

**Reserved****CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**JABALPUR****Original Application No.200/602/2011**Jabalpur, this Wednesday, the 04<sup>th</sup> day of March, 2020**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER****HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**

C.B. Hayaran, S/o Late Shri Dhaniram, aged about 60 years, Occupation Junior Accounts Officer (Retd.), Office of G.M.T.D., Bhopal, R/o F-71, Near Meenal Residency, J.K. Road, Bhopal (M.P) 462001

**-Applicant****(By Advocate – Shri Sanjayram Tamrakar)****V e r s u s**

1. Bharat Sanchar Nigam Limited through its Chief General Manager, Office of the Chief General Manager, M.P. Telecom, Bhopal – 15, District Bhopal (M.P) – 462001.

2. Accounts Officer, Office of General Manager Telecom, District Bhopal 462003

**-Respondents****(By Advocate – Shri Surendra Pratap Singh)***(Date of reserving order : 29.03.2019)***ORDER****By Navin Tandon, AM.**

The applicant is aggrieved that his pay fixation has not been done correctly.

2. The applicant has made the following submissions:

2.1 He was appointed on 21.06.1973 as Telegraph Man.

**2.2** The respondent No.1 issued circular dated 15.01.1996 (Annexure A-1), wherein local officiating arrangement in the grade of Junior Accounts Officer (JAO) was to be made from those who are JAO Part-I qualified.

**2.3** The applicant passed the JAO Part-I examination vide order dated 31.08.1998 (Annexure A-2).

**2.4** He was promoted on ad-hoc JAO on 17.02.1999 (Annexure A-3) purely on temporary and officiating basis for a period not exceeding 180 days.

**2.5** The respondents issued Office Memorandum dated 10.09.2002 (Annexure A-5) with regard to fixation of pay on local officiating arrangement.

**2.6** Respondent No.2 passed an order dated 05.06.2003 (Annexure A-6) for reversion of the applicant to the ad-hoc cadre w.e.f. 08.05.2003.

**2.7** Respondent No.2 issued a circular dated 11.06.2004 (Annexure A-8) by which absolute parity was made between the officers such as regular / officiating / on probation as JAO were treated into the Group-B.

**2.8** Respondent No.1 issued another circular dated 25.02.2005 (Annexure A-9) regarding the IDA pay scales with reference to officers, i.e. JAO absorbed into BSNL.



**2.9** The pay fixation of the applicant was done on 14.03.2005 at Rs.9850/- w.e.f. 31.08.2001.

**2.10** The respondents again issued order dated 25.04.2007 (Annexure A-11) and fixed the pay of the applicant at Rs. 9850/- w.e.f. 23.10.2006 while taking recourse of Fundamental Rule 35. Accordingly, order dated 27.08.2007 (Annexure A-12) was issued to the applicant saying that due to wrong fixation, an amount of Rs.101324/- was paid excess, which is to be recovered.

**2.11** The applicant was promoted as JAO on probation vide office order dated 17.09.2007 (Annexure A-13).

**2.12** The respondents issued office order dated 05.03.2009 (Annexure A-14) with reference to revision of pay scale of Board Level and Below Board Level Executives of BSNL w.e.f. 01.01.2007, whereas he was not fixed into the revised scale w.e.f. 01.01.2007 in-spite of the fact that vide order dated 11.06.2004 all the JAO were treated as Group-B officials.

**2.13** Subsequently, his pay fixation in the revised pay scale w.e.f. 01.01.2007 was done on 06.04.2009 (Annexure A-15). On his representation, the respondents formed a committee of three officers, which considered his entire case and decided on 21.07.2010 (Annexure A-18) that



the pay fixation of the applicant has been done correctly and his representation was not considered as per applicable rules.

**2.14** He has superannuated on 30.06.2011.

**3.** He has sought for the following reliefs:

**“8. RELIEF SOUGHT:**

Applicant, therefore, humbly prays that this Hon’ble Court may kindly be pleased to:

- i) Summon the entire material record pertaining to the instant controversy from the respondents for its kind perusal.
- ii) Set aside the order/report dated 21.07.2010 (Annexure A-18), order dated 25.04.2007 (Annexure A-11) and order dated 27.08.2007 (Annexure A-12).
- iii) Direct the respondents to repay the recovered amount which has been recovered from the pay of the applicant amounting to Rs.101324/- with 18% interest on it.
- iv) Direct the respondents to allow and continue all the benefits of the applicant as in accordance with his fixation of pay dated 14.03.2005 with all consequential benefits and interest on delayed payment.
- v) Direct the respondents to revise the pay of the applicant and consequently revise the pensionary benefits of the applicant accordingly with arrears and interest on it.
- vi) Grant any other relief/s which this Hon’ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant.
- vii) Award the cost of the instant lis to applicant.”

**4.** The respondents in their reply have made the following submissions:

**4.1** The applicant and nine others were promoted on local officiating basis vide order dated 17.02.1999, wherein it has been mentioned that the pay shall be fixed with restriction under FR 35.



**4.2** The circular dated 10.09.2002 (Annexure A-5) is applicable for local officiating promotion in JAO to AAO, AAO to AO, AO/Sr. AO to CAO and JTS/STS to JAG. It is not applicable for unqualified JAO Part-I pass candidates. The respondents have issued the office order dated 18.03.2004 (Annexure R-3), wherein introduction of IDA pay scales w.e.f. 01.10.2000 in replacement of existing CDA pay scales for Executive staff was specified. Para 2(e) therein is applicable to officiating promotion for the post of Executive to Executive promotion only. It is not applicable to unqualified JAO Part-I pass non Executive candidates.

**4.3** The order dated 11.06.2004 (Annexure A-8) is only for providing perks and other miscellaneous facilities like transport allowance, reimbursement of newspaper bills and briefcase, mobile phone etc. This is not related to pay fixation of unqualified Part-I pass JAO candidates.

**4.4** The applicant has been appointed in JAO regular post on probation basis w.e.f. 31.07.2007 after completion of four weeks basic training. Thereafter, his pay has been fixed in the scale of Rs. 9850-250-14600 as per rules.

**4.5** Letter dated 25.02.2005 (Annexure A-9) is applicable to those candidates, who were regular and qualified JAO after passing Part-II



examination and absorbed in the cadre of regular JAO in BSNL. This is not the case with applicant.

**4.6** The applicant was holding substantive post in Group-C cadre (non-Executive) as on 01.01.2007. Therefore, the order dated 05.03.2009 (Annexure A-14) was not applicable to him on 01.01.2007. His pay was fixed in 2<sup>nd</sup> PRC after his joining in JAO regular w.e.f. 31.07.2007.

**4.7** It had come to the notice of Vigilance Officer that over payments have been made to JAOs due to wrong fixation vide their communication dated 25.05.2009 (Annexure R-8).

**4.8** Since the applicant had given many representations, a committee of three members was appointed by the Competent Authority consisting of 1 CAO and 2 AAOs. The committee members had given their unanimous decision that the fixation done on 25.04.2007 is correct.

**5.** The applicant has submitted his rejoinder, wherein he has reiterated his stand quoting several paragraph of the Fundamental Rules.

**6.** The respondents have also filed their additional reply. It has been stated therein that the applicant was working as officiating JAO in the Establishment section and he has fixed his own pay on 14.03.2005 on point to point basis in FR 23, which was not applicable in his case because he was



only an unqualified JAO Part-I pass candidate. Therefore, wrong fixation was made by him, which was revised on 25.04.2007 and corrected as per FR-35.

7. Heard arguments of learned counsels for both the parties and perused the pleadings and the documents available on record.

8. Learned counsel for the applicant emphasised that the applicant was qualified (Annexure A-2) and, therefore, Government of India's orders, below Rule 35 of Fundamental Rules are not applicable to him. He also brought it to our notice that he has been promoted as Accounts Officer on temporary basis vide order dated 12.11.2010 (Annexure A-20).

9. Learned counsel for the respondents brought our attention to the Presidential order dated 20.12.2004 (Annexure R-5/1) through which the applicant was permanently absorbed in BSNL w.e.f. 01.10.2000. The designation of the applicant has been shown as Sr. TOA (TG). This designation is not of officer but of Clerk, which clearly shows that he was not Accounts Officer in the Department on the date of absorption. Further, Annexure A-1 clearly indicates that in the absence of qualified candidates, only those may be given the officiating arrangement, who had passed JAO Part-I exam.



## **FINDINGS**

**10.** The extracts from relevant documents are reproduced below:

**10.1** Order dated 15.01.1996 (Annexure A-1):

*“.....In supersession of all the above stated orders it has now been decided that whenever it becomes absolutely essential to appoint unqualified candidates as Junior Accounts Officer on local officiating arrangement basis such appointments should be made only from the JAO Part.I qualified candidates. In such cases their pay should be fixed in the grade in accordance with the instructions issued by the DOP & Training vide their O.M. No.18/12/85-Est. (Pay.I), dated 18.9.86, No.18/26/86-Estt (Pay.I) dated 29.07.87 and 1/10/89-Estt (Pay.I) dated 22.10.90 given below F.R. 35. ”*

**10.2** Order dated 17.02.1999 (Annexure A-3):

*“The General Manager (Finance), M.P. Telecom Circle, Bhopal is pleased to promote the following officials to the grade of J.A.O. for a period not exceeding 180 days purely on temporary and officiating basis with immediate effect and post them at the places noted against their names. ”*

Sl. No.	Name of the official	Place where working	Office to which posted as J.A.O
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*5. The pay of the officials should be fixed in accordance with the instructions issued by the Department of Personnel and Training vide O.M. No. 18/12/85 EST (Pay)-I dated 8.7.87 and No. 1/10/89-Estt. Pay-I dated 22-10-90 with restrictions under FR-35. ”*

**10.3** Circular dated 11.06.2004 (Annexure A-8):



*“The Chief General Manager Telecom M.P. Circle, Bhopal is hereby pleased to extend all the facilities available for Group ‘B’ officers , to all the JAOs irrespective of the fact whether they are regular / officiating / on probation , because JAOs are treated as Group ‘B’ officers.”*

**11.** The applicant was earlier working with the Department of Telecom and was subsequently absorbed in BSNL. He was promoted as JAO on a purely local officiating basis with clear indications that the same would not be exceeding 180 days. Accordingly, he was reverted to his parent cadre repeatedly.

**12.** It has not been indicated by learned counsels for the applicant as to what are the required qualification for promotion to JAO. However, perusal of the order dated 15.01.1996 (Annexure A-1) clearly indicates that in case unqualified candidates are to be promoted on JAO on local officiating basis, it should only to be made from JAO Part-I qualified candidates. This gives the clear indication that JAO Part-I examination is one stage towards acquiring the qualification, but it is not complete in itself. Reply to para 4.5 mentions about regular and qualified JAO after passing Part-II examination. Therefore, it is clear that the applicant does not have the requisite qualification to be regularly promoted to JAO.



**13.** Perusal of the Presidential order dated 20.12.2004 (Annexure R-5/1) clearly shows his designation as Sr. TOA (TG). This aspect has not been challenged anywhere or at any time by the applicant. Therefore, it gives clear indication that the applicant was not a regular JAO at the time of his absorption in BSNL.



**14.** The applicant has relied heavily upon the circular dated 11.06.2004 (Annexure A-8) to say that he has been treated equally to Group-B officers. The respondents have stated that this circular is only meant for providing the facilities regarding certain allowances is concerned. However, this does not grant them any pay fixation rights. Perusal of the said circular clearly indicates that the Chief General Manager Telecom, M.P Circle, Bhopal has extended all the facilities available for Group-B officers to all the JAOs irrespective of the fact whether they are regular/officiating or on probation. This circular does not give right to the applicant to be considered as regular JAO.

**15.** The office order dated 05.03.2009 (Annexure A-14) has been issued by BSNL for Executives and this is to be effective from 01.01.2007. Learned counsel for the respondents has been able to make is point that the applicant was regularly promoted as JAO only on 17.09.2007 (Annexure A-13) and,

therefore, he was not in the Executive Grade as on 01.01.2007. Therefore, his case cannot be considered for fixation as per this office order.

**16.** From the above deliberation, it is clear that the applicant was regularly promoted as JAO only on 17.09.2007. Prior to that, he was only working as JAO on a local officiating basis as he was not fully qualified to be posted as JAO. Accordingly, we do not find any irregularity or illegality in the orders passed by the respondents.

**17.** In the result, the Original Application is dismissed being devoid of merits. No costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

am/-

**(Navin Tandon)**  
**Administrative Member**

