sup>2</sup> Hereinafter referred to as 'the Act'

21.11.2017 for the declaration of the Will dated 04.02.2014 and the Codicil dated 20.09.2014 as null & void, is barred by limitation in the light of the averments contained in the plaint.

- 16.** It is clear from the plaint that the prayers made therein are primarily for seeking declaration of the aforesaid Will and Codicil to be null and void as also all actions in pursuance thereof. The relief for permanent injunction is dependent upon the success of the first relief. Therefore, the relief of permanent injunction is simply a consequential relief. The primary relief being for declaring the Will and the Codicil to be null and void.
- 17.** There is no dispute to the fact that the Will was executed and registered by the father of the plaintiff on 04.02.2014 and the Codicil came to be executed and registered on 20.09.2014. The plaintiff, as per his own averments in plaint, had acquired knowledge of the aforesaid Will and Codicil through defendant Nos. 1, 2 and 3 (sisters), only in the first week of November, 2017.
- 18.** Admittedly, a suit for declaration has to be governed by Part III of the Schedule contained in the Act. Part III of the Schedule provides for the limitation for filing suits relating to

declarations. Article 56 deals with declaration with regard to the forgery of an instrument issued or registered and Article 57 relates to declaration in respect to adoption.

- 19.** The relief of declaration claimed in the suit at hand does not fall under Articles 56 and 57 and, therefore, by necessary implication, Article 58 would stand attracted which provides for a limitation period of three years to obtain any other declaration other than that mentioned under Articles 56 and 57. It provides that for such a declaration, the limitation is three years from the date when the right to sue first accrues.
- 20.** The use of the words “*when the right to sue first accrues*” as mentioned in Article 58 is very relevant and important. It categorically provides that the limitation of three years has to be counted from the date when the right to sue first accrues.
- 21.** It would be beneficial to reproduce paragraph 3 (o), paragraph 4 and paragraph 6 of the plaint which contains averments about the knowledge of the Will and the Codicil, the cause of action and the reliefs claimed:

**“3 (o).** *After a brave struggle with Cancer, the deceased took his last breath on 21.10.2014 at 10.35 pm. Pursuant to his death, defendant nos. 1 to 3 in the first week of November, 2014 disclosed to*

*the plaintiff that the deceased had not only executed a Will but had even executed a Codicil .....*

**4.** *The cause of action has arisen on 04.02.2014, when the Will bearing Registration No. 707 was registered before the Sub-Registrar-3 (Memnagar), which was executed by the father of the Plaintiff Shri Pramodray Sanghavi and the cause of action further arose on 20.09.2014, when Codicil to the said Will bearing Registration No. 6213 was executed before the Sub-Registrar-3 (Memnagar). The cause of action also arose on 21.10.2014, when the father of the Plaintiff expired and thereafter, the Will and Codicil of the father of the Plaintiff came to the knowledge of the Plaintiff. The said Will and Codicil are absolutely illegal, false and fabricated and therefore, are required to be declared as null and void. Further, an injunction is required to be ordered against the Defendants for not to sell, transfer or alienate any of the properties as per the directions of the Will and to maintain status quo till the final disposal of the Suit. Hence, the present Suit.*

**6.** *The plaintiff prays as under:*

*a. The Hon'ble Court may be pleased to declare the Will dated 04.02.2014, bearing Registration No. 707 was registered before the Sub-Registrar-3 (Memnagar) as well as the Codicil dated 20.09.2014, bearing Registration No. 6213 was registered before the Sub-Registrar-3 [Memnagar] as null and void;*

*b. The Hon'ble Court may be pleased to grant permanent injunction against the defendants, restraining them from entering into any*

*transaction in furtherance of the directions in the Will or Codicil;*

*c. The Hon'ble Court may be pleased to declare all the subsequent action taken in furtherance of the said Will and Codicil as null and void status quo ante may be restored;*

*d. Such other and further relief/s as may be deemed fit and appropriate may be granted;”*

**22.** A bare reading of paragraph 3(o) of the plaint would reveal that the father of the plaintiff died on 21.10.2014 and that the plaintiff acquired knowledge of the Will and the Codicil left behind by him in the first week of November, 2014. Paragraph 4 of the plaint reveals that the cause of action for filing of the suit first arose on 04.02.2014, then on 20.09.2014 and finally on 21.10.2014 i.e., when the Will was executed, when the Codicil was executed and when the father of the plaintiff died respectively. Therefore, according to the plaintiff's own admission, the cause of action for filing the suit commenced on 04.02.2014 and ended on 21.10.2014.

**23.** In view of the above, according to the plaintiff's own averments the suit had to be brought within time of three years either from the commencement of the cause of action on 04.02.2014 or lastly on 21.10.2014 when his father died or at best when he

acquired knowledge of the Will and the Codicil i.e., the first week of November, 2014.

**24.** There is no dispute to the fact that the limitation for filing of the suit falls under Article 58 of the Schedule to the Act wherein the limitation prescribed is three years. It may be pertinent to note that the limitation of three years is from the date when the cause of action first arose. So, according to the plaintiff's case, the cause of action first arose on 04.02.2014 and, therefore, the limitation would end on 04.02.2017. However, even if the limitation is calculated from the date of knowledge of the Will and/or the Codicil, it would run from the first week of November, 2014 and would end in the first week of November, 2017. The suit admittedly was instituted on 21.11.2017; much beyond the first week of November, 2017 and as such is apparently barred by limitation, for which neither any defence is required to be looked into nor any evidence in support is needed to be adduced.

**25.** Section 3 of the Act contemplates that every suit instituted after the period prescribed under the Act shall be dismissed even if limitation has not been set up as a defence. The



aforesaid provision is of a mandatory nature and cannot be ignored by the courts even if not pleaded or argued by the defence. It is obligatory upon the court to dismiss the suit if it is, on the face of it, barred by limitation. The aforesaid provision has been enacted for public good and to give quietus to a remedy after lapse of a particular period, as a matter of public policy, though without extinguishing the right in certain cases. Therefore, once a limitation prescribed for instituting a cause of action expires and even if limitation is not set up as a defence, it obliges the court to dismiss the suit as barred by limitation.

- 26.** In the present case, the plaintiff not only categorically states that he acquired knowledge of the Will and the Codicil in the first week of November, 2014 but also that the cause of action for the suit first arose on 04.02.2014 and lastly on 21.10.2014. The suit was filed on 21.11.2017. As such on the own averments of the plaintiff, the suit was instituted beyond limitation attracting Order VII Rule 11 (d) CPC.
- 27.** The submission that limitation is a mixed question of law and fact and that it cannot be decided without allowing the party to

lead evidence is of no substance. In the present case, we have earlier noted that the suit was admittedly instituted on 21.11.2017 whereas according to the plaint averments the cause of action first arose on 04.02.2014. Even assuming that the cause of action last arose in the first week of November, 2014, the suit ought to have been filed by 07.11.2017. The suit was filed on 21.11.2017. It was *ex-facie* barred by limitation for which, no evidence was required to be adduced by the parties. The above issue is purely an issue of fact and in the admitted facts as per the plaint, allegations stand concluded for which no evidence is needed.

- 28.** The other contention that the plaintiff acquired knowledge of the Will and Codicil in the first week of November, 2014, but that was not a complete knowledge as probably he could read the same subsequently. In dealing with the submission, the appellate Court distinguished between “*having knowledge*” and “*full knowledge*” to hold that the suit is not barred by limitation as the limitation would reckon from the date of full knowledge. It is a complete fallacy to make any distinction between “*knowledge*” and “*full knowledge*”. First of all, the limitation has

to run from the date when the cause of action first accrued and not any subsequent date for the cause of action. According to the plaintiff himself, the cause of action for the suit had arisen much earlier. Secondly, the plaintiff has not pleaded any date on which he acquired complete knowledge and that such argument is only an afterthought and appears to be a simple creation of the first appellate Court.

- 29.** Lastly, the first appellate Court has ruled that in the suit, the plaintiff has claimed different reliefs and even if the plaint is barred by limitation in respect of one of the reliefs, it cannot be rejected in *toto*. The aforesaid submission is also without substance as upon the plain reading of the prayers made in the plaint, it is apparent that the primary relief claimed therein is to declare the Will and the Codicil to be null and void and also all subsequent proceedings thereto. In addition to it, the plaintiff has claimed permanent injunction. The other reliefs are dependent upon the first relief and cannot be granted until and unless the plaintiff succeeds in the first relief. Therefore, once the plaint or the suit in respect of the main relief stands

barred by time, the other ancillary relief claimed therein also falls down.

- 30.** In view of the aforesaid facts and circumstances and the discussion, we are of the opinion that the High Court manifestly erred in law in passing the impugned judgment and order dated 08.02.2024, reversing the judgment and order dated 23.10.2018 of the court of first instance rejecting the plaint of the plaintiff in exercise of powers under Order VII Rule 11 CPC.
- 31.** Accordingly, the judgment and order of the High Court dated 08.02.2024 is set aside and that of the trial court is restored. The plaint stands rejected as barred by limitation under Order VII Rule 11 (d) CPC.
- 32.** The appeal is allowed accordingly.

..... **J.**  
**(PANKAJ MITHAL)**

..... **J.**  
**(S.V.N. BHATTI)**

**NEW DELHI;**  
**APRIL 15, 2025**