

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 172 OF 2012

Monday, this the ^{31st} day of August, 2015

CORAM:

**HON'BLE Mr. JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER**

P.P. Johnson, S/o. Pailo,
Telecom Mechanic,
Muttom Telephone Exchange,
Thodupuzha, Residing at BSNL
Quarters No. 146, Muttom, Thodupuzha.

- Applicant

(By Advocate M.R. Hariraj)

Versus

1. Union of India, represented by
The Secretary to Government of India
Department of Telecommunications,
New Delhi – 110 001.
2. Bharath Sanchar Nigam Limited
Represented by its Chairman &
Managing Director, Sanchar Bhavan,
New Delhi.
3. Chief General Manager,
Telecom, BSNL, Kerala Circle,
Trivandrum – 695 033.
4. Principal General Manager,
Telecommunication, BSNL,
Ernakulam – 682 016.
5. Accounts Officer,
O/o. Principal General Manager (Telecom),
BSNL, Ernakulam – 682 016.
6. Assistant General Manager,
O/o. The Principal General Manager (Telecom),
BSNL, Ernakulam – 682 016. - Respondents

(By Advocates Mr.N. Anil Kumar, Sr. PCGC for R-1)
Mr. Pradeep Krishna for R2-6)

The application having been heard on 18.08.2015, the Tribunal on
31.8.15 delivered the following:



ORDER**P. GOPINATH, ADMINISTRATIVE MEMBER**

Applicant commenced his service under the Respondents as a Group D and was promoted as Lineman - Group C. He was granted the OTBP scale of Sub-Inspector of Phones (OP) as per Annexure A-1 before completion of prescribed length of 16 years of service in 1996 granting him the concession applicable to SC/ST stipulated vide DOT letter No. 11/14/88 NCG dated 04.08.1989. He was further promoted as Telephone Mechanic by Annexure A-2 with effect from 10.04.1995. According to DOT letter No.1-38/MOO dated 20.4.1999, it was decided that those employees who after getting qualified and trained, can enter the re-structured cadre of Telecom Mechanic after appointment in the OTBP of the pre-structured cadre and shall be placed in the revised pay scale of Rs.4000-6000 with effect from 01.12.1998. Consequently, his pay was revised by placing him in the pay scale of Rs. 3200-4900 with effect from 01.03.1998. The said order sought to denude the applicant of the benefit of the pay scale of Rs. 4000-6000 granted to him with effect from 01.12.1998. No notice was given to the applicant regarding the reduction or recovery before the issuance of the order. Even in the said order, the arrears was not quantified and no clue was given that recovery will be initiated. Thereafter, in January 2012, Rs. 7000/- was recovered from the pay of the applicant.

According to the applicant, there was no illegality in granting him the OTBP before completion of 16 years. Annexure A-1 provides that even in the case of OTBP, the reservation roster must be strictly applied and in case of lack of candidates having the prescribed length of 16 years service among the SC/ST employees, the shortfall vacancies must be filled with SC/ST candidates having service below 16 years. The applicant was granted the OTBP as there was lack of candidates to fill up the SC/ST quota who have completed the prescribed length of 16 years service. Such concession was



extended to members of SC/ST pursuant to judgment of the Hon'ble Supreme Court in **P&T Scheduled Caste/Tribe Employees' Welfare Association (Regd.) and others v. Union of India and ors (1998) 4 SCC**

147. Learned counsel for the applicant submitted that the applicant was never served with any of the orders referred to in Annexure A-5. It is only after receipt of Annexure A-5, applicant made enquiries as to why his pay was being revised with effect from 01.03.1998. The applicant was informed orally that such revision was being made in accordance with the directions contained in AGM(A) Lr. No. ST/EK-250/4(a)SSA/II/59 dated 14.12.2000. He is told that according to the said letter, it was directed that the revised pay scale granted to the applicant has to be cancelled and payment already made recovered as the OTBP granted to the applicant was irregular as he had not completed 16 years of service before being granted the OTBP. The letter dated 18.03.2011 referred in Annexure A-5 is one issued by the 6th respondent directing the Accounts Officer to refix the pay of the applicant in accordance with the directions in the aforementioned letter and to recover the overpayment. Hence the applicant filed this O.A seeking the following reliefs:-

- "i) to call for the records leading to Annexure A-5 and Annexure A-5 (A) and quash the same.
- ii) To direct the respondents to continue to pay the applicant pay and allowances without effecting any reduction in pay scale or effecting any recovery pursuant to Annexure A-5 or orders leading to the same with all consequential benefits including arrears of pay with interest @ 18% per annum.
- iii) grant such other reliefs as may be prayed for an the court may deem fit to grant, and
- iv) Grant the costs of this Original Application."

2. The respondents in their reply statement submitted that the OTBP was granted to the applicant before completion of 16 years against shortfall vacancies under Scheduled Tribe quota and placed in the higher scale of Rs. 4000-100-8000 with effect from 01.12.1998. As per clarification from



DOT, New Delhi vide letter No. 1-38/MPP-98 dated 16.03.2000 the officials promoted to OTBP/BCR of pre-structured cadre under shortfall vacancies are not eligible for the higher pay scale of restructured cadre unless they complete a total service of 16/26 years. Since the applicant and two other persons viz. Shri C.P. Ummer and Shri T.K. Rajan had not completed the required 16 years service in Group C cadre, they were found not eligible for placement in the higher scale of pay and a notice was issued vide Annexure R-2 letter No. ST/EK-250/4(a)/SSA/11/51 dated 06.10.2000 intimating that their names are proposed to be deleted from the list of officials placed in the higher scale of pay. Annexure R-2 notice was received by the applicant vide Annexure R-2(a) as per the acknowledged copies of the same available in office records. It is further submitted that subsequent order was issued vide Annexure R-3 letter No. ST/EK-250/4(a)/SSA/11/59 dated 14.12.2000 for deleting their names from the order dated 11.10.1999. Annexure R-3 notice was received by the applicant vide Annexure R-3(a) as per the acknowledged copies of the same available in the office records. The copy of the Annexure R-3 was however not received by A O (Esst.) Section, the officials responsible for effecting the revised order and hence the applicant continued to draw the higher scale. The applicant was, therefore, aware of the fact that he is drawing higher pay than what he was actually entitled for. He also kept quiet about the matter for 11 years and continued drawing higher scale of pay in BSNL. The same was detected when a doubt was raised by AO (Estt) regarding the correctness of OTBP issued on 25.06.1996 to one among above three officials referred. Consequently, the Annexure A-5 pay fixation order was issued by AO (Estt.) on 16.12.2011. The averment that the applicant is unaware of the revision is baseless and he is well aware that he was drawing higher pay than what he is actually entitled. The applicant should have brought the non-implementation of the orders to the notice of Administration. The Accounts Officer on 03.01.2012 intimated the



applicant about revision of pay and also informed that the recovery of over payment of Rs. 1,31,335/- will be effected in 17 installments @ Rs. 8000/- per month. The applicant on 04.01.2012 came to the office and met both the AO (P&A) and DGM (Finance) and requested to reduce the installment recovery. On his request, his installment recovery was reduced to Rs.7,000/- per month. Respondents submits that the matter of over payment recovery was properly informed to the applicant in advance. The applicant was well aware of the revision orders as early as in the year 2000, although it was implemented with some delay due to administrative reasons.

In the additional reply statement filed, the respondents submit that as per Annexure A-3 DOT letter dated 20.04.1999 regarding pay scales of OTBP/BCR officials inducted into the restructured cadres of Telecom Mechanic, TTA and Senior TOA, the officials who after getting qualified and trained enter the restructured cadre before completion of 16 years of service in the pre-restructure cadre shall be placed in the scale of Rs. 4000-100-6000 (Telecom Mechanic) Rs. 5000-150-8000 (Senior TOA and TTA) on completion of 16 years of total service including that rendered in the pre-restructured cadre i.e. the restructured cadre of TM is Lineman. As such the applicant had completed only 8 years on 01.12.1998. As per letter No. 1-71/83-NCG dated 17.12.1983 instructions issued by the DOT "All officials belonging to basic grades in Group C and Group D to which there is direct recruitment either from outside and / or by means of limited competitive examination from lower cadres and who have completed 16 years of service in that grade will be placed in the next higher grade. A clarification received from Corporate Office vide letter No. 25057/2002-Pers-III dated 22.04.2003 regarding the applicability of reservation while placing officials of restructured cadre in the Higher Pay Scale states that the placement of officials of the restructured cadres in Higher Pay Scale on the basis of the instruction contained in DOT order No. 1-38/MPP-98 dated 30.04.1999 is not a



promotion and it is to be given only on completion of 16/26 years of service and the benefit cannot be extended to SC/ST officials who have not completed 16/26 years service".

3. Heard the learned counsel appearing for both parties and also perused the written submissions made and documents produced by parties. The applicant's contention that the recovery was made without any notice is only to be brushed aside in view of the acknowledgments of applicant in Annexure R-2(a) and R-3(a). The applicant and two others were informed that for want of 16 years of service in Group C cadre, they were found ineligible for placement in the higher scale of pay. The recovery was not effected immediately after R-3 notice inadvertently by the concerned Accounts Officer, E&H Section. The applicant was, therefore, aware of the higher pay drawn in comparison to his lower entitlement. The applicant was also informed telephonically about the recovery in 2012 and the applicant met the Accounts Officer and discussed the reduction of his recovery installment. The applicant's contention is that his service in Group D should be taken into account to compute 16 years service. However, the instructions state that 16 years service should be in that grade.

4. The Hon'ble Supreme Court in Civil Appeal Nos. 5286-87 of 2005 in **BSNL v. R. Santha Kumari Velusamy & Others** clearly laid down that the BCR Scheme as per Circular of 16.10.1990 was a scheme, TBOP and BCR being two up-gradations provided under the same scheme on completion of 16 and 24 years for upgradation simplicitor without involving any creation of additional posts or any process of selection for extending the benefit. Such a scheme of upgradation did not invite application of the rules of reservation. It was merely a scheme to provide relief against stagnation. Hence, the relief given to applicant as an ST official was apparently wrong in the light of the above judgment.

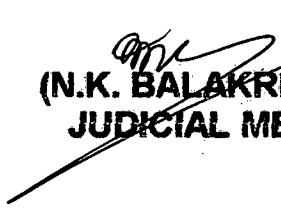


5. Now comes the issue of recovery of excess payment made. The benefit was given with effect from 01.12.1998. It is contended by the respondents that the applicant was put to notice regarding the excess payment of public money made under a bonafide mistake and the recovery was ordered therein even earlier and therefore according to the respondents, it cannot be contended that the proceedings for recovery was initiated after about 13 years. If, in fact, action had been taken then and there the respondents would be justified in their contention that there was no delay in taking steps for recovery of the amount. It is also contended by the respondents that except in case of extreme hardship the recovery of excess amount in such circumstances would be perfectly justified. However, in view of the judgment of the Hon'ble Supreme Court in **State of Punjab and Others v. Rafiq Masih (Whitewasher) (2014) 8 SCC 883**, the recovery of the excess amount paid cannot be allowed to be sustained. It is also made clear that in the light of the judgment of the Hon'ble Supreme Court in **BSNL v. R. Santha Kumari Velusamy & Others** supra the TBOP and BCR are merely upgradation schemes and so it did not invite application of Reservation Rules. The over payment recovery was intimated for commencement by the Accounts Officer on 03.01.2012 i.e. after a period of 13 years and hence the respondents are free to refix the pay of the applicant as per entitlement as per OTBP and BCR Scheme and fix the increment notionally as per entitlement and arrive at the present pay to be drawn in the Pay Band plus Grade Pay applicable to the applicant.

6. The Original Application is disposed of accordingly. No order as to costs.

(Dated, the 31st August, 2015)


(P.GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER