

impending corporatization of erstwhile DTS/DTO and therefore, have become of CCS (Pension) Rules, 1972. OM dated 03.03.2023 and Rule 37A operate in different fields having no common issues.

(b) OM dated 03.03.2023 is applicable when both causes of action i.e notification and formal appointment have been made in Government Department. However, in the present case, the appointment has not been made in Central Government.

(c) OM dated 03.03.2023 is applicable, when there is no change in legal entity of their Employer in the transition phase i.e The Employer is Central Government. However, in case of BSNL, apparent change in legal personality of the DTS/DTO took place as per Cabinet Decision and consequently, BSNL was incorporated as a Government Company under the Companies Act, 1956 upon corporatization of erstwhile DTS/DTO before TTA examination was held, declaration of result took place and subsequent appointment was made.

(d) NPS was introduced in place of CCS (Pension) Rules, 1972 for the Central Govt. appointments made on or after 01.01.2004. However, the BSNL was incorporated as Company on 15.09.2000 and permanent absorption of the Government employees working in erstwhile DTS/DTO as on 30.09.2000 took place w.e.f 01.10.2000 (i.e after transfer of Govt employees with their posts, assets and liabilities to BSNL). Any appointment made by BSNL on or after 01.10.2000 fall under the category of PSU appointment, which are neither governed by the CCS (Pension) Rules nor by the NPS scheme introduced vide notification dated 22.12.2003. Therefore, there is no remote nexus between the OM dated 03.03.2023 and permanent absorption of Government servants in BSNL pursuance of Rule 37A of CCS (Pension) Rules.

(iv) Present question/issue is no longer res-integra – The similarly situated TTAs, who were appointed in BSNL against the vacancies of 1999 approached the Hon'ble High Court and other benches of Ld. CAT seeking directions for payment of GPF/Pension. Rejecting their claims, Courts in the following matters have held as under.

(a) In Vikas Kumar & 67 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 has passed the following order in favour of the department :

“10. 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 right 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.*

11. *In view of the aforesaid reason and facts and circumstances noted herein, we do not find any error in the impugned order of the Ld. CAT. The Writ petition is accordingly disposed of."*

(b) The above-mentioned judgement has been treated as **binding precedent** and similar claims of the TTAs have been rejected by the Ld. CAT, Chennai Bench in OAs No. 67/2023 and 1076/2022 vide orders dated 26.07.2024.

Ratio of the afore-said judgement/orders are squarely applicable to the present claim of the applicants.

(v) **Non accrual of vested right before appointment:-** The applicants have been admittedly appointed in BSNL on or after 01.10.2000. Before their appointment, the legal entity of DTS/DTO converted from Govt. to PSU as per notification dated 30.09.2000 issued by the Government of India in the official gazette. CCS (Pension) Rules, 1972 and GPF Rules, 1960 do not apply to the appointments made in PSU. Therefore, applicants who did not have any vested right over pension/GPF before their appointment in Government, may not claim benefits of CCS (Pension) Rules, 1972 and GPF Rules, 1960 in view of the change in policy before their appointment and their appointment in PSU.

Reliance is placed upon **Mohd Faiyaz Ahmad & Ors versus State of Jharkhand (2025:JHHC:12879-DB)**, wherein the Hon'ble High Court of Jharkhand at Ranchi, categorically held that no vested right accrues on pay scale etc before the actual appointment of the employee. The Court held that if any policy changes before actual appointment, the incumbents would be covered by the said amendment instead of rules of pay, which were in force when advertisement or notification for the posts were issued. In the precedent,

the Court rejected the case of the Petitioners, who were appointed on lower pay scale instead of the higher pay scale due to change in the pay scale before their actual appointment.

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.

Applying the ratio of the afore-said binding precedents on the issue of pension/pay etc, it is submitted that the applicants who were not holding any pensionable post in the Government and are covered by the EPF, do not have any legitimate right to claim pension under CCS (Pension) Rules or GPF under GPF Rules, 1960.

(vi) **Article 14 is the positive concept, which cannot be enforced in negative manner-** The applicants have placed reliance upon letter dated 16.01.2003 of BSNL for opening GPF accounts of wards of deceased DoT employees upon their appointment in BSNL. However, the said letter dated 16.01.2003 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. BSNL had no authority to open GPF accounts in the absence

any authority delegated to them under GPF Rules, 1960. Besides above, GPF Rules formulated under Art. 309 of the Constitution are meant for Government employees only and do not apply to the PSUs. 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.

The precedents (judicial orders of Ld. CAT, Guwahati) cited by the applicant had different factual background. Merely claim relating to GPF instead of EPF in r/o some employees appointed under CGA, has been decided by the Ld. Tribunal in peculiar facts and circumstances of the case without noticing the CCS (Pension) Rules, GPF Rules, 1960, binding precedents on payment of pension [Prabhu Narain vs. State of U.P.19, (2004) 13 SCC 662] etc, do not aid the claim of the applicants as neither the applicants were holding pensionable posts in the Government nor they were covered by the letter dated 16.01.2003 issued by BSNL. Since the erroneous letter dated 16.01.2003 has been withdrawn by the BSNL itself vide letters dated 25.05.2007 r/w letter dated 10.05.2007, there is no force in the arguments of the applicant, wherein they have sought similar treatment. Besides above, Art. 14 of the Constitution is positive concept, which cannot be enforced in negative manner to perpetuate illegalities or irregularities committed in favour of other employees either administratively or through judicial orders, due to non-consideration of relevant rules/statutes. Reliance is placed upon **State Of Orissa & Anr vs Mamata Mohanty (2011) 3 SCC 436**, wherein the Hon'ble Apex Court held as under.

"36. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Administration & Anr v. Jagjit Singh & Anr., AIR 1995 SC 705; Yogesh Kumar & Ors. v. Government of NCT Delhi & Ors., AIR 2003 SC 1241; M/s Anand Buttons Ltd. etc. v. State of Haryana & Ors., AIR 2005 SC 565; K.K. Bhalla v. State of M.P. & Ors., AIR 2006 SC 898; Maharaj Krishan Bhatt & Anr. v. State of Jammu & Kashmir & Ors., (2008) 9 SCC 24; Upendra Narayan Singh (supra); and Union of India & Anr. v. Kartick Chandra Mondal & Anr., AIR 2010 SC 3455).

This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same...."

(vii) **“Rules of game cannot be changed once game starts”**, has no application in the corporatization of DTS/DTO-The applicants by placing reliance upon the judgements of the Hon’ble Supreme Court of India in *Tej Prakash Pathak versus Raj. High Court (Civil Appeal No. 2634/2014 decided on 07.11.2024)* etc have asserted that appointments have to be strictly made in terms stipulated in the advertisement and therefore, they should be governed by the Pension Rules, which were in force, when notification of recruitment was issued.

In this connection, it is submitted that the above-mentioned principle applies to the change in eligibility criterion (*essential qualification, weightage to different activities for selection to the post*) at subsequent stage, after issuance of the advertisement. However, the said principle would have no application to the present issue as the pension can be claimed under Rule 37A of CCS (Pension) Rules notified on 30.09.2000, if the employee was holding pensionable post in the Government Department and had subscription towards the GPF while he was working in Government (before corporatization). The law has been quite settled in this regard, for which reliance is placed upon *UP Roadways Retired Officials and officers Association versus State of UP and Anr (Civil Appeal No. 894/2020 decided on 26.07.2024)*, wherein the Hon’ble Apex Court while adjudicating 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.

The applicants who were neither holding pensionable post in the erstwhile DTS/DTO nor got appointment in Government, may not claim pension as a matter of right upon their appointment in PSU as they did not have any vested right over pension before their actual appointment, which has been made in BSNL instead of Government Department.

(viii) **Peculiar facts and circumstances of permanent absorption of JE (Electrical), who were appointed during 2002-** The applicants have claimed

that the benefits of permanent absorption in BSNL were inter-alia given while issuing appointment orders in favour of JEs (Electrical), Kerala Circle who appeared in open competitive exam held during 1998 and got appointment in BSNL during 2002. Reliance has been placed upon DoT's letter No. 19-14/2000-EW dated 08.08.2002, which had mentioned Civil Appeal No. 1985-86/2022 (UOI versus Sonu Verghese) decided by the Hon'ble Apex Court.

However, the applicants have not mentioned the factual and peculiar background of the afore-said issue, which distinguish the present issue from the afore-said case of JE (Electrical).

In this connection, it is pertinent to mention that **during 1998/1999, open competitive examinations for filling up posts of JE (Electrical)** took place by allowing Degree Holders in addition to Diploma Holders to participate in the competitive examination as per notification issued by the DoT/Govt. of India. Various degree holders and diploma holders got selected in the afore-said examination during 1999. However, the Diploma Holder namely Sonu Verghese approached the Ld. CAT, Ernakulam to exclude the Degree holders from the select list. However, the OA was rejected by the Ld. Tribunal. Being aggrieved, Sonu Verghese **filed the OP 20226/99** before the Hon'ble High Court of Kerala, which overturned the orders of the Ld. Tribunal and thereby, excluded the degree holders from the select list. However, **UOI preferred Civil Appeal No. 1986/2002 etc** before the Hon'ble Supreme Court, which reversed the orders of the Hon'ble High Court and consequently, vide order dated 07.03.2002 upheld the select list prepared by Department of Telecom during 1999 by including successful candidates having degree in respective discipline.

Under such peculiar facts and circumstances, where due to long running court cases, the appointment of eligible candidates (Degree holders) got inordinately delayed, the Department of Telecom, while issuing appointment orders vide order dated 08.08.2002, allowed the successful- Degree holders to get permanently absorbed in BSNL as they would have been appointed during 1999 itself (much before formation of BSNL), had the afore-said litigation(s) not taken place.

In view of the above, the applicants, who participated in the competitive examination of TTA held during 2001 (in BSNL) against the vacancies of 1999, may not claim the benefit extended to the afore-said category of the employees- Degree holders etc, who were deprived of the fruits of the appointment despite being selected and got eligible for appointment during 1999 itself (much before formation of BSNL).
