

(2022) 11 JH CK 0048

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2330 Of 2022

Vikas Kumar Gupta And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 16-11-2022

Acts Referred:

Central Civil Service (Pension) Rules, 1972 — Rule 37A

Citation : (2022) 11 JH CK 0048

Hon'ble Judges : Aparesh Kumar Singh, J;Deepak Roshan, J

Bench : Division Bench

Advocate : B.K. Pathak, Sanjay Kr. Singh, Prashant Kr. Singh, Arbind Kr. Jha, Ganesh Ram

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.
2. The applicants / petitioners are aggrieved by the dismissal of O.A. No. 051/00347/2021 (Annexure-12) vide order dated 18.04.2022 passed by learned Central Administrative Tribunal, Circuit Bench at Ranchi, on both counts as being devoid of merits and badly suffering from delay and latches.
3. The original application was made for the following reliefs:
 - a) For setting-aside/Quashing the order No. For setting aside/Quashing the order No. the order No. St./5-111/JKD-2021/Misc/31, St/5-111/JKD-2021 Misc/32, St/5-111/JKD-2021/Misc/33 and St/5-111/JKD-2021/Misc/34, dated 22.09.2021, whereby request of the applicant no.1 and 2 for grant of status of Dot employee absorbed in BSNL and benefits under the rule 37A of CCS (Pension) Rule 1972 was rejected on ground that "applicants have joined BSNL after 01-10-2000 so he is BSNL recruited and Benefit under rule 37A of CCS Pension Rules, 1972 is not applicable to him."
 - b) For issuance of direction/Direction(s) upon the respondents to granting the

Status of DOT (Department of Telecom) employee of DoT employee absorbed in BSNL (Bharat Sanchar Nigam Limited) in view of the recruitment process was initiated by the Department of Telecom (DoT) and completed by the Bharat Sanchar Nigam Limited without any modification / rectification / of the advertisement.

c) For the issuance of direction/Direction(s) upon respondents for getting all the benefits of old Pension cum GPF scheme in view of the fact that the recruitment has been done against the vacancy year 1999 and Regulated & Guided by the TTA Recruitment Rule 1998 (amended 1999).

d) For issuance of direction/Direction(s) respondents to extend/cover the pension benefit according to upon the Rule 37-A of CCS Pension rule 1972 and O.M. No. 57/04/2019- P & PW (B) dated 17 February 2020, issued by the Government of India, Department of Pension and PW.

e) For issuance of direction/Direction(s) upon the respondents to extend all consequential benefits according to TTA Recruitment Rule 1998 (Amended 1999).

f) For grant of any other reliefs deemed fit and proper in the facts and circumstances of the case in favour of the applicants.

g) Cost of the application may also be granted in favour of the applicants.

h) The applicants may be allowed to file joint"

4. Applicants argued that the advertisement under which they were appointed under BSNL in the year 2002, was issued by the Department of Telecom, Government of India. Their GPF was deducted initially from their salary but discontinued. Therefore, they bore a legitimate expectation of being treated as DOT employees. They persisted with representation before the respondents to treat them as DOT employees and grant them the benefit of Rule 37A of CCS (Pension) Rule, 1972. However, their representations were rejected finally on 22.09.2021. Thereafter the instant O.A. was preferred in the year 2021 itself.

5. The learned Tribunal after taking note of the case of the parties held as under:

7. It is not disputed that examination was conducted and result was declared by BSNL and appointment letters were also issued by the BSNL. Appointment letter shows the status of applicant as BSNL employee and not the employee of DOT. Applicants were appointed in year 2002 and at that time they any objection of their being employee of BSNL. It is only in year 2021 they pressed the claim for granting status of employee of Department of Telecommunication (DOT) absorbed in BSNL. The representation which has been rejected vide impugned order, Annexure A/7 bears date 30/7/2021. It is not the case where the employee was appointee of DOT and later on was absorbed in BSNL, applicants were given appointment by BSNL and they legally have no right now to agitate that they are not employee of BSNL and that too after 19-20 years of their appointment. As far as contention of Id counsel that it is a case where legitimate

expectation of applicant to treat them as DOT employee needs to be considered relates, legitimate expectation for grant of relief must be of nature wherein in entirety of facts one can reasonably infer or believe existence of some facts and that inference should not be hyper technical or whimsical. Instant case is not of that nature wherein even a person of ordinary prudence could assume that he is the employee of DOT when the very appointment letter is that of BSNL. The O.A is not only devoid of merits but also badly covered by delay and latches. The OA deserves dismissal and hence is dismissed. Pending MA also stand disposed of accordingly.”

6. Learned counsel for the petitioners submits that the learned Tribunal has committed an error in dismissing the O.A. The case of the applicants would not affect other employees of BSNL in different circles of the BSNL as they have been appointed by the advertisement issued by the BSNL itself after advertisement of the DOT was not acted upon or withdrawn. It is also contended that after issuance of the advertisement, the rules of game cannot be changed. A different employer cannot step into the shoes of the original employer who had issued the advertisement. Besides that petitioners have got their GPF deducted from their salary as if they were DOT employees for certain period. Applicants would only get the benefit of pension on being treated as employees of DOT. The O.A. was not barred by delay as the matter was being considered at the level of DOT.

7. Learned counsel for the Respondent has referred to the para 6 and 7 of the counter affidavit filed on 12.10.2022, which reads as under:

6. That, it is humbly submitted that Department of Telecommunications, vide letter No.27-1/2001-SNG (Vol-III)/ Chennai TC (Pt) dated 27-02-2020 & 23-02-2021 has made it clear that (i) the language of Rule 37A of CCS (Pension) Rules, 1972 clearly states that only Government Employee (permanent or temporary) who were on the roles of Government before corporatization and transferred on deemed deputation upon corporatization of Government Department are covered under Pension Rules for payment of pension from Consolidated Fund of India. The language of the rule is quite clear and unambiguous, (ii) Any employee who has been formally appointed by BSNL on or after 01.01.2000 and joined BSNL is BSNL appointee. Therefore, the petitioner of the present Writ, who were appointed in BSNL on 16-09-2002/30-09-2002 are BSNL appointees and cannot be extended pension under CCS (Pension) Rules, 1972.

7. That, it is humbly submitted that recently in a similar case the Hon’ble CAT, Allahabad in its order dated 01-12-2021 in O.A. Diary No-2184/2021 in the matter of Arif Saeed, S/o- M. Mohd Shareef & 68 ors- Vs- Union of India & ors had observed that the applicants were appointed in the year 2003 in BSNL. It is beyond our understanding as to how when the applicants were appointed in BSNL can now claim that they should be appointed in the Department of Telecommunications from the date of their initial appointment. The relief sought is itself without any sound basis and in our view does not deserve even a

preliminary consideration. Moreover, if at all a cause of action is presumed, it would have arisen in 2003 at the time of applicants initial appointment. It is after having served for eight years that they have approached the Tribunal with a prayer which is more than unreasonable. Therefore, there is no justification for condoning the delay also in this matter. Accordingly delay condonation application No-1560/2021 is dismissed and the Diary number is also obviously stand dismissed.”

8. Learned counsel for the respondent submits that BSNL was acting in its own capacity w.e.f. 1.10.2020 as per the Gazette resolution dated 23.01.2000. BSNL being a separate legal entity, the applicants having accepted joining under BSNL, cannot be allotted to agitate the claim of being treated as DOT employee and that too after 19-20 years of their appointment. Therefore, learned Tribunal has rightly rejected their prayer. Respondents have also indicated at para 11 of their counter affidavit the details of several applicants out of total 68. All these applicants had joined on 16.09.2002/30.09.2002 after formation of BSNL on 01.10.2000. Learned counsel for the respondent has also referred to different clarification dated 27.02.2020, 20.03.2020 and 13.09.2002, which is to the effect that any applicant who is formally appointed on or after 01.10.2000 and joined BSNL is a BSNL appointee. Therefore, claim of the petitioners for being treated as DOT employees being covered under 37A of the CCS (Pension) Rules, 1972 has been rejected.

9. Learned counsel for the petitioners has referred to the rejoinder affidavit filed on 2.11.2022, specifically para 4 thereof. He submits that before such clarifications were made by the BSNL, petitioners had already joined the organisation. The stand of the respondents therefore is not proper in the eye of law.

10. We have considered the submissions of learned counsel for the parties and taken note of the pleadings borne from the records. The claim of the petitioners for being treated as DOT employees stems from the only fact that the advertisement for recruitment was issued by the DOT. However, the entire exercise of recruitment was undertaken by the BSNL and applicants also joined the services of BSNL on or around 16.09.2002 /30.09.2002 after formation of the BSNL on 01.10.2000. Merely because of the fact that initially some GPF deductions were made from their salary, which was discontinued also, applicants cannot claim a legal right to be treated as employees of DOT. On the formation of the BSNL by a gazette notification dated 30.09.2000 (Annexure-R1 to the counter affidavit dated 26.07.2022), the assets and liabilities of the DOT was transferred to the BSNL, which came into existence on 01.10.2000. Petitioners’ cause of action, if any, related to the time when they had joined BSNL. Having accepted the offer of appointment and remained under the BSNL for 19/20 years, only on account of rejection of representation dated 21.09.2021, they cannot revive a stale claim of cause of action. No legitimate expectation can either accrue as their recruitment, appointment and joining and all subsequent events

having been taken place under BSNL organization.

11. In view of the aforesaid reasons and facts and circumstances noted herein above, we do not find any error in the impugned order of the learned CAT. The writ petition is accordingly dismissed.