

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00032/2016

Monday, this the 16th day of December, 2019

CORAM:

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

1. K.K. Vijayan, S/o. K.V. Kuttappan, aged 57 years, working as Telecom Mechanic, Telephone Exchange, Chalakkudy, Thrissur, residing at Kizhakkumkara House, I.Q. Road, Chalakkudy, Thrissur – 680 307.
2. Damodaran P.K., S/o. Kumaran, aged 57 years, working as Telecom Mechanic, Telephone Exchange, Chalakkudy, Thrissur, residing at Paramabikattil House, Vijayaraghavapuram, Thrissur – 680 722.
3. O.K. Sadanandan, S/o. Kunhipavan, aged 57 years, working as Telecom Mechanic, Telephone Exchange, Chalakkudy, Thrissur, residing at Oolaparambil House, V.R. Puram PO, Thrissur-680 722.
4. P.P. Sasi, S/o. Paran, aged 51 years, working as Telecom Mechanic, Telephone Exchange, Chalakkudy, Thrissur, residing at Parambikattil House, V.R. Puram PO, Thrissur – 680 722.
5. U. Sankaranarayanan, S/o. Achuthan Nair, aged 58 years, working as Telecom Mechanic, Telephone Exchange, Chalakkudy, Thrissur, residing at Ponneth House, Elinjipra PO, Thrissur – 680 721.
6. M.A. Subran, S/o. Ayyappan, aged 57 years, working as Telecom Mechanic, Telephone Exchange, Chalakkudy, Thrissur, residing at Marathambilly Bouse, Near Kumaramadom Temple, Chalakkudy, Thrissur – 680 307.
7. Ratnakaran A.V., S/o. Velayudhan, aged 53 years, working as Telecom Mechanic, Telephone Exchange, Chalakkudy, Thrissur, residing at Ankarath House, W. Chalakkudy, Chalakkudy PO, Thrissur – 680 307.
8. N. Kesavankutty, S/o. Narayanan Nair, aged 52 years, working as Telecom Mechanic, Telephone Exchange, Vellikulangara, Thrissur-680 699, residing at Kandedath House, Pady PO, Thrissur-680 699.

9. K. Sivaraman, S/o. Sivaraman Nair, aged 51 years, working as Telecom Mechanic, Telephone Exchange, Vellikulangara, Thrissur 680 699, residing at Kandedath House, Vellikulangara PO, Thrissur – 680 699. **Applicants**

(By Advocate : Mr. P.A. Kumaran)

V e r s u s

1. Deleted as per order dated 20.11.2019 in MA No. 180/534/2017

2. Bharath Sanchar Nigam Ltd., represented by its Chairman and Managing Director, Sanchar Bhavan, New Delhi.

3. Chief General Manager, Telecom, BSNL, Kerala Circle, Trivandrum.

4. Principal General Manager, Telecommunication, Bharat Sanchar Nigam Ltd. Thrissur – 680 022. **Respondents**

[By Advocate : Mr. Pradeep Krishna (R2-4)]

This application having been heard on 27.11.2019, the Tribunal on 16.12.2019 delivered the following:

O R D E R

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

Applicants are aggrieved by the refusal of the respondents to step up their pay to that of their junior who started drawing higher pay due to the anomalies of point to point fixation on conversion of their Central Dearness Allowance (CDA) pay scale to Industrial Dearness Allowance (IDA) pay scale with effect from 1.10.2000.

2. Applicants started their service as Group-D employees in the erstwhile Department of Telecommunication. They were promoted as Telecom Mechanic (TM) on various dates prior to 1.10.2000 - the date on which BSNL was incorporated. 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. On the basis of the agreement between the union of the employees of BSNL, the pay scales of Group-D and Telecom Mechanic (Group-C) which were Rs. 2,550-50-3,220/- and Rs. 3,200-85-4,900/- respectively in the CDA pay scale was replaced by IDA pay scales of Rs. 4,000-5,800/- and Rs. 4,720-6,970/. The conversion of CDA pay scales into IDA pay scale based on a point to point fixation depending upon the stage in the pay scale in which the incumbent was drawing his pay as on 1.10.2000 is vide Annexure A1 order issued by respondent No. 2. As per Annexure A1 the anomaly is arising out of such point to point fixation and the same is to be rectified in accordance with the Fundamental Rules. The applicants 1 to 8 were drawing a pay of Rs. 3,370/- in the CDA scale on 30.9.2000 and applicant No. 9 at Rs. 3,285/. In the IDA pay scale their pay was fixed at Rs. 5,020/- and Rs. 4,870/- respectively in the pay scale of Rs. 4,720 – 6,970/- applicable to the post of Telecom Mechanic. Applicants state that one Shri T.O. Varghese who was junior to them and was still in regular mazdoor cadre was drawing only a pay of Rs. 3,235/- in CDA scale of Rs. 2,550-3,200/- as on 1.10.2000; but on implementation of IDA scale the said Shri T.O. Varghese started drawing Rs. 5,225/- in the IDA scale of Rs. 4,000-5,800/- applicable to Group-D and was being granted the benefit of 9 increments based on point to point fixation vide Annexure A3 pay fixation memo, whereas the applicants were drawing a pay of Rs. 5,020/- and Rs. 4,870/- respectively. Subsequently, when he was promoted as Telecom Mechanic with effect from 6.11.2002 Shri T.O. Varghese started

drawing pay of Rs. 5,770/- on being granted fixation under FR 22(1)(a)(I) vide Annexure A4. The anomaly was augmented pursuant to the promotion of junior as Telecom Mechanic and was a direct consequence of point to point fixation done on conversion from CDA to IDA pay scale. When the applicants approached the respondents to set right the anomaly they were informed that a Standing Committee by name anomaly committee has to take a decision on the anomalies. But no decision was taken by the committee for a number of years. While so, some of the TMs under the Ernakulam Secondary Switching Area were granted stepping up of the pay to that of their junior to set right the anomaly of the junior drawing higher pay due to point to point fixation. But later, when such stepping up of pay was sought to be revoked by the Department the same was challenged by the TMs in the High Court in WP(C) No. 30582/2005. The WP(C) was allowed and declared that the petitioners therein are entitled to step up of their pay and arrears were directed to be paid vide Annexure A5 judgment dated 24.7.2008. The same was confirmed by Annexure A6 judgment dated 23.9.2009 of the High Court in WA No. 1028/2009. The SLP filed by the respondents was dismissed. Annexure A5 judgment was implemented vide Annexure A7 order in favour of the petitioners therein. The anomaly committee submitted a report recommending grant of personal pay as a one time measure to solve the problem. The report and findings of the anomaly committee was challenged before this Tribunal in OA No. 1025/2010 and connected cases which was allowed by this Tribunal directing to step up the pay of the applicants therein to that of their junior and quashed the decisions of the anomaly committee recommending the grant of personal

pay. The decision of this Tribunal in OA No. 1025/2010 was challenged in OP (CAT) No. 2233/2011 which was dismissed vide Annexure A8 judgment dated 8.8.2011 directing that the committee decision cancelled by this Tribunal should not be re-introduced in another form. Thereafter, respondent No. 2 issued Annexure A9 directions dated 4.5.2012 to respondent No. 3 to rectify the anomalies caused due to point to point fixation in the IDA scale where the junior who was still in lower CDA scale as on 30.9.2000 started drawing higher pay than the senior as on that day. As Annexure A9 order was not implemented in the case of the applicants they filed Annexure A10 (Collective) representations to respondent No. 4 but the respondents are inclined to grant stepping up only on the directions of this Tribunal. Applicants therefore pray for relief as under:

“i. To declare that the applicants are entitled to get stepping up of pay to that of their junior T.O. Varghese who started to draw higher pay by virtue of pay fixation granted on point to point basis on the IDA pay scale and due to fixation given under FR 22 (I)(a)(i) after fixation of pay in the IDA pay scale;

ii. To direct the respondents to consider Annexure A10 and Annexure A11 series of representations and to step up the pay of the applicants to that of their junior T.O. Varghese who started to draw higher pay by virtue of pay fixation granted on point to point basis on the IDA pay scale and due to fixation given under FR 22 (I)(a)(i) after fixation of pay in the IDA pay scale and to pay arrears of pay and consequential benefits with effect from the date of stepping up with interest @ 12% per annum from the date the amount became due till the date of actual payment;

iii. Grant such other reliefs as may be prayed for and the court may deem fit to grant, and

iv. Grant the costs of this Original Application.”

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. According to the respondents the anomaly committee examined the issue

and found that certain juniors getting fixed at higher IDA pay than seniors cannot be taken as pay anomaly since the pay as on 1.10.2000 in respect of the junior and senior are not identical.

4. With regard to the grievance of the applicant that Shri T.O. Varghese is getting higher pay than the pay they receive, the respondents contend that Shri T.O. Varghese joined the department on 23.2.1983 whereas applicants joined Department in 1986 and thereafter. Shri T.O. Varghese was promoted as TM on 6.11.2002 only. The applicants were in a different cadre with its own seniority carried different scale of pay than the lower post held by the applicants in BSNL since the cadre and scale of pay of applicants and Shri T.O. Varghese were not identical. The applicants were promoted to TM in the Department of Telecommunications, Government of India and were under the CDA pay scale. Applicants were in a different cadre up to 1.11.2002. Respondents contend that even in Annexure A5 judgment of the High Court permitted the anomaly committee to consider the matter or respondents to enter into another settlement with the employees union. There is no provision in the Annexure A1 agreement for stepping up the pay from any cadre. The disparity in the present case has not arisen from any disparity in incremental benefits. Respondents pray for dismissing the OA.

5. We have heard Shri P.A. Kumaran, learned counsel appearing for the applicants and Mr. Pradeep Krishna, learned standing counsel appearing for respondents Nos. 2-4. Perused the record.

6. A reading of Annexure A5 judgment of the High Court of Kerala reveals that the case in this OA is similar to the case dealt with in that judgment. In Annexure A5 it was held by the High Court that the petitioners therein are entitled to have their pay stepped up and equated with the pay of their juniors who were promoted as Telecom Mechanic after 1.10.2000 with all consequential benefits. Annexure A6 is the judgment of the Division Bench of the High Court wherein Annexure A5 judgment was confirmed. True, in Annexure A5 judgment it was made clear that the said judgment will not stand in the way of the anomaly committee from considering the matter or the respondents from entering into another settlement with the employees' unions. When the anomaly committee set up by the respondents to solve the problem recommended for making personal pay to meet the anomalous situation of the junior getting higher pay by granting personal pay to the senior the suggestion was set aside by this Tribunal. Annexure A8 is the judgment of the High Court when the aforesaid order of the Tribunal was challenged. While upholding the decision of this Tribunal to give equal pay at least to those seniors in the service in the same cadre a Division Bench of the High Court observed that it is for the BNSL to work out fresh scheme of fixation of pay in the IDA scale keeping in mind the anomalies that occur not only in that particular case but also in other cases. It was also held that the decision of the anomaly committee cancelled by this Tribunal shall not to be reintroduced in any other form.

7. It is clear that the issue is squarely covered by the aforesaid judgment viz. Annexures A5, A6 and A8. Learned counsel for the applicants

submitted that recently in OAs Nos. 180/19/2015 and 180/730/2014 also this Tribunal vide orders dated 10.11.2016 and 15.09.2017 respectively had allowed the stepping up of the pay of the applicant therein at par with his junior with all consequential benefits.

8. In this particular case we note that the respondents do admit that the applicants were promoted as Telecom Mechanic much before the formation of the BSNL on 1.10.2000 even while the aforesaid junior Shri T.O. Varghese was working as a regular mazdoor only. The respondents seem to take a meek and inept contention that at the time of promotion of Shri T.O. Varghese as TM on 6.11.2002 the applicants were in a different cadre with its own seniority and carried a different scale of pay than the lower post held in BSNL by Shri T.O. Varghese and that their cadre and their scale of pay were not identical. This, in our view, is a circumlocutory argument to escape the aftermath of the aforementioned judicial decisions.

9. The delay and laches of the applicants in approaching this Tribunal was brought to a sharp focus the respondents. In this regard they referred to *U.P. Jal Nigam & Anr. v. Jaswant Singh & Anr.* - (2006) 11 SCC 464, *A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala & Ors.* – (2007) 2 SCC 725, *S.S. Balu & Anr. v. State of Kerala & Ors.* - (2009) 2 SCC 479 to buttress their argument that the long delay in approaching the Court would disentitle a party to obtain the discretionary relief even though relief was granted to other similarly situated persons who approached the Court in time.

10. The above legal contentions of the respondents were countered by the applicants by pointing out that in ***Gurcharan Singh Grewal & Anr. v. Punjab State Electricity Board & Ors.*** - (2009) 3 SCC 94 it was held by the apex court that the junior drawing higher pay than that of the senior due to anomaly, ought to be rectified by stepping up. The applicants submitted that ***Gurcharan Singh Grewal*** decision was reiterated by the apex court in ***Union of India & Ors. v. Tarsem Singh*** – (2008) 8 SCC 648 and that a same view was taken in the earlier decision in ***M.R. Gupta v. Union of India & Ors.*** – (1995) 5 SCC 628 also. They relied on ***State of Madhya Pradesh & Ors. v. Yogendra Shrivastava*** – (2010) 12 SCC 538, wherein the apex court has held:

“18. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment.....”

11. Since the dispute in this case relates to payment of fixation of salary or allowances, we have no hesitation to hold that the claim put forth by the applicants is not barred by any limitation or doctrine of laches. There is no serious dispute for the respondents that there is indeed an anomaly in the scale of pay drawn by the applicants vis-a-vis the higher pay received by their junior Shri T.O. Varghese. Admittedly Shri T.O. Varghese was promoted as TM only on 6.11.2002 much after the formation of BSNL whereas the applicants have been promoted as TMs while they were working under the DOT i.e. even before the formation of BSNL on

1.10.2000. This very situation is certainly to the chagrin of the applicants even though Shri T.O. Varghese was promoted as TM after the formation of BSNL. No doubt, in such cases inter-seniority equity demands rectification of the anomaly by stepping up the pay of the seniors. The aforementioned judgments of the Kerala High Court have attained finality and therefore, respondents have no option but to implement the same in the case of the applicants also.

12. It has been judicially determined that the anomaly of junior getting higher pay than the seniors in the BSNL following the introduction of IDA pay scale have to be rectified by stepping up of the pay of the seniors affected by such anomaly and the stand of the respondents in this case appear to be puerile. Applicants attribute such anomaly because of point to point fixation.

13. From the above facts and circumstance of this case we hold that since this is a matter relating to the pay and allowances of the applicants (some of them have in the meantime retired), the challenge cannot be treated as barred by limitation or by the doctrine of laches as it is a continuing wrong, as observed by the apex court. Therefore, even though the fixation of the applicants' pay has been made several years prior to the claim they are still entitled to get it rectified.

14. In the result the OA is allowed to the extent of directing the respondents to step up the pay of the applicants at par with their junior

Shri T.O. Varghese, TM who started to draw higher pay by virtue of pay fixation granted on point to point basis. The consequential benefits shall accrue to the applicants. But the monetary benefits will be confined to the period of three years prior to the date of filing of this OA i.e. 11.1.2016. Respondents are directed to revise the pay of the applicants within a period of three months from the date of receipt of a copy of this order. The last pay drawn of those applicants who have in the meantime retired from service shall be revised and revised pension payment orders shall be issued to them. The benefits as directed above shall be implemented within three months from the date of receipt of a copy of this order. Ordered accordingly. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00032/2016**APPLICANT'S ANNEXURES**

Annexure A1 – True copy of the order No. BSNL/26/SR/2002 dated 7.8.2002 issued by the 2nd respondent.

Annexure A2 – True copies of the of the pay fixation memos for IDA scale of applicants 1 to 4 and 6 to 9.

Annexure A3 – True copy of the pay fixation memo for IDA scale of Sri T.O. Varghese.

Annexure A4 – True copy of the memo No. E/225-17/02-03 dated 28.1.2003.

Annexure A5 – True copy of the judgment dated 24.7.2008 in WP(C) No. 30582/2005 on the files of the Honourable High Court of Kerala.

Annexure A6 – True copy of the judgment dated 23.9.2009 in WA 1028/2009 on the files of the Honourable High Court of Kerala.

Annexure A7 – True copy of the order No. AO (Estt)/E-2/08-09/WPC-30582/05/25 dated 26.6.2010.

Annexure A8 – True copy of the judgment dated 8.8.2011 in OP (CAT) 2233/2011 on the files of the Honourable High Court of Kerala.

Annexure A9 – True copy of the order No. 211-9/2011-Pers-III dated 4.5.2012 issued for the 2nd respondent.

Annexure A10 – True copies of the representations dated 8.12.2015 submitted by the applicants 1 to 3 and 5 to 7.

Annexure A11 – True copies of the representation dated 16.12.2015 submitted by the applicants 8 and 9.

Annexure A12 – True copy of letter E2/15-16/02 dated 8.12.2015 issued by the Sub Divisional Engineer, BSNL, Chalakkudy.

Annexure A13 – True copy of letter No. E2/VLK/15-16 dated 16.12.2015 issued by the Sub Divisional Engineer, BSNL, Vellikulangara.

Annexure A14 – True copy of order No. E 211-2/Estt/CAT/12-13 dated 25.8.2014 issued by the 4th respondent.

Annexure A15 – True copy of the order in OA 968/2010 on the files of this Honourable Tribunal.

Annexure A16 – True copy of the order in OA No. 1025/2010 and OA No. 558/2010 and connected cases on the files of this Honourable Tribunal.

RESPONDENTS' ANNEXURES

Annexure R2(a) – True copy of the order in OA No. 333/14 dated 22.5.2004 of Central Administrative Tribunal Ernakulam Bench.

Annexure R2(b) – True copy of the comparison statement of the applicants and the junior.

Annexure R2(c) – True copy of the rules for stepping up OM dated 4.11.93.

Annexure R2(d) & (e) – True copy of the order in OA No. 59/15, OA No. 22/13 passed by Hon'ble Central Administrative Tribunal Ernakulam Bench.

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