

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 926 of 2010

Original Application No. 1085 of 2010

Original Application No. 42 of 2011

Original Application No. 253 of 2011

Thursday this the 9th day of June, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. Original Application No. 926 of 2010 -

1. A.V. Sreenivasaraghavan, S/o. Velayudhan, aged 51 yrs, Telecom Mechanic, BSNL, Kalady, residing at Ambattu (H), Manjapra.
2. K.P. Santhosh, S/o. Pavithran, aged 47 yrs, Telecom Mechanic, BSNL, Malayattoor, residing at Kozhikodathu (H), Panayeli, Manichamangalam.
3. M.A. Babu, S/o. Ayyappan Nair, aged 49 yrs, Telecom Mechanic, BSNL, Kalady, residing at Marangattu (H), Piraroor, Kalady.
4. M.C. George, S/o. Chacko, aged 48 yrs, Telecom Mechanic, BSNL, Kalady, residing at Mulavarikal (H), Piraroor, Kalady.
5. T.V. Unni, S/o. A. Velayudhan, aged 51 years, Telecom Mechanic, BSNL, Kalady, residing at Thozuthingal Padavil (H), Kalady.
6. P.S. Surendran, S/o. Sankaran Nair, aged 48, Telecom Mechanic, BSNL, Perumbavoor, residing at Pallippattu (H), Pezhakkapilly, Muvattupuzha.
7. T. Ayyappan, S/o. Thankappan Nair, aged 48 years, Telecom Mechanic, BSNL, Perumbavoor, residing at Kanjily (H), Kidangoor (PO), Vengoor.
8. Sankaran Nambiar, S/o. Narayanan Nambiar, aged 49 years, Telecom Mechanic, BSNL, Perumbavoor, residing at Edassery Pushpakkam, Thuruthy (PO), Pralayakadu.
9. K.P. Radhakrishnan, S/o. Padmanabhan Nair, aged 49 yrs., Telecom Mechanic, BSNL, Vazhakkulam, residing at Thottathikudy (H), Pezhakkapilly, Muvattupuzha.

10. K. S. Pathrose, S/o. K.V. Paulose, aged 49 years, Telecom Mechanic, BSNL, Perumbavoor, residing at Koottala (H), Marottichode, Kalady.
11. A.K. Surendran, S/o. A.E. Kuttappan, aged 48 yrs., Telecom Mechanic, BSNL, Perumbavoor, residing at Asarikudy (H), Edavoor PO, Edavoor.
12. N.K. Sabu, S/o. N.R. Krishnan, aged 51 yrs, Telecom Mechanic, BSNL, Perumbavoor, residing at Ambelil (H), Aayavana P.O., Muvattupuzha.
13. K.S. Pathrose, S/o. K.O. Devassy, aged 49 yrs., Telecom Mechanic, BSNL, Perumbavoor, residing at Kunthalappilly (H), Asamannur PO, Cherukunnam.
14. K.P. Ulahanna, S/o. Kuriako Paulose, aged 49 yrs, Telecom Mechanic, BSNL, Kolencherry, residing at Koothuman Chottil (H), Karukapilly P.O., Kolencherry.
15. Krishnan K. Raju, S/o. Kunjikrishnan, aged 51 yrs., Telecom Mechanic, BSNL, Vazhakkulam, residing at Akkalkarottu (H), Anchalpetty, Pambakuda.
16. Vincent K. Joseph, S/o. K.S. Joseph, aged 49 yrs., Telecom Mechanic, BSNL, Vengoor, residing at Vadakkel (H), Elambakapilly, Kodanadu P.O.
17. P. Eldho, S/o. Paulose, aged 49 yrs, Telecom Mechanic, BSNL, Vengoor, residing at Eramathukudy, Keezhillam, Keezhillam P.O.
18. K.C. George, S/o. K.P. Chacko, Aged 47 yrs, Telecom Mechanic, BSNL, Perumbavoor, residing at Kannappilly (H), Piraroor, Kalady.
19. T.S. Ashraf, S/o. K.A. Seethi, aged 49 yrs, Telecom Mechanic, BSNL, Aluva, residing at Thottamasala (H), Marampilly, Aluva.
20. N.R. Antony, S/o. N.V. Rockey, aged 52 years, Telecom Mechanic, BSNL, Aluva, residing at Nelanattu (H), Manichamangalam P.O., Kalady.

Applicants

2. Original Application No. 1085 of 2010 -

1. Vijayan P.S., S/o. Shankaran, aged 48 yrs., Telecom Mechanic, BSNL, Angamaly, residing at Pattathanathu (H), Manikyamangalam, Kalady.
2. K.V. Vijayakumar, S/o. K.N. Velayudhan Nair, aged 50 yrs., Telecom Mechanic, BSNL, Chelachuvadu, Idukki, residing at Kottappilly (H), Aymuri, Koovappady.

3. Original Application No. 42 of 2011 -

1. N. Asharaf, S/o. Noor Mohammed, Aged 44 yrs, Telecom Mechanic, BSNL SDE Central I Palakkad, residing at E.G.P&T Quarters, Sulthanpetta, Palakkad.
2. K. Ramakrishnan, S/o. K. Karunakaran, aged 50 yrs, Telecom Mechanic, BSNL SDE Central III Palakkad, residing at Sreekalyan, 19/527, New Colony, Mankavae, Palakkad.
3. B. Bahulayan, S/o. Balasubramanian, aged 49 yrs., Telecom Mechanic, BSNL SDE Central I Palakkad, residing at 5/450 (1), Pooja Nagar, Puthur, Palakkad P.O., Palakkad.
4. P. Sadasivan, S/o. Padmanabhan Nair, Aged 53 yrs, Telecom Mechanic, BSNL SDE Central I Palakkad, residing at 11/533 Aiswarya, Parassery, (Via) Kongad, Palakkad.
5. V. Jyothiprakash, S/o. Velayudhan, aged 49 yrs, Telecom Mechanic, BSNL SDE Central I Palakkad, residing at Alamkode House, Olavakkot. P.O., Pakakkad.
6. C. Rajan, S/o. Channi, aged 52 yrs., Telecom Mechanic, BSNL Adakkaputhur Exchange, residing at Kunnumpurath (H), Kodeenthirapully P.O., Palakkad.

Applicants

4. Original Application No. 253 of 2011 -

1. C. Narayanan, S/o. Chamiyar, aged 50 yrs., Telecom Mechanic, BSNL, Koduvayur, residing at Saiprsadam (H), Kundanparambu, Vadavannur P.O.-678504.
2. V. Narayanan, S/o. Appukunchan, aged 50 yrs., Telecom Mechanic, BSNL, Kadampazhipuram, residing at Vettukulam (H), Kadampazhapuram P.O.-678 633.
3. A. Narayanan, S/o. Aru, aged 50 yrs., Telecom Mechanic, BSNL, Nemmara, residing at Palazhy (H), Kottayankade, Elavancherry PO-678 508.
4. E. Muralikrishnan, S/o. Raman Nair, aged 50 yrs, Telecom Mechanic, BSNL, Kollengode, residing at Erata (H), Yoginimatha, Eranjimannam, Kollengode P.O-678506.
5. K. Sudevan, S/o. Kuppan, aged 50 years, Telecom Mechanic, BSNL, Nemmara, residing at Devapushpam (H), Akampadam, Pothudy PO-678508.

3. G. Aravindakshan, S/o. C.K. Gangadharan, aged 50 yrs., Telecom Mechanic, BSNL, Koovappadi, residing at Chilliparambil (H), Elambakapilly, Koovappadi.
4. Rockey N.P., S/o. Poulo N.V., aged 51 yrs., Telecom Mechanic, BSNL, Thottakattukara, Aluva, residing at Nellanattu (H), Manickamangalam P.O., Kalady.
5. M. Unnikrishnan, S/o. R. Mahadevan Nair, aged 49 yrs., Telecom Mechanic, BSNL Thottakattukara, Aluva, residing at Muralies Mana (H), West Desom, Aluva.
6. T.K. Rajeevan, S/o. Kumaran, aged 52 yrs, Telecom Mechanic, BSNL Thottakattukara, Aluva, residing at Thamarassery (H), Eroor P.O., Thrippunithura.
7. P.A. Unni, S/o. Aandavan, aged 50 yrs., Telecom Mechanic, BSNL, Thottakattukara, Aluva, residing at Pullattu (H), East Veliyathunadu, U.C. College P.O., Aluva.
8. P.K. Sasi Sekaran, S/o. Krishnan, Aged 51 yrs., Telecom Mechanic, BSNL, Angamaly, residing at Pattathanathu (H), Meloor (PO).
9. Job C. Daniel, S/o. Late C.J. Daniel, Aged 50 yrs, Telecom Mechanic, BSNL, Angamaly, residing at Chembottil (H), Anapady, Ollur, Thrissur.
10. Reghukumar M.S., S/o. Sankaran Nair, Aged 48 yrs., Telecom Mechanic, BSNL, Malayatoor, residing at Mangalath House, Piraroor, Kalady. **Applicants**

(By Advocate – Mr. C.A. Joy for all the applicants)

V e r s u s

1. Bharath Sanchar Nigam Limited, rep. by the Chairman & Managing Director, Corporate Office, Statesman House, Barakhama Road, New Delhi.
2. The Principle General Manager, BSNL Bhavan, Ernakulam SSA, Ernakulam, Cochin-16.
3. The Accounts Officer, ESTT, Office of TGMP, BSNL BHAVAN, Ernakulam, Cochin-16. **Respondents**
in OAs Nos. 926 & 1085 of 2010

(By Advocate – Mr. George Kuruvilla in OAs Nos. 926 & 1085 of 2010)

6. V. Krishnadas, S/o. V. Theethan, aged 47, Telecom Mechanic, BSNL, Kadampazhipuram, residing at Vaparakkal (H), Parassery PO- 678631.
7. A. Noormuhammed, S/o. Aneefa, aged 49 years, Telecom Mechanic, BSNL, Vadavannur, residing at Eripadam (H), Muthalamada PO- 678507.
8. K.K. Surendran, S/o. K.T. Kely, aged 47 years, Telecom Mechanic, BSNL, Adiperanda, residing at Koothumadam, Nellipadam, Nemmara PO-678508.
9. P.R. Subramanyan, S/o. Rama Iyyer, aged 47 yrs., Telecom Mechanic, BSNL, Kollengode, residing at Ram Nivas (H), Alampallam, Old Village, Kollengode PO-678506.
10. H. Samsudheen, S/o Haneefa, aged 49 years, Telecom Mechanic, BSNL, Project Udaan, AGM/CFA-III/Palakkad, residing at Puthenpura(H), Malayampallam, Vadavannur.P.O-678 504.

Applicants

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(By Advocate – Mr. C.A. Joy for all the applicants)

V e r s u s

1. Bharath Sanchar Nigam Limited, rep. by the Chairman & Managing Director, Corporate Office, Statesman House, Barakhama Road, New Delhi, Pin-110 001.
2. The Chief General Manager, Telecom, BSNL, Thiruvananthapuram, Pin-695 033.
3. The General Manager, Telecom, BSNL, Palakkad, Pin-678014.
3. The Accounts Officer, Office of GMP, BSNL, Palakkad, Pin-678 014. **Respondents in OAs Nos. 42 & 253 of 2011**

(By Advocate – Mr. Pradeep Krishna in OAs Nos. 42 & 253 of 2011)

These applications having been heard on 19.5.2011, the Tribunal on 09.06.2011 delivered the following:

O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member -

Having common facts and issues, these OAs were heard together and are disposed of by this common order.

2. The applicants have filed these OAs mainly for a declaration that they are entitled for re-fixation of their pay based upon the stepping up given and for disbursal of arrears of salary and other benefits and also for a direction to consider and pass appropriate orders on their representations within a time limit.

3. Facts in brief are as under. The Telecommunication Department was corporatised and converted into Bharat Sanchar Nigam Limited (in short BSNL) on 1.10.2000. All the Group-C and Group-D employees of the BSNL were absorbed as regular employees of the BSNL on the same date. Consequently their pay scales from Central Dearness Allowance pay scales were switched over to Industrial Dearness Allowance pay scale. The fixation of pay was on a point to point basis which resulted in juniors getting more pay on their promotion as Telecom Mechanics than their seniors. This anomaly got rectified by granting stepping up of the pay of the seniors to that of their juniors. The applicants are aggrieved because either their stepping up is not implemented or is cancelled as the case may be. Their representations have not yielded any result.

4. The applicants submitted that the Hon'ble High Court of Kerala has upheld the right of seniors for stepping up of their pay to the level of pay of their juniors and entitlement of periodical increments and arrears. Non extension of the said benefits to the applicants is illegal and unjust. Not implementing the stepping up amounts to discrimination. Non-consideration of the representations of the applicants is illegal and violative of principles

of natural justice and fair play.

5. The reply filed by the respondents in OA No. 42 of 2011 is adopted as common reply. They submitted that cases of juniors getting more pay than seniors on account of fixation of pay on point to point basis do not fall within the purview of anomaly as defined under Rule 22 of FR&SR. Further, it was submitted that the respondents are ready to grant personal allowance as per order dated 30.08.2010 to remove the hardships and difficulties being suffered by the applicants.

6. We have heard the respective counsel appearing for both sides and carefully perused the records.

7. The issues arising in these OAs are wholly covered by the decisions of the Hon'ble High Court of Kerala and this Tribunal as under.

8. In Writ Petition (C) No. 30582 of 2005 the Hon'ble High Court of Kerala in the judgment dated 24.7.2008 held as under:-

“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 01.10.2000 in the manner done in Exts.P2 and P3. The arrears of emoluments payable to the petitioner from January, 2005 onwards shall be paid on the basis of 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 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 Writ Petition is allowed as above. No costs."

The Hon'ble High Court held that seniors getting less pay than their juniors is an anomaly and that they are entitled to have their pay stepped up.

9. In OA No. 846 of 2010 this Tribunal held as under:-

"7. Interestingly, the respondents do not claim that by issuing the letter dated 30.08.2010, the problem of senior drawing less pay than his junior is solved. The fact is that it does not redress the grievance of the applicant. The personal allowance that was granted vide Annexure-R2(m) 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. Annexure R2(m) dated 30.08.2010 does not meet out full justice to the applicant. Therefore, in our considered view, in the facts and circumstances of the case, as per the settled law that the applicant is entitled to have his pay stepped up on par with his juniors who were promoted as Telecom mechanics and granted the benefit of fixation of pay under FR 22 (I)(a)(i) with effect from 01.10.2000 or thereafter with all consequential benefits of arrears of pay and allowances arising therefrom. Accordingly, we order as under.

8. The respondents are directed to step up the pay of the applicant as above and to grant him all consequential benefits of arrears of pay and allowances arising therefrom within a period of two months from the date of receipt of a copy of this order.

9. The O.A. is allowed as above with no order as to costs."

10. In OA No. 558 of 2010 and connected cases this Tribunal held as under:

"8. The attempt on the part of the respondents to set right the anomaly of senior employees drawing less pay than the juniors as per Annexure A-14 in O.A. No. 1025/2010 does not address the issue fully. Grant of personal pay to be absorbed in future increments is a temporary and short sighted solution to the problem of anomaly. After an increment or two, a junior will continue to be in higher pay since their personal pay is to be absorbed. The affect of anomaly will be

multiplied by future promotion. As his personal pay is not counted for pension or for any other purpose, the anomaly will be reflected in the pensionary benefits also. Therefore, in our considered opinion, all the applicants will have to be granted the benefit of stepping up on par with their juniors who got promotion after 01.10.2000. Accordingly, we allow these O.As as under.

9. The impugned orders in these O.As to the extent they relate to denial of stepping up of pay to the applicants drawing lesser pay than juniors who got promotion after 01.10.2000, withdrawal of stepping up and consequential recoveries are quashed and set aside. We declare that the applicants are entitled to get stepping up of pay to that of their juniors who started drawing higher pay by virtue of their promotion and pay fixation under F.R.22(I)(a)(1) after the introduction of IDA pay scale and all consequential benefits arising therefrom, including arrears, if any. We further direct the respondents that the amount recovered from the applicants should be refunded. The above directions should be complied with, within a period of three months from the date of receipt of a copy of this order. In the facts and circumstances of these O.As, we do not consider it justified to grant interest on the arrears/refunds to be made to the applicants."

11. Granting of personal allowance does not solve the problem of seniors getting less pay than their juniors. Following the above cited decisions of the Hon'ble High Court of Kerala and this Tribunal these OAs are allowed.

12. We declare that the applicants in these OAs are entitled for rectification of their pay based upon stepping up of their pay to the pay of their juniors who are getting higher pay. The respondents are directed to disburse the arrears of salary and other benefits within a period of three months from the date of receipt of this order. No order as to costs.

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

"SA"