

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(CIRCUIT BENCH AT SHIMLA)**

O.A.NO.063/01192/2017

Decided on : 23.1.2019

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

...

1. Bhawani Dutt Sharma (Retired AGM from BSN) s/o Late Shri Bala Ram Sharma, R/o Shastri Bhawan, Lower Phagli Shimla-171004, Himachal Pradesh.
2. Chuni Lal (Retired Sr. TOA (P) from BSNL), S/o Late sh. Panchhi Ram, R/o Santosh Niwas near block no. 53, Sector-4, New Shimla Himachal Pradesh.
3. Laiq Ram Kashyap (Retired Sr. TOA (P) from BSNL), S/o Late Sh. Chet Ram, R/o Rukmani Kunj, Near Public School, New Shimla Himachal Pradesh.
4. Sarojni Sarin (Retired Sr. TOA (P) from BSNL) D/o Late Sh. R.N. Beri, R/o Fir Wood Cottage Upper Kaithu, Shimla, Himachal Pradesh.
5. Ms. Krishna Singh (Retired Sr. TOA (P) from BSNL), D/o Sh. Naresh Thakur, R/o Kirtan Puri, Lower Kaithu Shimla, Himachal Pradesh.
6. Ms. Sita Thakur (Retired Sr. TOA (P) from BSNL), D/o Late Sh. Bashaka Ram, R/o Thakur Niwas near Shivnagar Lower Panthaghati, Kasumptati, Himachal Pradesh-171009.
7. Sh. K.L.Chauhan (Retired Sr. SDE from BSNL) S/o Sh. Narain Ram, R/o Narayan Bhawan, Middle Sangti, Summer Hill Shimla, Himachal Pradesh-171005.
8. Atma Ram (Retired Sr. TOA (P) from BSNL) S/o Late Sh. Hari Singh, R/o Vill. Lagru, P.O.Anjibrahmna via Baknaghat Distt. Solan, Himachal Pradesh-173234.
9. Tula Ram (Retired Sr. TOA (P) from BSNL), S/o late Sh. Het Ram, R/o Vill. Bag, P.O. Deola, Teh. Suni, Distt. Shimla, Himachal Pradesh-171007.
10. Kishori Lal Thakur (Retired Sr. SDE from BSNL),n S/o Late Sh. M.R. Thakur, R/o B-6, West End Apartments, Bharari Shimla, Himachal Pradesh-171003.

11. Vishwanath Sharma, (Retired AGM from BSNL), S/o Late Sh. Jagdish Lal Sharma R/o B-1, West End Apartments, Bharari Shimla, Himachal Pradesh-171003.
12. Ms. Shakuntla Sharma (Retired Sr. TOA (P) from BSNL), D/o Late Sh. Dayanand Sharma R/o Shankar Niwas near Police Post, Vikas Nagar, Himachal Pradesh, Shimla-171009.
13. Krishan Singh (Retired Sr. TOA (P) from BSNL S/o Sh. Roop Ram, R/o Vill. Khorkahara, P.O. Kunihar, Distt. Solan, Himachal Pradesh-173207.
14. Jiwan Lal (Retired AGM from BSNL), S/o Late Sh. Bhagat Ram, R/o House No. 122, Ward No.1, Distt. Hamirpur, Himachal Pradesh-177001.
15. Sohan Lal Syal (Retired AGM from BSNL), S/o Sh. Dhanpat Rai, R/o House No. 221, Ward No.1, Premnagar, Una, Himachal Pradesh-174303.
16. Dev Raj Daroch, (Retired AGM from BSNL), S/o Sh. Khushi Ram, 34-A, near DAV Public School, Una, Himachal Pradesh-174303.
17. Mohinder Kumar (Retired JTO from BSNL), S/o Sh. Niranjan Dass Puri, Vill. & P.O. Rampur near Shivmandir, Tehsil. & Distt. Una, Himachal Pradesh.
18. Yog Raj (Retired Senior A.O. from BSNL), S/o Sh. Salig Ram, R/o Vill. Chamrala P.O. Bara, Teh. Nadaun Distt. Hamirpur, Himachal Pradesh-177044.
19. Chuni Lal (Retired AGM from BSNL), S/o Late Sh. Babu Ram, R/o Village Laher Kotlu, P.O. Sidhyal, Tehsil Nadaun, Distt. Hamirpur, Himachal Pradesh.
20. Braham Das (retired Senior SDE from BSNL), S/o Sh. Sita Ram, R/o Vill. Takrala, P.O. Amb, Distt. Una, Himachal Pradesh.
21. Sh. Som Dutt, (Retired TM from BSNL), S/o Sh. Prabhu Ram, R/o Vill. Nehole, P.O. Andheradhiraj Chowki Maniar, Tehsil Bangana, Distt. Una, Himachal Pradesh.
22. Tilak Raj, (Retired TM from BSNL), S/o Sh. Ram Lal, R/o Village & P.O. Booni, Tehsil Nadaun, Distt. Hamirpur, Himachal Pradesh.
23. Ms. Raksha Devi (Retired Sr. TOA (P) from BSNL), D/o Sh. Gian Singh, R/o Subhash Nagar, near Friends Colony lower Arniala, Distt. Una, Himachal Pradesh.

24. Prithi Chand Chauhan (Retired Sr. ToA (P) from BSNL), S/o Late Sh. Hari Singh, R/o Vill. Daroghan, P.O Thana, Tehsil Tuni-devi Distt. Hamirpur, Himachal Pradesh.
25. Kewal Singh (Retired Sr. TOA (P) from BSNL), S/o Sh. Bihari Lal, R/o Village & P.O. Khad, Tehsil & Distt. Una, Himachal Pradesh .
26. Bipan Chand (Retied TTA from BSNL) S/o Late Sh. Braham Dass, R/o Village & P.O Lower Andora, Near Nand Atta Choaki, Teh. Amb, Distt. Una, Himachal Pradesh.
27. Kushal Chand (Retired Sr. TOA () from BSNL), S/o Late Sh. Babu Ram, R/o Village Marhun, P.O. Rail, Teh. Nadaun, Distt. Hamirpur, Himachal Pradesh.
28. Janak Raj Sharma (Retired Sr. TOA (G) from BSNL), S/o Late Sh. Jagdish Ram Sharma R/o Vill. & P.O.Teuri, Distt. Una, Himachal Pradesh.
29. Kanshi Ram (Retired DGM from BSNL), S/o Sh. Rattu Ram, Vill. & P.O. Nakrana ,Tehsil Naina Devi, Distt. Bilaspur, Himachal Pradesh.

....

Applicants

(ARGUED BY: **MR. ONKAR JAIRATH, ADVOCATE**)

Versus

1. Union of India through Secretary Telecommunication to the Government of India, Sanchar Bhawan, Ashoka Road, New Delhi-110001.
2. Bharat Sanchar Nigam Limited through its Chairman-cum-Managing Director, Bharat Sanchar Bhawan, H.C. Mathur Lane, New Delhi-110001.
3. Chief General Manager, H.P. Telecom Circle, Bharat Sanchar Nigam Limited, Block No. 9 & 11, SDA Complex, Kasumpti Shimla-171009, Himachal Pradesh.

..

Respondents

(ARGUED BY: **MR. ANSHUL BANSAL, ADVOCATE FOR RESP. NO.1**
MR. RANJAN SHARMA, ADVOCATE FOR
RESP. NO.2&3)

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. The applicants have filed the instant Original Application (OA) for issuance of direction to the respondents to release them arrears of pay and allowances w.e.f. 1.1.2007 till their retirement and revised consequential retiral dues like DCRG, commuted vale of pension and leave encashment etc. along with interest @ 12% from 10.6.2013 to March, 2017 for delay caused in release of necessary benefits.

2. The facts of the case are not in dispute. The applicants initially joined erstwhile Department of Telecommunications (DoT) and were absorbed in newly formed Bharat Sanchar Nigam Limited (BSNL), in terms of Circular dated 9.11.2000 (Annexure A-1), which inter-alia, provided that absorbed BSNL employees will be entitled to Government's Scheme of pension / family pension and a pension frame work had been made part of the CCS (Pension) Rules, 1972. The applicants have retired from BSNL on different dates during the period 1.1.2007 to 9.6.2013. In view of rule 37-A of the CCS (Pension) Rule, 1972, relating to special dispensation to BSNL employees, who had shifted from DoT to BSNL, the applicants received retiral dues like Death-cum-Retirement Gratuity (DCRG), Commuted value of pension (CVP) and leave encashment (LE) directly from DoT and even monthly pension is being paid to them from Consolidated Fund of India.

3. The case of the applicants is that in accordance with a decision taken after 6th Central Pay Commission and 2nd Pay Revision Committee, the Department of Public Enterprise issued order dated 26.11.2008 (Annexure A-2), for revision of pay of employees in BSNL w.e.f. 1.1.2007 by merging 68.8% D.A. The Department of Public Enterprise modified said OM vide OM dated 2.4.2009 (Annexure A-3), for grant of benefit of merger of 50% D.A. with basic pay w.e.f. 1.1.2007, effectively

amounting to 78.2% for the purpose of fitment and pay fixation in the revised IDA pay scales to BSNL employees. Approval of competent authority was also conveyed vide memorandum dated 10.6.2013 (Annexure A-4), for fitment formula as per the decision dated 2.4.2009, but with a rider that no arrears will be paid for the period between 1.1.2007 and 9.6.2013. Another order on similar lines of even date was issued by the Department of Telecom (Annexure A-5) and then 8.7.2013. The case in short, as projected by them is that on the basis of these orders, they having retired between 1.1.2007 and 9.6.2013, were to be allowed retiral dues like DCRG, CVP and LE and monthly pension on revised rate w.e.f. 1.1.2007. However, persons who retired on 9.6.2013 are getting less pension and retiral dues, as compared to persons who retired on 10.6.2013. In response to a communication dated 11.3.2014 (Annexure A-6), the DoT issued a clarification/ letter dated 11.7.2014 (Annexure A-7), with a request that DoT may be allowed to calculate pensionary benefits of employees retired between 1.1.2007 to 9.6.2013 on the basis of notional pay fixation in relaxation of Rule 33 and 34 of CCS (Pension) Rules, 1972, in terms of precedents mentioned therein. Thus, in terms of this letter, the applicants are entitled to benefit of merger of 50% D.A. effectively amounting to 78.2% as on 1.1.2007, for the purpose of fitment, as above with arrears of pay and allowances and revised retiral dues. The applicants submitted representations from time to time but to no avail.

4. The applicants then approached this Tribunal with O.A. No. 063/00033/2016 and during pendency of the same, the respondents took a decision dated 18.7.2016 as followed by further letter dated 26.7.2016, vide which retirees were also allowed revised pay fixation, after giving the benefit of merger of 50% DA with basic pay effectively

amounting to 78.2% IDA notionally w.e.f. 1.1.2007 with actual benefit w.e.f. 10.6.2013 and their pay was also re-fixed after grant of said benefit and were also given revised pension (though notionally) but actual benefits w.e.f. 10.6.2013 only by issuing revised PPOs w.e.f. 10.6.2013.

5. The claim of the applicants has been resisted by the respondent No.1 and respondents No.2&3 by filing separate written statements. Respondent No.1 pleads that Government has issued OM dated 18.7.2006 allowing revision of pension of BSNL pensioners, who retired prior to 10.6.2013, by grant of benefit of merger of 50% of DA/DR with basic pension, effectively amounting to 78.2% after obtaining specific approval of Union Cabinet. Since, there is no provision in sub rule 37-A of CCS (Pension) Rules, 1972, for revision of BSNL pensioners, the applicants are expected to accept the benefit as allowed and not claim any more benefit. They submit that pension of pensioners, who retired between 1.10.2000 to 31.12.2006, could not be revised as there is no provision in Rule 37-A of CCS (Pension) Rules, 1972. As a special case, the Cabinet allowed revision of pension of BSNL IDA pensioners, who retired between 1.10.2000 to 31.12.2006, from 1.1.2007 and as such order dated 15.3.2011 was issued. The 5% merger of DA though was made effective from 1.1.2007, but no arrears were allowed to be paid to BSNL employees for the period w.e.f. 1.1.2007 till the date (9.6.2013) preceding order dated 10.6.2013. The applicants are not entitled to this benefit w.e.f. 1.1.2007, since there is no order in that respect. No arrears were allowed to be paid to in-service BSNL employees for the period 1.1.2007 till 9.6.2013. It is denied that persons who retired during 1.1.2007 to 9.6.2013, are getting lesser pension. The actual benefit has been allowed only w.e.f. 10.6.2013. In the

rejoinder to this reply, the applicants claim that they are entitled to full arrears w.e.f. 1.1.2007 to 9.6.2013, as recommended by BSNL authorities itself, vide OM dated 11.7.2014. They term non grant of arrears as discriminatory as respondents have entered into an agreement with serving employees' Union/Associations to grant arrears w.e.f. 1.1.2007. It is also submitted that as per law settled in LPA No.148 of 2010 titled **HET RAM VS. HRTC & OTHERS**, decided on 21.3.2002 by Hon'ble Himachal Pradesh High Court, the pension is to be calculated not on the basis of amount actually received by an incumbent in the last month of his service but on the basis of the pay fixed for the last month of the service. Respondents No.2 and 3 have also filed a similar reply. They submit that it was a policy decision, which cannot be questioned by the applicants. The benefit was granted for purpose of pension only and not for other retiral benefits i.e. DCRG, CVP and LE and even indicated judgment talks about pension only and not other dues.

6. We have heard the learned counsel for the parties at length and examined the material on file minutely, with their able assistance.

7. Learned counsel for the applicants vehemently argued that there is no fault on the part of the applicants and if respondents have taken too much time in deciding to extend benefit to the category of the applicants, then actual arrears of pay and allowances with pension cannot be denied to them and in any case, when on notional fixed pay, pension has been released, then DCRG, CVP and LE too is liable to be revised on that basis and denial of same is discriminatory. On the other hand, learned counsel for the respondents argued with equal vehemence that notional fixation of pay is only for limited purpose of revised pension only and other elements stands excluded and since in-service

employees have been denied actual arrears, then there is no question of grant of arrears to the pensioners like applicants.

8. We have considered the submissions made by learned counsel for the both sides minutely.

9. A conjunctive perusal of the record shows that the in terms of the OM dated 2.4.2009 (Annexure A-3) read with OM dated 10.6.2013 (Annexure A-4), decision was taken to grant benefit of merger of 50% D.A. with basic pay w.e.f. 1.1.2007, effectively amounting to 78.2% for the purpose of fitment and pay fixation in the revised IDA pay scales to BSNL in-service employees. Decision was also taken that no arrears are to be paid for the period between 1.1.2007 and 9.6.2013. However, the arrears was to be paid w.e.f. 10.6.2013. Again, when category of applicants was denied this benefit, they approached this Tribunal, when a decision was taken on 26.7.2016, to grant benefits to retirees also notionally w.e.f. 1.1.2007, with actual benefit w.e.f. 10.6.2013. In pursuance of this decision, their pay was re-fixed, and they were also given revised pension on notional basis, allowing actual benefits w.e.f. 10.6.2013. The learned counsel for the applicants claim that the respondents could not have denied grant of actual benefits for the indicated period and in any case, the other retiral dues like DCRG, Leave Encashment etc. should also have been revised and such actual and revised benefits ought to be paid with interest thereon. They admit that even in-service employees have also been denied actual benefits, but an agreement has been reached by the respondents with the Union / Association of employees to grant actual benefits and if that be so, the actual benefit cannot be denied to them.

10. It is not in dispute that the pay of the applicants stands revised in the manner provided above, on the basis of which their pension has also

been revised and re-fixed. In that view of the matter, we do not find any grounds made out by the respondents for denial of benefit of other retiral dues on the basis of revised pay of the applicants only because the same was granted only on notional basis. In fact, on this point, the issue stands settled by the Hon'ble Himachal Pradesh High Court in the case of Het Ram (supra). In that case also, the benefit of revision of pension was denied on the ground that pay was fixed on notional basis. Rejecting the stand taken by department, it was held by Hon'ble High Court as under :-

"2. The undisputed and simple facts are that the writ petitioner retired from service on 31.1.1998. After the retirement, pay of the writ petitioner was revised retrospectively w.e.f. 1.1.1986. Accordingly, his pay was re-fixed. On the basis of re-fixation of pay based on revised pay-scale, the petitioner made a request for re-fixation of pension. The objection was raised by the Accountant General to the effect that since pay fixation was given only notionally and since the petitioner retired without actually getting the monetary benefits on account of pay fixation, the pension cannot be re-fixed. Annexure A-11 is the order. The Accountant General has attempted to place reliance on interpretation of Rule 33 of CCS (Pension) Rules, which reads as follows:

"33-Emoluments The expression 'emoluments' means basic pay as defined in Rule 9(21)(a)(i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death and will also include non-practising allowance granted to medical officer in lieu of private practice."

3. Pension is fixed on the basis of emoluments received by an incumbent immediately before his retirement. In other words, the last drawn pay. According to the Accountant General, the last drawn pay should be the actual pay drawn by an incumbent while in service and only on the basis of pay thus drawn, the pension can be re-fixed. We find it difficult to digest the contention. Once the pay of an incumbent, in service, has been re-fixed, it is irrelevant and immaterial as to whether actual benefit flowing from the fixation has been received or not. In other words, pension is to be calculated not on the basis of the amount actually received by an incumbent in the last month of his service, but on the basis of the pay, as fixed for the last month of the service. That alone is the interpretation, purposive, proper and reasonable, in the matter of fixation of pension.

4. Accordingly, the impugned judgment is set aside. The writ petition is allowed and Annexures A-11 and A-13 are quashed. There will be a direction to the respondents to re-fix the pension of the appellant-writ petitioner on the basis of the pay fixed for the last month in service. Arrears on account of re-fixation, as above, shall be disbursed to the appellant-writ petitioner within a period of three months."

11. In this case, the respondents do admit and have allowed claim of applicants for revision of pension, but denied other dues like DCRG, Leave Encashment, on the basis of revised pay, only on the ground that only word "pension" has been used in the decisions taken for grant of

benefit formula to the category of the applicants. The classification drawn by the respondents, apparently, does not appeal to reasons at all. As when the pay itself has been revised, the retirees become entitled to benefit of pension on the basis of revised pay and other related benefits flowing there from cannot be denied to the applicants. One fails to understand as to how the respondents can classify same pay differently. For pension, they have allowed claim of applicants but for other retiral dues, they have denied it on the ground that it was done only notional basis. If that be so, then even pension could not be allowed, as per the logic offered by them. Be that as it, the fact is that no doubt, Article 16 of the Constitution of India permits a valid classification but a valid classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration over others. A classification to be valid must necessarily satisfy two tests. Firstly, that the distinguishing rationale has to be based on a just objective and secondly, that the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. Legally, the test for a valid classification may be summarized as, a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved, as held in **STATE OF KERALA VS. N.M. THOMAS** (1976) 2 SCC 310). If this principle is applied in the present case, we have no hesitation in holding that the respondents have not made classification on some intelligible differential. It is only an artificial classification which is bereft of any logic or reason and cannot be accepted at all. In the peculiar facts of this case, the term "Pension" used in the decisions would cover the element of DCRG, Leave encashment, Commuted Value of Pension as

well and the applicants are held entitled to these revised dues on the basis of revised pay carried out by the respondents.

12. However, in so far as actual payment for the period 1.1.2007 to 9.6.2013 is concerned, admittedly as on date there is no information available on record that the in-service employees have been paid actual benefits. The only pleading is that some agreement has been reached between Union/Association of the employees to grant actual benefits. If that happens and actual benefits are paid to in-service employees, then needless to mention that the applicants would also be entitled to such actual payment.

13. In the wake of above discussion, this O.A. is allowed and disposed of in above terms. The needful be done within a period of 3 months from the date of receipt of a certified copy of this order. The parties are, however, left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

DATED: JANUARY 23, 2019

HC*