

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION No.3405 of 2020

28.02.2020

Between:

N.R. Deshpande

... Petitioner

and

Union of India and others

...Respondents

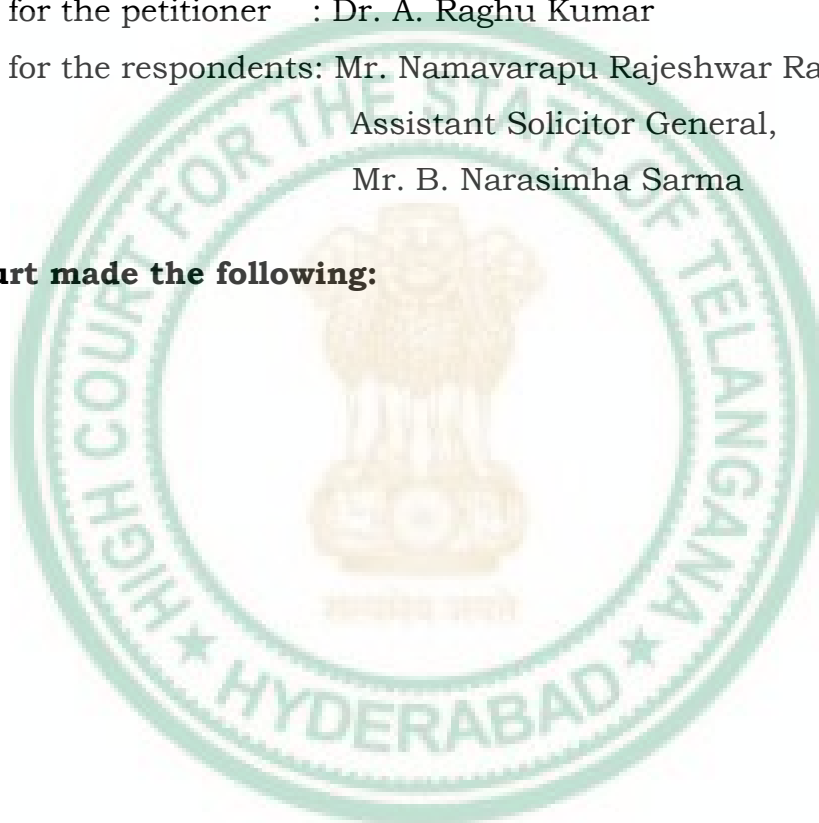
Counsel for the petitioner : Dr. A. Raghu Kumar

Counsel for the respondents: Mr. Namavarapu Rajeshwar Rao

Assistant Solicitor General,

Mr. B. Narasimha Sarma

The Court made the following:



ORDER: (Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

Aggrieved by the dismissal of his O.A.No.391 of 2018, by the learned Central Administrative Tribunal, Hyderabad Bench, by order, dated 26.06.2019, the petitioner has approached this Court.

Succinctly stated, the facts of the case are that the petitioner was working as a Group 'A' Officer in the Department of Telecommunications in M.P. Circle. During the course of his service, the Government of India had established a Company, by name of Bharat Sanchar Nigam Limited ("the BSNL", for short). Many of the staff members of the Department, including the petitioner, were transferred to the BSNL with effect from 01.10.2000. Subsequently, the petitioner retired in the post of Deputy General Manager on 31.07.2001 from the BSNL. By order dated 07.11.2005, the petitioner was permanently absorbed in the BSNL with effect from 01.10.2000.

Initially, on 05.07.1989, a memo was issued granting pro-rata pension and pensionary benefits to the employees working in the Government Departments, who were subsequently absorbed in Public Sector Undertakings (PSUs). However, subsequently on 30.09.2000, a memo was issued, permitting the pensionary benefits to be granted based on the combined service rendered by the employee in the Government Department and PSU, or as per the rules prevailing in the PSU, as on the date of the retirement of the employee. Since the petitioner was aggrieved by the said memo, he filed an O.A, namely O.A.No.170/00105/2015, before the Bangalore Bench of the Central Administrative Tribunal. The said O.A was disposed of by the Bangalore Bench, with a direction to the respondents to dispose of the representation, dated 05.12.2011, submitted by the petitioner.

In his representation dated 05.12.2011, the petitioner had claimed that prior to his absorption in BSNL, he was drawing basic pay of Rs.15,900/- in the CDA scale of Rs.14300-400-18300. However, on his absorption in the BSNL from 01.10.2000, his pay was fixed at Rs.20,300/- in the IDA scale of Rs.18500-450-23900. Therefore, he had opted for the IDA. However, subsequently, by the said representation, he sought the relief that he should be permitted to opt for the CDA scales, instead of continuing with the IDA scales. In pursuance of the order passed in the O.A.No.170/00105/2015, the said representation was rejected by the respondents, by order dated 17.06.2016.

Aggrieved by the order dated 17.06.2016, the petitioner filed another O.A, namely O.A.No.783 of 2016, before the Bangalore Bench of the Central Administrative Tribunal. The learned Bangalore Bench also directed the respondents to examine the issue. However, having examined the issue whether the petitioner can be permitted to switch from IDA to CDA, by order dated 15.12.2017, his request was again rejected by the respondents. Therefore, the petitioner filed the present O.A before the learned Tribunal.

In the reply to the O.A, the respondents clearly stated that the petitioner retired on 31.07.2001 from BSNL, and his pension was fixed, based on CDA scales as per Rule 37-A of the Pension Rules. However, after the petitioner was absorbed in the BSNL with effect from 01.10.2000, by order dated 07.11.2005, his pension was re-fixed, based on the IDA scales following the Sub-Rule (8) of Rule 37-A of CCS (Pension) Rules, 1972 ("the Rules", for short), at his own option. Therefore, according to the respondents, he cannot be permitted to change his option from the IDA scales to CDA scales. After an elaborate discussion on the issue, by order dated

26.06.2019, the learned Tribunal dismissed the O.A. Hence, the present petition before this Court.

Dr. A. Raghu Kumar, the learned counsel for the petitioner, has vehemently pleaded that the Rules were amended in 2007. According to the amendment brought in Rule 37-A, by substituting the new Sub-Rule (8), an option was, indeed, given to the petitioner to switch from one category to the other.

Secondly, by order dated 22.09.2011, issued by the Ministry of Communication & Information Technology, options were called from the retired employees of BSNL. Therefore, even under the said order, the petitioner was justified in claiming a fresh option for switching from IDA to CDA.

Thirdly, neither the amended law, nor the order dated 22.09.2011 have been noticed by the learned Tribunal. Therefore, the order passed by the learned Tribunal deserves to be set aside by this Court.

Heard the learned counsel, and perused the impugned order.

The contentions being raised by the learned counsel for the petitioner are highly misplaced. For, the amendment in Rule 37-A of the Rules is as under:-

“In the Central Civil Services (Pension) Rules, 1972, in rule 37A, for sub-rule (8), the following sub-rule shall be substituted, namely:-

(8) A permanent Government servant who has been absorbed as an employee of a public sector undertaking or autonomous body shall be eligible for pensionary benefits on the basis of combined service rendered by him in the Government and in the public sector undertaking or autonomous body in accordance with the formula for calculation of pension/family pension under these rules as may be in force at the time of his retirement from the public sector undertaking or autonomous body, as the case may be or at his option, to receive pro-rata retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.

EXPLANATION MEMORANDUM

Option to draw pro-rata monthly pension available to the Government servants who were transferred and absorbed in Public Sector Undertakings or Autonomous Bodies set up consequent upon conversion of a Government Department under Department of Pension and Pensioner's Welfare's O.M.No.4/18/87-P&PW(D) dated 5-7-1989 was withdrawn w.e.f.30-09-2000 vide Notification No.S.O.904(E) dated 30-9-2000. The same provision was restored through Notification No.S.O.1487(F) dated 14.10.2005 w.e.f.14-10-2005. The same provision has been restored through this notification w.e.f. 30-9-2000. This is certified that no one shall be adversely affected by giving retrospective effect to this notification."

A bare perusal of the **freshly** substituted Sub-Rule (8) of Rule 37-A of the Rules clearly reveals that the Sub-Rule relates to eligibility for pensionary benefits, and prescribes that the combined service rendered by an employee both in the Government and in the Public Sector undertaking, or an autonomous body, shall be taken as the service for calculating the benefits under the Rules, which are applicable to the Public Sector Undertakings on the date of the retirement of the employee. The said Rules nowhere provide that an employee, who was covered under the IDA, would be given a fresh option to switch from the IDA to CDA.

Similarly, the order dated 22.09.2011 gives an option to an employee to be absorbed in MTNL/BSNL. Such an option has already been given to those retirees who have retired since 01.10.2000. However, admittedly, the petitioner has already been absorbed with effect from 01.10.2000, by order dated 07.11.2005. Since the petitioner was already absorbed prior to the issuance of the order dated 22.09.2011, obviously, he cannot be permitted to again exercise an option for absorption. Therefore, the case of the petitioner does not even fall within the four corners of the order dated 22.09.2011.

A bare perusal of the impugned order passed by the learned Tribunal clearly reveals that the learned Tribunal has considered different issues, which could arise in this case. Considering the fact that the petitioner had opted for the IDA scales, the first issue considered by the learned Tribunal is whether an option once exercised can be treated as final or not? Secondly, whether once a conscious decision has been taken by the employee, can it be rescinded by him subsequently? Thirdly, whether the exercise of option is an open-ended one? Fourthly, whether after having retired from the service, the employee continues to maintain employee and employer relation with the Government to be able to seek the CDA scales granted to the Government employee or not? Lastly, whether the case of the petitioner is covered by the memo dated 30.09.2000 or not? Having considered the various aspects of the case, in a well reasoned order, the learned Tribunal has rejected the O.A filed by the petitioner.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned order. Therefore, the present writ appeal is devoid of any merit; it is, hereby, dismissed. There shall be no order as to costs.

The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

28th February, 2020
JSU

High Court for the State of Telangana**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN****AND****THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY****WRIT PETITION No.3405 of 2020****(Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)****Date: 28.02.2020****JSU**