

**Central Administrative Tribunal
Ernakulam Bench**

OA No.132/2013

Wednesday, this the 10th day of June, 2015

CORAM

HON'BLE MR.N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE MR.R.RAMANUJAM, ADMINISTRATIVE MEMBER

1. G.Muraleedharan Nair, 56 years
S/o Gopala Pillai
Telecom Mechanic, Telephone Exchange
Vannapuram P.O., Thodupuzha.
Residing at Aswathi Nivas, Vannapuram-685 607
2. P.N.Haridas, 56 years
S/o Narayanan Nair
Telecom Mechanic, Vengaloor P.O., Thodupuzha.
Residing at Puthenpurayail House,
Vengallur P.O.
Karittakode, Thodupuzha – 685 608,

Applicants

(By Advocate: Mr. P.A.Kumaran)

Versus

1. Bharat Sanchar Nigam Ltd represented by
its Chairman and Managing Director
Sanchar Bhawan, New Delhi – 110 001.
2. Chief General Manager, Telecom
BSNL, Kerala Circle
Trivandrum-695 033.
3. Principal General Manager
Telecommunication
BSNL, Ernakulam SSA, Ernakulam-682 016.
4. Union of India represented by the
Secretary to Government of India
Department of Communications
New Delhi-110 001.

Respondents


(By Advocate: Mr.Pradeep Krishna (R1-3)
ACGSC (R4)

ORDER**By Hon'ble Mr.R.Ramanujam, Administrative Member**

The applicants have filed this OA aggrieved by the refusal of the respondents to resolve the anomaly in pay fixation by granting them pay equal to that of their juniors. The applicants commenced service as Linemen in the erstwhile Department of Telecom in the year 1978. They were promoted as Telecom Mechanic (TM) in the year 1998 and 1999 respectively. Earlier they had been appointed as Phone/Telecom Mechanic on officiating basis with effect from 24.6.1996. One Sri K.S.Abdul Majeed who was junior to the applicants was promoted as TM w.e.f. 20.02.2002.

2. The pay scale of TM w.e.f. 01.01.1996 was 3200-4900. The pay scale of the feeder post, Sub Inspector of Phones (SIOP) was 3050-4590. The pay scales of TM and SIOP were revised to Rs.4000-100-6000 and Rs.3200-4900 respectively w.e.f. 01.12.1998. On that date, the pay of the applicants was fixed at Rs.4000 because despite fixation under FR 22 (1)(a)(i) on the date of promotion as TM they were drawing less than Rs.4000 on 01.12.1998. While the applicants were on the pay scale of Rs.4000-6000, the Department of Telecom was converted into Bharat Sanchar Nigam Limited (BSNL) w.e.f. 01.10.2000. The applicants and other employees were kept on deemed deputation in the Corporation for some time and later absorbed in BSNL retrospectively w.e.f. 01.10.2000.

3. In 2002, the Central Dearness Allowance (CDA) pay scales were replaced by Industrial Dearness Allowance (IDA) pay scales retrospectively from 01.10.2000. A copy of the relevant order dated 07.08.2002 has been placed as Annexure A2. The applicants' pay was fixed on the IDA scale of Rs.5700-160-8100 with the benefit of a point to point fixation. The first and second applicants were fixed at Rs.6020 and Rs.5860 respectively. While the applicants got the benefit of only 2 and 1 increments in the revised IDA scales, their junior Sri Majeed received the benefit of 8 increments as he was still in



the lower pay scale applicable to SIOP as on 01.10.2000.

4. Pursuant to his promotion as TM w.e.f. 20.02.2002, the pay of Sri Majeed was fixed at Rs.6500 in the pay scale of Rs.5700-160-8100. The anomaly in the pay of the applicants and their junior Sri Majeed persisted even after the revised pay scales were introduced w.e.f. 01.01.2007,

5. Respondent No.1 had issued Annexure A8 order to address the issue of anomaly arising out of conversion from CDI to IDA scale and fixation thereon. The applicants, however, allege that this order fails to resolve the anomalies in a comprehensive manner. The applicants have referred to the order of this Tribunal in OA 968/2010 in a similar case where relief was granted by way of a direction to step up the pay of the senior applicants.

6. The applicants have accordingly sought, inter-alia, the following reliefs:-

To declare that the applicants are entitled to get stepping up of pay to that of the junior, Sri Abdul Majeed who started to draw higher pay by virtue of pay fixation granted to him on point to point basis on the IDA pay scale and due to fixation given under FR 22 (I) (a) (1) on promotion after fixation of pay in the IDA pay scale and to direct the respondents to grant stepping up of pay of the applicants with that of the junior Sri Abdul Majeed who started to draw higher pay by virtue of pay fixation granted on point to point fixation in IDA pay scale and under FR 22 (I) (a) (1) on promotion and to pay the arrears of pay and allowances and other benefits flowing from such fixation with effect from the date of stepping up of pay.

7. Respondents in their reply have contended that the relief sought by the applicants is barred by limitation. The applicants who had been denied the stepping up of pay at par with juniors had not even chosen to make any representation highlighting their grievances, much less approach a Tribunal/Court for an appropriate relief. On merits, the respondents have contended that the difference in pay between the applicants and Sri Majeed is not a case of anomaly. The difference arose not on account of application of

FR 22 (C) but because of pay fixation following an agreement between staff unions and management of BSNL/Govt of India. The difference in pay is due to the exercise of option by Sri K.S.Abdul Majeed for fixation at Rs.6500 in the scale of pay of Rs.5700-8100 consequent on his promotion to the post of TM on 20.02.2002, at a time when the applicant was drawing Rs.6180/- in the same scale. The respondents also resist the plea of the second applicant for stepping up as it is not allowed even under the Fundamental Rules of the Govt of India since he had already availed a stepping up on 01.05.1997 with the first applicant. Under the rules, he is not allowed any stepping up with respect to any other junior. Sri Abdul Majeed and other juniors may get higher pay by virtue of their longer service in the lower grade. This is an outcome of an agreement entered with staff unions and point to point fixation. The respondents have attempted to resolve the grievances on account of such fixation through Annexure A8 order. The applicants are not entitled to any relief beyond the scope of Annexure A8 order.


9. We have heard learned counsel for the parties and examined the documents produced before us. The learned counsel for the applicants argued that the applicants cannot be denied stepping up of pay at par with their junior Sri Abdul Majeed as they all belong to the same cadre. Sri Abdul Majeed was drawing a lower pay vis-a-vis the applicants when the latter were promoted to the post of TM. A person who was promoted four years later cannot be granted a higher pay and if, for any reason including agreement with staff union, point to point fixation etc., he is granted a higher pay, the respondents would have no option but to step up the pay of the seniors accordingly. Both the applicants and Sri Majeed belong to the same cadre and the applicants cannot be penalized for having been promoted earlier in their turn. Similar cases had been decided by this Tribunal in the past and the issue of limitation is not relevant as the applicants have been subjected to perpetual and recurring disadvantage vis-a-vis their junior.

10. The learned counsel for the respondents would, on the other hand, draw



our attention to Annexure R2 statement showing the pay scale and pay fixation of the two applicants as also Sri K.S.Abdul Majeed, their junior. He pointed out that the applicants have always drawn a higher pay than Sri Majeed from 01.01.1996 to 01.03.2002 when the latter overtook them on account of the option allowed to him in respect of pay fixation on promotion. The pay of an officer on a particular date vis-a-vis his seniors could appear to be higher on account of the date of increment due to him. However, as on 01.05.2013, the pay of the first applicant was Rs.19,800 and the pay of Sri Abdul Majeed was Rs.19,700. Thus the first applicant was drawing Rs.100 more than his junior and, therefore, there should be no cause for any grievance.

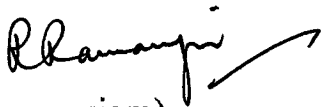
11. The only issue that arises for consideration is whether seniors could be subjected to a perpetual loss on account of adoption of certain methodology in pay fixation, on the ground that this was agreed with the staff union. Respondents contend that this has arisen from the system of point to point fixation that has been adopted. Since Sri Majeed spent a longer time in the lower pay scale, he had to be given the benefit of increments while fixing his pay on promotion. The matter has already been considered by the Anomaly Committee and the respondents cannot go beyond the recommendations made by the committee based on which Annexure A8 orders were issued. We are unable to agree with the respondents that the applicants have no option but to live with the anomaly that has its roots in the corporization of the Department of Telecom into BSNL and the introduction of IDA pay scales subsequently. We find that an identical issue had been considered by this Tribunal in OA No.968/2010. The Tribunal in that case referred to the common order in OA No.558/2010 and connected cases delivered on 01.03.2011 and held that the anomaly in the matter of pay of the applicants in comparison to that of the juniors was a grievance still pending and there was a recurring cause of action for redressal. It was also held that the application was time barred. It was observed that when the applicants were claiming monetary benefits, it was a settled principle that the arrears payable would be confined to 3 years prior to the filing of OA. It was directed that the pay of the applicants therein should be




fixed w.e.f. 01.10.2000 at par with juniors in the IDA scale. While the consequential benefits would follow based on such fixation, the monetary benefits would be confined to 3 years prior to the filing of the OA.

12. Applicants in their rejoinder have also pointed out that the recommendations of Anomaly Committee on which the respondents have placed reliance have already been quashed by this Tribunal in OA No.1025/2010. When the anomaly committee's report is quashed, there is no ground for Annexure A8 to subsist. This has not been controverted by the respondents.

13. For the aforesaid reasons, the OA succeeds. The respondents are directed to step up the pay of the applicants at par with their junior Sri Abdul Majeed on different dates from 01.03.2002 onwards. Consequential benefits shall accrue to the applicants while the monetary benefits shall be confined to arrears from a date 3 years prior to the filing of this OA, i.e., with effect from 02.02.2010. The respondents are directed to revise the pay fixation of the applicants accordingly within a period of three months from the date of this order. No order as to costs.


(R.Ramanujam)
Administrative Member


(N.K. Balakrishnan)
Judicial Member