

CENTRAL ADMINISTRATIVE TRIBUNAL**LUCKNOW BENCH LUCKNOW****TA NO.332/00002 OF 2016****In****Writ Petition No. 6808 OF 2005****Dated this 12th day of November, 2024****Hon'ble Mr. Justice Anil Kumar Ojha, Member-Judicial****Hon'ble Mr. Pankaj Kumar, Member-Administrative**

1. Pradeep Kumar, Son of Sri Ashok Prasad, presently Residing at Qr. No. 202, Sector-K, Door Sanchar Colony, Aliganj, Lucknow (U.P.) (posted as Stenographer O/o CGMT, UP (E) Circle, Hazratganj, Lucknow).
2. Nagendra Kumar Mishra, S/o Sri Krishna Kumar Mishra, R/o 566/10 Ka, Jai Prakash Nagar, Alambagh, Lucknow (U.P.) (posted as Stenographer O/o CGMT, UP (E) Circle, Hazratganj, Lucknow).
3. Naresh Gaur, S/o Sri S.C. Gaur, R/o D-488, Rajajipuram Colony, Lucknow (UP) presently posted as Stenographer O/o. CGMT, UP (E) Circle, Hazratganj, Lucknow.
4. Sanjal Kumar Gupta, S/o Late Braj Kishore Gupta, R/o C- 46/47, Alkapuri, Aliganj, Lucknow (presently posted as Stenographer in the office of the General Manager, Mobile Services, Alkapuri, Aliganj, Lucknow).
5. Sanjai Kumar Anand, S/o Sri Buddha Lal, R/o Village Amethia Salempur, Post-Kakori, Lucknow presently posted as Stenographer O/o CGMT, UP (E) Circle, Hazratganj. Lucknow.
6. Rajesh Kumar, S/o Sri Banarasi, R/o Village-Masuran, House No.95, Post-Narainpur Kalan, District-Sultanpur, presently posted as Stenographer O/o GMTD Sultanpur.
7. Binod Kumar, S/o Late Surendra Prasad, R/o East Ashok Nagar, Road No.13, Kanakat Bagh Colony, Patna (Bihar) presently posted as Stenographer O/o GMTD, BSNL, Varanasi.

.....Applicants**By Advocate: Shri Ravi Shankar Tiwari****VERSUS**

1. The Union of India through the Secretary, Department of Telecom, Ministry of Communication and Information Technology, Government of India, 20, Ashoka Road, Sanchar Bhawan, New Delhi.
2. The Chairman-cum-Managing Director, Bharat Sanchar Nigam Limited (A Government of India Enterprise), Bharat Sanchar Bhawan, New Delhi.

3. The Staff Selection Commission (Central Region) through the Regional Director, 8 AB, Beli Road, Allahabad.
4. The Chief General Manager Telecom, UP (East) Telecom Circle, Hazratganj, Lucknow.

.....**Respondents**

By Advocate: Shri Pradeep Kumar

Shri G. S. Sikarwar

ORDER (ORAL)

Per Hon'ble Mr. Pankaj Kumar, Member-Administrative

In this case relating to appointment, the applicants have sought the following reliefs:

- “(i) Issue a writ, order or direction in the nature of mandamus commanding the Respondents to accord the petitioners the same status, benefits, perquisites and other facilities, including G.P.F. deductions and pensionary benefits, as are admissible to the D.O.T. absorbed employees presently working in the B.S.N.L. following its creation with effect from 1.10.2000, right from the date of their appointment/joining.*
- “(ii) Issue any other writ, order or direction to which the petitioners might be found entitled in the facts and circumstances of the case.*
- “(iii) Award costs of the petition in favour of the petitioners throughout.”*

2.1 The short question which arises for our consideration in this case is whether the applicants, whose recruitment process was initiated by the Department of Telecommunication (DoT) before the creation of Bharat Sanchar Nigam Limited (BSNL), and who were appointed in BSNL after their selection, are entitled to the same service benefits as available to those DoT employees who were transferred on deemed deputation basis to BSNL on its creation.

2.2 The factual matrix of the case is that the Assistant Director (Telecom) requisitioned 25 vacancies for recruitment of Stenographer, vide letter dated 05.10.1998 and reminder dated 30.07.1999, to the Staff Selection Commission (SSC). Taking into account the requisition, SSC issued advertisement in May, 1999 for selection to the posts of Stenographer under the Combined Matric Level (Main) Examination,

1999. In response to the advertisement, the applicants applied for participation in the examination. The preliminary examination was held on 24.10.1999 and the main examination on 16.07.2000 followed by a skill test conducted on 28-29.07.2001. Final result was published in November, 2001. The applicants were declared successful. SSC sent its recommendation along with the applicants' dossiers to the respondents vide letters dated 20.11.2001 and 12.12.2001 (for Naresh Gaur only). During the process of recruitment, BSNL was created as a Government of India enterprise from 01.10.2000. The applicants were appointed in October, 2002 to the post of Stenographer in BSNL.

2.3 Before creation of BSNL with effect from 01.10.2000, employees of DoT were invited to declare their option for absorption in proposed new body, viz., BSNL. Those employees who opted for absorption in BSNL from DoT were granted the same service benefits as applicable to DoT employees. Presently, there are two categories of employees – the first category is DoT employees absorbed in BSNL after its formation enjoying the same terms and conditions applicable to them before their absorption; the second category of employees are those who were recruited later in BSNL who are governed by the terms and conditions of service of BSNL.

2.4 The applicants made representation dated 06.05.2003 to the respondents for grant of status, pay, allowances and other benefits applicable to DoT (Central Government) employees to the respondents followed by several reminders. Having failed to elicit a positive response, the applicants approached Hon'ble High Court in Writ Petition No. 6808 of 2005 which came to be transferred to this Tribunal as TA 2 of 2016.

3. The applicants contend that as their recruitment was made against the requisition made by DoT to SSC, it was not open to the respondents to grant appointment to them under service conditions of

BSNL, particularly as the process of recruitment was initiated in 1999, i.e., before the creation of BSNL. It is further contended that in doing so, the respondents have discriminated between them and DoT employees absorbed in BSNL.

4. The respondents state that in pursuance of the National Telecom Policy 1999, the Government of India had decided to corporatize the service provision function of DoT, Ministry of Communication, Government of India. Accordingly it was decided to transfer the business of providing telecom services in the country to the newly formed company BSNL from 01.10.2000 in pursuance of office memorandum (OM) dated 30.09.2000. The employees who were in service in the erstwhile Department of Telecom Services (DTS) or Department of Telecom Operations (DTO) were brought on deemed deputation to BSNL with effect from 01.10.2000 to be absorbed later as per their willingness. The letters dated 05.10.1998 and 30.07.1999 requisitioning vacancies were written by office of CGMT, UP(E) prior to creation of BSNL and transfer of employees as on 30.09.2000 to BSNL. The applicants were appointed in BSNL and were not appointed prior to 01.10.2000 in DoT. They joined accordingly in BSNL with Industrial Dearness Allowance (IDA) pay scale of Rs. 5,700 – 8,100/- corresponding to Central Dearness Allowance (CDA) pay scale of Rs. 4,000 – 6,000/-. As such, the applicants are governed by terms and conditions applicable in BSNL. Having accepted the offer of appointment, the applicants cannot claim otherwise.

5. We have heard both the parties.

6.1 The relevant text of the requisition letter dated 05.10.1998 made on behalf of Chief General Manager Telecom (CGMT), East UP Telecom Circle, Lucknow, Ministry of Telecommunication to SSC, Allahabad is reproduced below:

“25 vacancies in the cadre of Stenographer Grade-III in the pay scale of Rs. 4,000 to 6,000/- plus usual allowances per month are to be filled in subordinate offices in the jurisdiction of Eastern U.P. Telecom Circle, Lucknow...”

(emphasis supplied)

Admittedly, the vacancies were requisitioned before the creation of BSNL and they were in the CDA pay scale of Rs. 4,000 – 6,000/-.

6.2 On their selection, the applicants were appointed vide orders dated 03.10.2002 and 24.10.2002 issued by the office of CGMT, UP (E) Circle, Lucknow inter alia with the conditions extracted below:

“Consequent upon selection of following candidates for appointment in the cadre of Stenographer Grade-D vide Staff Selection Commission, Allahabad letter no. 51/SSC-CR/88 dated 20.11.2001, approval of competent authority is hereby conveyed for their appointment as Stenographer Grade-III in the revised pay scale of Rs. 5,700 – 160 – 8,100/- + allowances corresponding to pay scale of Rs. 4,000 – 100 – 6,000/- + allowances admissible from time to time with effect from the date of assumption of duty...”

Other terms and conditions of service will be governed by the existing Recruitment Rules as applicable in the BSNL...”

(emphasis supplied)

Here it is noticed that the appointment was made by BSNL in the IDA pay scale of Rs. 5,700 – 8,100/- and other terms and conditions of service were as per recruitment rules applicable to BSNL.

6.3 In comparison, vide office memorandum (OM) dated 30.09.2000, the service conditions of staff transferred to BSNL were governed under the following provisions:

“Subject: Setting up of Bharat Sanchar Nigam Limited – transfer of staff –orders issued – regarding.

“...Since it will take some time for the new Company to finalize the terms and conditions for staff and to give an opportunity to officers, staff, employees and industrial workers working in various circles/offices/units for exercising their options to join the newly created Company, it has been decided to make the following interim arrangements for smooth transition of administration and operations to the new company:

- (i) **The establishment (officers, staff, employees and industrial workers) sanctioned for exchanges/offices in various telecom circles, metro districts of Calcutta and Chennai, project circles, civil, electrical and architectural wings, maintenance regions, specialized telecom units namely Data Networks, National Centre for Electronic Switching, Technical and Development circle, Quality Assurance circle (except TEC), training institutions, other units like telecom factories, stores and**

*electrification projects of DoT/DTS/DTO (belonging to various organized services and cadres given in Annexure A to this letter) and **posted in these circles/offices/units will stand transferred to Bharat Sanchar Nigam Limited along with their posts on existing terms and conditions, without deputation allowance, with effect from 1st October 2000**, i.e., the date of taking over of telecom operations by the Company from DTS & DTO. Bharat Sanchar Nigam Ltd. will exercise control and supervision of staff working against these posts.*

.....

- (v) **Officers and staff shall continue to be subject to all rules and regulations as are applicable to Government servants, including the CCS (CCA) Rules till such time as they are absorbed finally by the Company after they exercise their options. Their pay scales, salaries and allowances will continue to be governed by existing rules, regulations and orders.**

.....”

(emphasis supplied)

It is evident from the above that the specified officers and staff in Ministry of Telecommunication were transferred to BSNL with their existing pay scales and salary and continued status of Government servants till their absorption in BSNL after exercising their options.

6.4 It is settled that the recruitment process commences from the issuance of advertisement and that the rules of the game cannot be changed after the game has been played. In the words of Hon'ble Supreme Court in judgment dated 07.11.2013 in **Tej Praksh Pathak & Ors vs Rajasthan High Court & Ors (Civil Appeal No. 2634 of 2013)**:

“42. We, therefore, answer the reference in the following terms:

(1) Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

(2) Eligibility criteria for being placed in the Select List, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

.....

(emphasis supplied)

6.5 We are of the opinion that the central issue in the case at hand mentioned in paragraph 2.1 above is similar to the issue of eligibility for pension under the Central Civil Services (Pension) Rules 1972 (now 2021) for those candidates whose process of recruitment had commenced before the National Pension System had been notified. This issue has been adjudicated in various Courts. Following extracts from ***Pawan Kumar & Anr vs Union of India & Ors*** decided on 11.01.2023 by Hon'ble High Court of Delhi are relevant to the case at hand:

“47. It is the settled position that appointments have to be strictly made in terms stipulated in the advertisement and any breach would tantamount to vitiation of the selection process.

48. In a recent decision in ASI/Pharma Biswa Prakash Jena Vs. Union of India, (2022) 5 HCC (Del) 319 : 2022 SCC On Line Del 2544, wherein one of us (Suresh Kumar Kait, J) being member while dealing with a case where the petitioners working as Pharmacist in CRPF had sought parity with Pharmacist in ITBP, which was denied to them by the Union of India on the ground that they were appointed beyond the period of advertisement and selection process, had relied upon decisions in Parmanand Yadav (Supra), Avinash Singh (Supra) and Rajendra Singh (Supra) and held as under:-

“11. The respondents cannot change the terms and conditions of service which were applicable at the time of advertisement to the prejudice of the petitioners and that too after their recruitment process is long over. It is trite law that terms and conditions of service applicable at the time of notification of the post cannot be altered to the prejudice of the incumbents to the post after the selection process is completed, as in the instant case”

...”

(emphasis supplied)

It is noted that the above issue has been resolved for all affected employees by the Department of Pension and Pensioners' Welfare (DPPW), Government of India vide their OM dated 03.03.2023 in the following manner:

“Subject: Coverage under Central Civil Services (Pension) Rules, in place of National Pension System, of those Central Government employees who were recruited against posts/vacancies advertised/notified for recruitment, on or before 22.12.2003.

The undersigned is directed to say that consequent on introduction of National Pension System (NPS) vide Ministry of Finance (Department of

Economic Affairs) Notification No. 5/7/2003-ECB & PR dated 22.12.2003, all Government servants appointed on or after 01.01.2004 to the posts in the Central Government service (except armed forces) are mandatorily covered under the said scheme. The Central Civil Services (Pension) Rules, 1972 and other connected rules were also amended vide Notification dated 30.12.2003 and, after the said amendments, those rules are not applicable to the Government servants appointed to Government service after 31.12.2003.

2. Subsequently, Department of Pension and Pensioners' Welfare in consultation with the Department of Personnel & Training, Department of Expenditure and Department of Legal Affairs in the light of the various representations/references and decisions of Hon'ble Courts, issued instructions vide OM No. 57/04/2019-P&PW (B) dated 17.02.2020 giving one time option to Central Government employees who were declared successful for recruiting in the results declared on or before 31.12.2003 against vacancies which occurred before 01.01.2004 and were covered under the National Pension System on joining service on or after 01.01.2004, to be covered under the CCS (Pension) Rules, 1972 (now 2021). There was fixed time schedule for different activities under the aforesaid OM dated 17.02.2020.

3. Representations have been received in this Department from the Government servants appointed on or after 01.10.2004 requesting for extending the benefits of the pension scheme under Central Civil Services (Pension) Rules, 1972 (now 2021) on the ground that the appointment was made against the posts/vacancies advertised/notified for recruitment prior to notification for National Pension System, referring to court judgments of various Hon'ble High Courts and Hon'ble Central Administrative Tribunals allowing such benefits to applicants.

*4. The matter has been examined in consultation with the Department of Financial Services, Department of Personnel & Training, Department of Expenditure and Department of Legal Affairs in the light of the various representations/references and decision of the Courts in this regard. **It has now been decided that in all cases where the Central Government civil employee has been appointed against a post or vacancy which was advertised/notified for recruitment/appointment prior to the date of notification for the National Pension System i.e. 22.12.2003 and is covered under the National Pension System on joining service on or after 01.01.2004, may be given a one-time option to be covered under the CCS (Pension) Rules, 1972 (now 2021).** This option may be exercised by the concerned Government servant latest by 31.08.2023.*

....”

(emphasis supplied)

6.6 Reverting to the case at hand, it is not in dispute that the requisition made to SSC on 05.10.1998 and the posts advertised by SSC in May, 1999 were under DoT and governed under the terms and conditions applicable to such employees. It is also not in dispute that the recruitment process, which commenced with the issue of advertisement in May, 1999, could be completed only after issuance of OM dated

30.09.2000. The OM dated 30.09.2000 transferred existing staff from DoT to BSNL on deemed deputation basis with applicability of rules, pay and allowances as admissible to Government servants till the time they were to be absorbed in BSNL after exercising their option. This being the factual position, in our opinion, the applicants are entitled to the same treatment as afforded by the respondents to the employees of DoT who were transferred to BSNL. In other words, the applicants are entitled to choose whether they would opt for service conditions of BSNL employees or DoT employees. The issue enumerated in paragraph 2.1 above is answered in the affirmative. The applicants have prayed that they may be extended the same benefits as were extended to DoT absorbed employee in BSNL from the date of their joining in BSNL after appointment. We are unable to persuade ourselves otherwise.

7.1 In view of the foregoing, this OA is allowed. The respondents are directed to extend to the applicants the same status, benefits, perquisites and other facilities, including GPF and pensionary benefits, as are admissible to the DoT absorbed employees presently working in BSNL following its creation with effect from 01.10.2000, from the date of their appointment/joining.

7.2 Pending MAs, if any, are also disposed of.

7.3 The Parties shall bear their own costs.

(Pankaj Kumar)
Member (A)

(Justice Anil Kumar Ojha)
Member (J)