

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM**

Original Application No. 178 of 2013

Thursday, this the 24th day of October, 2013

C O R A M :

**HON'BLE Mr. JUSTICE A.K. BASHEER, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K.R. Sivadasan,
S/o.Late K.P. Ramakrishnan Nair,
Aged 53 years,
Telecom Mechanic, Telephone Exchange,
Kadamath, Union Territory of Lakshadweep,
Residing at Kanicheril House,
Palanghara P.O., Koothattukulam.

... Applicant.

(By Advocate Mr. P.A. Kumaran)

versus

1. Bharat Sanchar Nigam Limited represented by its
Chairman & Managing Director
Sanchar Bhavan, New Delhi – 110 001
2. Chief General Manager, Telecom,
BSNL, Kerala Circle, Trivandrum – 695 033
3. Principal General Manager Telecommunication,
Bharat Sanchar Nigam Limited ,
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) and
Mr. M.K. Aboobacker, ACGSC (R-4)]

This application having been heard on 24.10.2013, the Tribunal on the
same day delivered the following:



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ORDER

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

The applicant was working as Telecom Mechanic in the Department of Telecommunications. On 01.10.2000, he was absorbed into Bharat Sanchar Nigam Limited (BSNL), replacing the Central Dearness Allowance (CDA) scale of pay to the Industrial Dearness Allowance (IDA) scale of pay. The conversion of the pay scale was done on point to point fixation with a stipulation that any anomaly arising out of such fixation where juniors start drawing higher pay ought to be rectified. The respondents have limited granting of personal allowance to redress the grievance of seniors drawing lesser pay than their juniors on account of point to point fixation in the IDA scale vide Annexure A-9 dated 30.08.2010. As the fruits of personal pay will be siphoned off when it is absorbed in future increments, the applicant is aggrieved and filed this O.A. for the following reliefs:

- (i) To call for the records leading to Annexure A9 and to quash the same to the extent that it provides for absorbing personal pay granted in future increments and to the extent that it does not consider the anomaly arising out of fixation under F.R. 22(I)(a)(1) and to the extent it stipulates an option with respect to the junior as against whom personal pay is sought will be final;
- (ii) To declare that the applicant is entitled to go stepping up pay to that of his junior Francis M Fernandes 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) 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 junior Francis M. Fernandes who started to draw higher pay by virtue of pay fixation granted on point to point fixation and due to fixation given under FR 22 (1)(a)(1) after fixation of pay in the IDA pay scale and to pay arrears and consequential benefits with effect from the date of stepping up;

(iii) Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and

(iv) Grant costs of this Original Application.

2. The applicant contended that the lesser pay granted to the seniors is an anomaly. He relied on the judgement of the Hon'ble Supreme Court in **Gurcharan Singh Grewal and Another vs. Punjab State Electricity Board and Others**, 2009 (3) SCC 94, wherein it was held that even in circumstances where there was a difference in the incremental benefits in the scale given to the senior and the scale given to the junior, such anomaly should not be allowed to continue and ought to be rectified so that the pay of the senior would be stepped up to that of the junior. Annexure A-9 falls short of addressing the real problem of lesser pay of the seniors. Grant of personal pay to be absorbed in future increments will be a temporary and short lived solution. The augmentation of the anomaly by grant of fixation under F.R. 22 (1)(a)(i) is not considered by the respondents. Annexure A-9 effectively treated unequals as equals and is, therefore, discriminatory. The applicant is made to suffer the loss in fixation of pay only because he was granted promotion as Telecom Mechanic based on his seniority and performance in the examination as per the recruitment rules. The anomalous situation of senior drawing lesser pay than his junior was not contemplated in Annexure A-4. The respondents have stepped up the pay of the similarly placed employees in compliance with the Annexure A-6 judgement of the Hon'ble High court of Kerala in W.P.(C) No. 30582 of 2005 and connected cases and O.A. No. 968/2010. The refusal to grant the benefits to the applicant herein who is similarly situated is unjust, illegal and arbitrary. The pay of all the employees in the secondary switching area is not published by the

respondents, though mandatory under the Right to Information Act. The pay and pay fixation granted to other employees is not readily available. Hence Annexure A-9 to the extent it makes the option with regard to the junior final and unamendable is illegal and unfair. The Committee which recommended grant of personal pay to rectify the anomaly of senior drawing lesser pay than the junior, failed to visualize that the inequity in pay will continue and that it will be multiplied by future promotions and ultimately reflect on the pension also. When a junior is drawing higher pay than the senior, it is an anomaly. But Annexure A-9 purports to consider the case of the senior drawing lesser pay than the junior as not an anomaly at all. The relief claimed by the applicant is not barred by limitation since the issue being fixation of pay is a continuing cause of action. The pay disparity between the applicant and his junior arose only due to pay fixation under F.R.22(1)(a)(1) consequent on promotion of the junior after the implementation of IDA pay scale. This Tribunal in O.A. No. 1025/2010 quashed the anomaly committee's report, which was upheld by the Hon'ble High Court of Kerala in OP (CAT) No. 2233/2011 and connected cases.

3. The respondents submitted that the O.A is hit by limitation as he did not make any representation highlighting his grievance or challenged the denial of stepping up of pay for all these years. The term 'anomaly' is not defined by any rule. The applicant was drawing higher pay most of the time, excluding certain spells, due to two pay upgradations till date. The reason for senior getting lesser pay than the junior in the present case is not on account of implementation Fundamental Rule, but due to the point to point pay fixation or conversion from CDA scale of pay to the IDA scale of pay. Hence it is not an

anomaly. On 01.10.2000, there was no pay revision but only conversion from CDA pay scale to IDA pay scale. The decisions rendered in different cases are only applicable to the respective applicants. The rectification of anomaly applying Fundamental Rules was not incorporated in Annexure A-4. In W.P. (C) No. 30582/2005, it was made clear that the judgement will not stand in the way of the Anomaly Committee from considering the matter or the respondents from entering into another settlement with the employees' Unions. The fixation of IDA pay scale is governed by separate set of orders issued by the BSNL Headquarters as per the agreement signed with the approved Unions and not under Fundamental Rules.

4. We have heard Mr. P.A. Kumaran, learned counsel for the applicant and Mr. Pradeep Krishna, learned counsel appearing for respondents No. 1 to 3 and perused the records.

5. In our considered view, this O.A is not barred by limitation as the issue of fixation of pay is a continuing cause of action in the case of the applicant. The issue of rectifying the anomaly in pay by stepping up the pay of the senior to the level of junior in respect of Telecom Mechanic has been decided in a number of cases on earlier occasions. In W.P.(C) No. 30582/2005, Hon'ble High Court of Kerala held as under :

"5. I have considered the submissions made at the Bar by the learned counsel appearing on either side. I find force in the contention raised by the learned counsel for the petitioner that in the absence of another agreement or an award by the Industrial Tribunal, the parties cannot depart from or ignore Ext.P1. Ext.P1 contemplates fixation of pay applying the provisions of the Fundamental Rules. It is settled law that the agreement between the union representing the employees and



the employer can be altered only by another settlement or by an award of the Industrial Tribunal. No agreement other than the agreement referred to in Ext.P2 has been brought to my notice. The service conditions stipulated in Ext.P1 even now hold the field. Even in Ext.R1(g), the respondents rely on Rule 22 of the Fundamental Rules. The stand taken by the respondents in Ext.R1(i) and Ext.R1(j) is that seniors drawing lesser pay than the juniors, though the juniors were promoted later to the same post is not an anomaly at all. In my opinion, there is no merit in the said contention. When Ext.P1 stipulates that the pay will be fixed applying the provisions of the Fundamental Rules, the respondents are not entitled to depart from Ext.P1 and to fix the pay ignoring the provisions therein. By Exts.P2 and P3 the pay of the petitioners was stepped up and equated with the pay of the juniors who were promoted after 1.10.2000. No objection was raised from any quarter regarding the fixation of pay in Exts.P2 and P3. As a matter of fact, the petitioners were being paid salary equivalent to the pay their juniors were drawing. This state of affairs continued till January, 2005 when the stepped up pay was withdrawn. From September, 2005 onwards the excess amount drawn by the petitioners was also sought to be recovered in monthly instalments.

6. In my considered opinion, in the light of Ext.P1, the stand taken by the respondents cannot be countenanced. I therefore declare that the petitioners are entitled to have their pay stepped up and equated with the pay of their juniors, who were promoted as Telecom Mechanic after 1.10.2000 in the manner done in Exts.P2 and P3. The arrears of emoluments payable to the petitioners from January, 2005 onwards shall be paid on the basis of the fixation in Exts. P2 and P3. They would also be entitled to periodical increments with effect from the date on which increments were granted to their juniors in service. The amount recovered shall also be reimbursed to them. I make it clear that this judgment will not stand in the way of the Anomaly Committee from considering the matter or the respondents from entering into another settlement with the employees' unions."

6. In O.A. No. 968/2010, this Tribunal held as under:

"2. We have heard the counsel on both sides. It is true that the cause of action for filing the OA arose as early as on 07.08.2002 when Annexure A-1 was issued in favour of juniors of the applicants. But according to the applicants the matter was pending consideration before the Anomaly Committee until Annexure A-10 was issued on 30.08.2010. Be that as it may, we are satisfied that anomaly in the matter of

pay in comparison with that of the juniors is a grievance still pending and therefore there is recurring cause of action for redressal. Therefore, we find that the application is not time barred. At the same time when the applicants are claiming some monetary benefits it is settled principle that the ordinary law of land will apply in respect of arrears payable which is confined to three years of filing of the OA. In the factual situation the applicants pay be fixed with effect from 01.10.2000 on par with their juniors in the IDA scale. However, they are entitled for consequential benefits and the monetary benefits will be confined to three years prior to the date of filing the OA, i.e 05.07.2011 and thereafter."

7. In O.A. No. 688/2012, this Tribunal held as under :

"2. In the light of the binding precedents and the decision of the Hon'ble Supreme Court we allow this OA and direct the respondents to rectify the anomaly in the matter of pay in comparison with that of the juniors by stepping up of pay on par with their juniors w.e.f. 1.10.2000 in the IDA scale. However, they shall only be entitled to monetary benefits three years prior to the date of filing of the OA and thereafter. "

8. In O.A.Nos. 1083/2011 and 1084/2011, this Tribunal held as under:

"2. OA 1084/11 is also a similar case filed by another set of employees. Similar contentions were raised and as such both OAs were heard together as common question of facts and law are involved.

3. It is fairly submitted that the contentions and the reliefs sought are squarely covered in favour of the applicants as in the earlier orders in OA 419/11 and connected cases wherein this Tribunal has disposed of the OA directing that the anomaly in the matter of pay in comparison with that of the juniors shall be rectified by stepping up of pay of the applicants on par with their juniors. In the circumstances, we allow these OAs directing the respondents to rectify the anomaly in the matter of pay in comparison with that of the juniors by stepping up of pay of the applicants on par with their juniors. Their pay will be fixed with effect from 01.10.2000 at par with juniors in the IDA scale. However, they shall be entitled to monetary benefits three years prior to the date of filing the OA and thereafter."

9. O.A. No. 405/2011 and connected cases were allowed by this Tribunal as under :

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"7. In O.A. No. 846/2000 decided on 14.01.2011, this Tribunal has held that the order issued on 30.08.2010 at Annexure R-4 does not redress the grievance of the applicant therein because the personal allowance that was granted would not count for any other purpose like pension, D.A. etc. Not counting the personal allowance for the purpose of pay including the pension and D.A. will result in the anomaly of senior drawing less emoluments or pension, as the case may be, than his junior. The aforesaid order dated 30.08.2010 does not meet out full justice to the applicant therein. The settled law as per the decision of the Apex Court in **Gurcharan Singh Grewal and Another vs. Punjab State Electricity Board**, (2009) 1 SCC (L&S) 578, is that a senior cannot be paid a lesser salary than his junior. In **Union of India and Others vs. P. Jagdish and Others**, AIR 1997 SC 1783, the Apex Court upheld the principle of stepping up of pay to remove the anomaly of juniors getting higher pay than their seniors. Following the ratio of the decisions of the Hon'ble Apex Court and the Hon'ble High Court of Kerala and orders of this Tribunal in O.A. Nos. 623/2009 and connected cases, O.A. Nos. 846/2010, 558/2010 and connected cases, we have no hesitation in allowing these O.As. Accordingly, it is ordered as under.

8. During the period when the applicants were paid less pay than their juniors, they are entitled to get the same monetary consideration as their juniors. Accordingly, we declare that the applicants are entitled for stepping up of their pay equal to that of the common junior, Mr. Francis M. Fernandez and their pay shall be accordingly refixed. However, the arrears of monetary benefits will be paid limited to a period of 3 years prior to the filing of these O.As and thereafter. The respondents are directed to issue appropriate orders and disburse the amount due to the applicants within a period of three months from the date of receipt of a copy of this order."

10. It is well settled that a senior getting lesser pay than the junior is an anomaly. In the instant case, the applicant's pay is less than his junior. This anomaly is only due to pay fixation under F.R.22(1)(a)(1) consequent on the promotion of his junior after implementation of the IDA pay scale. Annexure A-9 order granting personal pay does not address the issue of senior drawing lesser pay than the junior in an equitable and permanent way. It is a temporary and short lived solution. It does not take into account that the

inequity in pay will continue and would reflect upon the pension also. The contention of the respondents that the applicant was drawing higher pay most of the time excluding certain spells due to two pay upgradations till date is an admission that the applicant drew lesser pay than his junior during certain spells. The applicant was drawing higher pay in CDA pay scale and IDA pay scale till his junior was promoted as Telecom Mechanic and his pay was fixed under F.R. 22(1)(a)(1) with effect from 12.10.2011. Thereafter, his junior continued to draw higher pay till 01.10.2004. Subsequent to upgradation and pay revision, the applicant started drawing higher pay than his junior till 18.11.2008. From 01.10.2009 onwards, his junior again started drawing higher pay than the applicant on grant of second upgradation to him. As the respondents did not publish the pay of the employees of the secondary switching area, it is not fair to make the option with regard to the junior final and unamendable.

11. In the light of the binding precedents, the O.A. is allowed as under. The Annexure A-9 order is quashed 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(1)(a)(1) and to the extent it stipulates that the option with regard to the junior as against whom pay parity sought would be final. It is declared that the applicant is entitled to get stepping up of pay to that of his junior, Francis M Fernandes, who started to draw higher pay by virtue of pay fixation granted to him on point to point basis in the IDA pay scale and due to fixation given under FR 22(1)(a)(1) after fixation of pay in the IDA pay scale. The respondents are directed to step up the pay of the applicant to that of his junior, Francis M Fernandes, and pay


arrears and consequential benefits from the date of stepping up. The payment of arrears will be limited to three years prior to the date of filing of the O.A and thereafter.

12. Appropriate orders in respect of the above direction shall be issued by the respondents within a period of two months from the date of receipt of a copy of this order. No costs.

(Dated, the 24th October, 2013)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE A.K. BASHEER)
JUDICIAL MEMBER

cvr.