

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00063/2016

Tuesday, this the 17th day of December, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

1. Vijayan P. (HR NO. 199212501), Telecom Mechanic, BSNL, Mankulam, aged 59 yrs., S/o. late Parameswaran, Punnamoottil House, Thokkupara PO, Thokkupara, Chithirapuram, Adimaly, Idukki Dist., Pin – 685 565.
2. K.M. Kuriakose (HR No. 199212527), Telecom Mechanic, BSNL, Adimaly, aged 55 yrs., S/o. K.k. Mathukutty, Kuttichirakudiyil House, Adimaly PO, Adimaly, Idukki Dist., Pin-685 561. **Applicants**

(By Advocate : Mr. C.A. Joy)

V e r s u s

1. Bharath Sanchar Nigam Ltd., rep. by The Chairman and Managing Director, Corporate Office, Statesman House, Barakhama Road, New Delhi.
2. The Principle General Manager, BSNL Bhavan, Ernakulam SSA, Ernakulam, Cochin – 16.
3. The Accounts Officer, ESTT, Office of TGMP, BSNL Bhavan, Ernakulam, Cochin – 16. **Respondents**

(By Advocate : Mr. Pradeep Krishna)

This application having been heard on 11.12.2019, the Tribunal on 17.12.2019 delivered the following:

O R D E R

Per Hon'ble Mr. Ashish Kalia, Judicial Member –

Applicants are aggrieved by the rejection of their representation for stepping up of their pay to that of their junior. They started their service as

Group-D employees in the erstwhile Department of Telecommunication. They were promoted as Telecom Mechanic (TM) on various dates. The employees in the Department of Telecommunication were sent on deemed deputation to BSNL and later were absorbed, based on their options, on permanent basis with effect from 1.10.2000. Based on the implementation of IDA pay scale, the pay scale of TM in the Department of Telecommunication Rs. 4,000-100-6,000/- was replaced with IDA pay scale of Rs. 5,700-160-8,100/- with effect from 1.10.2000. Accordingly, the pay of the applicants were fixed at Rs. 5,680/-. Based on the 2nd pay revision w.e.f. 1.7.2007 the pay of the applicants were fixed at Rs. 13,620/- as on 1.8.2007 in the revised scale of pay of Rs. 10,900-20,400/-. The pay of the applicants were upgraded to Rs. 16,280/- in the pay scale of Rs. 12,520-23,440/- w.e.f. 1.8.2012 on the implementation of non-executive promotion policy. As on September, 2015 the pay of the applicants is Rs. 18,800/- in the pay scale of Rs. 12,520-23,440/-, whereas their junior Shri U.G. Narayanan is getting Rs. 19,290/-. The applicants submitted that consequent on the switching over of CDA pay scale to IDA pay scale, a junior getting higher pay than the seniority is considered as an anomaly as per the fundamental rules and stepping up of pay of the senior at par with the junior in order to get over the anomaly has been upheld by the Hon'ble High Court of Kerala as well as Hon'ble Apex Court. The applicants submitted that in various orders of this Tribunal, respondents were directed to allow stepping up of pay to the seniors at par with their juniors consequent on the anomaly in the fixation of pay. The applicants submitted representation which was rejected by the respondents. Aggrieved the applicants have filed this OA

claiming relief as under:

“1. Set aside Annexure A5 & A6 communication and to direct the respondents to reconsider the same in accordance with the law declared by the apex court.

2. Declare that the applicants are entitled for refixation and stepping up of their pay at par with the junior U.G. Narayanan or the common junior Francis M. Fernandez and issue an order directing the respondents to disburse the arrears of salary and other benefits within a time limit fixed by this Hon'ble Tribunal.

3. To direct the respondents to reconsider and pass appropriate orders on Annexure A3 & A4 representations treating Francis M. Fernandez as the common junior within a time limit fixed by this Hon'ble Tribunal.

4. Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice.”

3. Respondents resisted the OA mainly by contending that their claim is barred by limitation. They were not vigilant to prosecute their rights and therefore, the long delay in approaching this Tribunal defeats their right. Further as per the gradation list of AGM (Admn.) it is clear that the 2nd applicant is not senior to the alleged juniors cited i.e. Shri U.G. Narayanan and Shri Francis M. Fernandez. Therefore, the 2nd applicant is not entitled for stepping up of pay at par with them. As regards the 1st applicant he is senior to the alleged two juniors namely Shri U.G. Narayanan and Shri Francis M. Fernandez. The juniors are drawing higher pay than that of the 1st applicant. Therefore, the respondents contended that the 1st applicant is entitled for stepping up of pay with that of his junior Shri U.G. Narayanan and that the arrears may be limited to 3 years prior to the date of filing the OA.

4. A rejoinder was filed by the applicants wherein it was mentioned that based on Annexure R1(a) gradation list the 2nd applicant is junior to Shri U.G. Narayanan and Shri Francis M. Fernandez. However, on perusal of

Annexure R1(a) it can be seen that the 2nd applicant joined the service in the year 1992 whereas the juniors joined the service in 1993. The applicant was sent for training from 16.11.1998 to 8.11.1999 whereas the juniors were sent later. Accordingly, in the entry cadre as well as the date on which the 2nd applicant completed the training is much before the above said juniors Shri U.G. Narayanan and Shri Francis M. Fernandez. Therefore, the action of the respondents in placing the 2nd applicant junior to Shri U.G. Narayanan and Shri Francis M. Fernandez in the gradation list Annexure R1(a) is illegal and unsustainable.

5. The respondents have filed an additional reply statement to the rejoinder filed by the applicants wherein it is stated that the seniority of the officials is determined by the post training marks as per the order of the Hon'ble High Court of Kerala in OP No. 13149 of 2000 dated 18.7.2005. Therefore, those who have completed the training in a particular year will be taken together for deciding the seniority on the basis of marks obtained. The 2nd applicant scored 896 marks whereas the Shri U.G. Narayanan scored 932 marks and Shri Francis M. Fernandez scored 900 marks. Therefore, the date of entry in service is not applicable in the issue of fixation of seniority in the promoted cadre of Telecom Mechanic.

6. Heard Shri C.A. Joy, learned counsel for the applicants and Shri Pradeep Krishna, learned counsel appearing for the respondents. Perused the record.

7. The respondents in their reply statement dated 26.7.2016 categorically stated that the applicant No. 1 is senior to Shri U.G. Narayanan and Shri Francis M. Fernandez and therefore, his pay may be stepped up with that of his junior Shri U.G. Narayanan. Therefore, we direct the respondents to step up the pay of the applicant No. 1 with effect from the date his junior Shri U.G. Narayanan is drawing higher pay than the 1st applicant. However, the monetary benefits of arrears will be restricted to three years prior to the date of filing of this OA as laid down by the apex court in *Union of India & Ors. v. Tarsem Singh* – (2008) 8 SCC 648. The respondents shall implement the order in respect of the 1st applicant within three months from the date of receipt of a copy of this order.

8. As regards the 2nd applicant we find that the respondents have stated that as per Annexure R1(a) gradation list the 2nd applicant is junior to Shri U.G. Narayanan and Shri Francis M. Fernandez. They further submitted that the seniority of the officials is determined by the post training marks as per the order of the Hon'ble High Court of Kerala in OP No. 13149 of 2000 dated 18.7.2005. Therefore, those who have completed the training in a particular year will be taken together for deciding the seniority on the basis of marks obtained. The 2nd applicant scored 896 marks whereas the Shri U.G. Narayanan scored 932 marks and Shri Francis M. Fernandez scored 900 marks. Therefore, the date of entry in service is not applicable in the issue of fixation of seniority in the promoted cadre of Telecom Mechanic. This fact has not been denied by the 2nd applicant. Moreover the gradation

list Annexure R1(a) is also not challenged by him. Therefore, we find that applicant No. 2 is not entitled for any relief as claimed by him.

9. In view of the directions given in paragraph '7' above, the Original Application is disposed of. No order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

“SA”

Original Application No. 180/00063/2016**APPLICANT'S ANNEXURES**

Annexure A1 – True copy of the pay slip of the 1st applicant for the month of September, 2015.

Annexure A2 – True copy of the pay slip of the junior U.G. Narayanan in the month of October, 2015.

Annexure A3 – True copy of the representation submitted by the 1st applicant through proper channel dated 16.11.2015.

Annexure A4 – True copy of the representation submitted by the 2nd applicant through proper channel dated 16.11.2015.

Annexure A5 – True copy of the communication No. Estt/PF/PV/15-16/47 dated 3.12.2015 issued to the 1st applicant.

Annexure A6 – True copy of the communication No. Estt/PF/KMK/15-16/43 dated 3.12.2015 issued to the 2nd applicant.

RESPONDENTS' ANNEXURES

Annexure R1(a) – True copy of the gradation list of AGM (Admn.), BSNL, EKM.

Annexure R1(b) – True copy of the comparison statement of pay.

Annexure R1(c) – True copy of the judgment of the Hon'ble High Court of Kerala in OP No. 13149/2000.

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