CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 91 OF 2011

Thursday, this the 15th day of March, 2012

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

1. All India BSNL Pensioner's Welfare Association,
represented by its Circle Secretary,
R.N. Pada Nair, S/o. V. Raman Nair,
Perampet House, Thuruth, Aluva – 683 101.

2. Siciliamma Thomas
Retired Senior Telephone Supervisor,
Telephone Exchange, Mattancherry,
Kochi – 682 002. Residing at Thekkedath House,
XV/29 A, R.C. Road, Kochi – 682 005.

3. C.G. Daniel
Retired Senior Section Supervisor, BSNL,
Central Telegraph Office, Kochi – 16.
Residing at Chelackattu House,
Lane – 22, Janatha Road,
Vyttila, Kochi 682 019.

4. K.D. Rajappan
Retired Telecom Technical Assistant,
O/o. The Sub-Divisional Engineer,
A/C & Power, Telephone Exchange,
Ernakulam. Residing at "Karthika",
H. No. 31/59 A, Ambelipadam Road,
Vyttila (P.O), Kochi – 682 019.

5. K.P. Devakikutty
Retired Senior Telecom Supervisor (OP),
CDTMX, Telephone Exchange,
Boat Jetty, Kochi – 682 011.
Residing at Manikkiri House,
Manikkiri Road, Kochi – 682 016.

6. P.K. Varghese
Retired Senior Telegraph Master (O),
Residing at Penchathil House,
Kulampadam, Koothattukulam (P.O),
Kochi – 686 662. ... Applicants

(By Advocate Mr. R.Sreeraj)

versus

1. Union of India represented by its Secretary
to the Government of India,
Ministry of Communications & IT:

Department of Telecommunications,
20, Asoka Road, Sanchar Bhavan,
New Delhi – 110 001.

2. Bharat Sanchar Nigam Limited,
Represented by the Chairman and
Managing Director, Corporate Office,
Statesman House, Barakhamba Road,
New Delhi – 110 001.

3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Kerala Circle, Trivandrum – 14.

4 The Controller of Communication Accounts,
Door Sanchar Bhavan,
Thiruvananthapuram. ... Respondents

(By Advocate Mr.M.K.Aboobacker (R1&4)
Advocate T.C.Krishna (R2&3))

The application having been heard on 15.03.2012, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The 1st applicant is All India BSNL Pensioner's Welfare Association and the applicants 2 to 6 are retired Grade III staff from the service of BSNL.

2. The applicants are aggrieved by the discriminatory treatment meted out to them by the respondents in the matter of counting the one extra increment granted to Grade III staff of BSNL covered under OTBP/BCR Scheme one year prior to their retirement towards pension and pensionary benefits. As per Annexure A-1 issued by the BSNL dated 18.11.2003, the BSNL conveyed its approval to grant one extra increment in BCR Grade - III, one year prior to their retirement, to those Group C officials who are in BCR Grade- III and are unable to get Grade - IV promotion on the following terms and conditions. Except condition No.4 the other conditions mentioned

thereunder is of no relevance as of present case is concerned. As per Condition No.6, " the Scheme of extra increment will be effective from 01.06.2003. Hence, the officials retiring after 01.06.2003 will get the financial benefit from that date only. This extra increment will be counted for the pensionary and other retirement benefit purposes." Later, as per Office Memorandum No 40-12/2006-Pen(T) dated 27.07.2009, the 1st respondent, Government of India, Ministry of Communications & IT conveyed the approval of the competent authority for counting the one extra increment granted to Grade III staff of BSNL covered under OTBP/BCR Scheme one year prior to their retirement towards pension and pensionary benefits. This O.M is produced as Annexure A-2 as per which the Under Secretary, Ministry of Communications & IT conveyed the approval of the competent authority for counting one extra increment granted to Grade III staff of BSNL covered under OTBP/BCR Scheme one year prior to their retirement .towards pension and pensionary benefits as a special case as this issue had been a part of **wage settlement** in the case of these grade III. employees who have been absorbed in BSNL in accordance with the option exercised by them. (emphasis given)

3. The applicants 2 to 6 received one extra increment prior to one year of their retirement in lieu of promotion to Grade IV. Annexure A-3 is the true copy of the order dated 29.03.2005 issued by the Deputy General Manager (Admn). Annexure A-4 is the copy of another order so issued to one of the applicants. In Annexures A-3 and A-4, it is categorically stated that the extra increment in BCR Grade III will be counted for pension and other retirement benefits. According to the applicants " Rule 33 of the CCS (Pension)Rules stipulates that the expression 'emoluments' means basic pay

as defined in Rule 9 (21)(a)(i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death. As per FR 9(21)(a)(i), pay means the amount drawn monthly by a Government servant as 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. The extra increment drawn by the applicants one year prior to their retirement, beyond any doubt, falls within the definition of the term pay as defined under FR 9 (21)(a)(i). Further, Annexures A-3 and A-4 orders assured that the same will be counted for pension and other retirement benefits. It is stated that in the normal course, there would not have been any cause for grievance as far as the applicants are concerned. But strangely, in some of the circles including the Kerala circle, the respondents took the stand that the increment drawn beyond the maximum of the scale of pay of the post held by the pensioner can not be reckoned for pension. As a result, while some were denied the benefit of reckoning the extra increment for pension in toto, others were denied the same in part. It is contended that such a stand not to reckon the extra increment as part of the pay for the purpose of pensionary benefits is contrary to Annexuer A-2 O.M as well as the Rules. The pension payment orders issued to the applicants 3 to 6 are produced as Annexures A-5, A-6, A-7 and A-8 respectively. The 4th respondent by his letter dated 19.02.2010 addressed to the 3rd respondent took the stand that the grant of extra increment to a person drawing pay at the maximum of the scale of pay is in violation of the existing rules. It is understood that he had placed reliance on FR 19 for taking such a stand. But he had not quoted FR 19 fully or extracted or understood to support such a stand. On a proper reading of

Rule 9 (21) (a) even if the pay of a Government servant shall not be so increased as to exceed the pay sanctioned for his post without the sanction of an authority competent to a post in the same cadre on a rate of pay equal to his pay when increased" there is no illegality about it. A reading of FR 19 is sufficient to show that contrary to what the 4th respondent says, the grant of extra increment to a person drawing pay at the maximum of the scale of pay is in consonance with the rules since here in this case it was so granted with the sanction of an authority competent to create a post in the same cadre on a rate of pay equal to his pay when increased. In this connection, it is contended that the decision taken by the BSNL and approved by th Union of India and it was given as a part of wage settlement at the time of take over of the employees of the BSNL. Annexures A-9 to A-16 are the representation made by the applicants seeking redressal of their grievances. Annexures A-17 and A-18 are also such representations. The applicants seek for a declaration that the one extra increment drawn by the applicants one year prior to their retirement is liable to be reckoned for pension and other retirement benefits without any restriction what so ever and that the 3rd and 4th respondents have no jurisdiction to put any restriction to the meaning or import of Annexure A-2 and also for a direction to the respondents to reckon the one extra increment drawn by the applicants one year prior to their retirement for pension and other retirement benefits without the restriction that the benefit of increment beyond the maximum of the scale of pay will not be reckoned, to revise their pension and to grant them all consequential benefits.

4. It is contended that the action of the respondents in reckoning one extra increment to Grade III is covered by a wage settlement, does not in

any way violate any of the rules on the contra not to reckon such extra increments one year prior to retirement for calculating the pensionary benefits is arbitrary and illegal; and violative of Articles 14 and 16 of the Constitution of India. The action of the 4th respondent to the extent he denied the benefit exceed restoration by law. . The interpretation placed under FR 19 by the 4th respondent is incorrect.

5. In the reply statement filed by the respondents on and for behalf of R 1 & 4 it is contended as follows:-

> 4. *" With regard to the averments contained in Para 4.6, it is submitted that pensionary benefits admissible to absorbed employees of BSNL are determined with reference to "emoluments" expressed in Rule 33 of C.C.S (Pension) Rules,1972. As per this, "emoluments" means "basic pay as defined in Rule 9 (21) (a) (i) of the Fundamental Rules which a Government servant was receiving immediately before his/her retirement or on the date of his/her death" and will also include non practicing allowance granted to medical officers in lieu of private practice. The extract of the said provision is produced herewith and marked as Annexure-R-1(1). In addition to this explanation below Rule 33 of CCS(Pension) Rules 1972, the Government of India, Dept. of Pension & Pensioners Welfare Notification No. 38/52/90 P & P W / A dated 05/03/1991 inserted that" stagnation increment shall be treated as emoluments for calculation of retirement benefits. The extract of the said provision is produced herewith and marked as Annexure-RI (2).*
>
> 5. *The contention of the applicants that the extra increment drawn by them one year prior to their retirements falls within the definition of the term pay as defined under FR 9(21) (a)(i) is respectfully denied. The one extra increment in BCR Grade III to non-executive staff of BSNL covered under OTBP BCR scheme, one year prior to their retirement was granted having its effect from 01/06/2003, by the BSNL Corporate Office vide its letter No.27-8/2003.TE.II(I) dated 18/11/2003 produced by the applicant as Annexure A-1 to this O.A. In para (b) of the letter the terms and conditions for grant of such extra increment is specified. In para(b) (III), it is categorically stated that " **this benefit is being given in appreciation of the long years of good service rendered by an official and hence claim on this benefit on any other ground will not be entertained**". This: interalia: means*

that the extra increment so granted to such officials comes within the meaning of "pay granted in view of his personal qualification" which is excluded from the ambit of "pay" to be reckoned for the purpose of pensionary benefits under FR 9(21) (a) (i) and therefore cannot be termed as " emoluments" expressed in Rule 33 of CCS(Pension) Rules1972. Therefore, the claim of the applicants that the extra increment drawn by them one year prior to their retirement falls within the definition of the term "pay" as defined under FR 9 (21) (a) (i) is bereft of any truth and the signatories of Annexure A-3 and Annexure A-4 to this O.A are not empowered to assure the applicants that the extra increment will be counted for pension and other retirement benefits.

6. The Department of Telecommunications vide its Office Memorandum ***No.4012/2004-Pen(T) dated 27/07/2009*** *has, however, conveyed its approval for counting the one extra increment granted to grade III staff of BSNL covered under OTBP /BCR scheme one year prior to their retirement towards pension and pensionary benefit as a special case. Copy of the OM is produced by the applicants as Annexure A-2. Hence the allegation by the applicants made out in this Para is a deliberate attempt to mislead the Hon'ble Court and therefore liable to be summarily rejected.*

7. As against the averments contained in para 4.7, it is submitted that while processing the revision of pension cases on receipt of ***DOT OM No.40- 12/2004Pen(T) dated 27/7/2009,*** *it is noted that in certain cases the extra increment as granted in terms of BSNL corporate office letter No. 27-8/2003.T.E.11 (i) dated 18/11/2003 in Kerala Telecom Circle exceeded the maximum of the scale of pay of post held by the recipients.* ***Fundamental Rule 19 states as " Except in case of personal pay granted in the circumstances defined in Rule 9(23)(a), the pay of the Government servant shall not be so increased as to exceed the pay sanctioned for the post without the sanction of an authority competent to create a post in the same cadre on a rate of pay equal to his pay when increased". The Comptroller and Auditor-General's decision below FR 19 has clarified that this rule does not give the Central Government power to grant pay in excess of what is permissible under other rules in Fundamental Rules.*** *Extract of FR 19 in Chapter IV-Pay of Swamy's Compilation of FRSR Part-I is produced herewith and marked as* ***Annexure-R1 (3).*** *Therefore the matter was taken up with the CGMT, BSNL Kerala Telecom Circle and also with the Establishment Branch of DOT, Head Quarters, New Delhi for advice under this office letter No.CCA/KRL/1-3/Pen/Rev/Genl dated 19/02/2010, a true copy of which is produced herewith and* ***marked as Annexure R.1 (4).***

The Establishment Branch of Department of Telecom has now clarified vide their letter No. 40-12/2004 Pen en dated 04th November, 2011 (Annexure R-1(5) that extra increment granted to grade III employees of BSNL covered under OTBP/BCR scheme one year prior to their retirement beyond maximum of pay scale is neither admissible under Government rules nor under pay fixation policy of BSNL. As such the claim of the applicants cannot be acceded to. "

6. Annexure R-1(1) is the true extract of the Rule 9(21) (a) of FR. Annexure R-1(2) is the true extract of Rule 33 of CCS(Pension)Rules under Chapter IV Emoluments and Average Emoluments. Annexure R-1(3) is the true extract of FR 19. Annexure R-1(4) is the true extract of a letter issued by the 4th respondent taking the stand that pension is sanctioned on the basis of emoluments as defined in Rule 9(21)(a)(i) which means the amount drawn monthly by the Government servant as the pay other than special pay granted in view of his personal qualification 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. As the extra increment other than stagnation increment granted to a person who is drawing pay at the maximum of the scale of pay will not come under pay as defined in FR 9 (21)(a)(i) and as such, the same cannot be reckoned as emoluments for calculation of pensionary benefits. In other words, according to him, as per FR 19 the pay of a Government servant shall not be so increased as to exceed the pay sanctioned for the post. As such, there is no provision in the FR to sanction increment other than stagnation increment beyond the maximum of the scale of pay. This stand taken by the 4th respondent appears to be misconceived on the true language of FR 19 to which I shall advert to later. Annexure R-1(5) is the true extract of letter addressed to the Chairman-cum-Managing Director under date 04.11.2011 as per which

proposal regarding grant of one extra increment to BCR Grade III officials of BSNL who had reached maximum of the scale or were drawing stagnation increment one year prior to their retirement if they were unable to be promoted to BCR Grade IV and reckoning the said extra increment towards calculation of pension and other pensionary benefits have been examined in the Department of Telecommunications and has not been agreed to. This is a letter issued during the pendency of the OA. The OA was admitted on 03.02.2011 and this letter is issued on 04.11.2011. By virtue of Section 19 (4) of the AT Act, where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter thereafter be entertained under such rules. It is contended by the applicants that Annexure R-1 (5) is thus abated by virtue of provisions under Section 19 (4) of AT Act. Further this has been issued without hearing the parties who were beneficiaries of an order Annexures A-1 and A-2 as part of wage settlement after hearing the affected parties.

7. The 3rd respondent has filed reply statement for and on behalf of R 2 & 3 have virtually supported the case of the applicant and in the circumstances Annexures A-1 and A-2 were issued. According to them, representations were forwarded after counting extra increment granted to them and they do not have any separate stand but support the applicants. Annexure A-2 is the order approved by the Government of India and the decision was conveyed as per Annexure A-1.

8. I have heard at length the respective counsel appearing for the applicants as well as the respondents. Annexure A-1 proceedings issued on 18.11.2003 is specific on the subject on payment of one extra increment in BCR Grade III may be given one year prior to retirement. The same is issued by the BSNL and proceedings is the outcome of the 2nd meeting of National Council held on 28.05.2003, on the demand relating to time bound promotions to Grade IV. In this connection, it may be mentioned that BSNL came into existence in 2000 and all the employees of the erstwhile P & T Department except those who opted out, became employees of BSNL. It was decided by the Board of BSNL to grant one extra increment in BCR Grade III may be given one year prior to retirement. Without benefit of FR 22 (c), to those Group 'C' officials who are in BCR Grade III and are unable to get Grade IV promotion on the terms and conditions mentioned thereunder to which reference has already been made while stating the facts. It is specifically provided under condition No. (vi) that the scheme of extra increment will be effective from 01.06.2003 and the officials retiring after 01.06.2003 will get the financial benefit from that date only. This extra increment will be counted for the pensionary and other retirement benefit purposes. It must be borne in mind that Annexure A-1 was issued in the light of agreement in the 2nd meeting of National Council held on 28.05.2003 which conveys the decision of the BSNL in Annexure A-2, Government of India considered the decision so taken and specifically accorded approval stating that the Under Secretary has been directed to state that the competent authority has approved the counting of one extra increment granted to Grade III staff of BSNL covered under OTBP / BCR Scheme one year prior to their retirement towards pension and pensionary benefits as a special case as this issue had been a part of **wage settlement** in the case of

these Grade III employees who have been absorbed in BSNL in accordance the option exercised by them. Thus going by Annexures A-1 and A-2, certain benefits granted as part of wage settlement could not have been withdrawn unilaterally. In this case, decision not to accord with such payment as required in Annexure R-1 (5) is not a decision rendered based on any such settlement nor is it issued under any provisions of law. Further the affected parties were not heard in the matter. Besides Annexure R-1 (5) was issued during the pendency of the OA and as per Section 19 (4) of A.T.Act, it has been abated. For the above reason, it is a decision not to count the extra increment to BCR officials who had reached the maximum of the scale or were drawing stagnation increment one year prior to retirement as part of pensionary benefits is totally arbitrary and illegal and contrary to the wage settlement accorded as reflected in Annexure A-1 and approved by Annexure A-2 and also violation of principles of natural justice.

9. For the purpose of completion , I may advert to other contentions raised by the respondents in the reply statement. .FR 19 reads as under :

> *" Except in the case of personal pay granted in the circumstances defined in Rule 9 (23) (a), the pay of a Government servant shall not be so increased as to exceed the pay sanctioned for his post* ***without the sanction of an authority*** *competent to create a post in the same cadre on a rate of pay equal to his pay when increased."*
> *(emphasis given)*

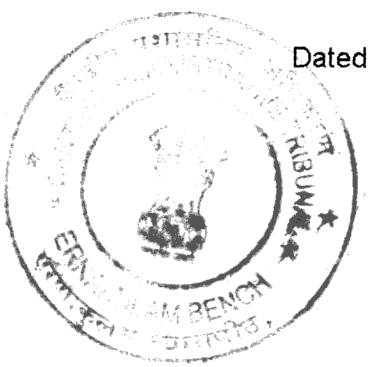
10. Obviously the stand taken by the respondents for grant of one extra increment to a person drawing pay at the maximum of the scale of pay is in violation of the existing rules. Therefore, their objection to FR 19 is misconceived. If only FR 19 is read as a whole, it can be seen that only when the 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 Annexur 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.

Dated, the 15th March, 2012.



Sd/-

JUSTICE P.R.RAMAN
JUDICIAL MEMBER

vs

CERTIFIED TRUE COPY
Date 27/3/2012

Deputy Registrar