

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00764/2014

Dated this Thursday, the 6th day of December, 2018.

CORAM:

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

1. C.K. Satheesan, S/o Karuvan T. (late), aged 51 years, TTA, CSR, BSNL, Telephone Bhavan, Kannur 670001, HR No. 198704351, residing at Surab Panniyott, Eachur P.O, Kannur- 670594.
2. prakashan U.P., S/o Murukan, aged 46 years, TTA, BSNL Office, Edakkad, Muzhapilangadi P.o., Kannur 670662, HR No. 199204231, residng at Guruprasadam, Kadambur P.O., Edakkad, Kannur 670663.....
3. K. Sunil Kumar, S/o Govindan (late), aged 51 years, TTA, O/o SDE (Extl), BSNL, Telephone Bhavan, Palayam, Calicut-673002, HR No. 199407567, residing at Nandanam, Kayikottuparamba, Chavarambalam, Calicut 673017.

Applicants

(By Advocate – Mr.Nirmal V.Nair)

V e r s u s

1. The Bharath Sanchar Nigam Limited, represented by its Chairman, Managing Director, New Delhi 110 001.
2. The Chief General Manager, Bharath Sanchar Nigam Ltd., Trivandrum 695001.
3. The General Manager, Telecom BSNL, Kannur SSA, Kannur 670 662.
4. The Principle General Manager, Telecom, BSNL, Calicut SSA, Calicut 673002.

..... Respondents

(By Advocate – Mr.V.Santharam)

This Original Application having been heard on 30.11.2018, the Tribunal on 06/12/2018 delivered the following:

O R D E R

Per: Ashish Kalia, Judicial Member:

Applicants seek the following reliefs in the O.A.

- (i) To declare that the applicants working as TTA are entitled to parity in pay in pay with respect to their juniors in the cadre.
- (ii) To direct the respondents to grant stepping up of pay to the applicants with the immediate juniors in their cadre with all consequential benefits including arrears of pay.
- (iii) To direct the 2nd respondent to consider and pass orders on Annexure A8 and Annexure A9 and Annexure A10 considering the grievance of applicants for parity in pay as expeditiously as possible.
- (iv) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
- (v) Grant the cost of this Original Application.

2. Three applicants have filed the present joint application as they are presently working as Telecom Technical Assistants under the respondents and have been aggrieved by the delay on the part of the respondents to consider the request for stepping up of pay on par with the juniors in the cadre.

3. The first applicant had joined as a lineman in February 1987. The second applicant joined as Regular Mazdoor on 19.11.1992 and the third applicant was appointed as Telephone Mechanic on 08.05.1994. All the three applicants opted for absorption on formation of Bharat Sanchar Nigam Ltd. (B.S.N.L.) on 1.10.2000 and their pay was fixed at Rs.5470/- thereafter promoted on 21.6.2002 as Senior Telecom Operating Assistant (Sr.TOA). Applicants had passed TTA examination for the year 2008 and their pay were fixed at Rs. 17390/- as on 01.06.2010. The grievance of the applicants that juniors of the applicants are getting basic pay of Rs. 20180/- whereas their basic pay is Rs. 19590/-. It is further submitted that applicants No.1 and 2 had grievance with one Mr. T.Chandran, was recruited subsequent to them who failed in the merit list of TTA Examination in the year 2008 and has joined after the applicants but drawing more pay than the applicants.

4. Similarly, one Mr. U. Jayaprakashan, Junior to the applicants also got recruited and failed in the examination is getting more salary.

5. It is submitted that the B.S.N.L. has introduced time bound scale upgradation policy by order dated 23.3.2010. As per the policy those who are recruited by telecom department will be entitled to upgradation at intervals of 4, 7 years respectively. As per para 6.3. of NEPP order dated 23.3.2010, "*Time Bound IDA pay scale upgradations are personal to the non-executive concerned and no claim what-soever can be made by comparison on grounds of seniority, class, community, cadre, street etc. Further, except as*

provided in the instant guidelines, there will be no claim on account of any of the other provisions of FRSR in the context of pay scale, pay fixation, substantive status etc. “

However, clause (2) of the policy laid down various methods to resolve inequality arising out of post based promotion viz-a-viz upgradation policy. The applicants made representation to the respondents which were not found favour with them and rejected. Accordingly they approached this Tribunal for redressal of their grievances

6. Notices were issued. Respondents put appearance through Mr. V. Santharam, Learned Standing Counsel for the Govt. of India,k and filed detailed reply statement.

7. The respondents firstly, objected the O.A. on the ground that they have approached this Tribunal after three years of formulation of policy and hence the original application is hit by law of limitation and is liable to be rejected.

8. It is submitted on behalf of the respondents that regarding the averments in para 4.2. to 4.3 of the Original Application, the respondents submit that the 1st applicant, Shri C.K. Satheeshan was appointed as Lineman w.e.f 26.02.1987 in the Central Dearness Allowance (CDA) pay scale of Rs. 825-15-9000-EB-20-1200 and his pay was fixed at Rs.825/- . He was promoted as Telephone Mechanic on 11.04.1994 in the CDA Pay scale of Rs. 975-25-1150-EB-30-1540 and his pay was fixed at Rs.975/- . The applicant was absorbed in BSNL w.e.f 01.10.2000 and his pay was fixed at Rs.5470/- in the Industrial Dearness Allowance (IDA) pay scale of Rs. 4720-150-6970 with Date of next increment (DNI) on 01.04.2001. the applicant appeared for departmental competitive examination and qualified for the promotion as Sr. Telecom Operating Assistant (Sr.TOA). He was appointed as Sr. Telecom Office Assistant w.e.f 21.06.2002 and his pay was fixed at R.6020/- with DNI on 01.06.2003 in the IDA pay scale of Rs. 5700-160-8100(Revised Rs.10900-20400). While remaining so, the applicant appeared for departmental competitive examination for Telecom Technical Assistant and qualified for promotion w.e.f 01.09.2008, in the IDA pay scale of Rs. 7100-200-10100(Revised Rs.13600-25420). The applicant opted DNI for pay fixation and his pay on promotion as TTA was fixed at Rs. 17390/- w.e.f 01.06.2009 with DNI on 01.06.2010.

9. It is further submitted by the respondents that the 2nd applicant, Shri U.P. Prakashan

was appointed as Regular Mazdoor w.e.f 17.11.1992 in the CDA Pay scale of Rs. 750-12-870-EB-14-940 and his pay was fixed at R.786/- with DNIU on 01.10.1993. He was promoted as Telephone Mechanic on 09.05.1994 in the CDA pay scale of Rs. 975-25-1150-EB-30-30-1540 and his pay was fixed at Rs.975/-. The applicant was absorbed in BSNL w.e.f 01.10.2000 and his pay was fixed at Rs.5470/- in the IDA pay scale of Rs. 4720-150-6970 with DNI on 01.05.2001. The applicant appeared for departmental competitive examination and qualified for promotion as Sr. Telecom Operating Assistant. He was appointed as Sr. Telecom Office Assistant w.e.f 20.06.2002 and his pay was fixed at R.6020/- with DNI on 01.06.2003 in the IDA pay scale of rs. 5700-160-8100. While continuing as Sr. Telecom Office Assistant, the applicant appeared for departmental competent examination for Telecom Technical Assistant and qualified for promotion w.e.f 25.08.2008 in the IDA pay scale of Rs. 7100-200-10100 (Revised Rs.13600-25420). The applicant opted DNI for pay fixation and his pay on promotion of TTA was fixed at Rs.17390/- w.e.f 01.06.2009 with DNI on 01.06.2010.

10. Lastly it is submitted that the promotion of the applicant and their junior officials as Senior TOA and later as TTA are not hierarchical promotions, but post based promotions against competitive examination based on relevant recruitment rules. As per NEPP, the next time bound upgradation in the pay scale of Rs. 14900-27850 will be due for the applicants during 2016 while that of the alleged junior will be only on 2019 i.e. on completion of 8 years in the pay scale granted on TTA promotion.

10. It is further submitted that promotion to the posts of Sr. TOA and TTA are made through competitive examinations, which are not considered as direct line of promotion. As such, the applicants and the alleged junior can be considered as direct line of promotion. As such, the applicants and the alleged junior can be considered as belonging to same cadre/post upto the period they were working as Telecom mechanic. As such, the provisions available under FR 22 regarding stepping up of pay of Senior officials to that of junior official cannot also be invoked in this case. As per FR 22 provision, the stepping up of the pay to that of junior will be subject to the following conditions.

- a) Both the junior and senior officials should belong to the same

cadre and the post in which they have been promoted should be identical in the same cadre.

b) The unrevised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical,k and

c) The anomaly should be directly as a result of the applications of the provisions of Fr 22C(FR 22 (1) (A) (i) in the revised scale.

11. The applicants have filed their rejoinder and reiterated their pleadings in the OA.

12. Respondents also filed Additional reply statement on 06.10.2017 and submitted that the financial aspects of OA has been verified with the comparative statement of pay details and found to be in order as per Non-Executive Promotion Policy (NEPP) orders dated 23.03.2010. As per para 6.3 of NEPP orders (Annexe A1) there will be no claim on account of any of the other provisions of Fundamental Rules and Supplementary Rules (FRSR) in the context of pay scale, pay fixation, sub. Status etc.

13. Respondents have relied upon the judgement of the Hon'ble Kerala High Court in the case of *Govt. of Kerala and Another v. Dr. Anitha and Others 2018 KHC 108* and the Judgement in the case of *UOI & ors. v. M.S. Gopalakrishnan and others in OP(CAT) No. 446 of 2012 dated 9.7.2015.*

14. We have heard the learned counsel appearing on both sides at length and perused the pleadings and records pertaining to this O.A. The core issue raised in the Original Application by the applicant is whether they are entitled for getting stepping up of their pay viz.a.viz the pay of their juniors. In order to resolve the controversy as per F.R. 22 there are three conditions laid down. Junior as well as senior should belong to the same cadre and in the post in which they have been promoted should be identical. The revised scale of pay of higher and as well as lower post should be identical. An anomaly should be resolved by application of FR(C) in the revised scale. Juniors of the applicant has claimed Mr. Chandran and Mr. Jayaprakash were failed in the written examination for the post of ROA but they have been granted upgradation after completion of sever years and on implementation of NEPP Scheme by which a stagnation upgradation is given after four and sever years of service. So their pay was fixed accordingly. It is further submitted that the

applicants herein also got second upgradation with effect from 1.6.2010. Thus the pay fixation of the juniors after implementation of NEPP Scheme has to be looked into. As per this Scheme para 3.2, clauses (a) and (b) are very relevant.

- “(a) First Time Bound IDA pay scale upgradation to the next higher non-executive IDA pay scale will be considered after 4 years of service in the IDA pay scale held by the employee as on 01.10.2000. This pay upgradation will be notional if the date of upgradation is before 01.04.2008. The actual benefits of pay fixation will be paid only from 01.04.2008.
- (b) Second Time Bound IDA pay scale upgradation to the next higher IDA pay scale will be considered after 7 years of service in first upgraded non-executive IDA pay scale. “

Para 6.3. of the Scheme reads as under:

“6.3. Time Bound IDA pay scale upgradations are personal to non-executive concerned and no claim what-soever can be made by comparison on grounds of seniority, class, community, cadre, stream etc. Further, except as provided in the instant guidelines, there will be no claim on account of any of the other provisions of FRSR in the context of pay scale, pay fixation, substantive status etc. “

15. A bare reading of this scheme and the above said clauses depicts time bound IDA Pay scale upgradation are given to the employees of non executive cadre and any comparison vis-a-vis senior or junior class or community cadre/system will be looked into on account of provisions of FRSR , meaning thereby stepping up of the pay in comparison to the juniors of the senior is barred. Thus applicants cannot claim that their pay should be stepped up in comparison with the juniors whose pay has been fixed after upgradation in the NEPP Scheme. This issue has been dealt with by Hon'ble Kerala High Court in the matter of *General Manager v. Ashokan B and Others OP(CAT) No. 279/2017* dated 9.11.2017 the order passed by the CAT has been set aside.

16. In another judgement of the Kerala High Court in the case of *Govt. of Kerala and Anr. v. Dr. Anitha and Ors.* (Supra) at para 8 it is held as under:

“8. In Gurcharan Singh Grewal (supra), the Hon'ble Supreme Court in similar set of circumstances, concluded affirmatively that the contention placed before it, that the sanction of advance increment cannot be considered as an anomaly leading to a claim for stepping up the pay, is legally unsustainable. Their Lordships, thereafter, directed that the petitioners (who are admittedly seniors) are entitled to stepping up of the pay to be at par with the juniors. As we have already indicated, the Bench judgement in W.A. No. 488/2017 also concludes on identical lines and while dismissing the appeal filed by the State of Kerala, this Court held that implementation of a subsequent scheme shall not result in a situation where the juniors were permitted to draw more salary than them. On such reasoning this Court directed the State to rectify the anomaly and to fix the scale of pay to the seniors by stepping it up to be at par with their juniors.”

In the cited case of UOI vs. M.S.Gopalakrishnan and Ors (supra) it is held as under:

“17. The law is well settled that, question of law need not be pleaded and as such, there cannot be any estoppel with regard to question of law. If the parties concerned have not satisfied the requirements for getting 'stepping up of pay', in terms of the enabling Office memorandum and also by virtue of the position clarified by the Apex Court on many an occasion, this Court finds that unless and until, it is established that the parties concerned are legally entitled to have the benefit of stepping up of pay, subject to satisfaction of the requirements specified in this regard, they cannot be granted the benefit; merely for the reason that somebody else has been given the same without satisfying the above norms. Issuance of writ of mandamus has necessarily to be a positive concept and even if there is an instance of granting the benefit by way of mistake, the same cannot be perpetuated by issuing another direction. Viewed in the above perspective, this Court finds that the applicants before the Tribunal have not established their eligibility to get the benefit of 'stepping up of pay', with reference to the conditions/requirements in the relevant O.M.”

17. The law is very clearly laid down on implementation of scheme of NEPP.

18. In view of the facts and circumstances and the legal position as explained above, it is clearly envisaged in the NEPP Scheme that no claim will be entertained in comparison with seniority or for any other reason. Thus, we are of the view that the present Original Application, lacks merits and the same is liable to be dismissed. It is accordingly dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sj*

Applicant's Annexures

Annexure A1 - A true copy of the order No. 27-7/2008-TE-II dated 23/03/2010 issued by the 1st respondent.

Annexure A2 - A true copy of the representation dated 12/11/2012 submitted by the 1st applicant to the 3rd respondent.

Annexure A3 - A true copy of the representation dated 20/11/2012 submitted by the 2nd applicant to the 3rd respondent.

Annexure A4 - A true copy of the salary slip of 1st applicant for the month of May 2014.

Annexure A5 - A true copy of the salary slip of 1st applicant and that of Mr. Chandran T for the month of May 2014.

Annexure A6 - A true copy of the salary slip of 3rd applicant for the month of April 2014.

Annexure A7 - A true copy of the salary slip of 3rd applicant and that of Mr. Jayaprakasan for the month of April 2014.

Annexure A8 - A true copy of the representation dated 21/06/2014 submitted by the 1st applicant to the 2nd respondent.

Annexure A9 - A true copy of the representation dated 25/06/2014 submitted by the 2nd applicant to the 2nd respondent.

Annexure A10 - A true copy of the representation dated 17/06/2014 submitted by the 3rd applicant to the 2nd respondent.

Annexure A11 - A true copy of the order No. EST/ TTA/ 8922011/106 dated 04/11/2014 issued by the Accounts Officer (Estt/CA) O/o GMTD.,

BSNL, Kozhikode.

Annexure A12 - A true copy of the final order dated 17.02.2017 in O.A. 1070/2014 on the files of this Honourable Tribunal.

Annexures of Respondents

Nil
