(2014) 07 DEL CK 0203

In the Delhi High Court

Case No : W.P. (C) No. 789/2014

Bhoop Singh APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 28-07-2014

Acts Referred:

Citation : (2014) 07 DEL CK 0203

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Rama Shanker, Advocate for the Appellant; Saqib, R.V. Sinha, A.S. Singh, Advs., Ravi Sikri, Vaibhav Kalra and Sumedha Dang, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioner challenges the order of the Central Administrative Tribunal (CAT/Tribunal) dated 05.10.2012 passed in T.A. No. 1392/2009, whereby the Tribunal rejected his application-questioning the adjustment/recovery of Rs. 1,26,000/- from the terminal benefits admissible to him at the time of his superannuation with effect from 31.03.2004.

2. Briefly, the facts are that the petitioner was originally an employee of the Department of Telecommunication (DOT), when the functioning of the DOT was reorganised and its employees were transferred to the successor organisation, i.e. Bharat Sanchar Nigam Limited (BSNL) and Mahanagar Telephone Nigam Limited (MTNL); the settlement of their terms and conditions was in a state of flux for a considerable period of time. Employees of both organisations were governed by the CDA pay pattern. In these circumstances, MTNL decided on 06.06.2000, in principle, that till final settlement of the entitlement of individual employees-(based upon their option) were arrived at, an ad hoc amount of Rs. 3,000/- was to be paid to all Group A/Group B employees. The order, inter alia, stated that "this compensation shall be payable with effect from 01.04.1999 or from their date of joining MTNL, whichever is later, till the IDA pay scales

becomes operative for Group A and B officers, subject to the following conditions...........". Similar orders apparently had been issued earlier as well.

3. In January 2002, eligible officers were asked to opt whether they wish to be absorbed in the successor organisation or return to the DOT, and also whether they wished to continue in the CDA pay scale or migrate to the IDA scale. It is not in dispute that the petitioner opted for absorption in the MTNL; he also indicated his preference for the IDA scale. The letter of 14.01.2002 which called for option indicated pertinently as follows:

8. The IDA pay scale and the fitment formula will be announced by BSNL separately. Till that time the optees will continue to remain in CDA pay scale. The IDA pay scales will be effective from 01.10.2000. After fixation of the pay of the absorbed employees in IDA pay scale, they will be paid arrears.

However, after their absorption is finalised by BSNL and till they are fitted in the IDA pay scale officials will be paid and ad-hoc sum of Rs. 2000 per month by BSNL. This will be an advance payment against the arrears receivable by them on their fitment in the IDA pay scales. This advance payment will be adjusted from their IDA emoluments, perks and benefits on fixation of their pay in IDA pay scales. In case of optees accepted for absorption from MTNL any ad-hoc amount paid to them by MTNL would also be adjusted against their IDA emoluments, perks and benefits on fixation of their pay in IDA pay scales.

4. The BSNL also issued another communication dated 02.09.2003 calling for options, wherein it reiterated the afore extracted position.

5. It was in this background and circumstances that the petitioner was granted allowance of Rs. 3,000/- per month pending the settlement of his pay scale. That eventuality did not happen during the currency of his service i.e. even till the stage of his superannuation on 31.03.2014. In these circumstances, the last pay certificate was issued at the time of the petitioners superannuation; it indicated that compensation of Rs. 3,000/- was paid to the petitioner. The petitioner has sought to highlight that the word "adhoc" was scored out and substituted with the word "compensation".

6. On 24.04.2004, the Central Government issued the following absorption order:

1. Pursuant to letter No. BSNL/11/SR/2003 dated 02.09.2003 on the above subject and in accordance with the provisions of Rule 37A of CCS (Pension) Rules, as amended from time to time, sanction of the President is hereby conveyed to the permanent absorption of Shri/Smt/Kumari BHUP SINGH, a permanent/temporary/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/Smt/Kumari BHUP SINGH shall be eligible for pensionary benefits including gratuity as per the provisions of Rule 37A of the CCS (Pension) Rules, as amended from time to time.

4. Family Pension: The family of Shri/Smt/Kumari BHUP SINGH shall be eligible for family pension as per provisions of Rule 37A read with Rule 54(13B) 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 OM No. 4/18/87-P&PW(D) dated 05.07.1989.

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

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

7. Subsequently, the petitioner was informed, consequent upon the pay fixation pursuant to the order dated 24.04.2014, that an amount of Rs. 1,26,000/- had been withheld from the terminal benefits. He felt aggrieved and approached the Tribunal.

8. By its impugned order, the Tribunal noticed the circumstances in which the payment of ad hoc payment had been given to the erstwhile employees of the DOT, whose option were being processed. The Tribunal referred to the order of 14.01.2002 as well as the order seeking option from the petitioner on 02.09.2003. The Tribunal was of the opinion that since the alleged withholding was only an adjustment, there was no adverse impact as the ultimate pay that the petitioner was entitled to and was finally fixed and indicated to him; and that the withholding of Rs. 1,26,000/- was in order.

9. The petitioner heavily relies upon the judgment of the learned Single Judge in W.P. (C) No. 2762-2815/2005 in Harish Kumar & Ors. V. Union of India decided on 20.05.2008. It was stated that under similar circumstances, when certain amounts were sought to be recovered from the other employees who had approached the Court, it was held that such action was arbitrary and unlawful. It was next contended that the petitioner was entitled to the benefits which had to be fixed on the date of his superannuation, i.e. 31.03.2004, and that the respondents'' action in withholding terminal benefits is without authority of law. It was also emphasised that the order of 20.05.2008 clearly stated in para 2 that the amount of Rs. 3,000/- is "compensation" and has no connection or link with the pay.

10. It is evident from the above narrative that upon reorganisation of DOT and its subsequent corporation into two entities, i.e. BSNL and MTNL, the existing

officers (of DoT) were given various options-one to indicate in which organisation they wished to be permanently absorbed and two whether they chose the IDA or the CDA pattern of pay. These options were crucial because ultimately it was based on the exercise, and processing that the employers'' liabilities were to be fixed, which included the liability of pay terminal benefits, pension etc. and the corresponding rights of the employees, were to be crystallised.

11. There is no dispute in this case that the petitioner was ultimately absorbed with the BSNL. His option for IDA pattern of pay scale was also accepted-however, retrospectively, with effect from, 01.10.2000 by an order of 24.04.2004. The materials on record also disclose that he was alerted on 14.01.2002 and again on 02.09.2003-(when the options were elicited from him) with regard to his pay fixation. In these circumstances, the subsequent pay fixation was effected and the fitment in pay scale (is found at page 60 of the paper book) order was issued. This fitment has not been questioned at all. As against the sum of Rs. 3,000/- (whether this term is compensation or ad hoc advance), the petitioners entitlement in the IDA pay scale valued between Rs. 2,785/- (as on 01.10.2000), and became Rs. 2,536/- (in the month that he finally superannuated). The amount thus finally determined in respect of the balance payable for the IDA scale was Rs. 1,17,349/-, as against this the petitioner had been already disbursed the amount of Rs. 1,26,000/-.

12. If all these circumstances are taken into account, the argument that Rs. 3,000/- was compensation and, therefore, not liable to adjustment is wholly insubstantial. The petitioner nowhere supports his submission with respect to the additional compensation over and above what he would be entitled to in terms of his options, as aforesaid. The only conclusion that the Court can, therefore, reasonably infer is that even though the letter of 06.06.2000 in, para 2 stated that an amount of Rs. 3,000/- would have no link with the pay, and there is an apparent contradiction with the earlier portion of the same letter. The intent and purport of the orders (in the context of the other contemporaneous letters/ orders) is that the payment of Rs. 3,000/- per month was only an ad hoc one since options, as, had been called for from the concerned employees and such payment was to be adjusted upon final pay fixation. In these circumstances, the Court is of the opinion that the Tribunal correctly inferred that there was no arbitrary withholding of pensionary or terminal benefits.

13. As far as the reference to the previous judgment of this Court goes, the learned Single Judge had noticed there that the petitioners had not opted for permanent absorption. This is evident from a reading of the following extract of the Courts reasoning:

8. The petitioners have not been paid IDA pay scales. They received and were paid salary under the CDA pay scales while they were working on deputation with MTNL. In addition they have received Rs. 3,000/- per month in terms of letter dated 6th June, 2000.

14. In view of the above, we are of the opinion that there is no infirmity with the impugned order of the Tribunal. The writ petition lacks merit and is consequently dismissed.