CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 109 OF 2011
w i t h
O.A. No. 110/2011 and 236/2011

Wednesday..., this the 07th day of December 2011

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

1. O.A. No. 109/2011 :

1. M. Sethumadhavan,
S/o. Late M. Krishnan Nair,
Divisional Engineer Telecom,
Transmission Projects, 1st Floor,
Microwave Building,
Vellayil Telephone Bhawan,
Gandhi Road, Kozhikode.

2. Govindan V., S/o. Achuthan T.
Assistant General Manager (Transmission),
Office of the General Manager Telecom,
Palakkad – 678 014,
Residing at Thazhathethil House (P.O),
Punchappadam, Palakkad – 678 634.

3. M. Sankaran,
S/o. M.C. Neelakandhan Namboodiri,
Divisional Engineer, Telecom, Kongad,
Residing at Abhisree, Edathara (P.O),
Palakkad – 678 611.

4. T.M. Lakshmana Rao,
S/o. Late Madhava Naik,
Divisional Engineer (NSS),
Mobile Services, Telephone Exchange,
Vattapally, Changanacherry – 686 101.
Residing at Thirkovil House,
Arpookara East (P.O), Kottayam – 686 008.

5. R. Sukumara Pillai,
Nandavanam,
Assistant General Manager,
Office of the General Manager (BSNL),
Alappuzha, Residing at
Chirakkadavam, Kayamkulam (P.O)
PIN – 690 502.

6. K.C. Joseph, S/o. Late A.V. Chacko
Assistant General Manager
Office of the General Manager (BSNL)
Alappuzha. Residing at
Kochupurackal CMC-XV
Cherthala (P.O) – 88 524.

7. N. Seetha, W/o. K.S. Krishnakumar
Divisional Engineer (Project Manager)
Project Udaal, Office of PGMT
BSNL Bhavan, Cochin – 682 016
Residing at Suryaprabha, G-4, FACT Nagar
Thrippunithura – 682 301
Ernakulam District.

8. Rema Mohandas, W/o. K.C. Mohandas
Kollara House, 30/1125 A
Cosmos Road, Vyttila, Cochin – 682 019.
Assistant General Manager
(UP, office of the PGMT
BSNL Bhavan, Ernakulam
Cochin – 682 016.

9. T.V. Monzi, S/o T.M. Varkey
Panchami House,
Agastianmuzhi, Mukkom (P.O)
Calicut, Retired Divisional Engineer
Transmissions (Eqpts.) Vellayil, Calicut.

10. K.K. Kuttikrishnan, S/o. G. Kesavan Pillai
Assistant General Manager (Sales)
Office of the Deputy General Manager (EB)
BSNL Bhavan, Ernakulam, Cochin – 682 016.
Residing at House No. 34/2242A, Deepam Lane
Thambrattiparambil Road
Mamangalam, Cochin – 682 025.

11. C.M. Purushothaman, S/o. C.K. Madhavan
1707 A, Charamkandathil,
Vyttila, Kochi – 682 019.
Divisional Engineers, Sales Head
Project Vijay, Office of the PGMT
BSNL Bhavan, Kalathiparambil Road
Cochin – 682 016. ... Applicants

(By Advocate Mr.P. Chandrasekharan)

Versus

1. Bharat Sanchar Nigam Limited
Represented by its Managing Director
Corporate Office, 4th Floor
Bharat Sanchar Bhawan
New Delhi – 110 001.

2. The Chief General Manager
Telecom, Kerala Circle
Trivandrum – 695 033. ... Respondents

(By Advocate Mr. V. Santharam)

2. O.A. No. 110/2011 :

1 K.G. Balakrishnan Pillai, S/o. Govinda Pillai
Residing at Divisional Engineer
Telecom, Cherthala.
Gangothri, Cherthala – 688 524.

2 B. Balachandran, S/o. Bhaskara Panicker
Divisional Engineer (Vigilance), Office of the
General Manager, Telecom, Alappuzha.]
Residing at Akshatha Punnapra
Alappuzha – 688 004.

3 P.M. Vasavan, S/o. A.K. Madhavan
Gokulam, Omakareswaram
Varanad (P.O), Cherthala – 688 543.

4 M. Sahadevan, S/o. Late Kaliyappan
Area Manager, Manjeri SSA,
Malappuram District.
Residing at Mangalath House PM 20/55 (1)
Kidang, LIC Road, Perinthalmanna
Pin- 679 322.

5 K.K. Karthiayani, W/o. Purushothaman Nair
Divisional Engineer (Internal)
Telephone Exchange, Panampilly Nagar
Residing at 31/291 Junior Janatha Road,
Vyttila, Cochin - 682 019.

6 T.C. Chacko, S/o. Chacko Chacko
Madappally Village, Changanasserry
Kottayam District, retired Divisional Engineer.

7 V.I. Sam, 10/513 Puthupariyaram
Kallekulangara (P.O), Palakkad – 678 009
Retired AGM (OP & Admn), BSNL
Palakkad.

8 T.C. Baby, S/o. T.U. Chacko
Mandapathil House, Koothattukulam
Ernakulam District – 686 662
Divisional Engineer (NSS) BSNL
Mobile Services, Telephone Exchange
Panampilly Nagar, Ernakulam – 682 025.

9 K.L. Santhakumary,
W/o. Chandrasekhara Warrier
Chandni, XXI/252, Hospital Road
Opp. RLV Music College,
Thrippunithura – 682 301.
Divisional Engineer
(Assistant General Manager) R&E,
Office of PGMT,BSNL, Cochin – 682 016. ... Applicants

(By Advocate Mr.P. Chandrasekharan)

Versus

1. Bharat Sanchar Nigam Limited
Represented by its Managing Director
Corporate Office, 4th Floor
Bharat Sanchar Bhawan
New Delhi – 110 001.

2. The Chief General Manager
Telecom, Kerala Circle
Trivandrum – 695 033. ... Respondents

(By Advocate Mr. V. Santharam)

3. O.A. No. 236/2011 :

1. Sasidharan K,
S/o. E.K. Kunhikrishna Varma Raja
Residing at Indeevaram,
Madappally College, Vatakara – 673 101.
Divisional Engineer OCB,
Badagara, Kozhikode.

2. V.C. Sukumaran,
S/o. Late V.A. Chandran
PMC 7/73, Vichatt Lane,
Perumbavoor – 683 542.
Divisional Engineer, DET
Telephone Exchange, BSNL,
Perumbavoor.

3. Mary Johnson, W/o. M.F. Johnson
Residing at 30/1602/1, Maliyeckal
Narayanan Asan Road, Ponnurunni
Vyttila – 682 019. ... Applicants

(By Advocate Mr.P. Chandrasekharan)

Versus

1. Bharat Sanchar Nigam Limited
Represented by its Managing Director
Corporate Office, 4th Floor
Bharat Sanchar Bhawan
New Delhi – 110 001.

2. The Chief General Manager
Telecom, Kerala Circle
Trivandrum – 695 033. ... Respondents

(By Advocate Mr. V. Santharam)

These applications having been heard on 22.11.11, the Tribunal on 07.12.11 delivered the following:

ORDER

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

Having common facts and issues, these O.As were heard together and are disposed of by this common order.

2. The applicants in these O.As as well as their juniors were granted first time bound upgradation to the scale of pay of Senior SDE, i.e. E-3 Scale Rs. 13000-350-18250 on 01.10.2004 as per Annexure A-1 executive promotional policy order. The due date for the 2nd time bound upgradation for the applicants and their juniors was on 01.10.2009. Being seniors, the applicants got ad hoc promotion to E-4 pay scale in the year 2008. Their juniors got ad hoc promotion after the 2nd time bound upgradation on 01.10.2009. As a result, the juniors drew more pay than the applicants. Aggrieved, the applicants have filed these O.As for a direction to the respondents 1 and 2 to grant them the 2nd time bound upgradation in scale of pay in the substantive cadre of Sub Divisional Engineer, fix their pay accordingly and refix their pay consequentially in the scale of pay of post in the cadre of Divisional Engineer

as has been done in the case of their juniors and to grant them all consequential monetary benefits including arrears of pay forthwith.

3. The applicants submit that denial of the 2nd time bound upgradation in the scale of pay of SDE to the applicants solely for the reason that they accepted ad hoc promotion to the cadre of Divisional Engineer and while continuing in the substantive post of Sub Divisional Engineer and granting the said benefit to the juniors of the applicants thereby stepping up of their pay above the pay of the applicants is highly arbitrary, discriminatory and is violative of principles of equal pay for equal work.

4. The respondents in their reply statements submitted that since the juniors have not got ad hoc promotion as Divisional Engineer till the due date of the 2nd time bound upgradation, i.e. as on 01.10.2009, they were given the 2nd time bound upgradation on completion of 5 years. As the juniors were given ad hoc promotion after the 2nd time bound upgradation, they would draw more pay than the applicants due to their length of service in the cadre of SDE by virtue of Annexure A-1 Scheme. Hence, the principle of equal pay for equal work is not applicable in the facts and circumstances of the instant case. The ad hoc promotion given to the applicants in the pay scale of Rs. 29100-54500 (E4 scale) before 01.10.2009 has been considered as post based promotion because the benefit of E4 pay scale given earlier on post based ad hoc promotion. The respondents considered the ad hoc promotion given to the applicants as post based promotion. They are not eligible for financial upgradation on 01.10.2009. The period of 6 months has not expired since the submission of representation of the applicants on the subject of their

getting less pay than their juniors to confer jurisdiction on this Tribunal. None of the juniors of the applicants is arrayed as party to these O.As. The anomaly arising out of the situation as brought up in these O.As is already under consideration of a Committee whose report is awaited. The applicants have not challenged Annexure A-1 policy on any ground whatsoever.

5. In the rejoinders filed by the applicants, it was submitted that none of the representations submitted by the applicants are statutory appeals or petitions but only requests in the nature of demand preceding their remedy before this Tribunal. No statutory remedies are required to be exhausted by the applicants before approaching this Tribunal in the facts and circumstances of the case, Therefore, the O.A. is not premature. None of the juniors of the applicants are adversely affected by the reliefs prayed for by the applicants . Therefore, it is not necessary to join them as parties to this O.A. The juniors got 2nd time bound promotion on 01.10.2009 from Senior SDE and got the benefit of pay fixation. They got one more benefit of pay fixation when they were given promotion to the post of Divisional Engineer (ad hoc) on 30.06.2010. The juniors were given the benefit of two fixations from Senior SDE cadre, but the applicants who are seniors got only one fixation from Senior SDE cadre. Because of this, the juniors are getting more pay than them. Most of the applicants have already retired and others are on the verge of retirement. Even after ad hoc promotion, the applicants are entitled to the 2nd time bound upgradation in view of the fact that there will be no change in substantive status, designation and duties and responsibilities of the executive upon ad hoc promotion unless ordered otherwise in any specific context.

6. In the additional reply statements, the respondents submitted that on post based ad hoc promotion to DE cadre (E-4), there is a change in substantive status, designation and duties of the applicants. The applicants got ad hoc promotion to the post of Divisional Engineer and thereby got E-4 scale earlier with the benefit of pay fixation on 01.01.2008 or 05.07.2008 or 22.07.2008, as the case may be, that is prior to the normal E-4 upgradation due on 01.10.2009. The applicants being seniors will get their subsequent upgradation after 5 years in the year 2013, i.e. on 01.10.2003, while the juniors will get the same on 01.10.2014. The juniors got their E4 upgradation (2nd) on 01.10.2009 and then they got DE (ad hoc) promotion on 30.06.2010. The time bound upgradation of IDA pay scale of any executive under the promotion policy is personal to the executive concerned, therefore, it cannot be compared with others. On ad hoc promotion as DE, which is post based, there is change in substantive status, designation and duties. The promotion/upgradation given to the applicants are as per the existing rules governing the subject and the applicants are not entitled for the claim put forth by them.

7. We have heard Mr. P. Chandrasekharan, learned counsel for the applicant and Mr. V. Santharam, learned counsel for the respondents and perused the records.

8. In service jurisprudence, the general principle is that senior gets more pay than junior, if not, at least the same pay as junior. Senior getting less pay than junior is an anomaly. It is generally resolved by stepping up the pay of

senior to the level of pay of junior. In the instant cases, seniors are getting less pay than the juniors without any justifiable reason for being an exception to the general principle. This constitutes an anomaly.

9. The root cause of the anomaly is the policy of the respondents which allows the benefit of pay fixation upon time bound financial upgradation as well as upon ad hoc/regular promotion. The juniors in the instant cases got the benefit of pay fixation on the 2nd time bound financial upgradation on 01.10.2009 and on post based ad hoc promotion on 30.06.2010 whereas the applicants being seniors got post based ad hoc promotion in 2008 with the benefit of pay fixation and because of the post based ad hoc promotion, which is considered as post based promotion, they were not given the 2nd time bound financial upgradation in 2009. Thus, the seniors missed out the benefit of one financial upgradation only because they were seniors to be promoted earlier than their juniors. When the benefit of pay fixation upon time bound financial upgradation, which is to be given as a temporary substitute for promotion which is delayed for want of vacancy of post, the question whether again the benefit of upgradation of pay upon ad hoc/regular promotion is to be given or not , is for the respondents to ponder over. In our considered view, the anomaly of the applicants who are seniors drawing less pay than their juniors in the cases under consideration have arisen only when the benefit of pay fixation was granted to their juniors upon their ad hoc promotion in 2010 as DEs, even after giving them the said benefit in 2009 upon the 2nd time bound financial upgradation. This is as per the policy of the respondents. When the policy has resulted in an anomaly which is not justifiable on any count, they should set right the anomaly by stepping up the pay of the seniors

to the level of the pay of their juniors without loss of time, especially when juniors have no superior claim over the seniors, whether in length of service or qualification. Instead, they have set up a Committee whose report is awaited. Details such as when it was constituted, what has it done so far, when it is going to submit the report etc. are not available. That the applicants will get next financial upgradation in 2013 as against their juniors getting it in 2014 cannot justify continuance of less pay for the seniors than the juniors till 2013. Those who retire before the next financial upgradation are left in the lurch. In the instant cases, most of the applicants have retired or are on the verge of retirement. In the facts and circumstances of these cases, granting the benefit of 2 pay fixations are, in effect, granting of 2 promotions for juniors, first on 01.10.2009 and the 2nd on 30.06.2010, both within a span of 9 months. Granting of 2nd pay fixation benefit to the juniors amounts to supersession of the seniors for no reason other than that they are seniors. The charges of discrimination and arbitrariness in granting the benefit of pay fixation cannot be deflected from the respondents. It is only fair and just that the pay of the applicants should be stepped up, with effect from the date of arising the anomaly to the level of the pay of their juniors.

10. As the applicants are not seeking reliefs against their juniors, the juniors are not necessary parties in these O.As. The applicants have made representations to the respondents, but those representations are only requests in the nature of demand. In the facts and circumstances of theses cases we are satisfied that those representations are not a remedy they have to exhaust under Section 20(2)(b) of the Administrative Tribunals Act, 1985, before approaching this Tribunal.

11. It could have been appreciated if the respondents had made it clear to the applicants when they were promoted as DE on ad hoc basis that if they accept the promotion, they will not be eligible for the 2nd financial upgradation in SDE cadre, instead they could wait for the 2nd financial upgradation in SDE cadre and then be promoted to the cadre of DEs.

12. In the light of the above, the O.As are allowed as under.

13. The respondents are directed to step up the pay of the applicants to the level of pay of their juniors with effect from the date of arising of the anomaly of seniors drawing less pay than their juniors in respect of each of the applicants within a period of 3 months from the date of receipt of a copy of this order. However, this order will not stand in the way of the Committee set up to deal with the issue under consideration in these O.As, giving a more beneficial recommendation for the applicants.

14. No order as to costs.

(Dated, the 07th December, 2011)

K GEORGE JOSEPH
ADMINISTRATIVE MEMBER

JUSTICE P.R.RAMAN
JUDICIAL MEMBER

cvr .