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5/2/18

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CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
SECTOR 17 E

Dated: 05/02/2018

From
The Registrar,
Central Administrative Tribunal,
CHANDIGARH BENCH,
SECTOR 17 E

To,

(1) Sh. Yatin Gupta, Advocate
Punjab & Haryana High Court, Chandigarh.

(2) Sh. K.K. Thakur Advocate
C/O CAT, Bar Association Chandigarh.

(3) Sh. Rakesh Verma, Advocate
C/O CAT, Bar Association Chandigarh.

Regn. M.A./60/583/2017
O.A./60/79/2017

Jiwan Singh & Another
Versus
M/o Communications



Applicant(s)

Respondent(s)

Sir,

I am directed to forward herewith a copy of Judgement order dated **24/01/2018** Passed by this Tribunal in the above mentioned case for information and necessary action if any.

Please acknowledge the receipt.

Yours faithfully,

[Signature]
5/2/18

Section Officer Judicial
For Registrar

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

MA No. 060/00583/2017 **Date of decision- 24.01.2018**
In O.A No. 060/00079/2017

...

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)

- ...
1. Jivan Singh, Age 71 Years, S/o Sh. Ram Chand, Retd. Sr. Section Supervisor, GMTD, Bharat Sanchar Nigam Limited, Patiala, R/o House No. 227, Dukhniwaran Colony, Sirhind Road, Patiala. (Group C).
 2. Gopal Kishan Pathak, Age 72 years, S/o Late Sh. Ram Kishan Pathak, Retd. Sr. Telegraph Master, Office of CGMT, Bharat Sanchar Nigam Limited, Chandigarh, R/o House No. 791, Harmilap Nagar, Zirakpur (Group C).

...APPLICANTS

BY ADVOCATE : Mr. Yatin Gupta.

VERSUS

1. Union of India through Secretary, Government of India, Ministry of Communications & IT, Department of Telecommunications, 20, Ashoka Road, Sanchar Bhawan, New Delhi-110001.
2. Chief General Manager Telecom, Punjab Telecom Circle, Bharat Sanchar Nagar Limited, Sector 34, Chandigarh.
3. General Manager Telecom 'District, Bharat Sanchar Nigam Limited, Telephone Bhawan, (Near Leela Bhawan), Patiala.
4. Controller of Communication Accounts, Punjab Telecom Circle, Plot No. 2C, Sector 27 A, Madhya Marg, Chandigarh, 160019.



...RESPONDENTS

BY ADVOCATE: Mr. K.K. Thakur, counsel for respondent no. 1.
Mr. Rakesh Verma, counsel for respondent no. 2 & 3.

ORDER (ORAL)**SANJEEV KAUSHIK, MEMBER(J):-**

Present O.A has been filed where the applicants seek following relief:-

"2. Respondents be directed to grant the benefit of one extra increment to the applicants in pursuance to the Hon'ble CAT Ernakulum Bench dated 15.03.2012 (Annexure A-3) upheld by Kerala High Court vide judgment dated 03.07.2015 (Annexure A-6) from due date i.e. w.e.f. 2004 and with further direction to revise all the pension and pensionary benefits granted to applicants after giving the benefit of the said extra increment and disburse the same with all consequential benefits with arrears etc. along with interest at the rate of 18 % per annum from the due date till actual payment in the interest of justice."

2. Mr. Yatin Gupta, learned counsel for the applicants, in support of above plea vehemently argued that present applicants are the member of Association who filed O.A No. 91/2011 before the Ernakulum Bench, which was decided in their favour on 15.03.2012 with a direction to the respondents therein to grant them benefit. That order has also been approved by the Hon'ble Kerala High Court by dismissing the civil writ petition at the hands of the respondents vide order dated 03.07.2016. When the respondents did not comply with the order of Ernakulam Bench even after dismissal of the writ petition, the petitioners therein were compelled to file contempt petition which was closed vide order dated 12.07.2016 with a liberty to member of the association to file separate contempt petition. He also argues that it is thereafter, the applicants have approached this Tribunal for implementation of order dated 15.03.2012 of Erankulam Bench.

3. Along with O.A, the applicants have also moved MA for condonation of delay in filing accompanying O.A to which the respondents have also filed reply.

4. We have learned counsel for the parties.

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5. In the light of the above noted fact that the applicants are members of All India BSNL Pensioner's Welfare Association who were applicants along with other individual in OA No. 91/2011 which was allowed vide order dated 15.03.2012, the respondents ought to have granted the benefit to the present applicants arising out of referred case without forcing them to approach the Court for second time for the same very relief. Since the respondents have already allowed similar benefit to the some of the members of the Association, therefore, there is no need to pass fresh order or issue direction to the respondents, once there is decision in favour of the applicants by the Ernakulam Bench of this Tribunal.

6. In the light of the above, we dispose of MA as well as O.A with a direction to the respondents to implement the direction as contained in order dated 15.03.2012, relevant paragraphs of which read as under:-

"10. Obviously the stand taken by the respondents for grant of one extra increment to a person drawing pay at the maximum of the scale of pay is in violation of the existing rules. Therefore, their objection to FR 19 is misconceived. If only FR 19 is read as a whole, it can be seen that only when the pay exceeds without sanction of an authority competent to create a post in the same cadre on a rate of pay equal to his pay when increased, that it becomes illegal. So long as the sanction is made by an authority competent it cannot be taken as violative of FR 19. In this case Annexure A-2 is the order approved by the Government of India and the decision was conveyed as per Annexure A-1. If so, FR 19 cannot be a ground for denying the benefits as is now done by the respondents. This contention is therefore devoid of any merit. The next contention advanced is to reckon the one extra increment drawn by them one year prior to their retirement for pension and other pensionary benefits is by way of personal reason and as such it is not 'Pay' as defined in Rule 9 (21). As per Rule 9 (21) (a) " Pay means the amount drawn monthly by a Government servant as (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre and (ii) overseas pay, special pay and personal pay



and (iii) any other emoluments which may be specifically classified as pay the President." Now in this case, payment of one increment is effected as part of wage settlement and secondly it is given to Grade 'C' officials who are in BSNL and unable to get Grade IV promotion, covered under OTBP/BCR Scheme, one extra increment, one year prior to their retirement was given on certain terms and conditions. Thus it is not the personal pay. By virtue of Clause (b) of Annexure A-1, one extra increment in BCR Grade III will be given one year prior to retirement, without the benefit of FR 22(C) to those Group 'C' officials who are in BCR Grade III and are unable to get Grade IV promotion. Therefore, I have no doubt in mind to say that what has been granted at Annexure A-1 cannot be excluded from the pay and what has been paid is not personal pay as understood.

11. In the result, I declare that the benefit of one increment, prior to one year of their retirement as per Annexure A-1 cannot be withdrawn or annulled by Annexure R-(5) and as such the one extra increment should be treated as part and parcel for calculation of pensionary benefits. In case the applicants are not paid the pension amount reckoning the increment so granted, the same shall be revised and paid deducting the actual amount paid, as early as possible, at any rate, within four months from the date of receipt of a copy of this order.

12. OA is allowed as above. No costs."

Let the above exercise be carried out within a period of one month from the date of receipt of a certified copy of the order. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 24.01.2018

'jk'

मुद्रांकित सत्य प्रतिलिपि / Certified True Copy
15/2/18
Section Officer (Jud.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
चण्डीगढ़ बेंच / Chandigarh Bench
चण्डीगढ़ / Chandigarh