

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Original Application Nos. 192/2013 with MA 92/2013,
305/2013 with MA129/2013, 306/2013 with MA 130/2013 &
307/2013 with MA 131/2013**

Jodhpur, this the 22nd day of April, 2014

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms Meenakshi Hooja, Member (Administrative)

Pukh Raj Sharma S/o Shri Shampat Raj Sharma B/c Sharma R/o Jat Colony, Nagaur, District Nagaur. At present working as Sr. T.O. (T) General Manager Telecom, District Bharat Sanchar Nigam Limited Nagaur (Raj).

.....Applicant in OA No. 192/2013

Om Singh S/o Shri Jethu Singh, aged 56 years R/o Kurada, Tehsil Degana, District Nagaur. At present posted as T.M. Bharat Sanchar Nigam Limited Office Kurada, District Nagaur (Raj).

.....Applicant in OA No. 305/2013

Shiv Ram Prajapat S/o Shri Bhinwa Ram Prajapat, aged 54 years R/o Harsor, Tehsil Degana, District Nagaur. At present posted as T.M. Bharat Sanchar Nigam Limited Office Harsor, District Nagaur (Raj).

.....Applicant in OA No. 306/2013

Shanker Lal Prajapat S/o Shri Harji Ram Prajapat aged 56 years R/o Gotan, Tehsil Merta City, District Nagaur. At present posted as T.M. Bharat Sanchar Nigam Limited Office Degana, District Nagaur.

.....Applicant in OA No. 307/2013

By Advocate: Mr M.R. Choudhary

Versus

1. Bharat Sanchar Nigam Limited through its Chief Managing Director, Corporate office 4th Floor, Bharat Sanchar Bhawan, New Delhi-110001.
2. The Chief Manager, Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur (Raj) 302008.

3. The General Manager, Telecom District, Bharat Sanchar Nigam Limited, Nagaur (Raj)..

.....Respondents

By Advocate : Mr Kamal Dave.

ORDER (Oral)

Per Mr Justice K.C. Joshi

By way of these Original Applications the applicant in these OA have sought direction from this Tribunal for stepping up of their pay equal to their junior. Since relief sought by the applicants and respondents in array of party are common, therefore, we shall decide the controversy by a common order for all these OAs.

2. Before going into the merit of the case, we find it expedient to dispose of preliminary objection of limitation. It is settled principle of law that cases decided on merit always advance the cause of justice and in genuine cases, the cases should be decided on merits notwithstanding delay in filing the case. Therefore, we allow MA Nos. 92/2013, 129/2013, 130/2013 and 131/2013 filed alongwith these OAs, for the reasons recorded therein.

3. For the sake of convenience, we narrate the short facts as averred by the applicant Shri Pukh Raj Sharma in OA No. 192/2013 for deciding these OAs.

4. The short facts to adjudicate OAs, as averred by the applicant in OA No. 192/2013, are that the applicant was initially appointed on the post of Telegraphist on 06.06.1994 under the Department of

Telecom, Govt. of India. The applicant and one Shri Bhanwar Lal Prajapati were drawing the same basic pay of Rs 1075/- as on 06.06.1995. The Bharat Sanchar Nigam Limited (BSNL) was incorporated on 01.10.2000 and the services of the personnel in the Department of Telecommunications were made over the BSNL and BSNL started functioning with the employees borrowed from the Department of Telecommunications. Later on, options were called from the employees and based on such options employees were absorbed in the BSNL. The applicant was promoted on the C.T.O. (T) on 29.10.2001 and Shri Bhanwar Lal Prajapati was promoted on the said post after absorption of his services in the BSNL w.e.f. 29.10.2001. The applicant's pay was fixed at Rs 5860 as on 01.10.2000 in the pay scale of 5700-160-8100 whereas the pay of Shri Bhanwar Lal Prajapati was fixed at Rs 6070/- in the pay scale of Rs 4720-150-6970. Therefore, an anomaly occurred in the pay drawn by the applicant wherein a junior person to the applicant started getting a higher pay than the applicant w.e.f. 01.10.2000. The applicant submitted representations in persona and also through the Union before the concerned authorities with regard to this anomaly that a junior person is getting a higher pay than the applicant but no heed was paid by the respondent-department. The office of respondent No. 1 issued directions vide order dated 30.08.2010 for inviting objections from the aggrieved officials on the Circle Level and the concerned authorities were directed to take timely and appropriate action to settle the issue of pay aberrations/anomaly. It has been averred in the application that the applicant and Shri Bhanwar Lal Prajapati were

promoted from time to time on the higher posts and presently both are working on the post of Sr. T.O.A. (T) under the respondent-department and the applicant is drawing the pay in the pay scale of Rs 13600-25420 whereas Shri Bhanwar Lal Prajapati is drawing the pay in the pay scale of Rs 12520-23440 but the applicant is drawing less basic pay than Shri Bhanwar Lal Prajapati i.e. the applicant is drawing basic pay of Rs 18640/- whereas Shri Bhanwar Lal Prajapati drawn basic pay of Rs 19,730/- as on November, 2012. The applicant with other aggrieved employees served a notice for demand of justice on 08.01.2013 through his counsel but no action has been taken by the respondents to redress the grievance of the applicant till date, therefore, the applicant in OA No. 192/2013 has filed this OA for seeking a relief for removing pay anomaly in the basic pay of the applicant by stepping up of pay to the level of his junior employee w.e.f. 01.10.2000, consequential benefits are also prayed.

5. By way of reply, the respondents have averred that the applicant being initially appointed as Telegraphist under the Department of Telecom on 06.06.1994 in the pay scale of Rs 975-1650 and Shri Bhanwar Lal Prajapati appointee of 06.06.1994 was also drawing the same pay scale in the Department of Telecom (DOT). After formation of BSNL on 01.01.2000 services of DoT employees were merged in the BSNL or were allowed to serve on deputation in the BSNL. Subsequently, options were called for absorption in BSNL by the employees of DoT covered under Central Dearness Allowance Scale (CDA scale) whereas in BSNL Industrial Dearness Allowance (IDA)

scale of pay was allowed. The applicant alleged pay anomaly w.e.f. 01.10.2000 and he was promoted as CTO (T) prior to 01.10.2000 whereas Shri Bhanwar Lal Prajapati was promoted after absorption w.e.f. 29.10.2001. Pay of the applicant was fixed at Rs 5860/- w.e.f. 01.10.2000 in pay scale of Rs 5070-8100 whereas pay of Shri Bhanwar Lal Prajapati was fixed as Rs 6070/- in the grade of Rs 4720-6970 w.e.f. 01.10.2000. The respondents have averred that the pay fixation is allowed in strict adherence to the statutory provision and circular of the department and in particular as per communication dated 01.10.2002. The respondents have averred that order dated 30.08.2010 is in respect of settlement of pay aberrations of official in the cadre of Linemen/Telecom Mechanic drawing more pay before 01.10.2000 but started getting less pay than their junior after point to point fixation in the IDA scale on 01.10.2000 whereas in the present case the relief sought by the applicant based on order dated 30.08.2010 has no applicability or relevance for the post of TOA (T) held by the applicant. The orders with regard to pay fixation in consonance with the requirement is available and are still guiding the situations regarding pay fixation, the applicant is under obligation to make out a case by first referring to statutory provision and the orders supporting his case and belated representation in the form of demand of justice is no consequence as regard stale and dead case in respect of which cause of action if arose was of the year 2000. Thus, respondents have prayed for dismissal of the OA.

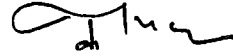
6. Heard both the parties. Counsel for the applicant contended that in the similarly controversy, the Ernakulam Bench of Central Administrative Tribunal ordered to step up the pay of the seniors equal to pay of the junior that was affirmed by the High Court of Kerala at Ernakulam in OP (CAT) No. 1429 of 2011(s) in The Chief General Manager (Telecom) & Ors. V/s Bhuvanandran. T.C. & Ors arising out of OA No. 741/2011. Per contra, counsel for the respondents contended that the representation submitted by the applicants are pending before the competent authority for consideration and the stepping up can only be granted as per statutory provisions although the Ernakulam Bench of the CAT passed the order of stepping up of pay of the senior equal to the juniors but respondent-department will consider the representation in the light of the statutory rules along with the judgment of the Kerala High Court passed in the original petitions.

8. Having considered rival contentions of both the parties we propose to dispose of petitions with certain directions. The respondent-department is directed to consider the representation of the applicants pending before them in the light of statutory rules alongwith judgment of the Hon'ble High Court of Kerala at Ernakulam as discussed above, within 4 months from the date of receipt of this order. After decision on the representations of the applicant, if any grievance remains with the applicants, they will have a right to approach this Tribunal.

9. In terms of above direction, OA Nos. 192/2013, 305/2013, 306/2013 & 307/2013 are disposed of accordingly. There shall be no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member



(JUSTICE K.C.JOSHI)
Judicial Member

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