

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO. 619 OF 2009  
with  
O.A.NO.670 OF 2009**

**Tuesday, this the 19<sup>th</sup> day of January, 2010**

**CORAM:**

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER  
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

**1. O.A. NO. 619 OF 2009**

1. Rameswan. R  
JTO, O/o Divisional Engineer,  
NIB, Trivandrum.  
Residing at TC 27/1817-2, Reghu Raj  
Sree Chithre Lane, Vachiyoor P.O.  
Trivandrum
2. S.Jayakumar.  
JTO, O/o Divisional Engineer,  
Installation, Trivandrum.  
Residing at Aiswarya  
Ambalathikara, Kazhakuttom  
Trivandrum
3. J.M. Sreekumar.  
JTO, Transmission Maintenance, BSNL, Exchange,  
Neyyattinkara.  
Residing at Souparnika, Athiyanoor  
Aralumoodu P.O., Trivandrum
4. Ramachandran Nair. K  
JTO, O/o SDE, Vizhinjam.  
Residing at Thevarthala veedu  
Kurisaumuttom, SN Road  
Peyad P.O., Trivandrum
5. Sadeesan Nair.N  
JTO, BSNL Chenkal, Neyyattinkara, Trivandrum.  
Residing at Narayaneeyam, Kadakulam,  
Plamcottukada, Trivandrum District
6. Suresh Kumar. V.K.  
JTO, BSNL, Neyyatinkara, Trivandrum.  
Residing at Sreelekshmi, Perumpazhuthoor P.O.  
Neyyattinkara, Trivandrum
7. R.K.Benna.  
JTO, O/o CGMT, Trivandrum.  
Residing at Sandram, BM 402 A  
Bhapuji Nagar, Pongummoopu  
Trivandrum



8. P.S.Venugopal.  
JTO, O/o SDET, Varkala, Trivandrum.  
Residing at Naryana Vihar, Mannarasala, Haripad

9. Suman. S  
JTO, O/o DET, Attingal, Trivandrum.  
Residing at Adhikaripuram, Puravoor  
Chirayinkil, Trivandrum

10. Sajeesh. R. Sundar  
JTO, O/o Divisional Engineer NIB, Trivandrum.  
Residing at Co-Axil Staff Quarters  
BSNL, Seeveli Nagar, Palkulangara, Pattom P.O  
Trivandrum

11. A.H. Beena,  
JTO, O/o SDE, (Extl), Chalai, Trivandrum.  
Residing at Beena Sadan, Pakalkuri P.O.  
Trivandrum

12. S.Jayaprasad.  
JTO, Telecom Bhavan, BSNL, Medical College PO,  
Trivandrum.  
Residing at Revathy, Aruviode, Vattappara P.O.  
Trivandrum

13. Esther Baby. P  
JTO, BSNL, Kattakada, Trivanrum.  
Residing at Stephen Sadan, Kottampally  
Abalathinkala Post, Kattakada, Trivandrum

14. Renuka. K.R  
JTO, Pongumooou, Koovalssery, Trivandrum.  
Residing at Chandranand  
Perumpazhutho, Neyyantinkara  
Trivandrum

15. K. Jayakumari  
JTO, BSNL, Vanchiyur, Trivandrum.  
Residing at Swathy, TC 27/279-1, Near General Hospital Jn.  
KunnukuzhyP.O., Trivandrum

16. Jayasree T.A.  
JTO, Network, Planning Section, O/o CGMT, BSNL, Trivandrum.  
Residing at Thiruvathira, TC 5/1885, Nadakkavu Lane,  
Peroorkada – 5, Trivandrum

17. Prabha Kumari.  
JTO, Telephone Bhavan, Medical College, Trivandrum.  
Residing at Bhadradeepam  
Mannadi Lane, Ambalamukku, Peroorkada P.O.  
Trivandrum

Applicants

(By Advocate Mr.V.Sajith Kumar )

Versus

1.	The Bharat Sanchar Nigam Limited Represented by its Chairman & Managing Director New Delhi	
2.	The Chief General Manager(Telecom) Bharat Sanchar Nigam Limited Kerala Circle Trivandrum	
3.	The General Manager Bharat Sanchar Nigam Limited Trivandrum	... Respondents

(By Advocate Mr.T.C.Krishna )

**2. O.A.NO.670 OF 2009**

1.	Johnney Junior Telecom Officer (Officiating) Office of Divisional Engineer Transmission Project, Ernakulam Circle Telecom Store Depot Gandhi Nagar, Kochi – 20 Residing at Bharani Kulangara, House Karippassery Vattapparambu P.O., Aluva (via) Ernakulam District – 683 579	
2.	Subramanian G Office of Divisional Engineer BSNL, Survey and Access Network Transmission Projects, CTSD Buildings, Gandhi Nagar, Ernakulam – 682 020 Residing at House No.8/6768 A, Murukkinthara Parambu Koovappadam, Kochi – 682 002	
3.	Baiju V Junior Telecom Officer (Officiating) Broad Band Telephone Exchange, Palarivattom Residing at 36/1535 Parvanendu North Janatha Palarivattom - 682 025	... Applicants

(By Advocate Mr.V.Sajith Kumar )

**Versus**

1.	The Bharat Sanchar Nigam Limited Represented by its Chairman & Managing Director New Delhi	
2.	The Chief General Manager(Telecom) Bharat Sanchar Nigam Limited Kerala Circle Trivandrum	

3. The Chief General Manager(Telecom)  
 Bharat Sanchar Nigam Limited  
 Southern Telecom Project  
 Chennai

4. The Principal General Manager  
 Bharat Sanchar Nigam Limited  
 Ernakulam

... Respondents

(By Advocate Mr.T.C.Krishna )

The applications having been heard on 19.01.2010, the Tribunal on the same day delivered the following:

ORDER

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

So heartening to the Judge's bosom is the happy ending of a bitterly fought litigation where the law is declared by the Court and justice is accomplished by the parties settling the differences, assisted by activist judicial suggestions and promoted by constrictive counselling by advocates.

2. In the instant cases, according to the counsel for the parties, a settlement has already been arrived at between the Union on the one hand and the Management on the other. The main impediment viz., Annexure A-13 Clause (7) has been removed. With the above removal of the impediment, it is fairly expected that the applicants grievances would be fully redressed by the Department by taking further action in pursuance of the settlement arrived at.

3. With the above, these O.As are closed giving liberty to the applicants to agitate any residual grievances, in future. No costs.

Dated, the 19<sup>th</sup> January, 2010.

  
**K GEORGE JOSEPH**  
 ADMINISTRATIVE MEMBER

  
**Dr. K. B. S. RAJAN**  
 JUDICIAL MEMBER

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.619/2009  
& Original Application No.670/2009**

*Thursday*, this the 10<sup>th</sup> day of March, 2016

**CORAM:**

**HON'BLE Mr. JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER  
HON'BLE Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER**

**Original Application No.619/2009**

1. R.Rameswan,  
S/o.Ramaswamy Chettiar,  
Residing at TC 27/1817-2,  
Reghu Raj, Sree Chithra Lane,  
Vachiyoor P.O., Trivandrum,  
JTO, O/o.Divisional Engineer,  
NIB, Trivandrum.
2. S.Jayakumar, S/o.N.Sreedharan,  
Residing at Aiswarya,  
Ambalithikara, Kazhakuttom,  
Trivandrum, JTO, O/o.Divisional Engineer,  
Installation, Trivandrum.
3. J.M.Sreekumar,  
S/o.K.Madhavan Pillai,  
Souparnika, Athiyannoor,  
Aralumoodu P.O., Trivandrum,  
JTO, Transmission Maintenance,  
BSNL Exchange, Neyyattinkara.
4. K.Ramachandran Nair,  
S/o.K.Krishnapillai,  
Residing at Thevarthala Veedu,  
Kurisumuttom, SN Road, Peyad P.O.,  
Trivandrum, JTO, O/o.SDE, Vizhinjam.
5. Sadeesan Nair,  
S/o.N.Narayanan Nair,  
Residing at Narayaneeyam, Kadakulam,  
Plamootukada, Trivandrum District,  
JTO, BSNL Chenkal, Neyyattinkara, Trivandrum.



6. Suresh Kumar.V.K.,  
S/o.Krishnan Nair.P.,  
Residing at Sreelekshmi,  
Perumpazhuthoor P.O., Neyyattinkara,  
Trivandrum, JTO, BSNL, Neyyatinkara, Trivandrum.
7. R.K.Benna,  
D/o.G.Radhamani Amma,  
Residing at Sandram, BM 402 A,  
Bhapuji Nagar, Pongummoopu,  
Trivandrum JTO, O/o.CGMT, Trivandrum.
8. P.S.Venugopal,  
S/o.Subramonian Nambi,  
Residing at Naryana Vihar,  
Mannarasala Haripad, JTO,  
O/o.SDET, Varkala, Trivandrum.
9. Suman.S., S/o.Sreedharan,  
Adhikaripuram, Puravoor,  
Chirayinkil, Trivandrum, JTO,  
O/o.DET, Attingal, Trivandrum.
10. Sajeesh R Sundar,  
S/o.K.Sundaresan,  
Co-Axil Staff Quarters,  
BSNL, Seveli Nagar,  
Palkulangara, Pattam P.O., Trivandrum, JTO,  
O/o.Divisional Enginner NIB, Trivandrum.
11. A.H.Benna, D/o.S.Abdul Vaheed,  
Beena Sadan, Pakalkuri P.O.,  
Trivandrum, JTO, O/o.SDE (Extl.),  
Chalai, Trivandrum.
12. S.Jayaprasad,  
S/o.S.Purshothaman,  
Revathy, Aruviode, Vattappara P.O.,  
Trivandrum, JTO, Telecom Bhavan, BSNL,  
Medical College P.O., Trivandrum.
13. Esther Baby P.,  
D/o.Ponnu,  
Stephen Sadan, Kottampally,  
Abalathinkala Post, Kattakada, Trivandrum,  
JTO, BSNL, Kattakada, Trivandrum.



14. Renuka.K.R.,  
D/o.S.Krishna Pillai,  
Chandranand, Perumpazhuthoor,  
Neyyatinkara, Trivandrum, JTO,  
Pongumooou, Koovalssery, Trivandrum.
  
15. K.Jayakumari,  
D/o.K.Kamapalan,  
Swathy, TC 27/279-1,  
Nr.General Hospital Jn.,  
Kunnukuzhy P.O., Trivandrum,  
JTO, BSNL, Vanchiyur, Trivandrum.
  
16. Jayasree.T.A.,  
D/o.Thankappanpillai,  
Thiruvathira, TC 5/1885,  
Nadakkavu Lane, Peroorkada – 5,  
Trivandrum, JTO, Network Planning Section,  
O/o.CGMT, BSNL, Trivandrum.
  
17. Prabha Kumari P,  
D/o.R.Chandran Pillai,  
Bhadradeepam, Mannadi Lane,  
Ambalamukku, Perukada P.O.,  
Trivandrum, JTO, Telephone Bhavan,  
Medical College, Trivandrum. ....Applicants

**(By Advocate Dr.K.P.Satheesan,Sr. & Mr.V.Sajith Kumar)**

**V e r s u s**

1. Bharat Sanchar Nigam Limited  
represented by its Chairman & Managing Director,  
New Delhi.
  
2. The Chief General Manager (Telecom),  
Bharat Sanchar Nigam Limited, Kerala Circle,  
Trivandrum.
  
3. The General Manager,  
Bharat Sanchar Nigam Limited,  
Trivandrum. ....Respondents

**(By Advocates Mr.George Kuruvilla)**



**Original Application No.670/2009**

1. Johny.B.A., S/o.B.V.Antony,  
Junior Telecom Officer (Officiating),  
O/o.Divisional Engineer, Transmission Project,  
Ernakulam, Circle Telecom Store Depot,  
Gandhi Nagar, Kochi – 20.  
Residing at Bharani Kulangara House,  
Karippassery, Vattapparambu P.O.,  
Aluva (Via), Ernakulam (District) – 683 579.
  
2. Subramanian G., S/o.N.Gopalan,  
O/o.Divisional Engineer,  
BSNL, Survey and Access Network,  
Transmission Projects, CTSD Buildings,  
Gandhi Nagar, Ernakulam – 682 020.  
Residing at House No.8/678 A,  
Murukkinthara Parambu,  
Koovappadam, Kochi – 682 002.
  
3. Baiju.V., S/o.Vasudevan,  
JTO (Officiating),  
Broad Band Telephone Exchange, Palarivattom.  
Residing at 36/1535, Parvanendu North Janatha,  
Palarivattom – 682 025.

...Applicants

**(By Advocate Dr.K.P.Satheesan,Sr. & Mr.V.Sajith Kumar)**

**V e r s u s**

1. Bharat Sanchar Nigam Limited  
represented by its Chairman & Managing Director,  
New Delhi.
  
2. The Chief General Manager (Telecom),  
Bharat Sanchar Nigam Limited, Kerala Circle,  
Trivandrum.
  
3. The Chief General Manager (Telecom),  
Bharat Sanchar Nigam Limited,  
Southern Telecom Project, Chennai.
  
4. The Principal General Manager,  
Bharat Sanchar Nigam Limited,  
Ernakulam.

...Respondents

**(By Advocates Mr.George Kuruvilla)**



These applications having been heard on 8<sup>th</sup> February 2016, the Tribunal on ..<sup>10</sup> March 2016 delivered the following :

**ORDER**

**HON'BLE Ms.P.GOPINATH, ADMINISTRATIVE MEMBER**

As the issue involved in both these O.As are similar they are being dealt with in this common order.

2. The applicants are working as Junior Telecom Officer (JTO) in the pay scale of JTO Rs.9850-250-14600 under the respondents. They are aggrieved by the delay on the part of the respondents in granting revised scale of pay implemented in BSNL for executives as a part of 2<sup>nd</sup> IDA pay revision with effect from 1.1.2007. The revised pay scales have been granted to all executives in BSNL excluding the applicants. It is submitted that the applicants are working as JTOs in the post on officiating/adhoc basis after having qualified for promotion as JTO in the screening test in the year 2000 under JTO Recruitment Rules 1996 and having successfully completed the Phase 1 of the training program. Consequently the respondents in public interest promoted the applicants and other similarly situated to the category of JTO, through various orders with in the BSNL, Kerala Circle. The respondents fixed the pay of the applicants in the scale of pay of Rs.9850-250-14600 by applying FR 22 (a) (1) read with FR 17. The attempt to withdraw the pay in the pay scale Rs.9850-250-14600 with FR 22 fixation has already failed through the successive judgments of the Hon'ble High Court and that of the

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C.A.T. When the eligibility of the applicants for FR 22 fixation is so settled, there is no justification in delaying FR 22 fixation in the revised scale of JTO cadre.

3. It is submitted that the applicants are eligible and are drawing pay fixed as per FR 22-1(a)(1) in the JTO scale of Rs.9850-250-14600 as ordered by this Tribunal and as well as by Hon'ble High Court. As such the refusal of the respondents to grant the revised scale to the applicants in par with other JTOs in BSNL is arbitrary. The reasons shown in Annexure A-13 can not be put forward as a reason for delaying the implementation of revised pay scales to the applicants, in the facts and circumstances of the case. Once the pay scale of an official is revised, the official is automatically eligible for the revised pay. The non fixation of revised pay in TTA category is not material or relevant in case of the applicants. The revised pay in TTA will have relevance only in case of FR35 pay fixation where the pay scale of the official would be that of a non-executive. The FR 35 fixation depends on the pay in the revised scale of TTA and therefore in such cases revision of pay in TTA has a relevance.

4. FR22 1(a)(1) fixation is made based on the scale of pay of the officiating cadre ie. JTO in this case. Since the fixation of pay in the lower category is not relevant for FR 22 1(a)(1), the attempt of the respondents is to overreach the directions of the Hon'ble High Court and this Tribunal and

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deny the eligible benefits to the applicant through administrative instructions. The respondents have already implemented Annexure A-11 and paid arrears of salary and revised scale of pay for all the regular JTO's working in the respondent office. The benefits has been denied only to the applicants who were officiating as JTO's for the last 5 years. The eligibility of applicants for FR22 fixation in JTO category got settled through judicial pronouncements. Attempt to deny the benefits by not implementing revised scale of pay to the applicants who are officiating in JTO category is highly arbitrary and violative of the principles of equality enunciated in Article 14 of the Constitution of India.

5. The applicants are recruited/selected for appointment to the post of JTO based on their merit and eligibility. Only if an employee is eligible for appointment, he can be selected/recruited for appointment against that post. The empanelling of the applicants establishes that they are fully eligible to be appointed against the post of JTO. Therefore the finding in Annexure A-1 with regard to ineligibility of the applicants is unjust and unfair and it was so held in Annexure A-14 and in other judgments. FR22, governs the fixation of pay, when a Government servant holding a post other than a tenure post, in a substantive or temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attached to the post held by

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him, his initial pay in the timescale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or Rs.100/- only which ever is more. The applicants had fulfilled all the eligibility conditions for promotion and they were in the panel for promotions. There is no justification in denying FR22 1(a)(1) fixation in the revised scale to the applicants. Reliefs sought by the applicants are to quash Annexure A-13 to the extent it restricts revised scale of pay to applicants drawing fixation under FR 22-1(a)(1) and declare that the applicants are entitled to fixation of pay under FR 22-1(a)(1) in revised scale of pay in the JTO category with effect from 1.1.2007 and disburse the same as ordered in Annexure A-11.

6. Respondents submit that the applicants were holding the posts of Telecom Technical Assistant (TTA). The said post is a non-executive cadre. TTAs are one of the non-executive cadre for promotion to the post of Junior Telecom Officer. As per the JTO Recruitment Rules, 1996 the method of recruitment is (i) 50% by direct recruitment and (ii) 50% by promotion through limited internal competitive examination. Out of the said 50% promotion quota, 35% are recruited on promotion through internal competitive examination from among certain Group C employees such as Phone Inspector/Auto Exchange Assistant/Wireless Operator/Transmission Assistant/Telecom Technical Assistant etc. possessing the required

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qualification and the remaining 15% quota are filled up through internal competitive exam from among the Group C employees having the required qualifications. As per the Recruitment rules, the candidate selected both against the direct recruitment quota of vacancies and internal promotion quota of vacancies shall have to successfully undergo training as per the training plan laid down by the company. The training plan consists of two phases. Phase I training consists of 14 weeks training which includes 10 weeks training in Training Centres and 4 weeks practical training on job. On successful completion of the above 14 weeks of training the trainees will be appointed as JTOs. Applicants qualified the screening test conducted on 30.4.2000 as per the Recruitment Rules for JTO -1996. There were no vacancies in the 35% departmental quota. Hence it was decided to divert 500 JTO posts on all India basis from the 50% direct recruitment quota of JTO posts to 35% departmental quota year by year. Accordingly 3500 posts were diverted to promote departmental candidates as JTOs.

7. Pursuant to the orders of the Hon'ble High Court of Punjab and Haryana in CWP No.5608/07 dated 30.5.2008, BSNL Board decided that all the above said 3500 posts of JTOs of direct recruitment quota diverted to 35% departmental quota on year by year basis for accommodating the wait listed candidates will stand re-diverted to the direct recruitment quota. The JTO post to which applicants are being given officiating promotion are not

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earmarked for them. These posts are for direct recruits. An employee, who officiates in a post on which another person holds lien will have no claim for regular promotion or officiating promotion in that post as per Rules. Further the applicants have not completed the Phase I training. They were given the first spell of 10 weeks training in the Training Centre. They have not undergone the second part of Phase I training, ie. 4 weeks practical training on job. Having completed the training of 10 weeks, on exigencies of service and existence of vacancies in direct recruitment quota, the applicants have been locally promoted purely on officiating basis as JTOs from time to time. As such the demand of the applicants that they may be given pay fixation under FR22 (1) (a) (i) without application of FR 35 does not hold good.

8. The engagements of the applicants in the JTO posts were not continuous. Inadvertently the applicants were given pay fixation under FR 22 (1)(a)(i) without the restriction provided under FR 35. However, due to interference of the Court and orders issued from time to time the pay was not reduced and the applicants continued to receive pay as fixed under FR 22 (1)(a)(i). At the time of officiating promotion, the applicants do not fulfill the eligibility conditions prescribed in the relevant Recruitment Rules for appointment as JTOs. The provisions contained in FR 22 (1)(a)(i) meant from fixation of pay on promotion or appointment denote that if an employee, who is working in a post on a time scale of pay is promoted in a

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substantive temporary or official capacity to another post carrying duties and responsibilities of greater importance as to fulfill the eligibility conditions prescribed as per relevant Recruitment Rules.

9. Existence of posts as per Recruitment Rule is also an eligibility condition for the fixation of pay of an employee on promotion. In the present case, the validity period of Recruitment Rule for JTOs 1996 is between 1.1.1996 and 31.8.1999. But there was no vacancy under the 35% quota till 31.8.1999. From 1.9.1999 onwards a new Recruitment Rules for JTOs was published viz., Recruitment Rules for JTO 1999. It is submitted that vide Annexure A-6 the Hon'ble High Court held that the petitioners therein are entitled for fixation of pay under FR 22 (1)(a)(i). The said judgment was taken up in appeal and by Annexure A-7 judgment, the same was set aside and the 1<sup>st</sup> respondent was directed to consider the representation submitted by the employees against the fixation of pay. Annexure A-1 order was issued in obedience to the direction contained in Annexure A-7 judgment. As such Annexure A-6 has no relevance at all. Further the scale of pay of executive employees including JTOs were revised with effect from 1.1.2007. However, the scale of pay of non-executive cadre which includes TTAs has not been revised. A non-executive in the pre-revised scale officiating as an executive cannot claim fixation of pay under FR 22 (1)(a)(i) in the revised scale of executive cadre unless and until the pay scale of the non-executive cadre is

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also revised. It was under said circumstance Annexure A-13 order was issued. It is true that prior to issuance of Annexure A-13 order there was no clarity as to the position of fixation of pay of a non-executive in the pre-revised scale officiating as an executive after revision of pay in the executive cadre.

10. Heard the detailed arguments of the learned counsel for applicants and respondents and the written submissions made. The applicants in both O.As are TTAs. As per 1996 Recruitment Rules, JTOs were appointed :

- (i) 50% by direct recruitment
- (ii) 50% by transfer of which
  - (a) 35% were from Technical Staff
  - (b) 15% were from Administrative Staff.

11. For Technical Staff a screening test is prescribed. For Administrative Staff a Competitive Examination is held. The above prescribed screening test was conducted on 30.4.2000 as per 1996 Recruitment Rules. Applicants were successful but there were no vacancies to accommodate them. From 1995 no Direct Recruitment was made and as such DR vacancies remained unfilled. So 500 persons who passed the screening test were adjusted against the DR quota and as such 3500 persons were adjusted as JTOs under DR quota.



12. In 2007 the Chandigarh Bench of the C.A.T set aside the filling up of DR quota by the screening test candidates, holding it as poaching into another mode of recruitment. Hence respondents in order to circumvent this problem created 3500 supernumerary JTO posts and adjusted the above persons who were displaced from the DR quota. The respondents were fully responsible for the excess recruitment and subsequent appointment made.

13. On 13.5.2004 persons qualified in 2000 examination were sent for Phase I Training. On completion of training the applicants were posted as JTOs under DR quota. This happened prior to Chandigarh Bench judgment of 2007. The applicants were qualified as JTOs as :

(i) They had passed the screening test and hence were eligible as per recruitment competency.

(ii) They had undergone Phase I Training and hence were eligible for JTO appointment.

14. So what should have been the pay fixation criteria for such applicants who had qualified as per criteria indicated supra is the issue under consideration.

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15. The 2<sup>nd</sup> respondent vide communication dated 31.12.2008 held the view that the TTAs holding the officiating promotion posts as JTOs on a continuous basis, are working in a higher post than their substantive post and are hence eligible for annual increments counting all the periods of duty in each year as per provisions of FR 26. The said O.M also citing the Ministry of Finance O.M of 15.11.1974 clarified that if the officiating JTOs were holding the post on the 1<sup>st</sup> of the month, the increment may be granted from the date it falls due. FR 22 (1)(a)(i) reads as follows :

(a)(1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporarily or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity as the case may be subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of a lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only which ever is more.

16. Applicants were TTAs and were holding the post of JTOs which is a higher post with more responsibility and hence FR 22 (a) 1 was applied in 2004. In 2005 an attempt was made to replace FR 22 (1)(a) 1 with FR 35 which is applicable to unqualified persons who are officiating in a higher post. Applicants on the other hand have qualified the screening test and also completed Phase I Training. Further, for the purpose of pay fixation under FR 22 (1)(a) 1, the relevant issue is whether applicants TTAs were performing the higher duty with greater responsibility of JTOs. The answer is in the affirmative and the applicants were discharging higher responsibilities in the promoted post in comparison to earlier post of TTA

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held by them. A Single Bench of the Hon'ble High Court of Kerala in WPC No.35481 of 2005 had held that the temporary nature of posts or the non-regularization of posts are irrelevant to pay fixation and upheld the fixation under FR 22 (1) (a)1. The Division Bench in WPC No.400 of 2007 held that before refixing the pay the affected parties should have been given an opportunity of being heard and directed the appellants to give an opportunity to the respondent writ petitioners to file objections which will be considered after being given an opportunity of being heard. The applicants having been heard by respondents had their representations rejected. This rejection was challenged by the applicants in the High Court which was transferred as a T.A case. Annexure A-14 is the judgment of CAT in T.A.No.84/2008 and others dated 15.7.2009 which held that applicants are entitled to pay fixation under FR 22 (1)(a)(i). This has been challenged by respondents in High Court of Kerala in W.P.Nos.8077/2010 & 7723/2010. The Supreme Court in S.L.P.No.4583/2012 had held that :

“.....It goes without saying that in the light of the observations made by the Tribunal and those made by the High Court if the Writ Petitions filed by the petitioner – Corporation before the Kerala High Court are eventually allowed and the judgment of the Ernakulam Bench of the Central Administrative Tribunal (CAT) is set aside, any benefit which the petitioner – Corporation may have extended to its employees pursuant to the said judgment can be reversed not only qua those who are parties to the said case but also qua all such employees as have on the analogy of the said order obtained benefit from the petitioner – Corporation with or without intervention of the CAT or the High Court. It is common ground that pursuant to the order passed by the Ernakulam Bench of CAT the petitioner has already extended the benefit claimed by the applicants in that case. The CAT (Principal Bench) has on the analogy of that order, simply directed a similar benefit to the respondents herein, subject to the condition mentioned above, which as mentioned earlier, sufficiently secures the interest of the petitioner – Corporation, hence calls for no interference from us. With these observations the Special Leave Petition fails and is accordingly dismissed.”

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17. FR 22 (1)(a)(i) puts forth three conditions for extending the benefit of pay fixation :

- (i) A government servant should be holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity.
- (ii) (i) above is applicable if eligibility conditions in Recruitment Rules are fulfilled.
- (iii) The post held in which pay fixation is sought carries duties and responsibilities of greater importance than that attached to the post held by a person seeking the fixation.

F.R.35 states

"The Central Government may fix the pay of an officiating Government servant at an amount less than that admissible under these rules."

The respondents are treating the promotion as an officiating promotion and the demand of the applicants that they may be given pay fixation under FR 22 (1)(a)(i) without application of FR 35 is contested by the respondents. But the respondents' aver that applicants have been locally promoted on officiating basis as JTOs from time to time. The applicants' pay was fixed under FR 22(1)(a)(i) inadvertently without the restriction provided under FR 35. This is required to be corrected.

18. The respondents have no doubt about the fulfillment of condition (i) and (iii) of FR 22(1)(a)(i) above by the applicants. They only contest that condition (ii) is not fulfilled. The applicants working as JTOs are discharging higher duties and responsibilities than the post of TTA. Hence logically their pay cannot be fixed at an amount less than the pay admissible



to a JTO in the promoted post. The applicants have appeared and passed the qualifying test. As regards condition No.(ii) above, the applicants have undergone Phase I institutional training. It was the responsibility of the respondent to impart in-service training prior to engaging the TTAs to officiate in the post of JTOs. The in-service training is generally imparted after taking charge. The respondents have not averred either in the written arguments or in verbal arguments as to what useful purpose would be served as on date by in-service training as the applicants have been working in the post of JTO for several years. Any in-service training at this stage would be not only belated but irrelevant in view of the on-the-job work experience of the applicants as TTAs which far outweighs in-service training. Hence this argument for denying the benefit to the applicants also fails. Hence FR 35 is not applicable to the applicants as they are not unqualified persons working in a higher post. Subject to the final outcome of the W.P.(C) No.24092/2010 and W.P.(C) No.23141/2010 filed before the Hon'ble High Court of Kerala the respondents are directed to fix the pay of applicants as per FR 22 (1)(a)(i) in the revised scale of pay of JTO with effect from 1.1.2007 within a period of three months from the date of receipt of a copy of this order. The O.A is allowed accordingly. No costs.

(Dated this the 10<sup>th</sup> day of March 2016)

  
(P. GOPINATH)  
ADMINISTRATIVE MEMBER  
asp

  
(N.K. BALAKRISHNAN)  
JUDICIAL MEMBER