

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

OP (CAT) .No. 4133 of 2012 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 91/2011 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 15-03-2012

PETITIONERS:

1. UNION OF INDIA REPRESENTED BY ITS SECRETARY TO GOVERNMENT
OF INDIA, MINISTRY OF COMMUNICATIONS & IT, DEPARTMENT OF
TELECOMMUNICATIONS, 20, ASOKA RAOD, SANCHAR BHAVAN,
NEW DELHI - 110 001

2. THE CONTROLLER OF COMMUNIIATION ACCOUNTS, OFFICE OF THE
CONTROLLER OF COMMUNICATION ACCOUNTS, DEPARTMENT OF
TELECOMMUNICATIONS, DOOR SANCHAR BHAVAN, THIRUVANANTHAPURAM 695033

BY ADVS.SRI.P.PARAMESWARAN NAIR,ASG OF INDIA

SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

RESPONDENTS:

1. BHARAT SANCHAR NIGAM LIMITED REPRESENTED BY THE CHAIRMAN
AND MANAGING DIRECTOR, CORPORATE OFFICE, SATESMAN HOUSE,
BARAKHAMBA ROAD, NEW DELHI 110 001

2. THE CHIEF GENERAL MANAGER, OFFICE OF THE CHIEF GENERAL
MANAGER, BHARAT SANCHAR NIGAM LIMITED, KERALA CIRCLE,
TRIVANDRUM 695033

3. ALL INDIA BSNL PENSIONER'S WELFARE ASSOCAITION REPRESENTED
BY ITS CIRCLE SECRETARY SHRI. R. N PADA NAIR, AGED 63 YEARS,
S/O RAMAN NAIR, PERAMPET HOUSE, THURUTH, ALUVA 683101

4. SICILAMMA THOMAS, W/O T.D THOMAS, AGED 65 YEARS,
RETD. SENIOR TELEPHONS SUPERVISOR, TELEPHONE EXCHANGE,
MATTANCHERRY, JKOCHI 2 RESIDING AT THEKKEDATH HOUSE,
XV/29 A, R.C. ROAD, KOCHI 05

5. C.G. DANIEL, AGED 65 YEARS, S/O LATE C.T. GEEVARGHESE,
RETD. SR. SECTION SUPERVIOSR, BSNL. CENTRAL TELEGRAPH OFFICE,
KOCH 16 RESIDING AT CHELACKATTU HOUSE, LANE - 22, JANATHA ROAD,
VYTTILA, KOCHI 19

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:2:

6. K.D. RAJAPPAN, AGED 65 YEARS, S/O K. DAMODHARAN,
RETD. TELECOM TECHNICAL ASSISTANT, O/O THE SUB DIVISIONAL
ENGINEER, A/C & POWER TELECPHONE EXCHANGE, ERNAKULAM RESIDING AT
KARTHIKA, H.NO. 31/59 A, AMBELIPADAM ROAD, VYTILA. KOCHI 682019

7. K.P. DEVAKIKUTTY, AGED 66 YEARS, W/O. M. BHASKARA MENON
RETD. SENIOR TELEGRAPH MASTER (O), RESIDING AT PENCHATHIL HOUSE
KULAMPADAM, KOTHATTUKULAM P.O., KOCHI 68662.

8. P.K VARGHESE, AGED 64 YEARS, S/O U KURIAKOSE, RETD.
SENIOR TELEGRAPH MASTER (O), RESIDING AT PENCHATHIL HOUSE,
KULAMPADAM, KOTHATTUKULAM PO, KOCHI 686662

R1-R2 BY ADV. SRI.MATHEWS K.PHILIP,SC, BSNL
R3-R8 BY ADV. SRI.R.SREERAJ

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 03-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P. (CAT) NO. 4133 OF 2012

APPENDIX

PETITIONERS EXHIBITS :

EXHIBIT P1 : TRUE COPY OF O.A. NO. 91 OF 2011 FILED
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXHIBIT P2 : TRUE COPY OF THE REPLY STATEMENT FILED BY THE
PETITIONERS ON 22.03.2010

EXHIBIT P3 : TRUE COPY OF THE ORDER PASSED BY THE
CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN
O.A. NO. 91 OF 2011 DATED 15.03.2012

RESPONDENTS EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE

P.R. RAMACHANDRA MENON

&

BABU MATHEW P. JOSEPH, JJ.

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O.P (CAT) No. 4133 of 2012

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Dated, this the 3rd day of July, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The petitioners challenge the order passed by the Central Administrative Tribunal, Ernakulam Bench, in O.A. No. 91 of 2011 upholding the entitlement of the applicants therein to reckon one extra increment also as part and parcel for calculating their pensionary benefits.

2. Heard the learned Assistant Solicitor General of India appearing for the petitioners, learned standing counsel appearing for the respondents 1 and 2 and the learned counsel appearing for the respondents 3 to 8.

3. The respondents 4 to 8 had retired from the first respondent BSNL while they were working in BCR Grade III. The employees belonging to BCR Grade III were granted one extra increment based on a settlement arrived at in the meeting of national council and as approved by the BSNL on certain

conditions. The relevant portions of Annexure A1 granting such extra increment to the employees in BCR Grade II read as follows :

"(b) One extra increment in BCR Grade-III may be given one year prior to retirement, without benefit of FR 22 (C), to those Group 'C' officials who are in BCR grade III and are unable to get Grade-IV promotion on the following terms and conditions:-

(i) This will be applicable only to those cadres, which are covered under OTBP/BCR Schemes and only those officials who have been absorbed in BSNL.

(ii) The officials should have earned at least one increment in BCR Grade-III i.e., he/she must have completed at least one year regular qualifying service in BCR Grade-III.

(iii) This benefit is being given in appreciation of the long years of good service rendered by an official and hence claim of this benefit on any other ground will not be entertained. The fitness of the official for getting benefit of one extra increment will be judged by a Screening Committee headed by appointing authority. The screening is to be held in advance so that benefit

is extended from the due date.

(iv) In case any official, who had been given an extra increment under this Scheme, subsequently becomes eligible and promoted to Grade-IV due to any reason, such official would have to exercise option at the time of promotion either for retention of the extra increment or for Grade-IV promotion. If the official opts for Grade-IV promotion, then he would be promoted to Grade-IV and the amount already paid to the official on account of the extra increment would have to be refunded or to be adjusted accordingly.

(v) In the case of officials who have preferred representation or filed cases in any court of law, claiming for Grade-IV promotion on any ground, the benefit of this Scheme will not be extended to such officials till the finalisation of representation/court case.

(vi) The Scheme of extra increment will be effective from 01.06.2003. Hence, the officials retiring after 01.06.2003 will get the financial benefit from that date only. This extra increment will be counted for the pensionary and other retirement benefit purposes.

Therefore, it is clear that employees who belonged to 'Group C' working in BCR Grade III were entitled to one extra increment, provided they fulfill the conditions in Annexure A1. It is specifically ordered in Annexure A1 that the extra increment thus granted would be counted for pension and other retirement benefits. This matter has been considered by the concerned Ministry in the Government of India and by issuing Annexure A2 dated 27.07.2009 further clarified the position. The relevant portion of Annexure A2 reads as follows :

"2. In this connection the Undersigned has been directed to state that the Competent Authority has approved the counting one extra increment granted to Grade III staff of BSNL covered under OTBP/BCR Scheme one year prior to their retirement towards pension and pensionary benefits as a special case as this issue had been a part of wage settlement in the case of these grade III employees who have been absorbed in BSNL in accordance with the option exercised by them."

Therefore, it is clear that the competent authority under the

Government of India has approved the counting of one extra increment granted to Grade III staff of BSNL one year prior to their retirement towards pension and pensionary benefits. BSNL issued Annexures A3 and A4 orders dated 29.03.2005 and 06.07.2004 respectively granting said benefits to various employees. In those orders also it was specifically made clear that the extra increment would be counted for pension and other retirement benefits. Therefore, it is quite evident in the light of the orders already referred to, that the employees who were so granted one extra increment were entitled to count the same for pension and other retirement benefits. But, when the question of fixing retirement benefits arose, the establishment took a different stand in respect of fixing pensionary benefits ignoring the extra increment granted to the employees. Since the retired employees were not given necessary Pension Payment Orders including the said benefit, they have approached the Central Administrative Tribunal, Ernakulam Bench, by filing O.A. No. 91 of 2011, claiming such benefits. During the pendency of that O.A., the

concerned Ministry in the Government issued Annexure R1 (5) letter dated 04.11.2011 to the Chairman-cum-Managing Director of BSNL clarifying the matter. As per the clarification, in effect, the benefit granted as per Annexures A1 to A4 was virtually withdrawn. When the matter was finally heard by the CAT, Annexure R1(5) letter was also considered in detail. After considering the matter, the CAT upheld the entitlement of the applicants to count the increment so granted based on the wage settlement for the purpose of fixing their pensionary benefits.

4. The learned Assistant Solicitor General submitted that going by the provisions of the Fundamental Rules and the Central Civil Services (Pension) Rules, the increment so granted to the employees cannot be counted for the purpose of fixing their pensionary benefits. In the light of Annexures A1 to A4, the argument so advanced on behalf of the establishment cannot be countenanced. The Fundamental Rules or the Central Civil Services (Pension) Rules do not say that the benefit so granted to the employees should not be

taken into account for the purpose of fixing pensionary benefits. Annexure A1 grants the benefit of one increment, which specifically says that would be counted for pension and other retirement benefits. That order issued by the BSNL has been approved by the Government of India by issuing Annexure A2. When Annexure A1 order was implemented by issuing Annexures A3 and A4, the establishment specifically made it clear that the increment so granted to employees would be counted for the purpose of pension and other retirement benefits. By these orders, a vested right to count that increment for the purpose of pension and other retirement benefits has been accrued to the employees. Such a right vested in them cannot be taken away by issuing a clarification in the nature of Annexure R1(5). Therefore the increment so granted to the employees is liable to be counted for pension and other retirement benefits when fixing such benefits as per the Rules.

5. An argument advanced on behalf of the establishment based on Annexure R1(5) is that the extra

increment granted to BCR grade III employees one year prior to their retirement beyond maximum of pay scale is inadmissible (emphasis supplied). This argument is far fetched. Exts.A1 to A4 do not admit such an exception or rider. The benefit is granted to those employees who are in BCR grade III and are unable to get grade IV promotion. It is a benefit granted to those employees based on settlement. The establishment does not have a case that by receiving the extra increment those employees ceased to be BCR grade III or went to grade IV. Whether those employees draw maximum of pay scale applicable to BCR grade III or below that is immaterial and irrelevant consideration. Whether they are in BCR grade III and satisfy the conditions specified in Annexure A1 alone are relevant and material. Since they satisfy them, they are entitled to that increment and that should be counted for fixing their pension and other retirement benefits. Annexure R1(5) reads something which does not exist in Annexures A1 to A4. Therefore, the argument so advanced is rejected.

6. The learned CAT has considered the matter in its right perspective. We find no illegality or infirmity with the order passed by the CAT. This Original Petition is devoid of any merits and hence, it is dismissed.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**BABU MATHEW P. JOSEPH,
JUDGE**

kmd