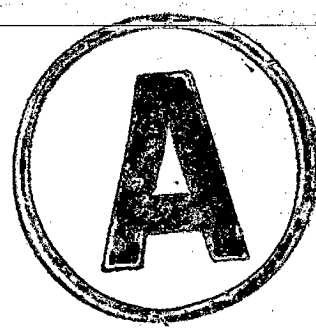


CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH



Original Application No. 405 of 2011
with
O.A. Nos. 502/11, 619/11 and 696 of 2011

Thursday, this the 01 day of *Dec.*, 2011

CORAM:

HON'BLE Mr. P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. O.A. No. 405/2011

1. Thankam K.S., W/o. Swami Prakashan
Telecom Mechanic, HRD No. 199312805
BSNL Parali.
2. M. Swaminadan, S/o. Madhavan
Telecom Mechanic, HRD No. 199311559
BSNL Yakkara.
3. S. Velayudhan, S/o. Shankaran
Telecom Mechanic, HRD No. 199311571
BSNL Yakkara.
4. K. Gangadharan, S/o. Kumaran
Telecom Mechanic, HRD No. 199210068
BSNL Koottanad.
5. K.P. Unnikrishnan, S/o. Late C.K. Sankarankutty Nair
Telecom Mechanic, HRD No. 199209746
BSNL Pulassery
6. S. Vasudevan, S/o. Sivaraman
Telecom Mechanic, HRD No. 199312559
BSNL K.K. Pathi.
7. Damodaran C., S/o. C.V. Chellan
Telecom Mechanic, HRD No. 198915148
BSNL Project Vijay (Marketing), Palakkad.
8. Viswanathan C.C, S/o. C. V. Chellan
Telecom Mechanic, HRD No. 199210673
BSNL, Parali.
9. Shanmughan M, S/o. Ramaswami Chettiyar
Telecom Mechanic, HRD No. 199310019
BSNL Elambuzhassery.

- 2
10. K.V. Radhakrishnan, S/o. K.K. Vasudevan
Telecom Mechanic, HRD No. 199105036
BSNL Sreekrishnapuram.
 11. K. Ramachandran, S/o. Kelekutty
Telecom Mechanic, HRD No. 199311248
BSNL Kollemgode.
 12. K.P. Sathyanarayanan, S/o. K. Parameswaran
Telecom Mechanic, HRD No. 199307147
BSNL Ottapalam.
 13. P.N. Madhusoodanan, S/o. Narayanan
Telecom Mechanic, HRD No. 199310630
BSNL, Peringottukurussi.
 14. C. Mohanan, S/o. Chinnappa Mannadiar
Telecom Mechanic, HRD 199312846
BSNL Eleancherry.
 15. M. Asok, S/o. A. Madhavan
Telecom Mechanic, HRD 199211559
BSNL SDE (External), Olavakkode.
 16. C. Ramankutty, S/o. Chathy
Telecom Mechanic, HRD No. 199311268
BSNL, Elappully.
 17. V. Velayudhan, S/o. Velan
Telecom Mechanic, HRD No. 1992-10654
BSNL, Elappully.
 18. K. Mani, S/o. N. Koru
Telecom Mechanic, HRD No. 1993-12854
BSNL (Power Plant), Palakkad.
 19. C.K. Udayadevan, S/o. C.V. Krishnan
Telecom Mechanic, HRD No. 1993-11120
BSNL, Kozhikkara.
 20. M. Santhosh, S/o. Manikkan
Telecom Mechanic, HRD No. 1992-06816
BSNL, Shornur.
 21. I. Alikutty, S/o. Ismail, Telecom Mechanic
HRD No. 1992-10336, BSNL Malampuzha
Manthakkad.
 22. Radhakrishnan, S/o. L. Subramaniyan
Telecom Mechanic, HRD No. 1992-09557
BSNL Pattambi.

- Applicants

(By Advocate Mr. C.A. Joy)

Versus

1. Bharath Sanchar Nigam Limited
Represented by the Chairman &
Managing Director, Corporate Office
Statesman House, Barakhama Road
New Delhi – 110 001.
2. The Chief General Manager
Telecom, BSNL,
Thiruvananthapuram – 695 033.
3. The General Manager, Telecom
BSNL, Palakkad – 678 014.
4. The Accounts Officer
Office of GMT, BSNL
Palakkad – 678 014.

Respondents

(By Advocate Mr. Pradeep Krishna, ACGSC)

2. O.A. No. 502/2011

- 1 P.K. Radhakrishnan, S/o. P. Krishnankutty
Pottakad House, Mullurkara – 680 583
H.R No. 199310033, Telecom Mechanic
BSNL, Mullurkara, TCR.
- 2 C. Manoharan, S/o. Achuthan Nair
Thalthingal House, Mullurkara – 680 583.
H.R. No. 199308529, Telecom Mechanic
BSNL, Mullurkara, TCR.
- 3 T. Mohanadasan, S/o. Kelu
Thanissery House, Panjal – 679 531
H.R.No. 199308657, Telecom Mechanic
BSNL Chelakara, TCR.
- 4 E.N. Balakrishnan, S/o. Karappan
Elambilathudy House, Attur- 680 583
HR-199308538, Telecom Mechanic
BSNL, Mullurkara, TCR.
- 5 V.K. Mukundan, S/o. Vasu
Varavattur House, P. Telecom Mechanic,
BSNL, Pazhayannur.
- 6 B.A. Sankara Narayanan
S/o. Anthyalan, Kunnath House
Mullurkara – 680 583
HR-1994066584, Telecom Mechanic
BSNL, TCR.

- 7 O.V. Raju, S/o. O.A Valayudhan
Odathil House, R.V. Puram (P.O)
HR-199409395, Telecom Mechanic
SDEP, E-10B-II, BSNL, TCR.
- 8 M.K. George, S/o. Kuriakose
Mangattu House, Kumabalmkode (P.O)
Pazhayannur – 680 587.
HR-199405591, Telecom Mechanic,
BSNL, Pazhayannur.
- 9 K.N. Gopalan, S/o. Narayanan
Karakkattuthaiya Valappil House
Mullurkara (P.O) – 680 583.
HR-199305857, Telecom Mechanic
BSNL, Pazhayannur.
- 10 P. Rajan, S/o. Kochu Govindhan Nair
Peringannoor House, P.O. Kuttur – 680 013
HR-1993406377, Telecom Mechanic
SDE/OCB Central, BSNL, TCR.
- 11 Baby A.C., A.A. Chakku
Alappadan House, Chiyyaram (P.O)
HR- 199404230, Telecom Mechanic
E10-B, BSNL TCR.
- 12 T.J. Thomas, S/o. T.V. Jacob
Thottumali Puthen Parambil House
Pattikkad (P.O),
HR No. 199408757, Telecom Mechanic,
E10B-P/P, BSNL TCR.
- 13 K. Madhusudhanan, S/o. Narayanankutty
Kalaparambathu House, P.O Puthur
HR-199307398, Telecom Mechanic
E10-B, BSNL TCR.
- 14 M.G. Sarojini, D/o. M.K. Govindan
Mullikkal House, Pandikkave
P.O. Cheroor – 680 008
HR- 199409397, Telecom Mechanic
E-10-B-II, BSNL, TCR.
- 15 V.K. Rajan, S/o. Kochumon
Vakayil House, P.O. Nedupuzha
HR No. 199402057, Telecom Mechanic
E10-BI, BSNL, TCR.
- 16 P.A. Rappai, S/o. P.K. Antony
Paliyekkara House, P.O. Nettissery – 680 657
HR-1994.08134, Telecom Mechanic
E10-B-I, BSNL, TCR.

- 17 V. Mohana Sundaran, S/o. Sankara Narayana Nair
Kakarrad, Velloth House, P.O. Kavalappara – 679 523
H.R. No. 199403437, Telecom Mechanic
BSNL, Kunnamkulam.
- 18 P.K. Prabhakaran, S/o. Kunjunny
Palakkatuthodiyil House
P.O Attur – 680 583, HR No. 199407301
Telecom Mechanic, BSNL Kunnamkulam.
- 19 P.P. Sachidanandan, S/o. P.K. Prabhakaran
Pangal House, P.O. Kaiparambu – 680 546.
HR No. 199403663, Telecom Mechanic
BSNL, Kunnamkulam.
- 20 P.K. Asokan, S/o. Karappakutty
Parakkat House, P.O. Velur – 680 601
HR No. 199409269, Telecom Mechanic
BSNL, Vylathur.
- 21 P.S. Asokan, S/o. P.S. Sekharan
Pallikkara House, (P.O) Kanippayyur – 680 517.
Telecom Mechanic, BSNL, Kunnamkulam.
- 22 Balakrishnan, S/o. Kuttan Nair
Nadiyadath House, P.O. Vaka – 680 602
HR No. 199308071, Telecom Mechanic
BSNL, Puvathur.
- 23 M.R. Sathian, S/o. Raghavan M.K
Manchery House (P.O)
Koonamouchi – 680 504
Telecom Mechanic, BSNL Mattam.
- 24 M. Sasindran, S/o. R. Bhaskaran Nair
Rayirath House, (P.O) Puthur – 680 014
HR-199401352, Telecom Mechanic
SDE (CML), BSNL, Ollur, TCR.
- 25 K.V. Ajithkumar, S/o. Vasudevan
Kunnath House, (P.O) Pazhayannur
Vadakkatara – 680 587. HR No. 199303751
Telecom Mechanic, BSNL Thiruvillamala.
- 26 V.K. Murali, S/o. V.K. Kuttan
Villadathu House, Kammath Lane
P.O. Poothool, Pin – 680 004
HR No. 199310029, Telecom Mechanic
O/o. Installation, BSNL, TCR.
- 27 M. Sivarajan, S/o. N. Govindan Nair
Mookalathazhathu House
P.O Alloor – 680 602, HR No. 199409273

Telecom Mechanic, BSNL, Mattam.

- 28 P.T. John, S/o. P.L. Tharu
Puthur House, Peramangalam – 680 545.
HR No. 199309942, Telecom Mechanic
E10-B-II, BSNL, TCR.
- 29 P. Asokan, S/o. Narayanan Nair
Ponnath House, Velluthor – 680 016
HR No. 199408137, Telecom Mechanic
SDE External, BSNL, Ayyanthole.
- 30 M. Sugathakumari, D/o. V. Ramankutty Nair
Madathilathu House, Veluthor
Arimboor – 680 016. HR – 199405679
Telecom Mechanic, SDE External
BSNL, Ayyanthole.

- Applicants

(By Advocate Mr. C.A. Joy)

Versus

1. Bharath Sanchar Nigam Limited
Represented by the Chairman &
Managing Director, Corporate Office
Statesman House, Barakhama Road
New Delhi – 110 001.
2. The Chief General Manager
Telecom, BSNL
Thiruvananthapuram – 695 033.
3. The General Manager, Telecom
BSNL, Thrissur – 680 022.
4. The Accounts Officer
Office of GMT, BSNL
Thrissur – 680 022.

- Respondents

(By Advocate Mr. Pradeep Krishna, ACGSC)

3. O.A. No. 619/2011

1. A.A. Ramachandran, S/o. Achuthan
Andiyath House, Madakkathara (P.O)
Madakkathara – 680 651, H.R. No. 199303417
Telecom Mechanic, SDE, NDF & Power Plant
BSNL, TCR.
2. V. Gangadharan, S/o. Madhavan Nair
Vilakkathala House, C2 6, BSNL Quarters
Poohole – 680 004, HR No. 199405827
Telecom Mechanic, BSNL, Kuriachira, TCR.

3. T.A. Raman, S/o. Ayyappan
Thozhuthingaparambil House
P.O. Manalithara, Malaka – 680 589
H.R. No. 199406223, Telecom Mechanic
BSNL, Punnamparambu, TCR.
4. E.R. Bharathan, S/o. E.K. Raman
Edathara House, Kolazhy (P.O)
H.R. 199310027, Telecom Mechanic
BSNL-SDE, Broadband, TCR-I.
5. K.N. Manoharan, S/o. K.R. Mammunny
Koleyadath House, Kunnathumkara
Ollukara (P.O) – 680 655,
HR-199316384, Telecom Mechanic,
BSNL-Telephone Exchange, Peechi.
6. K.V. Paulson, S/o. Vareed
Karuvettil House, Ollur – 680 306
HR-199402872, Telecom Mechanic
Telephone Exchange, TCR.
7. E. Achuthankutty, S/o. P. Achuthan Nair
Pallath House, Peringavu P.O – 680 018.
HR-199408145, Telecom Mechanic
O/o. D.E. (Phones-I), BSNL, TCR.
8. K. Venugopalan, S/o. Gopi Nair
Kochaatal House,
Nandipulam (P.O) – 680 312
H.R. No. 199401412, Telecom Mechanic
O/o. S.D.E. Varandrapilly, BSNL.
9. T.K. Rajan, S/o. T.K. Kochu
Thachattil House, Valapad (P.O) – 680 567
HR-199406023, Telecom Mechanic
BSNL, Valapad.
10. K.S. Pavithran, S/o. Sankara Narayanan
Kallattuvalappil House,
P.O. Cheror – 680 008
HR-199409481, Telecom Mechanic
O/o. S.D.E Switch Installation, BSNL, TCR.
11. Satheesan M.C, S/o. Chandran M.V
Mullamkuzhi House,
Nedupuzha (P.O)-680 015
HR-199301638, Telecom Mechanic
O/o. SDE Switch Installation, BSNL TCR.
12. P.R. Baburaj, S/o. P.K. Raghavan
Poothoparambil House, Kurichikkara (P.O)
Ponganamkad – 680 028,
HR-199409478, Telecom Mechanic,
O/o. SDE Switch Installation, BSNL, TCR.

13. C.L. Jose, S/o. P.A. Lonappan
Panokkaran House,
Kanimangalam (P.O) – 680 027.
HR No. 199310030, Telecom Mechanic
O/o. SDE-Project Udaan P.G.M.T
BSNL, TCR.
14. K. Muraleedharan, S/o. Achuthapoduval
Kurujottil House, Vyyoor (P.O) – 680 010
H.R No.199406267, Telecom Mechanic
OCB Telephone Exchange, Pattalam, TCR.

- Applicants

(By Advocate Mr. C.A. Joy)

Versus

1. Bharath Sanchar Nigam Limited
Represented by the Chairman &
Managing Director, Corporate Office
Statesman House, Barakhama Road
New Delhi – 110 001.
2. The Chief General Manager
Telecom, BSNL
Thiruvananthapuram – 695 033.
3. The General Manager, Telecom
BSNL, Thrissur – 680 022.
4. The Accounts Officer
Office of GMT, BSNL
Thrissur – 680 022.

- Respondents

(By Advocate Mr. Pradeep Krishna, ACGSC)

4. O.A. No. 696/2011

- 1 V. Swaminathan, S/o. Velayudhan. K
HRD No. 199210637, SDE Pathiripala
EMP No. 7676010, Telecom Mechanic
BSNL, Parali. Residing at Poozhikunnam House
Pirayri (P.O) – 678 004, Palakkad.
- 2 V.T. Sukumaran, S/o. Theethy
HRD No. 199211570, SDE, Pathiripala
Telecom Mechanic, BSNL, Pathiripala
Residing at Vadakepura House
Mankurussi (P.O) – 678 613
- 3 C.M. Kumaran, S/o. Maani
HRD No. 199210125, SDE
Pathiripala, EMP No. 7667010
Telecom Mechanic, BSNL, Mundur,
Residing at Chrukuttykalam House,
Kinavellur, Parali (P.O), Palghat.

- 4 A. Parthan, S/o. Arumughan
H.R. No. 199210261, Telecom Mechanic
BSNL, Kanjikode, Residing at Nampallam House
Kottakkad (P.O), Palghat – 678 732.
- 5 K. Sukumaran, S/o. Kumaran
H.R. No. 199211581, Telecom Mechanic
BSNL, Akamalavaram, Malampuzha
Palghat, Residing at Kalmadam House
Akathethore (P.O), Palghat – 678 008.

- Applicants

(By Advocate Mr. C.A. Joy)

Versus

1. Bharath Sanchar Nigam Limited
Represented by the Chairman &
Managing Director, Corporate Office
Statesman House, Barakhama Road
New Delhi – 110 001.
2. The Chief General Manager
Telecom, BSNL
Thiruvananthapuram – 695 033.
3. The General Manager, Telecom
BSNL, Palakkad – 678 014.
4. The Accounts Officer
Office of GMT, BSNL
Palakkad - 678 014.

- Respondents

(By Advocate Mr. Pradeep Krishna, ACGSC)

These applications having been heard on 1st December, 2011, the Tribunal on 01-12-2011 delivered the following :-

ORDER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The above O.As are identical, in facts and issues. They were heard together and are disposed of by this common order.

2. The applicants who were working as Mazdoors in the Department of Telecom were absorbed as Group-D employees during the year 1992. They

got promotion as Telecom Mechanics prior to 01.10.2000, the date of formation of Bharat Sanchar Nigam Limited (BSNL) and the date of implementation of IDA pay scale. Their pay had been fixed directly on point to point basis in the IDA pay scale applicable to the Telephone Mechanics. Those persons who were working as Group-D employees on 01.10.2000 got their pay fixed in the IDA pay scale corresponding to Group-D post and on their promotion as Telecom mechanics after 01.10.2000, their pay again got refixed as per IDA pay scale giving rise to a situation where the juniors happened to draw higher pay than seniors. The above anomaly got rectified by granting stepping up of pay to the seniors, as per the order of the 2nd respondent dated 27.08.2004 after notifying Mr. Francis M. Fernandez as common junior. Later, the 2nd respondent ordered to cancel the stepping up of the pay of the Telecom Mechanics at par with the common junior, Mr. Francis M. Fernandez, and to recover the excess amount paid. In Writ Petition (C) No. 30582/2005, the Hon'ble High Court of Kerala as per the judgement date 24.07.2008 declared that the applicants are entitled to have their pay stepped up and equated with the pay of their juniors, who were promoted as Telecom Mechanics after 01.10.2000 and ordered reimbursement of the amount already recovered. The above judgement of the Single Bench of the Hon'ble High Court of Kerala was confirmed by the judgement of the Division Bench of the Hon'ble High Court in W.A. No. 1028/2009 dated 23.09.2009. The applicants had submitted representations to the first respondent requesting to revise the pay fixation and arrears of pay and other benefits, but to no avail. Aggrieved, they have filed these O.As mainly for a declaration that they are entitled for refixation of their pay based upon the stepping up given to Telecom Mechanics in other Divisions of the BSNL at par with the common

junior, Mr. Francis M. Fernandez or as in the case of Narayana Das and Abdul Salim K.K. and issue an order directing the respondents to disburse the arrears of salary and other benefits within a time limit fixed.

3. The applicants contended that the non extension of the benefit of stepping up of pay and entitlement of periodical increments and arrears as held by Hon'ble High Court of Kerala as per Annexures A-2 and A-3 judgements, is illegal, arbitrary and unjustifiable. There is no justification in not implementing in the Palakkad Division the stepping up granted to the Telecom Mechanics in other divisions of BSNL. In identical cases, such as O.A. No. 623/2009 and connected cases, O.A. Nos. 846/2010 and 558/2010 and connected cases, this Tribunal had held that the applicants therein should be granted the benefit of stepping up on par with their juniors who got promotion after 01.10.2000. Accordingly, the case of the applicants is covered by the decisions of this Tribunal in those cases.

4. The respondents in their reply statement submitted that the applicants who had chosen to acquiesce in the present anomaly for a long period is not entitled for discretionary relief as there is inordinate delay in approaching this Tribunal for redressal of their grievances, if any. The reason for senior getting less pay than the juniors is not on account of implementation of Fundamental Rules but due to the point to point pay fixation on conversion from the Central Dearness Allowance (CDA) pay scale to the Industrial Dearness Allowance (IDA) pay scale. Hence it is not an anomaly. A settlement reached by the staff side and the management had recommended for addressing the aberration cases in respect of Non-Executives by the grant of personal pay

subject to certain conditions mentioned in Annexure R-3. There is no clause in the agreement to enable the applicants by which they can claim pay equal to the pay which their juniors in service are drawing. They are eligible for the pay scales agreed upon only. The applicants pay cannot be stepped up with that of the junior since the difference has not risen from any disparity in incremental benefits but due to point to point fixation of pay on implementation of IDA pay scale with effect from 01.10.2000. So, the O.As are liable to be dismissed.

5. We have heard Mr. C.A. Joy, learned counsel for the applicants and Mr. Pradeep Krishna, learned counsel for the respondents and perused the records.

6. The respondents have not given any justification for not implementing in Palakkad Division alone the stepping up granted to the Telephone Mechanics in other Divisions of BSNL. We also do not see any merit in the contention that there was inordinate delay on their part in approaching this Tribunal for redressal of their grievances. In fact, the representations for their redressal of grievance at Annexure A-4 in these O.As have not been considered as yet by the respondents. It is the failure on the part of the respondents to discharge their duty to consider the representations submitted by the applicants, that has forced them to approach this Tribunal for redressal of their grievance. The judgement of the Hon'ble High Court in W.P.(C) No. 30582/2005 and the judgement of Hon'ble High Court in W.A. No. 1028/2009 confirming the same have settled the issue under consideration in these O.As. The contention of the respondents is that seniors drawing less pay than the juniors though the

juniors have been promoted later to the same post, is not an anomaly at all. The declaration that the petitioners in W.P.(C) No. 30582/2005 are entitled to have their pay stepped up and equated with the pay of their juniors who have been promoted as Telecom Mechanics after 01.10.2000, is applicable to the applicants herein also as they are similarly placed as the applicants in the aforesaid Writ Petition.

7. In O.A. No. 846/2000 decided on 14.01.2011, this Tribunal has held that the order issued on 30.08.2010 at Annexure R-4 does not redress the grievance of the applicant therein because the personal allowance that was granted would not count for any other purpose like pension, D.A. etc. Not counting the personal allowance for the purpose of pay including the pension and D.A. will result in the anomaly of senior drawing less emoluments or pension, as the case may be, than his junior. The aforesaid order dated 30.08.2010 does not meet out full justice to the applicant therein. The settled law as per the decision of the Apex Court in **Gurcharan Singh Grewal and Another vs. Punjab State Electricity Board**, (2009) 1 SCC (L&S) 578, is that a senior cannot be paid a lesser salary than his junior. In **Union of India and Others vs. P. Jagdish and Others**, AIR 1997 SC 1783, the Apex Court upheld the principle of stepping up of pay to remove the anomaly of juniors getting higher pay than their seniors. Following the ratio of the decisions of the Hon'ble Apex Court and the Hon'ble High Court of Kerala and orders of this Tribunal in O.A. Nos. 623/2009 and connected cases, O.A. Nos. 846/2010, 558/2010 and connected cases, we have no hesitation in allowing these O.As. Accordingly, it is ordered as under.

8. During the period when the applicants were paid less pay than their juniors, they are entitled to get the same monetary consideration as their juniors. Accordingly, we declare that the applicants are entitled for stepping up of their pay equal to that of the common junior, Mr. Francis M. Fernandez and their pay shall be accordingly refixed. However, the arrears of monetary benefits will be paid limited to a period of 3 years prior to the filing of these O.As and thereafter. The respondents are directed to issue appropriate orders and disburse the amount due to the applicants within a period of three months from the date of receipt of a copy of this order.

9. The O.As are allowed as above with no order as to costs.

(Dated, the 01st December 2011)

K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER

JUSTICE P.R.RAMAN
JUDICIAL MEMBER

cvr.