

not maintainable in the eyes of law. However, declining their prayer in following cases, the Ld. CAT/Hon'ble High Court have held as under.

(a) **In Diary No. 2184/2021 in the matter of Arif Saeed S/o M. Mohd. Shareef & 68 Ors. Vs UOI & Ors., the Hon'ble CAT Allahabad in its order dated 01.12.2021 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 DOT 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 stands dismissed."

(b) **In another similar matter titled Vikas Kumar & 27 Ors. Vs. Uoi & Ors. in WP(S) No. 2330/2022 order dated 07/16.11.2022**, the Hon'ble High Court of Jharkhand at Ranchi while deciding the status of employees who were formally appointed by BSNL on the basis of the advertisement notified by Govt. of India (DoT) has passed the following order in favour of the department :

"We have considered the submission 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 undertaken by the DoT. However, the entire exercise of recruitment was undertaken by the BSNL and the 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 rights to be treated as employees of DoT. On the formation of the BSNL by a gazette notification dated 30.09.2000 (Annexure-R-1) 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 BSNL for 19/20 years, only on account of rejection representation dated 21.09.2021, they cannot revive a state claim of cause of action. No legitimate expectations can either accrue as their recruitment, appointment and joining and all subsequent events having been taken place under BSNL organization. In view of the aforesaid reason and facts and circumstances noted herein, we do not find any error the impugned order of the Ld. CAT. The Writ petition is accordingly disposed of."

(c) **Order dated 07.03.2024 passed by the Hon'ble CAT Jabalpur in OA No. 200/00847 & 864/2017 in matter of Naval Singh Kushwaha & ors. wherein the Hon'ble CAT has held as follows:**

" In these cases, we find that applicants were appointed by BSNL on

10.10.2001 and 21.11.2000 i.e. after the formation of BSNL on 01.10.2000. The applicants had wrongly exercised the option for absorption in BSNL. The DoT/DTS & DTO the employees who had been absorbed in BSNL en masse the effective date of their Presidential Order was 01.10.2000 the same was rewritten as 11.10.2001 in OA No. 847/2017. Being the employees of Central Public Enterprise the Applicants were eligible for EPF patronage and when mistake was noticed it was rectified by the respondents. Therefore, applicants have no right to retain their option which they had wrongly exercised as he was appointed by BSNL after due recruitment process on 10.10.2001 & 21.11.2000. There is no question of absorption of the applicants with BSNL as they were directly recruited employees of BSNL. Hence, we do not find any merit in both the cases. Accordingly, both Original Applications are dismissed being devoid of merits. No order as to costs."

(vii) CCS (Pension) Rules, 1972 (the then Rules in force), were applicable when pre-appointment formalities and actual appointment is made in Central Government. In present case, the Employer's legal authority has changed from Government (DoT) to PSU (BSNL). Therefore, any person, who was not having pensionable post in Central Government (in present matter erstwhile DTS/DTO/DOT) and got appointment in BSNL after completion of formalities, do not have any legal right to claim pension under CCS (Pension) Rules.

Reliance is placed upon following judgements of the Hon'ble Supreme Court which has categorically declared the law for receiving pension from the Consolidate fund of India:-

In Prabhu Narain vs. State of U.P.19, (2004) 13 SCC 662, the Hon'ble Supreme Court held that to receive pension the employees must establish that they are entitled to pension under a particular rule or scheme. The following has been held in para 5:

"5. No doubt pension is not a bounty, it is a valuable right given to an employee, but, in the first place it must be shown that the employee is entitled to pension under a particular rule or the scheme, as the case may be."

In UP Roadways Retired Officials and officers Association versus State of UP and Anr (Civil Appeal No. 894/2020 decided on 26.07.2024), while dealing with akin issue of conversion of Government Department into Corporation, observed as under.

35. The common thread in the above referred judgments of this Court is that pension is a right and not a bounty. It is a constitutional right for which an employee is entitled on his superannuation. However, pension can be claimed only when it is permissible under the relevant rules or a scheme. If an employee is covered under the Provident Fund Scheme and is not holding a

pensionable post, he cannot claim pension, nor the writ court can issue mandamus directing the employer to provide pension to an employee who is not covered under the rules.

(viii) The aggrieved employee was neither working as permanent nor temporary Government employee in erstwhile DTS/DTO (on or before 30.09.2000 i.e before corporatization). Therefore, he was not covered by the CCS (Pension) Rules, which apply to the appointments made in the Central Govt. Department and not to the appointments made in PSU.

(ix) Even if the erroneous PO for permanent absorption in BSNL of any employee has been issued, he may not claim pension/GPF as matter of right as the erroneous PO does not have any legal effect being *ab initio void* and did not create any vested right in favour of any employee in the absence of any provisions in Rules.

In the matter of BSNL versus Renuka P Garag (WP No. 28602/2011 decided on 17.09.2012), claim of family pension was raised before the Hon'ble High Court of Karnataka on the grounds that the PO of the employee (casual worker engaged in DoT and regularized in BSNL after rendering long services in DoT) was issued by the Department of Telecom. However, the contention was rejected by the Hon'ble High Court by citing that the deceased was not holding any post in the DOT and he was regularized in BSNL on or after 01.10.2000. The SLP against the above-mentioned judgement was dismissed by the Hon'ble Supreme Court on 22.04.2014 vide SLP (Civil) No. 9197/2013.

(x) Besides above, if any employee did not have any subscription towards GPF in erstwhile DTS/DTO under GPF Rules, 1960 on or before 30.09.2000, his claim for opening of GPF account in BSNL is not maintainable in the eyes of law as his appointment in BSNL was made from prospective effect and not having any retrospective effect. The GPF account if opened by BSNL in the absence of any statutory provision lacks legal authority.

(xi) Letter dated 16.01.2003 of BSNL for opening GPF accounts of wards of deceased DoT employees upon their appointment in BSNL has been withdrawn by BSNL itself vide letter dated 10.05.2007 r/w letter dated 25.05.2007 as the earlier letter lacked any legal authority under GPF Rules, 1960. In the absence any provisions in Rules and withdrawal of letter dated 16.01.2003, any employee who did not have any subscription towards GPF in erstwhile DTS/DTO, does not have any right to claim pension or GPF, which are governed by the statutory rules formulated under Art. 309 of the Constitution of India.

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