
(2019) 05 CAT CK 0109

In the Central Administrative Tribunal

Case No : Original Application No. 258 Of 2016

Chander Mohan Trehan

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 25-05-2019

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 37A, 37A(4)
Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 05 CAT CK 0109

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : Madhu Tewatia, Vidya Sagar, H.K. Gangwani

Final Decision : Dismissed

Judgement

1. Briefly stated, the facts leading to filing of the current O.A. are that the applicant joined Ministry of Communication in Junior Time Scale on 02.01.1967. The applicant submits that after obtaining approval from the Appointments Committee of the Cabinet, he was promoted to the post of Chief Engineer in September, 1994 in the pay scale of Rs.18400-22400 (S-29). He was transferred from the post of Chief Engineer (Civil) Telecom, Bombay to MTNL as Chief Engineer in S-29 Grade on 10.11.2000. He was further promoted to the post of Principal Chief Engineer in the pay scale of Rs.22400-24500 in (S-30) grade on 10.09.2001.

2. The applicant superannuated on 31.05.2003 while on deputation and at that time his basic pay was Rs.22925/- in the HAG (S-30) scale of Rs.22400-24500. His pension was accordingly fixed at Rs.11437/- vide PPO No. 6-924/2003/PFP/1295 dated 02.06.2003. This was based on 50% of the average pay for the last 10 months before retirement on superannuation from the post of Principal Chief Engineer.

3. He submits that while carving out MTNL (1986) & BSNL (1.10.2000), it was

decided to transfer regular officers to BSNL and MTNL which are autonomous organizations. The applicant was then transferred as Sr. DDG (BW) (BSNL) on 26.04.2000. No actual absorptions were carried out during the entire service tenure of the applicant and he retired as a regular DOT employee on 31.05.2003 as is clear from his initial PPO.

4. Vide letter dated 04.10.2005, options were invited for absorption in BSNL/MTNL (from serving and retired officers). It was clearly mentioned in the said letter that it was subject to the Court judgment. The applicant submits that while giving his option for pensionary benefits on 08.05.2000, he had clearly stated that "without prejudice to my right to further benefit that may accrue to me on account of judgments in pending cases". Even in the Sanction Order No. 32-11/2005-Cwg dated 11.10.2005, it was mentioned that absorption is subject to the decision in the court cases pending before various courts in the matter of permanent absorption of Group-A officers.

5. It is further stated that Para-18(1) of the Consolidated General Terms and Conditions for Absorption of Group A officers in MTNL/BSNL dated 04.10.2005 states as under:-

"The pension to Group A officers upon their absorption in BSNL/MTNL shall be paid as per the relevant provisions of Rule 37A of the CCS Pension Rules 1972."

The Rule 37A of the CCS Pension Rules 1972 is enclosed as Annex A-10. The sub rule 4 of this rule viz., Rule 37-A reads as under:

"4. The permanent absorption of the Government servant as employee of the Public Sector Undertakings or Autonomous Body shall take effect from the date on which their options are accepted by the Government and as from the date of such acceptance, such employees shall cease to be Government Servants and they shall be deemed to have retired from Government Service."

It is clear from the above provision that absorption has to be prospective and subsequent to the date of acceptance by the Government.

6. The applicant submits that the issue of retrospective absorption was agitated before the Hon'ble Delhi High Court in WP(C) No. 22515/2005. This issue was decided by the Hon'ble High Court vide its order dated 17.04.2012, directing that:-

"i) The deemed date of absorption of the petitioners fixed as 1.10.2000, is held to be illegal, being contrary to Rule 37-A (4) of CCS (Pension) Rules;

ii) The deemed date of permanent absorption of such of the petitioners who seek permanent absorption in BSNL/MTNL shall be 8.12.2005;

iii) The petitioners before this Court are given an option, to be exercised within two weeks from the date of this order, to revert to the Government or to seek permanent absorption in BSNL/MTNL as the case may be;

iv) Those Government servants who have already accepted permanent absorption w.e.f. 1.10.2000 will not be entitled to exercise a fresh option in terms of this order;

v) BSNL/MTNL shall relieve such of the petitioners, who opt to revert to Government service within 2 weeks of receipt of options from them;

vi) Such of the petitioners who opt to revert to the Government shall be appropriately redeployed by the Government in Government service through surplus cell of the Government. We have no doubt in our mind that the Government would not like to keep such of the petitioners who opt to revert to the Government idle and, subject to availability of the positions with it, give them such work as is deemed appropriate to be performed by them."

The applicant submits that no SLP was filed in the Hon'ble Supreme Court against this judgment, hence it attained finality, & that his case is squarely covered by the aforesaid judgment. Thus, the DoT's letter No. 6-924/2003/PPF/1295/Pre-2006/R dated 24.09.2014 reducing the pay scale of the applicant retrospectively from 5th Central Pay Commission S-30 (Rs.22400-24500) from which he retired on superannuation in 2003, to S-29 (Rs.18400-22400) while re-fixing his revised pension under 6th Central Pay Commission Pay Band-4 (instead of HAG scale of Rs.67000-79000) is wrongl. The respondents have even changed the commuted amount of pension from Rs.4574 to Rs.4130 w.e.f. 08.05.2008 vide their letter dated 24.09.2014 without any justification. The ostensible reason appears to be that 08.05.2008 was the date when the applicant gave his conditional option.

7. The applicant avers that his rank was unjustifiably reduced from S-30 to S-29 retrospectively more than two years after his superannuation. However, some similarly placed officers, who applied for absorption in BSNL after their retirement, was allowed and their rank was not reduced. This action of the respondents is unfair and arbitrary and against the right to equality enshrined under Articles 14 and 16 of the Constitution of India.

8. Aggrieved by the action of the respondents, the applicant has filed the current O.A. seeking the following relief:-

"(i) Declare retrospective absorption of the Applicant w.e.f. 1-10-2000 in BSNL as Illegal and void ab-initio.

(ii) Quash and set aside Department of telecommunication letter No. 6-924/2003/PPF/1295/Pre-2006/R-dated 24-9-2014 (Annex A-1) and order No. 32-11/2005-(WG) dated 11 October 2005 (Annex.A-2).

(iii) Affirm that the reduction in rank of the Applicant from S-30 to S-29 from a date prior to the retirement is illegal.

(iv) Order that the scale S-30 mentioned in the said PPO be revised in accordance with rules from Rs.22400-525-24500 to Rs. 67000-79000 w.e.f.

1-1-2006 and be further revised as and when the Seventh Central pay Commission Report comes into effect.

(v) Order that the arrears of pension because of lesser pension having been paid to the Applicant after adjusting the Amount paid to the Applicant because of wrongful absorption in BSNL.

(vi) Direct payment of interest at the prevailing bank rate for fixed deposits in scheduled Banks for Senior Citizens.

(vii) Any other relief which the Hon'ble Tribunal may consider fit and proper in the circumstances of the case."

9. In reply, the respondents contend that the applicant voluntarily exercised his option to get absorbed in BSNL w.e.f. 1.10.2000 in response to DoT letter No. A-11013/1/2005-Admn II dated 24.03.2005. This was retrospective absorption as the applicant had already superannuated at the time of exercising his option for absorption. They submit that in the DoP&T letter dated 04.10.2005, it was categorically laid down that "...the option once exercised shall be final and will not be allowed to be withdrawn by the concerned officer at a later stage." In view of this clear stipulation, there is no provision to revert back an absorbed officer in MTNL/BSNL.

10. The respondents have relied upon the decision of the Hon'ble High Court of Delhi in the case of Indian Telecom Service Association & Ors. Vs. UOI & Ors. [WP(C)-22515/2015] on 17.04.2012 wherein it has been held that "Those Government Servants who have already accepted permanent absorption w.e.f. 1.10.2000 will not be entitled to exercise a fresh option in terms of this order." They aver that since the applicant had already accepted permanent absorption w.e.f. 1.10.2000 by voluntarily exercising his option for absorption in BSNL, hence he is not entitled to exercise a fresh option in view of the judgment of Hon'ble Delhi High Court.

11. I have gone through the facts of the case carefully and considered the rival contentions of both sides.

12. The facts of the case not being in dispute are not being reproduced. The short issue to be adjudicated is whether the action of the respondents in reducing the pension of the applicant from scale of S-30 (HAG) to S-29 (SAG) is valid and legal. In the Consolidated General Terms and Conditions for absorption of Group-A officers in MTNL/BSNL contained in DoT letter No. A-11013/1/2005-Admn.II/Absorption Cell dated 04.10.2005, it is categorically mentioned that the option once exercised shall be final and would not be allowed to be withdrawn by the concerned officer, at a later stage. The revised PPO issued by the respondents is based on the option exercised by the applicant to be absorbed in BSNL w.e.f. 01.01.2000 vide his letter dated 08.05.2008.

13. It is not disputed by either side that the applicant had exercised his option for pro-rata pension vide his letter dated 08.05.2008. The DoT while inviting

options (vide letter dated 11.10.2005) and the applicant while giving his option, mentioned that the exercise of options are subject to the outcome of the court cases. While deciding the issue of retrospective absorption, the Hon'ble High Court specifically mentioned that the employees, who had exercised option for permanent absorption w.e.f. 01.10.2000 voluntarily would not be entitled to exercise a fresh option.

14. During the course of hearing, the learned counsel for the respondents Sh. Vidya Sagar draw my attention to the judgment of Hon'ble Supreme Court in the case of Nagubai Ammal & Ors. Vs. B. Shama Rao & Ors., 1956 SCR 451. He submitted that the present case is not maintainable on the principle that a person cannot both approbate and reprobate. In para-21 of the said judgment, the following has been held:-

".....A plaintiff is not permitted to 'approbate and reprobate'.

The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election - namely, that no party can accept and reject the same instrument: *Ker v. Wauchope* (1819) 1 Blight 1 (21) (E); *Douglas-Menzies v., Umphelby* 1908 AC 224 (232) (F). The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say if is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction".

It is clear from the above observations that the maxim that a person cannot 'approbate and reprobate' is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The law is thus stated in Halsbury's Laws of England Volume XII, p. 454, para 512:

"On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e. g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it".

15. Learned counsel for the applicant Ms. Madhu Tewatia during the course of hearing emphasized that some similarly placed persons have been given preferential treatment and their rank was not reduced from S-30 to S-29. She argued that the respondents were adopting pick and choose policy and acting in a discriminatory manner qua the applicant. (If that is true, the respondents are advised to look into the matter for rectification, as per law, if warranted).

16. The applicant has contended that the entire exercise of inviting and receiving the options and the final acceptance, was conditional and subject to outcome of the decision of Court cases pending before various Courts in the matter of permanent absorption of Group-A officers. Interestingly, both the applicant and the respondents have relied upon the judgment of Hon'ble High Court in WP(C)-22515-22518/2005 (supra) dated 17.04.2012. While the applicant has quoted directions (i) and (ii) of the order, which read as under:-

"(i) The deemed date of absorption fixed as 01.01.2000 is held to be illegal being contrary to rule 37-A(4) of CCS (Pension) Rules.

(ii) The deemed date of permanent absorption of such of the petitioners who seek permanent absorption in BSNL/MTNL shall be 08.12.2005."

The respondents have relied upon para-iv of the same judgment where the Hon'ble High Court of Delhi has directed that:-

"(iv) Those Government Servants who have already accepted permanent absorption w.e.f. 1.10.2000 will not be entitled to exercise a fresh option in terms of this order."

It would be seen that the applicant has conveniently avoided mentioning the direction which prohibits those government servants, who had accepted permanent absorption w.e.f. 01.10.2000 from revising their option. Since the applicant has already accepted permanent absorption w.e.f. 01.10.2000, he stands precluded from any claim of revision of option in view of the Hon'ble Delhi High Court judgment. This contention of the respondents gains strength as per the terms and conditions for absorption of Group-A officers in BSNL & MTNL wherein it has been laid down in para-2 that:-

".....the option once exercised shall be final and will not be allowed to be withdrawn by the concerned officer at a later stage."

17. The claim of the applicant in the O.A. fails since the point as to why the scale S-29 was adopted while revising applicant's pension has suitably and convincingly been addressed by the respondents in their counter as well as in their arguments. This action now gets validated by the orders of the Hon'ble High Court as discussed in para 17 above. In view of these directions, there remains no cause for the Tribunal to intervene with the impugned order dated 20.09.2014. The O.A. is accordingly dismissed. No costs.