

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**OA 370/05**

**Friday this the 28th day of April, 2006**

**CORAM**

***HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER***

S. Purushothaman Nair S/o the late K.Sreedharan Nair,  
aged 57 years working as Junior Telecom Officer,  
Telephone Exchange, Peyadu, Thiruvananthapuram.  
Residing at Sree Shylam, Elankathu Nagar,  
Valiyavila PO,Via.Thiruvamala,  
Thiruvananthapuram.6. ....Applicant

(By Advocate Mr.OV Radhakrishnan (Sr. Counsel)

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- 1 Union of India, represented by its Secretary, Ministry of Communications and Information Technology, Department of Telecommunications, 421 Sanchar Bhavan, 20 Ashoka Road, New Delhi.1.
- 2 Bharat Sanchar Nigam Limited, represented by its Chairman and Managing Director, Statesman Building, New Delhi.
- 3 Chief General Manager, Bharat Sanchar Nigam Limited, Kerala Circle, Thiruvananthapuram.33.
- 4 Principal General Manager, Thiruvananthapuram Telecom District, District Cooperative Bank Building, East Fort, Thiruvananthapuram.
- 5 Accounts Officer (Pay Bill), BSNL Office of the Principal General Manager, Telecom District, Thiruvananthapuram.23. ....Respondents

(By Advocate Mrs. Aysha Yousuf for R.1 (no representation)  
Advocate Mr.TC Krishna for R.2to5)



The application having been heard on 3.4.2006 the Tribunal on 28.4.2006 delivered the following:

**O R D E R**

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the Annexure A6 letter dated 18.1.2005 of the Respondent No.5 asking him to remit Rs. 94,064/- paid to him towards arrears of pay and allowance, consequent upon introduction of IDA pay scale to the Executives of Bharat Sanchar Nigam Limited (BSNL for short). In the said letter the respondents has also stated that he was eligible only for the CDA pay scale as he was not absorbed in the BSNL and no presidential orders have been issued in this regard.

2 The brief facts of the case are that while the applicant was working in the cadre of Junior Telecom Officer, the Government of India issued the new Telecom Policy in the year 1999 deciding to corporatise the service providing function of Department of Telecom (DoT). Further, it was decided to transfer the business of providing Telecom service in the country currently run and entrusted with the Department of Telecom Services (DTS) and the Department of Telecom Operations (DTO) to the BSNL with effect from 1.10.2000 as per Annexure.A1 Memorandum dated 30.9.2000. According to the said Memorandum, since it was taking time for the new company to finalize the terms and conditions of absorbing the staff, employees and industrial workers in various circles/offices, as an interim arrangement, they were transferred to BSNL along with their posts,

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on existing terms and conditions on "as is where is basis" on deemed deputation without deputation allowance with effect from 1.10.2000, ie., the date of taking over of the telecom operations by the BSNL. Accordingly, the applicant also stood transferred to BSNL on deputation basis with effect from 1.10.2000.

3 Later, the BSNL has invited applications for absorption of Group 'B' officers vide Annexure.A3 letter dated 14.1.2002 wherein it was stated that the IDA pay scales and fitment formula will be announced by BSNL separately and till that time the optees will continue to remain in the CDA pay scale. The IDA Pay scale was to be made effective from 1.10.2000 and after the fixation of the pay of the absorbed employees in IDA Pay scale, they were also to be paid arrears. Since the BSNL has invited applications for absorption without finalizing the terms and conditions of absorption, some of the employees filed OA 849/02 and connected O.As, which were disposed of on 6.8.2002 pursuant to which fresh options were called for, vide Annexure.A4 Memorandum dated 2.9.03. The applicant has also submitted his option on 24.9.2003 which was received and accepted by the Assistant General Manager (Administration) of the BSNL on 10.10.03.

4 The applicant along with all such optees were continuing in the CDA pay scale and they have been paid an adhoc sum of Rs. 2,000/- per month by the BSNL before the submission of their option. On the basis of the option submitted by them their pay was fixed in the IDA pay scale with effect from 1.10.2000 and they were paid the arrears.

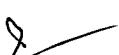
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The applicant was also paid the arrears to the tune of Rs. 94,064/- after adjusting the said amount of Rs. 2000/- paid to him monthly.

4 It was in this backdrop that the applicant has filed the present OA aggrieved by the aforesaid Annexure A6 Memo dated 18.1.05 after making the Annexure A7 and A8 representations dated 22.1.05 and 11.5.05 respectively. Respondents have not replied to both the representations so far. However, the respondents deducted Rs. 18,180/- from the pay of the applicant for the month of March, 2005 and an amount of Rs. 10,000/- from the pay of April, 2005. The contention of the applicant is that he is entitled to be placed in the IDA scale from 1.10.2000 and denying the same to him is patently illegal, arbitrary and discriminatory.

5 When the applicant approached this Tribunal with the present OA on 30.5.2004, further recovery has been stayed pending its disposal.

6 The respondents 2 to 5 in their reply has stated that the applicant was not absorbed in the BSNL as the Criminal Case No. 143/CR/1997 registered against him by the CBI CID was pending against him. Considering the seriousness of the case his application for absorption was rejected for the time being and his option for permanent absorption in BSNL was not accepted and no presidential order has also been issued. As such the applicant continued to be on deemed deputation in BSNL and he was eligible only for the CDA pay scale. The IDA pay scale is admissible only to those employees who are permanently absorbed in BSNL. It was by an inadvertent



mistake that the applicant's name was included in the list of absorbed BSNL officers and an amount of Rs. 94,064/- was paid to him on 26.4.2004. In noticing the mistake, the bank was advised to stop payment but by that time the cheque was already encashed. Therefore, the applicant was asked to refund the money vide Annexure.A6 letter dated 18.1.2005. Since the applicant failed to do so, the recovery was effected from his pay and on the basis of the interim orders of this Tribunal the amount recovered from him has been refunded to him. The absorption of the applicant in BSNL is subject to the outcome of the Criminal Case pending against him, till then he is only entitled for CDA pay scale and not the IDA pay scale. He is also, therefore, not entitled for the arrears received by him on IDA pay scale.

7 In the rejoinder the applicant has taken the preliminary objection to the filing of the reply statement by the respondents under the signature of one Shri M.Muralidharan Nair, Chief Accounts Officer (Estt), BSNL, Telecom Department, Thiruvananthapuram stating that he was not a party to the present OA and there was no statement to the effect that he was authorized in writing by the respondents 2 to 5 to file the reply statement. Relying upon the judgment of the Apex Court in Barium Chemicals Ltd.and another Vs. Company Law Board and others, AIR 1967 SC 295 and Mohammed Ibrahim Vs. B.Rama Rao, AIR 1976 SC 1822 and the order of this Tribunal in Ram Rakhan Vs. Union of India, 1988(8) ATC 16, Shri O.V.Radhakrishnan, Senior Advocate argued that the reply



statement filed by the respondents is to be ignored. He has further submitted that the applicant was not communicated with any order rejecting his option for permanent absorption. He has contended that as per Para 3 of the "General Terms and Conditions", the officers with ongoing disciplinary cases can also opt for absorption in BSNL but their absorption will be subject to the outcome of the vigilance case. The fact that an FIR was made against the applicant in Criminal Case No.143/CR/1997 of CBCID, Trivandrum by itself cannot stand in the way of his absorption. The only rider provided in paragraph 3 of Annexure A3 "General Terms and Conditions" is that such absorption will be subject to the outcome of the vigilance case. The expression "subject to" only means that the absorption is conditional upon the outcome of the vigilance case. Shri Radhakrishnan relied upon the judgment of the Apex Court in K.R.C.S.Balakrishna Chetty and Sons & Co. Vs. The State of Madras, AIR 1961 SC 1152 in which the words "subject to" have been interpreted. It has been held in the said judgment that:

"The use of the words "subject to" has reference to effectuating the intention of the law and the correct meaning in our opinion, if 'conditional upon'".

Therefore, the mere fact that vigilance case was pending against the applicant by itself is not sufficient to treat the applicant as not absorbed in BSNL. Moreover, the applicant was not retained under Department of Telecommunications by any order issued by the DoT either. The only consequence of the pendency of the vigilance case against the applicant is that his absorption in BSNL is made

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conditional upon the outcome of the vigilance case. He has also submitted that his pay cannot be brought under the CDA pay scale so long as he continues on deemed deputation under the 2<sup>nd</sup> respondent Company and got absorbed subject to the final outcome of the vigilance case. The only consequence of the pendency of vigilance case is that his permanent absorption in BSNL is deferred awaiting the outcome of the vigilance case. Therefore, the applicant is entitled to draw IDA pay scales and the recovery of the alleged excess amount is clearly illegal and indefensible and the amounts already recovered from the pay of the applicant is liable to be refunded.

8 The Respondents 2 to 5 filed an additional statement in which they have clarified that the Chief Accounts Officer (Estt) has filed the reply statement under proper authorization and hence the preliminary objection raised by the applicant in his rejoinder has no merit. As regards the other contention of the applicant in this regard, the respondents have stated that the Group 'B' officers who have submitted applications for absorption in the BSNL along with the applicant were absorbed by issuing presidential orders followed by pay fixation in IDA pay scales. During December, 2003 presidential orders were issued to Group 'B' officers excluding those who were involved in disciplinary/criminal cases. Applicant had never preferred any representation/complaint against the non-issuance of presidential orders, non-fixation of pay and allowances in IDA scale and non-payment of bonus till the filing of the above Original

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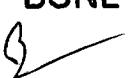
Application. Moreover by Annexure A8 representation applicant has agreed for the recovery of the wrongly paid amount. The applicant is well aware of his ineligibility for permanent absorption and consequential benefits. His eligibility for absorption to BSNL is subject to the outcome of the criminal proceedings against him. The BSNL has not so far issued any orders absorbing the applicant. The status of officers, who are not yet absorbed in BSNL is only that of deemed deputationist and they are eligible only to draw an adhoc payment of Rs. 2000 per month along with CDA pay. Officers who are permanently absorbed in BSNL are only eligible for pay in IDA scale and that too from the date of their absorption. The applicant is drawing an ad hoc payment of Rs. 2000 along with CDA pay and such officers are not entitled to get any arrears. Only when the pay is changed from CDA to IDA scale, consequent to permanent absorption, eligibility of pay fixation and question of payment of arrears arise. There is also no provision to draw bonus for Junior Telecom Officers in CDA pay scale. There is no conditional absorption as averred by the applicant. Paragraph 3 of Annexure A3 also stipulates that the absorption of persons who are involved in disciplinary/criminal/vigilance cases will be considered for absorptions only on finalization of the proceedings. Applicant is still a DOT employee and the disciplinary powers in respect of the applicant are vested with DOT only. Applicant being a Junior Telecom Officer, a gazetted cadre in DOT is not eligible for bonus.



Though the applicant is working in BSNL on deemed deputation his lien and final control are with DOT.

9 Shri Radhakrishnan relied upon the following judgments of the Apex Court in M.Gopalakrishna Naidu V. state of Madhya Pradesh, AIR 1968SC 240, Bhagwan Shukla Vs. Union of India and others, AIR 1994 SC 2480, Shyam Babu Verma Vs. Union of India and others, SCC 1994(2) 521, Sahib Ram Vs. State of Haryana, SCC supp.1995(1) 18, State of Orissa& ors. Vs.A.C.Mohanty SCC supp.1995(1) 470, and Gajanen L.Perackar Vs. State of Goa and another, SCC 1999(8) 378 in support of his arguments that the respondents are not competent or authorized to take any steps to recover or to adjust any alleged excess payment made to the applicant. In all these judgments the Apex Court has held that if the over payments have been made due to fault of the respondent department and not that of the government employee concerned the excess amount already paid shall not be recovered.

10 On the other hand, the respondents' counsel Advocate Shri T.C.Krishna has relied upon the judgments in Aligarh Muslim University and others Vs. Manzoor Ali Khan 2000(7) SCC 529, Rose Vs. State of Kerala 2004(1) KLT 934, United India Insurance Co.Ltd Vs. Roy 2005(2) KLT 63 and Santhakumari PJ Vs. State of Kerala and others ILR 2005(4)KER 563 to justify the action of the respondents in recovering the amount of Rs. 94,064/- paid to the applicant as arrears of pay and allowances on his absorption in BSNL as a mistake. Relying upon the Aligarh Muslim University case



(supra) Shri Krishna has submitted that there was no need for any further show cause notice in this matter. In the case of Rose Mary (supra) followed in Santhakumari's case (supra), the Hon'ble High Court of Kerala has held that even if the employee has not contributed to the mistake, government can recover the excess amount paid to the employee. Same is the position in the case of United India Insurance Co. (Ltd) (supra).

11 In view of the relief sought by the applicant for a declaration that he is entitled for the grant of IDA pay scale with effect from 1.10.2000 and the arrears arising thereof, first it is necessary to decide this main issue. The other reliefs to declare that the respondents are not competent to recover the alleged excess payment made to the applicant and to direct them to refund the amount already recovered will depend upon the decision on the aforesaid main issue. According to the Annexure.A3 letter dated 14.1.2002 calling of option for absorption of Group 'B' officers in BSNL, the option was open to all serving Group 'B' officers who were transferred to BSNL on deemed deputation basis. All those who have opted for absorption were entitled for IDA pay scale w.e.f. 1.10.2000 but till the IDA pay scale and fitment formalities are announced by the BSNL separately, all the optees will continue to remain in CDA pay scale and receive a sum of Rs. 2000/- pm which will be adjusted against the arrears payable to them on their fitment in the IDA pay scale. After fixation of the pay of the absorbed employees in IDA pay scale they will be paid arrears. The option

exercised by the officers are final. The officers with ongoing disciplinary cases could also opt for absorption in BSNL but their absorption is conditional. Clause 3 of the "General Terms and Conditions of Absorption of Group B Officers in BSNL" gives the following provisions in this regard:

"The officers with on-going disciplinary cases can also opt for absorption in BSNL but their absorption will be subject to the outcome of the vigilance case. The appeal/petition cases for these officers will also be decided by DOT authorities."

Accordingly, the applicant opted for absorption on 24.9.03 which was duly received by the designated officer in the BSNL. It is not the case of the respondents that on receipt of such option it was kept pending till the disciplinary case is over. It only says that their absorption will be subject to the outcome of the vigilance case. Therefore, the conditional absorption of such officers are envisaged in terms of Clause 3 (ibid). In the case of the applicant, since he is facing criminal charge, if the outcome is acquittal, it may not have any effect on his continued absorption. If the outcome is conviction, the BSNL can take appropriate action against him at that point of time. As regards change over to IDA pay scale, clause 4 is relevant and it is as under:

"The IDA pay scale and the fitment formula will be announced by BSNL separately. Till that time the optees will continue to remain in CDA pay scale. The IDA pay scales will be effective from 1.10.2000. After fixation of the pay of the absorbed employees in IDA pay scale, they will be paid arrears. However, after their absorption is finalised by BSNL and till they are fitted in the

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IDA pay scale such officials will be paid an ad hoc sum of Rs. 2000 per month by BSNL. This will be an advance payment against the arrears receivable by them on their fitment in the IDA pay scales. This advance payment will be adjusted from their IDA emoluments, perks and benefits on fixation of their pay in IDA pay scales. In case of optees accepted for absorption from MTNL any "adhoc amount paid to them by MTNL would also be adjusted against their IDA emoluments, perks and benefits on fixation of their pay in IDA pay scales."

From the above provision it is seen that all the absorbed employees are eligible for IDA pay scale. The amount of Rs.2000/- per month paid as adhoc sum is in lieu of the difference in the CDA pay scale and the IDA pay scale which will be adjusted against the arrears payable to them on their fitment in IDA. As any other optees for MTNL, the applicant was also paid Rs. 2000/- pm till he was fitted in the IDA pay scale with effect from 1.10.2000. The payment of the adhoc amount of Rs. 2000/-pm or the IDA pay scale were not dependent on the pending vigilance case or the criminal case as the case may be. Just because a criminal case has been pending against the applicant at the time of his option, he cannot be discriminated in the matter of payment in the IDA pay scale vis-a-vis the other officers who have been absorbed. In our considered opinion, the stand of the respondents 2 to 5 that IDA pay scale is admissible only to those employees who are permanently absorbed in BSNL is not tenable and it is also not in terms of the provisions contained in Clauses 3 and 4 of the "General terms and Conditions for Absorption of Group B Officers in BSNL". Even according to



proforma attached to the said General terms and conditions, there are only two categories of employees in BSNL as on 1.10.2000 (i) those who have agreed to be absorbed in BSNL and (ii) those who want to continue in Government service. Those who have opted to be absorbed shall be eligible for IDA pay scale and those who are not, shall be eligible for CDA pay scale. Any further classification among the optees for absorption is not envisaged. Therefore, the contention of Respondents 2 to 5 that among the optees, the officers facing disciplinary cases are not entitled to IDA pay scale is arbitrary and illegal. We, therefore hold that the applicant is entitled to be paid the IDA rates w.e.f 1.10.2000 so long as he remains with the Respondents 2 to 5 as optee for absorption in BSNL. His absorption, of course is subject to the outcome of the criminal case pending against him. This Tribunal do not wish to express any opinion on the correctness or otherwise of this condition as that is not under dispute.

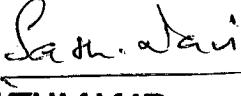
12 In the result, we allow the OA and quash and set aside the Annexure.A6 Memorandum dated 18.1.2005. We further declare that the applicant is entitled for the IDA pay scale with effect from 1.10.2000 and the arrears which have arisen thereof. Consequently, respondents are not competent to take any steps to recover or adjust any alleged excess payment made to the applicant on the ground that he has not been permanently absorbed in BSNL. The respondents are also directed to refund the amount recovered in

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this regard to the applicant within a period of two months from the date of receipt of this order. There shall be no order as to cost.

Dated this the 28 th day of April, 2006

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

  
**SATHI NAIR**  
**VICE CHAIRMAN**

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