

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## ERNAKULAM BENCH AT ERNAKULAM

ORIGINAL APPLICATION NO.619 OF 2012THURSDAY, THIS THE 18<sup>th</sup> DAY OF SEPTEMBER, 2014

HON'BLE SHRI.U. SARATHCHANDRAN ....MEMBER (J)

HON'BLE SHRI.P.K.PRADHAN .....MEMBER (A)

N.D.Gopi, S/o Late Damodaran,  
 Aged 59 years, Telecom Mechanic,  
 O/o SDE, Telephone Exchange,  
 Ravipuram, Kochi – 682016,  
 Residing at Nagapillil Thundiya House,  
 Thycoodam, Vytilla P.O., Kochi – 682019

...Applicant

(By Advocate Shri.P.A.Kumaran)

Vs.

1. Bharath Sanchar Nigam Ltd.,  
 Represented by its Chairman and  
 Managing Director, Sanchar Bhavan, New Delhi.
2. Chief General Manager, Telecom,  
 BSNL, Kerala Circle, Trivandrum.
3. Principal General Manager Telecommunication,  
 Bharat Sanchar Nigam Ltd., Ernakulam SSA, Ernakulam.
4. Union of India  
 Represented by its Secretary  
 to Government of India,  
 Department of Communications,  
 New Delhi.

....Respondents

(By Advocates Shri Pradeep Krishna for R-1 and 3 and Shri Varghese P.  
 Thomas for R-2 and 4)

ORDERPer: HON'BLE SHRI.P K PRADHAN, MEMBER (A)

The above application is filed under Section 19 of the Administrative  
 Tribunals Act, 1985 seeking the following relief:-



- i. To call for the records leading to Annexure A12 and to quash the same to the extent it provides for absorbing of personal pay granted in future increments and to the extent that it does not consider the anomaly arising out of fixation under FR 22 (I)(a)(I) and to the extent it stipulates that the option with respect to the junior as against whom pay parity is sought will be final;
- ii. To declare that the applicant is entitled to get stepping up of pay to that of his junior 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 direct the respondents to step up the pay of the applicant to that of his juniors Sri.V.V.Asokan and T.X.Vacco and to pay the arrears with effect from the date of stepping up of pay.

2. The applicant joined service under the respondents as Linemen under the erstwhile Department of Telecom in the year 1974. He was granted the higher grade of Sub Inspector of Phones [SI(OP)] for short] on completion of 16 years of service under the OTBP scheme with effect from 16.03.1990. Subsequent to the implementation of recommendation of V Pay Commission the applicant was drawing a pay in the OTBP pay scale of Rs.3200-85-4900 with effect from 10.10.1997 (Annexure A1). The applicant was also granted Grade III under BCR scheme with effect from 01.07.2000 on completion of 26 years of service in the pay scale Rs.4000-100-6000. It is submitted that the applicant's junior Sri. V.V. Ashokan was also granted the Grade III with effect from 01.01.2001 vide Order No.ST/EK-20/4(a)/SSA/II/46 dated 03.10.2001 (Annexure A2). The applicant's pay was fixed at Rs.4,400/- with effect from 01.03.2001 vide order dated 16.10.2001 (Annexure-A/1) with the date of next increment being 01.03.2002 in accordance with F.R 22 I(a)(1).



3. The applicant was drawing pay in the pay scale of 4000-6000 as on 01.10.2000 when the Department of Telecom was converted into Bharat Sanchar Nigam Ltd. The applicant, and other employees, were kept on deemed deputation to the Corporation. Later they were retrospectively absorbed into the 1st respondent Corporation with effect from 01.10.2000 based on their options. In 2002, the Central Dearness Allowance pay scales were replaced with Industrial Dearness Allowance pay scale retrospectively from 01.10.2000 (Annexure A4). Based on Annexure A4 a point to point fixation was given to the applicant. Applicant's pay was fixed at Rs.6020/- on the IDA scale 5700-160-8100 (Annexure - A5). The pay of V.V.Asokan who is junior to the applicant was refixed at Rs.6370/- (Annexure-A6). Sri.V.V.Asokan pay was further refixed at Rs.6820/- on being granted the grade III in BCR scheme (Annexure-A6(A)).

4. Due to the point to point fixation done, applicant who was in the Grade III BCR scale of Rs.4000-6000 as on 01.10.2000 itself got no benefit of increment in the revised IDA scale. Whereas Sri.V.V.Asokan who was in the lower scale of Rs.3200-4900 as on 01.10.2000 got the benefit of 11 increments in the IDA scale of Rs.4720-6970. Thus the applicant's pay in the IDA scale as on 01.10.2000 was fixed at Rs.6020/- whereas the junior Sri.V.V.Asokan's pay was fixed at Rs.6370/-. Thus consequent to the revision of pay from the CDA scale to the IDA scale the applicant's junior Sri.V.V.Asokan started to draw a higher pay due to the application of the point to point fixation as contemplated under Annexure-A4. Thereafter on refixing

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the pay on the basis of grant of Grade III in BCR scheme, the applicant's pay was fixed at Rs.6340/- with effect from 01.03.2001 and Sri.V.V.Asokan's pay was fixed at Rs.6820/- with effect from 01.07.2001. Thus the junior of the applicant stated drawing an even higher pay consequent to the promotion. Sri.Vacco T.X is one another person who was also granted the benefit of 11 increments and pay fixed At Rs.6820/- in the IDA scale of Rs.5700-8100.

5. Subsequently the applicant and his juniors was granted promotions as Telecom Mechanics with effect from 20.02.2002 vide order No.Admn-II/267/4/IV/2001-03/93 dated 11.10.2002 (Annexure-A7). Accordingly their pay was refixed. The applicant started drawing a pay of Rs.7105/- in the pay scale of Rs.6550-185-9325 with effect from 20.02.2002. Sri.V.V.Asokan pay was fixed at Rs. 7290/- with effect from 01.07.2002. Sri.V.V.Asokan was once again given the benefit of one increment in the lower scale before refixing his pay in the grade of Telecom Mechanic. The applicant was not granted the same. Hence the anomaly got accentuated as would be evident from the pay fixation memo dated 25.02.2005 of the applicant and pay fixation memo dated 11.05.2004 of Sri.V.V.Asokan (Annexures A-6 and-A9). The applicant made several representations requesting to rectify the anomaly whereby his junior was drawing higher pay than him. The representation dated 20.07.2009 is at Annexure-A10. When the revised pay scales were introduced with effect from 01.01.2007 the anomaly became more evident. The applicant made representations requesting to set right this anomaly. The representation dated 02.08.2011 is at (Annexure-A11). Various anomalies arising out of fixation of

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pay in the IDA pay scales was referred to a Committee. The anomaly of a senior official in the Telecom Mechanic cadre drawing higher pay than his junior getting lesser pay after point to point fixation in the IDA scale was one among them. After considering the report of the Committee it was decided Vide Order No.250-5/2005-Pers III(PI) to grant personal allowance to equate the pay of the senior with a junior of his choice by grant of personal allowance. It is also provided that the said allowance will be absorbed in future allowances dated 30.08.2010 (Annexure-A12).

6. The above-said order dated 30.08.2010 fails to address the anomaly comprehensively. The point to point fixation given with effect from 01.10.2000 results in huge difference of pay in favour of the Junior Officials since the benefits would be siphoned off when it is absorbed in future increments. A similar case of anomaly arising due to anomaly arising due to point to point fixation was considered by the Tribunal in O.A No.968/2010. The Tribunal vide order dated 17.11.2011 allowed the Original Application and directed the respondents to step up the pay of the applicant's therein to that of their junior. (Annexure-A13). The applicant is also entitled to similar benefits. Annexure-A12 though it purports to set right the anomaly miserably falls short of addressing the issue. Grant of personal pay to be absorbed in future increments will at best be a temporary and short lived solution to the anomaly. Further the augmentation of the anomaly by grant of fixation under FR 22 (I)(a)(i) is not considered by the respondents.

7. The respondents have filed reply statement and submitted that the difference in pay of the applicant and his junior arose because of the



applicant's non-option for beneficial fixation of pay as per Rules on his promotion to Telephone Mechanic cadre on 20.02.2002. The said matter is taken up after 10 years, the O.A may be dismissed considering the Law of Limitation. The applicant is not eligible for grant of pay equivalent to that of his junior as per rules. The applicant was promoted to the BCR Scale of Line man on 01.07.2000. The applicant opted for fixation of pay on increment date, on promotion to the BCR scale of 4000-100-6000 (CDA) as per orders contained in DOT Circular No.1-1(1)/06-PAT dated 12th Sept 2006 and hence his pay was fixed initially under FR 22 1(a)(i) at Rs.4200 on the date of promotion. Subsequently on formation of BSNL, this pay was refixed at Rs.6020 on 01.10.2000 in the equivalent IDA scale of pay of Rs.5700-160-8100. This pay was again refixed at Rs.6820 under FR 22 1(a)(i) as per his option on his date of next increment, i.e., 01.03.2001 in the same scale. His junior Shri.V.V.Asokan got the LM-BCR promotion later only on 01.07.2001 and as per his option for fixation of pay on increment date i.e. on 01.07.2001, his pay was fixed at Rs.6820 in the scale of pay of Rs.5700-160-8100 on 01.07.2001. The applicant Shri.N.D.Gopi started drawing pay of Rs.6820 as per his option with effect from 01.03.2001 whereas his junior Shri.V.V.Asokan from 01.07.2001 only, i.e., 4 months later. Hence there was no pay anomaly as purported to be made out.

8. However, it is further submitted that as per Circular No.32 (BSNL HQ Letter No.1-5/2004/PAT(BSNL) dated 27.09.2012) at Annexure-R2, the above position has since been altered since pay fixations done earlier under

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Annexure-R1 orders had to be revised. as per the above circular, BSNL endorsed two important orders of Department of Telecommunications, restricting the scope of the R1-type pay fixation in IDA pay scale in respect of absorbed officials of BSNL who were promoted prior to 01.10.2000 but opted under FR 22 (1) (a) (1) for fixation of their pay in the promoted scale on the date of their next increment in the lower grade which falls after 01.01.2000.

*'The option of fixing the pay from the next increment date available under FR 22 will not be available for the employees of BSNL since their status has changed with effect from 01.10.2000. Hence their pay will have to be re-fixed on the date of their promotion as per then existing rules prior to 01.10.2000 and no re-fixation can be permitted on the next increment date which is falling after 01.10.2000'.*

9. Accordingly, on receipt of Annexure R2(a) and Annexure R2 (b) orders, the pay of Shri.N.D.Gopi was refixed again as on 01.07.2000 at Rs.4300/- granting all consequential benefits thereto. This refixation resulted in a marginal variation of the pay of Shri.N.D.Gopi with reference to the earlier fixation. The pay on 01.07.2000 has increased from Rs.4200 to Rs.4300, but his current pay as on 01.02.2012 has been reduced to Rs.19700 from Rs.21210. The Due Drawn statement of pay in respect of the applicant is at Annexure R3. On account of the above refixation of pay of Shri.N.D.Gopi, the relative position of juniors has also changed. His pay vis-à-vis his juniors has also changed.

10. As per the earlier position, the applicant Shri.N.D.Gopi and his juniors Shri.V.V.Asokan, Shri.T.X.Vacco got promotion to the post of Telephone Mechanic on 20.02.2002 vide Annexure A7 order dated 11.10.2002 wherein

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the condition for submission of option for fixation of pay within one month was also there. The applicants and his juniors were drawing Rs.6820 in the scale of pay of Rs.5700-160-8100 at the time of promotion. The date of increment of the applicant was 01.03.2002, while that of Shri.V.V.Asokan and Shri.T.X.Vacco were 01.07.2002. Shri.V.V.Asokan and Shri.T.X.Vacco diligently opted for fixation of pay on promotion on their increment date, and got their pay fixed at Rs.7290 in the scale 6550-185-9325. Whereas the applicant had not exercised the option for fixation on increment date within the stipulated time and got his pay fixed on promotion date i.e., 20.02.2002 itself at Rs.7105 in the scale of 6550-185-9325. The applicant did not act with same diligence as his juniors and this resulted in his drawing less pay than his two juniors.

11. Since the said matter is taken up after 10 years, after the expiry of the eligible period, the above O.A may be dismissed considering the Law of Limitation and also as per Section 21 of the Central Administrative Tribunals Act 1985. It is submitted that the applicant was drawing less pay for a short period from 01.10.2000 to 28.02.2001, due to intermediate fixation as per his option for fixation on the next increment date consequent to his BCR promotion on 01.07.2000. He started drawing more pay than his juniors Shri.V.V.Asokan and Shri.T.X.Vacco from the date of fixation on the next increment date. In other words, Shri.Asokan and Shri.Vacoo were drawing higher pay during the short interval, not because of the direct application of fixation of pay on 01.10.2000, but as a result of the applicant's option.

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12. The respondents further submitted that the applicant Shri.N.D.Gopi and his junior Shri.V.V.Asokan, Shri.T.X.Vacco were got promotion to the post of Telephone Mechanic on 20.02.2002 vide Annexure A7 order dated 11.10.2002 wherein the condition for submission of option for fixation of pay within one month was also there. The applicant and his juniors were drawing Rs.6820 in the scale of pay of Rs.5700-160-8100 at the time of promotion with the date of increments on 01.03.2002 for the applicant Shri.N.D.Gopi and 01.07.2002 for Shri.V.V.Asokan & Shri.T.X.Vacco. Shri.V.V.Asokan & Shri.T.X.Vacco opted for fixation of pay on promotion with effect from their increment date, i.e on 01.07.2002 and got their pay fixed at Rs.7290 in the scale 6550-185-9325. The copy of the said fixation memos are at Annexure R5(a), R5(b), and Annexure R6(a), R6(b). Whereas the applicant Shri.N.D.Gopi had not exercised the option for fixation on increment date within the stipulated time and got his pay fixed on promotion date i.e. 20.02.2002 itself at a lower rate of Rs.7105 in the scale of 6550-185-9325 as per Annexure R4 Memo. The applicant's lack of diligence to act in time resulted in his drawing less pay than his two juniors who have availed the chance of option and got their pay fixed beneficially. It is submitted that the averments in the grounds the original application and reliefs sought for are neither tenable nor sustainable and the application is devoid on merits.

13. The applicant in his rejoinder submitted that as regards the stepping up of the pay of the applicant at par with his junior, the point stands settled in favour of the applicant by virtue of the decision of this Tribunal in O.A



No.749/2008 which was affirmed by the Hon'ble High Court as per its judgment in W.P(C) 4436/2010 (Annexure A-14). The plea of limitation is concerned, the same is also untenable. The issue essentially is one of fixation of pay and hence the cause of action is recurring. Hence the dictum in Union of India vs. Tarsem Singh squarely applies to the facts and circumstances of present case.

14. Heard the learned counsel for the parties.

15. The learned counsel for the applicant submitted that the junior to the applicant Shri Asokan got less pay as on 01.07.2000. However, the anomaly arose at the time of point to point fixation in the IDA scale. The contention of the respondents that the anomaly arose due to non-exercise of option by the applicant during promotion has resulted in the anomaly does not hold good as the anomaly arose prior to that. He referred to the judgment of this Tribunal in OA No.749/2008 which held that in normal circumstances the junior shall not draw more pay than his senior in the same cadre. If there is any such disparity, it is nothing but a anomalous and has to be corrected. This order of the Tribunal was also confirmed by the Hon'ble High Court of Kerala. He further highlighted the contention made in the OA and claimed that the applicant is entitled to get pay at par with the junior and hence, should be allowed the relief as sought for. He also referred to further re-fixation of the pay of the applicant which has further reduced his pay and aggravated the situation.



16. The learned counsel for the respondents on the other hand reiterated the facts submitted in the reply and submitted that the anomaly arose due to non-exercise of option for fixation of increment date which was done so by his junior when the applicant and the junior got promotion to the post of Telephone Mechanic on 20.02.2002. He also raised the issue of limitation since the matter has been taken up after 10 years. Therefore, he submitted on this account alone, the OA should be dismissed though it is also devoid of merit. On the issue of further re-fixation of pay of the applicant, he submitted that this has been done in terms of the fresh order issued by respondents.

17. We have carefully considered the facts of the case as highlighted in the OA and the reply and also the submissions made by the parties.

18. It is the undisputed fact that Shri B.V. Asokan and Shri T.X. Vacoo were juniors to the applicant and were in same service and in same grade. The issue therefore, arose whether they are getting more pay than their senior, i.e., the present applicant and the applicant is entitled to get pay at par with his juniors. There is also another issue involved in this case, i.e., the applicant's pay due to a revised circular issued by DoT and the BSNL and which, according to the respondents has further changed the position of pay of the applicant vis-à-vis his juniors. But this issue has been the subject matter of another OA before this Tribunal and hence is not taken up in the present OA. The statement produced by respondents at Annexure-R/3 (1,2) clearly shows that subsequent to revised pay fixation, the junior Shri T.X. Vacoo started drawing higher pay than the applicant right from 01.10.2000.



The difference has become more pronounced after the pay of the applicant was revised subsequent to the circular dated 05.08.2012 issued by the BSNL as a corollary to circular of 17.12.2008 issued by the DoT.

19. In this context, it will be relevant to examine the circular issued by DoT in 2006 and 2008 and the subsequent circular issued by BSNL in 2012. The 2006 circular primarily referred to absorbed officials of BSNL who were promoted prior to 01.10.2000 but opted under FR 22 (1) (a) for fixation of pay in the promoted scale on the date of their next increment in the lower grade which fall after 01.10.2000 and stipulated that they are entitled to avail of the provision of FR 22 (1)(a)(i) while fixing the pay under IDA scale. The 2008 circular reviewed the said clarification and clearly stipulated that the option of fixing the pay from the next date of increment available under FR 22 will not be available for the employees of BSNL since their status changed on 01.10.2000.

20. This circular of 2008 was issued by the DoT after consulting the nodal Ministry for Public undertakings, i.e., the Department of Public enterprises. As a corollary to their order of 2008 issued by DoT, the BSNL issued Circular No.32 in 2012. From Annexure-R/5 (a) and (b) as well as Annexure-R/6 (a) and (b), it appears that both Shri V.V. Asokan and Shri T.X. Vacoov have given option for fixation under FR 22 (1) (a) and their pay was fixed accordingly. But, the provision of FR 22 is not available to BSNL employees in terms of DoT circular of 2008 and further circular issued by BSNL in 2012. According to the order introducing the IDA scale for BSNL employees with effect from



01.10.2000, to pay is to be fixed in the corresponding pay scale from the date of promotion under the normal rules. Since the provision of FR 22 is not available to the BSNL employees, the stand of the respondents that the anomaly arose as the juniors have availed the option of pay fixation under FR 22 (1)(a) will no longer hold good now. May be at that point of time, i.e., in May, 2004, the DoT and the BSNL were under a wrong presumption and fixed pay of the juniors to applicant allowing them the benefit of FR 22 (1)(a)(i) even though it was not actually available to them. . But after the circular of 2008 which makes it clear that the benefit of FR 22 is not applicable to the BSNL employees since it is a PSU, the stand of the respondents justifying the anomaly on account juniors taking benefit under FR 22 (1)(a) appears incorrect. The respondents are completely silent as to whether the pay fixation of V.V. Asokan and T.X. Vacco have also been revised subsequent to the revised circular of BSNL in 2012 as the benefit of FR 22 which was allowed to them is not correct as this was not available to them being BSNL employees.


21. Under any circumstances, we completely agree with the observation of this Tribunal in OA No.749/2008 which was also upheld by the Hon'ble High Court of Kerala in WP © No.4436/2010 that in normal circumstances, the junior shall not draw more pay than his senior in the same cadre. If there is any such disparity, it is nothing but an anomaly and it has to be corrected. In this case, there is no special circumstance which justifies the two juniors drawing higher pay than the applicant. Therefore, we feel it appropriate to

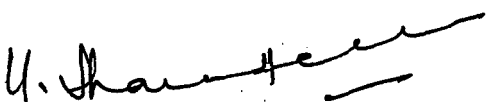


direct the respondents to re-examine the pay fixation done in respect of Shri V.V. Asokan and T.X. Vacco, the juniors to the applicant since we are of the view that they are not entitled to get the benefit of FR 22 in terms of the circular of DoT dated 17.12.2008 and circular No.32 of BSNL dated 27.09.2012. However, after the re-examination of the pay fixed for the two juniors, if they are still found to be drawing higher pay, then the applicant is entitled to have parity in pay with his juniors i.e., to get the same pay as drawn by the juniors from 01.10.2000 onwards since they belong to the same cadre and are covered by the same service conditions.

22. Therefore, after considering the entire facts and circumstances of the case, we direct the respondents to re-examine the fixation of pay of the two juniors with whom the applicant has sought parity of pay in the light of OM dated 17.12.2008 issued by the DoT and circular No.32 of BSNL dated 27.09.2012. Thereafter, if the juniors are still found to be drawing higher pay than the applicant, then the applicant's pay shall be stepped up at par with his juniors right from the date when the anomalous situation arose. The entire exercise should be completed within a period of three months from the date of receipt of a copy of this order.

23. The OA is allowed in terms of the above directions. No order as to costs.

  
(P.K. PRADHAN)  
MEMBER (A)

  
(U. SARATHCHANDRAN)  
MEMBER (J)