

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA NO.407/2003

FRIDAY THIS THE 31st DAY OF MARCH 2006.

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Jose Sebastian S/o K.M. Sebastian
Sub Divisional Engineer, Marketing
Office of the Principal General Manager
Bharat Sanchar Nigam Ltd.
Ernakulam
residing at I/148, Kuzhikodil
Kureekkad-682 305.

Applicant

By Advocate M/s P.K. Jacob, P.A. Kumaran & N.B. Sunil Nath

Vs

- 1 The Principal General Manager
Bharat Sanchar Nigam Ltd.
Ernakulam.
- 2 The Chief General Manager
Bharat Sanchar Nigam Ltd.
Kerala Circle, Trivandrum
- 3 The Accounts Officer (Estt)
Office of the Principal General Manager,
Bharat Sanchar Nigam Ltd.
Ernakulam.
- 4 Union of India represented by its Secretary
to Government of India
Ministry of Communications,
New Delhi.

Respondents

By Advocate Mr. Dinesh R. Shenoy

ORDER**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN**

The applicant is aggrieved by the order dated 8.11.2002 issued by the 3rd respondent by which stepping up of pay granted to him at par with his junior C.K. Sivadasan, Sub Divisional Engineer, Calicut is decided to be cancelled.

2 The applicant commenced service as a Telegraphist with effect from 3.7.1977 and was promoted as Assistant Superintendent [ASTT] with effect from 17.6.1988. Sri C.K. Sivadasan who also commenced service as Telegraphist with effect from 3.7.1977 was promoted as ASTT with effect from 2.12.1986. As per the integrated seniority list of JTO's ASTTs as on 1.4.1994, the applicant was placed at 629 and Sri C.K. Sivadasan at 671. As per the recommendations of the 5th Central Pay Commission, the basic pay of the applicant was fixed at Rs 7100/- as on 1.1.1996 with next increment to Rs 7300/- on 1.6.1996, at the time of pay fixation the applicant was drawing a pay of Rs 2240/- in the pre-revised scale [Annexure A3]. Sri C.K. Sivadasan's basic pay was fixed at Rs 7100/- as on 1.1.1996 with next increment 1.1.1996, while he was drawing a basic pay of Rs.2240/- in the pre-revised scale [Annexure A4]. The applicant had submitted a representation to step up his pay at par with C.K. Sivadasan and the 1st respondent approved the stepping up of the pay of the applicant by an order dated 25.10.1999 (Annexure A5). Thereafter Annexure A1 was issued cancelling the stepping up granted on the ground that Sivadasan's

pay was fixed at a higher stage than the applicant on the basis of a court order. Hence the stepping up granted to the applicant was considered irregular. The applicant made a representation before the 3rd respondent for reconsidering the decision pointing out that even after the increment was granted as per the court order Sri Sivadasan who is junior was drawing less than the applicant till 31.12.1995. He made a second representation on 31.1.2003 requesting for intervention but there was no move on the part of the respondents to reverse the Annexure A1 order and hence he is constrained to approach this Tribunal. He seeks the following reliefs:-

- (i) Quash Annexure A1
- (ii) Declare that the applicant is entitled to be granted stepping up of his pay with that of his junior Sri C.K. Sivadasan.
- (iii) To direct the respondent to grant the stepping up of pay to the applicant with that of Sri C.K. Sivadasan.
- iv) Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- (v) Grant the cost of this Original Application.

3 The main grounds on which the applicant seeks the relief are that he has not been given an opportunity to be heard before the decision to reverse Annexure A1 and that as per note under Rule 7 of CCS[RP]Rules 1997, pay of a Govt servant who was immediately before 1.1.1996 drawing more pay than another Govt servant junior to him in the same cadre gets fixed with revised scale at a stage lower than that of his junior, his pay shall be stepped up on the same stage in the revised scale as that of the junior. Therefore it is contended by the applicant that the order is illegal and discriminatory and liable to be quashed.

4 The respondents have filed a reply statement contending that the anomaly of a junior drawing more pay than the senior has not arisen as a direct consequence of pay fixation of the Fifth Pay Commission. It was due to the reason that the junior's increment month is January whereas the increment of the applicant falls in the month of June. After the pay revision the pay of Sri C.K.Sivadasan was fixed at Rs.7300/- with DNI on 1.1.1997 and the pay of the applicant was fixed at Rs.7100/- with DNI on 1.6.1996 since his increment falls in June. The reason for counting the increment month of C.K Sivadasan from October to January was due to counting of the training period as directed by the Hon Tribunal in OA 1421/95. If the training period was not counted there would have been no anomaly. The applicant in his rejoinder has contended that though the increment month of the junior was pre-poned to January he never drew higher pay than the senior at any time till the implementation of the Pay Commission scales. He has also stated that he was absorbed in BSNL after filing the OA and the subject matter of the OA relates to a period even prior to the formation of the BSNL.

5 We heard the learned counsel and perused the record. A comparative statement of pay of both the officers is as below.-

| <u>Jose Sebastian[applicant]</u> | <u>C.K.Sivadasan</u> |
|----------------------------------|----------------------|
|----------------------------------|----------------------|

| <u>Increment date</u> | <u>Pay</u> | <u>Increment date</u> | <u>Pay</u> |
|-----------------------|------------|-----------------------|------------|
| 1-6-91 | 2000 | 1.1.92 | 2000 |
| 1-6-92 | 2060 | 1-1-93 | 2060 |
| 1-6-93 | 2120 | 1-1-94 | 2120 |
| 1-6-94 | 2180 | 1-1-95 | 2180 |

| <u>Increment date</u> | <u>Pay</u> | <u>Increment date</u> | <u>Pay</u> |
|-----------------------|------------|-----------------------|------------|
| 1-6-95 | 2240 | 31-12-95 | 2180 |
| 31-12-95 | 2240 | 1-1-96 | 7100 |
| 1-1-96 | 7100 | 1-1-96 | 7300 |
| 1-6-96 | 7300 | | |

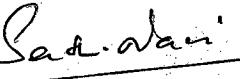
6 The conditions to be fulfilled for stepping up pay are that both the senior and junior employees should belong to the same cadre and if the anomaly has arisen on account of revision of pay and consequent fixation the pay of the senior will be stepped up to that of the junior with effect from the date the junior draws more pay than the senior. One occasion where such an anomaly can arise is when the date of next increment in case of the junior falls earlier than in the case of the senior. This is what has happened in this case as admitted by the respondents themselves. According to the relevant instructions the remedy lies in such cases in advancing the date of next increment to that of the senior. The argument advanced by the respondents that the increment date of the junior was postponed on the directions of the Tribunal and hence stepping up cannot be granted to the senior is not correct and there is no such bar. These are two independent actions at different points of time and it is not one of the cases which are not treated as anomalies under the instructions in DOPT OMNo4/7/92Estt(Pay)dated 4.11.93. The Table above illustrates that till 31-12-95 the applicant was drawing more pay than his junior and only due to the change in increment date the anomaly has arisen. We therefore hold that the applicant is entitled to stepping up of his pay by advancing the date of his increment. Accordingly we quash Annexure A-1 and direct the respondents to grant the stepping up of pay to the applicant with that of Sri

C.K.Sivadasan. The direction shall be complied with within a period of three months from the date of receipt of a copy of this order.

7 The OA is allowed. No costs.

Dated 31.3.2006.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

kmn