

**Central Administrative Tribunal
Ernakulam Bench**

OA No.22/2013

~~Friday~~, this the 31st day of July, 2015

CORAM

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

1. T.C.Subramanian, age 55 years
S/o Chamy
Telecom Mechanic, Telephone Exchange
Chelakkara, Thrissur SSA
Residing at Thaivalappil House, Mullurkara P.O.
Wadakkancherry, Thrissur District-680 583.
2. M.S.Unnimon, 54 years
S/o Sankuru
Telecom Mechanic, Telephone Exchange
Puvathur.
Residing at Mallissery House
Vilakkattupadam Road, Pavaratty P.O.
Thrissur 680 507.

Applicants

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

Versus

1. Bharath Sanchar Nigam Ltd
represented by its Chairman and Managing Director
Sanchar Bhavan, New Delhi-110 001
2. Chief General Manager
Teleconm, BSNL, Kerala Circle
Thiruvananthapuram 695 033.
3. Principal General Manager Telecommunication
Bharat Sanchar Nigam Ltd
Thrissur SSA, Thrissur 680 022.
4. Union of India represented by the
Secretary to Govt of India
Department of Communications
New Delhi 110 001.

Respondents

(By Advocate: Mr.Pradeep Krishna for R1-3)
Mr.C.P.Ravikumar, ACGSC (R4)

The Original Application having been finally heard on 8th July, 2015, this Tribunal delivered the following order on 31st July, 2015:-

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 Group-D under Thrissur Division of the erstwhile Department of Telecom in the year 1983-84. They were promoted as Telecom Mechanic (TM) on officiating basis with effect from 19.8.1997 (Annexure A1). One Sri E.M.Krishnankutty who was junior to the applicants was promoted as TM w.e.f. 20.02.2002.

2. The applicants were drawing pay of Rs.3540/- in the pay scale of Rs.3200-4900 as on 1.10.2000, the date on which the the Department of Telecom was converted into Bharat Sanchar Nigam Limited (BSNL). 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 based on their options.

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.4720-150-6970 with the benefit of a point to point fixation. Both the applicants' pay in IDA scale was fixed at Rs. Rs.5320/-. While the applicants got the benefit of 4 increments in the revised IDA scales, their junior Sri E.M.Krishnankutty 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 E.M.Krishnankutty was fixed at Rs.6220 in the pay scale of Rs.5700-160-8100. The anomaly in the pay of the applicants and their alleged junior Sri




Krishnankutty 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 CDA 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. 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 E.M.Krishnankutty who started to draw higher pay by virtue of pay fixation granted to them 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 E.M.Krishnankutty 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.


6. 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 E.M.Krishnankutty 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. Further, the applicants were junior to Sri E.M.Krishnankutty before their promotion. Sri Krishnankutty had joined the Department on 26.3.1981 as Lineman whereas the applicants commenced service as regular Mazdoor under



Thrissur Division, the erstwhile Department of Telecom, on 17.2.1983 and 18.2.1983 respectively. The difference in pay is due to the fact that Sri Krishnankutty, senior to the applicants, became entitled to higher pay fixation on promotion as TM on 20.2.2002. He is receiving higher pay than the applicants because of higher scale of pay to which he became entitled in the post of SIOP by reason of his deputation to BSNL and subsequent conversion of their CDA pay scale into IDA pay scale by Annexure A2 office order dated 7.8.2002. The applicants never held SIOP post in BSNL as they were promoted to the post of TM prior to 1.10.2000. As per Government of India order No.22 under FR 22 (I) (a) (1), stepping up of pay should be done with effect from the date of promotion of the junior if both the junior and senior officials belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre. The anomaly should be directly as a result of application of FR 22. The applicants were drawing less pay even before conversion from CDA to IDA scale i.e., on 30.09.2000 and naturally Sri E.M.Krishnankutty would draw more pay than the applicants. As the difference in pay could not be termed as an anomaly but has arisen only on account of the longer service put in by Sri Krishnankutty and yearly increments earned by him in a particular cadre, this OA was not maintainable, contend the respondents.

7. The applicants in their rejoinder have pointed out that promotion to the cadre of Telecom Mechanic is based on passing in the Screening Test. Since they were more meritorious and passed the test in the first chance itself got promoted to the higher cadre on earlier dates. Sri E.M.krishnankutty was not promoted as he passed the Screening Test only in subsequent chances. He was promoted with effect from 20.2.2002. His position in the seniority list was 828 whereas the position of first applicant was at 121 and second applicant at 254. Hence E.M.Krishnankutty was junior to the applicants in the cadre of Telecom Mechanic.


8. We have heard learned counsel for the parties, perused the pleadings 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 E.M. Krishnankutty as they all belong to the same cadre of TM. The applicants were made to suffer a loss in fixation of pay only because they were granted promotion as TM earlier on the basis of their performance in the examinaion as per the recruitment rules. The applicants belonged to the cadre of TM under Group-C and Sri Krishnankutty belonged to Lineman/Sub Inspector of Phones which was also a Group-C post. That the grant of personal pay as envisaged in Annexure A8 would rectify the pay difference between the senior and junior would only aggravate the situation resulting in perpetual disadvantage. The learned counsel relied on the order passed in OA 178 of 2013 dated 24th October, 2013 of this Bench to substantiate his contention that the applicants are entitled to stepping up of pay. Reliance was also placed on the decision of the Hon'ble High Court of Kerala in OP(CAT) No.2233 of 2011 (Z).

9. The learned counsel for the respondents would, on the other hand, draw our attention to Annexure R1 (a) statement showing the pay scale and pay fixation of the two applicants as also Sri E.M.Krishnankutty, their junior in the TM grade. He pointed out that the applicants were far junior to Sri E.M.Krishnankutty in as much as Sri Krishnankutty had joined the Department on 26.3.1981 as Lineman whereas the applicants did so in February 1983 as regular Mazdoor. The applicants were drawing less pay than Krishnankutty even before conversion from CDA to IDA pay scale and, therefore, the same cannot be termed as an anomaly. Learned counsel for the respondents placed reliance on the judgment of the Hon'ble Supreme Court in *Union of India Vs. Sushil Kumar Paul*, reported in 1998 KHC 987: 1998 SCC (L&S) 1336 and argued that the rules governing stepping up of pay would not come to the rescue of the applicants.

10. The issue that was presented for consideration in this case was 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 to with the

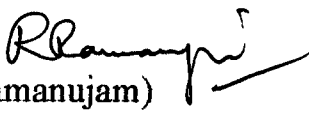


staff union. Since Sri S.M.Krishnankutty spent a longer time in the lower pay scale, he had to be given the benefit of increments while fixing his pay on promotion. The matter has already been considered by the Anomaly Committee and the respondents cannot go beyond the recommendations made by the committee based on which Annexure A8 orders were issued. We are unable to agree with the applicants that an early promotion should necessarily entail a higher or equal pay in the pay scale as that of the persons promoted later. It is to be noted that the applicants were junior to Sri Krishnankutty in the lower grade. They had got an out of turn promotion admittedly on the basis of merit. But merit has already been rewarded in the form of an earlier promotion and consequent seniority on the higher post. They would further benefit from this when considered for future promotions. However, there is no basis to contend that their pay should be stepped up as and when they discover that a new promotee is getting a higher pay. Such a situation is more the norm than an exception in direct recruit versus promotee issues in various cadres. Often a direct recruit would be senior by virtue of his appointment to a post before promotions are made to the same level from lower posts. In such cases, while the pay scale would be the same, pay of the promotees would invariably be higher. An out of turn promotion based on limited competitive examination is akin to direct recruitment though not categorized as such. Therefore, the perceived pay anomalies are inevitable in the very scheme of the administration. We find that the issue considered by this Tribunal in OA No.968/2010 and the other cases relied upon by the applicants is not identical. In OA 968/2010, the Tribunal 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. These were cases where the anomaly was solely on account of movement from CDA to IDA pay scales. The applicants in those cases were



senior both in the lower level as well as on the promotion post. The relief granted to them cannot, therefore, be made available to the applicants herein as they were admittedly juniors and were drawing a lower pay than that of Sri Krishnankutty while on the lower post.

11. For the aforesaid reasons, the OA fails and is, therefore, dismissed. No order as to costs.


(R. Ramanujam)
Administrative Member


(N. K. Balakrishnan)
Judicial Member

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