

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 150 OF 2009

Wednesday this the 20/10 day of October, 2010

CORAM:

**HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

- 1 P. Karunakaran,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Kannur.
- 2 T. Kannan,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Telephone Exchange,
Poovam, Kannur District.
- 3 T. Purushothaman,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Telephone Bhavan,
Kasargod.
- 4 P. Mahalinga Bhat,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Telephone Exchange, Kumabala,
Kasargod District.
- 5 B. Suresh,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Telephone Exchange,
Chengala, Kasargod District.
- 6 A. Raghavan,
Telecom Technical Assistant (Retired),
Bharat Sanchar Nigam Limited,
Telephone Exchange,
Sreekandapuram, Kannur District.
- 7 P.M. Damodharan,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Telephone Exchange,
Koothuparambu, Kannur District.

8 C.H. Mohanan,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
City Telephone Exchange,
Kannur.

9 T.T. Janardhanan,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Telephone Bhavan,
Kannur.

10 P.J. Jose,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Thalayolaparambu,
Kottayam District.

11 P.A. Cherian
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
E 10 B Telephone Exchange,
Power Plant, Kottayam District.

12 K.N. Rajendran,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Telephone Exchange,
Koottikkal, Kottayam District.

13 Thomas Sebastian,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Telephone Exchange,
Mukkoottuthara, Erumely,
Kottayam District.

14 P.M. James,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Telephone Exchange,
Peringalam, Kottayam District.

15 G.M. Joseph,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Telephone Exchange,
Uzhavoor, Kottayam District.

16 Rani Abraham,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Telephone Exchange,
Manimala, Kottayam District.

17 Dai Jose,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Telephone Exchange,
Ayarkunnam, Kottayam District.

18 K.S. Satheesan,
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Telephone Exchange,
Aranmula, Alappuzha District.

19 T.M. Philip,
Telecom Technical Assistant,
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Telephone Exchange,
Kozhenchery,
Pathanamthitta District.

20 K.R. Rajendran,
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Bharat Sanchar Nigam Limited,
Telephone Exchange,
Kadampanad,
Pathanamthitta District.

21 B.Shaji,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Telephone Exchange,
Adoor, Pathanamthitta District.

22 M.M. Divakaran Nair,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Telephone Exchange,
Vazhakulam, Ernakulam District.

23 Stanley Joseph,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Carrier Station, Ernakulam District,
Kochi – 682 016.

24 S.J. Paul,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Cell One Operation and Maintenance Centre,
Panampilly Nagar, Kochi – 682 036

25 P.G. Sadasivan Achari,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Pathanamthitta.

26 K.C. Accamma,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Kumarakam Exchange,
Kottayam – 686 563.

27 Abraham V. John,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Chelad, Ernakulam District.

28 Jose K. Varghese,
Telecom Technical Assistant,
Bharat Sanchar Nigam Limited,
Chathamattom, Ernakulam District. **Applicants**

(By Advocate Mr.CSG Nair)

versus

1 Bharat Sanchar Nigam Limited,
Represented by its Chairman cum
Managing Director,
Sanchar Bhavan, Parliament Street,
New Delhi.

2 The Chief General Manager,
Bharat Sanchar Nigam Limited,
Kerala Circle, Trivandrum – 1.

3 The General Manager,
Bharat Sanchar Nigam Limited,
Kannur SSA, Kannur.

4 The Principal General Manager,
Bharat Sanchar Nigam Limited,
Kottayam SSA, Kottayam.

5 The General Manager,
Bharat Sanchar Nigam Limited,
Pathanamthitta SSA,
Thiruvalla.

6 The Principal General Manager,
Bharat Sanchar Nigam Limited,
Ernakulam SSA, Kochi – 682 031.

7 The Department of Telecom
Represented by its Secretary,
Sanchar Bhavan, 20 Ashoka Road,
New Delhi – 1. **Respondents**

(By Advocate Mr.Johnson Gomez)

The application having been heard on 06.10.2010, the Tribunal on 20.10.2010 delivered the following:

ORDER

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

The applicants 28 in Nos. presently working as Telecom Technical Assistants (TTAs) in the Bharat Sanchar Nigam Limited (BSNL), who were the employees of Department of Telecommunications of Government of India. The applicants have filed the OA for a direction to the respondents to grant OTBP/BCR promotions as they have completed 16/26 years of service. The applicants have also prayed for a direction to the respondents to grant higher pay scales on fixing their pay scales on the basis of grant of OTBP/BCR promotions with effect from granting of such benefits.

2. Few facts which are necessary for consideration of the application are as follows:-

While the applicants were working in the Erstwhile Department of Telecommunications, Government of India, by the letter dated 17.12.1983 issued by Director General of Posts & Telegraph Department recommended a time bound promotion to the employees of the erstwhile Posts & Telegraph Department. Consequently, Posts & Telegraph Department introduced a scheme for giving One Time Bound Promotion (OTBP) and Biennial Cadre Review (BCR) for those employees who have completed 16 and 26 years of service respectively in the Department. A copy of the said letters dated 17.12.1983 and 11.10.1991 implementing the scheme have been produced and marked as Annexures A-5 and A-7



respectively. While so, on 01.10.2000 all the officers and staff in the Telecommunication Department have been absorbed / transferred to BSNL alongwith their posts on the existing terms and conditions. Subsequently on restructuring of Group 'C' and 'D' employees admitted in the service of BSNL in the restructured cadre and as per the terms and conditions of their transfer rather absorption in the BSNL, had submitted representations for grant of OTBP./BCR and for grant of pay scale for those who have already got the benefit of OTBP/BCR in th4 parent Department. However, these representations were not answered. Consequently the applicants have filed W.P(C)s viz., W.P(C) 30313/06 and 3433/07 before the Hon'ble High Court of Kerala and as per the common orders passed in the above WP(C)s, the Hon'ble High Court of Kerala directed that the Department shall look into the grievances highlighted by the petitioners and directed to take a decision thereon within a specified period. The said direction was without considering the merits of the contentions raised in the W.P(C)s. After the judgment of the High Court the Department promulgated the promotion policy as on 23.03.2010. a copy of which has been produced and marked as Annexure A-15 in the OA subsequent to the filing of the OA. However, by order dated 16.10.2008 the representations filed by the applicants were considered and passed an order taking the stand that the issues raised by the applicants has been referred to the Joint Committee on promotion policy for non executives and rejected the claim of the applicants, a copy of which is produced and marked as Annexure A-9 in the OA. In the above circumstances, aggrieved by Annexure A-9, the applicants have filed the present OA.

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3. The OA has been admitted by this Tribunal and notice ordered to the respondents and in pursuance to the receipt of the notice ordered by this Tribunal, a reply statement has been filed for and on behalf of the respondents on 20.10.2009. The main stand taken in the reply statement is that as the applicants were granted OTBP in the Telecom Technical Assistants cadre as they have completed 16 years of service including the service rendered in the pre structured cadre. OTBP the scale of TTA in the CDA scale was Rs.5000-150-8000 corresponding to IDA scale i.e Rs.7100-200-10100 and hence the applicants were placed in the pay scale taking into account of OTBP and the present claim is not sustainable. The further stand taken in the reply statement is that as stated in Para 6 of the reply statement is as follows:-

"It is submitted that representations were submitted by different individuals as well as the union for granting them OTBP/BCR and also high pay scales. These representations were referred to Circle Office for clarification vide letter dated 15.03.2007 from the office of the 6th respondent. It is further submitted that the 2nd respondent has in turn sought for clarification from the 1st respondent. As such, it is submitted that implementation of OTBP/BCR for restructured cadre is not possible and therefore the impugned orders have been issued intimating the applicants that the joint committee on promotion policy for the non executives, which has been constituted to look into various pending demands of the representative union also looking into the issue."

4. On receipt of the reply statement, a rejoinder was also filed on behalf of the applicants and in the rejoinder on reiterating the grounds urged in the OA, it is stated that as agreed in Annexure A-5 and A-7 schemes, the promotional benefits shall be granted till the orders on new promotional policies are issued. It is further stated in the rejoinder that there were three different pay scales viz., initial pay scale, OTBP pay scales and BCR pay scales and these scales are 4500-125-7000, 5000-175-9000 and



6500-200-10500 and as the three pay scales were merged together, all the TTAs were given pay scales of Rs.5000-8000 equal to Rs.7100-200-10100 (IDA scale). On receipt of the rejoinder, an additional affidavit has been filed for and on behalf of the respondents stating that a comprehensive general clarification to the various points raised from different quarters at the time of introduction of new promotional policy has been made and it is further stated that if no executive is covered in the said policy may be allowed to exercise fresh option as per option form No.1 and No.2 in accordance with the option given as per the order dated 23.03.2010 (Annexure A-15). If so, the claim of the applicants is pre mature the there is no nexus between the present prayer with that of the implementation of the new promotion policy.

5. We have heard the learned counsel for applicant, Mr.CSG Nair and Mr.Johnson Gomez, learned counsel for respondents. We have also perused the documents produced in the OA. Mr.CSG Nair, the learned counsel for applicant contended that as per Annexure A-2 agreement entered between the employees and the management, on absorption of the erstwhile employees all promotional avenues with pending adoption of standing orders on promotional policy, the present OTBP/BCR/ACP will continue in the BSNL also. As per Annexure A-5 and A-7 letters of the Director General of Posts & Telecommunications, New Delhi the OTBP/BCR scheme and benefits will be continued to the employees who have completed 16 years and 26 years of service. If so, even after the restructuring of the cadre of Group 'C' and 'D' employees, the applicants are entitled to get the benefit as ordered by the Director General of Posts & Telecommunications Department. Hence they have filed W.P(C) Nos.

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30313/06 and 3433/07 before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala have considered this issue and found that OTBP/BCR pay scales prescribed under the scheme relate to pre structured cadres only which are granted on completion of 16/26 years of service in the pre structured cadres. However, the Hon'ble High Court observed that " it is always open to the respondents to pass fresh orders taking note of the delay of option as standing orders as part of the promotion policy and further take note of the stagnation of several TTAs without chances of cadre promotion as such." If this absorption are to be looked into, according to the counsel for applicant, and in the light of the agreement contained in Annexure A-2 letter regarding the terms and conditions for absorption of the employees of the erstwhile Posts and Telecommunication Department it is agreed that even after absorption there will be negotiation with the newly formed recognized union regarding promotional avenues, pending adoption of standing orders on promotional policy, the present OTBP/BCR/ACP will continue to be followed by BSNL. Hence the applicants are entitled for continuation of the benefits even after the restructuring of the cadres for the benefit of scheme adopted by the Department. The counsel further submits that as per Annexure A-15 clarification if any pertaining to the implementation of the non executive promotion policy has to be considered by the BSNL. If so, the applicants are entitled to get the benefits of OTBP and BCR. To the above arguments, the learned counsel for respondents relied on the reply statement filed on behalf of the respondents and submitted that as the applicants were granted OTBP in the TTA cadre as they have completed 16 years including the service rendered in the pre restructured cadre and as the OTBP scale of TTA in the CDA scale is Rs.5000-150-8000



corresponding to IDA of Rs.7100-200-10500 in the revised pay scale. If so, the applicants were already placed in the scale at present even after considering or granting OTBP benefits. Counsel further submitted that several representations were submitted by different individuals as well as recognized Unions for granting OTBP/BCR and higher pay scales, and these representations were already considered and answered in Annexure A-9 that as the OTBP/BCR scheme has already been implemented for the restructured cadre, a further implementation of the same is not possible. However, on the questions raised by this Tribunal and as requested as per the interim orders passed by this Tribunal, by an affidavit dated 17.09.2010, it was clarified that the procedure followed by the Department and as per Annexure A-14, it is explained that the first review under the non executive promotion also has been considered on 01.10.2004 and if any individual case has not been considered or covered such employees were given chance for filing their option for getting the benefit which they claim. This too is on the basis of Para 5.1 and 5.2 of the letter dated 23.03.2010. If so, the present application is without any basis and it is left to the Department to consider each and every option being filed in individual cases.

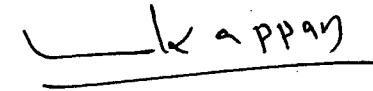
6. In the light of the contentions of the counsel for the parties and on the basis of observation given by the Hon'ble High Court of Kerala, this Tribunal has to find out whether the applicants are entitled for relief which they claim or not ? The main contention of the applicants is that as per Annexures A-5 and A-7 policy, they are entitled for higher pay scales on restructuring the cadres on absorption in the BSNL. In Annexure A-2, the terms and conditions of agreement for absorption, it is only stipulated that after absorption there will be negotiation with the newly formed recognized



union regarding promotional avenues, pending adoption of standing orders on promotional policy, the present OTBP/BCR/ACP will continue to be followed by BSNL. As per Annexure A-14, the first review of upgradation of the pay scales by the non executive employees has been taken place on 01.10.2004. This review is also over at the sub switch area level of all sub switch area cadres and at circle level for all circle level and thereafter Annexure A-15 order dated 23.03.2010 has been adopted and in which all cases of upgradation has been considered with pre restructured cadres and restructured cadres and even if any individual grievance is left, it will be considered on filing their option as per the letter dated 20.08.2010. further it is to be noted that options were already called and it will continue in the erstwhile time bound promotion scheme and if so, we are of the view that if any employee, if aggrieved by the implementation of non executive promotion policy, may give their option and on giving such options their individual cases will be considered by the Department. If so, the present OA does not contain any grounds to interfere with any of the orders passed by the Department. Accordingly, with the observation made above, OA stands dismissed with no order as to costs. Ordered accordingly.

Dated, the October, 2010.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


JUSTICE K.THANKAPPAN
JUDICIAL MEMBER

vs

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

R.A.No.45/10

in

Original Application No. 150 of 2009

Friday....., this the8th..... day of ...April..., 2011

CORAM:

**Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Ms.K Noorjehan, Administrative Member**

1. P.Karunakaran
Telecom Technical Assistant
Bharat Sanchar Nigam Limited
Kannur.
2. T.Kannan
Telecom Technical Assistant
Bharat Sanchar Nigam Limited
Telephone Exchange
Poovam, Kannur District
3. T.Purushothaman
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4. P.Mahalinga Bhat
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Telephone Exchange, Kumabala
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5. B Suresh
Telecom Technical Assistant
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6. A Raghavan
Telecom Technical Assistant (Retired)
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Telephone Exchange
Sreekandapuram, Kannur District
7. P.M Damodharan
Telecom Technical Assistant
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 Telecom Technical Assistant
 Bharat Sanchar Nigam Limited
 Chelad, Ernakulam District

28. Jose K Varghese
 Telecom Technical Assistant
 Bharat Sanchar Nigam Limited
 Chathamattom, Ernakulam District. **Applicants**

(By Advocate – Mr.C.S.G Nair)

V e r s u s

1. Bharat Sanchar Nigam Limited
 Represented its Chairman cum
 Managing Director
 Sanchar Bhavan, Parliament Street
 New Delhi

2. The Chief General Manager
 Bharat Sanchar Nigam Limited
 Kerala Circle, Trivandrum – 1

3. The General Manager
 Bharat Sanchar Nigam Limited
 Kannur SSA, Kannur

4. The Principal General Manager
 Bharat Sanchar Nigam Limited
 Kottayam SSA, Kottayam

5. The General Manager
 Bharat Sanchar Nigam Limited
 Thiruvalla

6. The Principal General Manager
 Bharat Sanchar Nigam Limited
 Ernakulam SSA, Kochi – 682 031

7. The Department of Telecom
 Represented by its Secretary
 Sanchar Bhavan, 20 Ashoka Road
 New Delhi - 1 **Respondents**

(By Advocate – Mr. Johnson Gomez)

This Original Application having been heard on 30.03.2011, the Tribunal on ...08.04.11... day delivered the following:

ORDER

By Hon'ble Ms.K Noorjehan, Administrative Member

1. The applicants have filed this Review Application seeking to review and clarify the observations made in para 6 of the order of this Tribunal dated 20.10.2010 in Original Application No. 150/2010. In the Original Application the applicants sought a direction to the respondents to grant OTBP/BCR Promotion to the applicants who have completed 16/26 years of service and 12 years in the case of reserved candidates and to grant higher pay scales to those applicants who were already granted OTBP/BCR promotion, with effect from the date they were granted OTBP/BCR, with all consequential benefits including arrears of pay and allowances. This was the subject matter in the Writ Petition W.P.(c) No.30313/2006 and W.P(c).No.3433/2007 filed before the High Court of Kerala, which was disposed of by a judgment dated 18.03.2008. Relevant paragraphs 4,5,6 and 7 are extracted below:-

“4. The stand taken by the respondents therefore, is that the higher pay scale which was decided consequent upon the formation of BSNL was not linked to OTBP/BCR policy and therefore OTBP/BCR pay scales cannot be made applicable to the re-structured cadres as it was done in the case of the pre-structured cadre. I find force in this submission. After all, higher grade is always decided taking note of the pay scale available. Therefore, if the higher pay scale which apparently was brought into vogue under the new dispensation, was in relation to the re-

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structured cadre, then in the absence of specific orders providing for the application of OTBP/BCR pay schemes in relation to the restructured cadre, it cannot be directed to be given as a matter of course.

5. I cannot, therefore, find my way to issue a direction as sought for by the petitioners as such. But nevertheless, it is always open to the respondents to pass fresh orders taking note of the delay in the adoption of standing orders as part of the Promotion Policy and further take note of the stagnation of several TTA's without chances of cadre promotion as such.

6. In the result, writ petitions are disposed of in the following terms.

7. Respondents shall look into the grievance highlighted by the petitioners in Ext.P.17 in Writ Petition No.3433/2007 and Ext.P16 in Writ Petition No.30313/2006 and convey a decision thereon within a period of six months from the date of receipt of a copy of this judgment. Such decision may be taken without being bound by the stand that has been taken in the counter affidavit filed by the respondents. It is made clear that I have not expressed any opinion on the acceptability of the demand made by the petitioners in this regard. “

2. It was in compliance of the judgment of the Hon'ble High Court that the impugned order Annexure A-9 in the Original Application was issued by the respondents. The respondents did not concede the demand of the applicants on the ground that

“ the induction to the Restuctured cadres started in the year 1994. The special dispensation of higher pay scales prescribed under DOT letters No.1-38/98-MPP dated 20.04.99 and 20.09.99 have been granted to all the officials of the Restuctured cadre on their completion of 16/26 years, of service including the service rendered in the Pre-restuctured cadre. As such grant of OTBP/BCR to such officials would amount to double benefits to the restuctured officials. ”

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3. This was referred to in para 6 of the order of this Tribunal besides the on going negotiations with the service Union regarding promotion policy for non-executive staff, the first review of up-gradation of pay scales on 01.10.2004 etc. During the pendency of the Original Application the respondents announced the non-executive promotion policy dated 23.03.2010 produced by the applicants as Annexure A-20. Paragraph 5 of Annexure A-20 gives terms and conditions to exercise the option to continue in the erstwhile time bound promotion scheme if an employee so desires. The respondents produced Annexure R-2 which gave elaborate clarification so as to guide the staff in exercising option. In fact for those who exercised option Number 1 under option Form 1 one more option in form 2 was permitted to be given which has to be exercised as per the conditions of para 6.4 of the promotion policy. The time given for exercising option was also reported to be extended. Under such circumstances, the Tribunal found that in view of the adoption of the Non-Executive Promotion Policy it is for the applicants to exercise their options and institute legal proceedings if they are still aggrieved.

4. In this view of the matter, we do not find any error apparent on the face of the records. Accordingly the Review application is dismissed.

(Dated this the ^{8th} day of April, 2011)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER
sv


(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER