

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00498/2015
&
Original Application No.180/00806/2015

Thursday, this the 16th day of August 2018

CORAM:

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

1. **O.A. No. 180/00498/2015** -

1. Nagappan Nair,
Telecom Mechanic (Retired),
Residing at Lakshmi Nivas,
Sreeram Nagar, Nettayam P.O.,
Thiruvananthapuram – 695 013.
2. B. Sundaresan Thampi,
Telecom Mechanic (Retired), Residing at
Vellathy Veedu S., T.C. 64/1746(I), Nelliyoodu,
Valiyarathala P.O., Naruvamodu,
Thiruvananthapuram – 695 528.
3. Reghuvaran Nair,
Telecom Mechanic (Retired), Residing at
Bhagavathi Mandiram, Aralumoodu P.O.,
Thiruvananthapuram.
4. K. Gopinathan Nair,
Telecom Mechanic (Retired), Residing at
Pranavam (Poovathara), Pallukula Line,
Edakode, Nemam P.O., Thiruvananthapuram – 20.

..... **Applicants**

(By Advocate – Ms. Elizabeth Oliver)

V e r s u s

1. Bharath Sanchar Nigam Limited, represented by the Chairman-cum-Managing Director,
Corporate Office, Statesman House,
Barakhamba Road, New Delhi – 1.
2. The Principal General Manager,
Telecom, BSNL, Thiruvananthapuram - 1.

3. The Accounts Officer (Estt.),
 O/o. The Principal General Manager,
 Telecom, BSNL, Thiruvananthapuram - 1. **Respondents**

(By Advocate – Mr. P. Muraleedharan)

2. **O. A. No.180/00806/2015**

Krishnan M.,
 S/o. Nayadi, aged 57 years,
 Telecom Mechanic, Telephone Exchange,
 Thirurangadi, Malappuram Dist.,
 Residing at Mannackal House, P.O. Ariyallur,
 Malappuram Dist.,

..... **Applicant**

(By Advocate – Mr. J. Vimal)

V e r s u s

1. Bharat Sanchar Nigam Limited,
 represented by the Chairman-cum-Managing Director,
 Corporate Office, Statesman House, Barakhamba Road,
 New Delhi – 1.

2. The Principal General Manager,
 Telecom, BSNL, Malappuram.

3. The Accounts Officer (Estt.),
 O/o. The Principal General Manager,
 Telecom, BSNL, Malappuram. **Respondents**

(By Advocate – Mr. Pradeep Krishna)

These Original Applications having been heard on 09.08.2018, the Tribunal on the 16.08.2018 delivered the following:

O R D E R

Per : ASHISH KALIA, JUDICIAL MEMBER -

O.A. No. 180/00498/2015 and O. A. No.180/00806/2015 were heard together as the question of law and facts involved in these two cases are identical and for the sake of convenience both these O.As. are being disposed of by a common order with the consent of both the parties.

2. The reliefs sought in O.A. No. 180/00498/2015 are as follows :

- (i) To direct the respondents to step up the pay of the applicants at par with that of their juniors like Sri. Thulaseedharan Nair since the inaction on the part of the respondents against Clause 2 (g) of Annexure A1 agreement and is highly arbitrary, discriminatory and issued in violation of the applicants' fundamental rights under Articles 14 & 16 of the Constitution of India;
- (ii) To declare that the applicants are entitled to get their pay stepped up at par with that of their juniors like Sri. Thulaseedharan Nair w.e.f. 01.10.2000 since the anomaly occurred at the instance of the respondents while replacing the CDA Scale of Pay of their employees by IDA Scale of Pay w.e.f 01.10.2000, in the light of the decision of the Hon'ble Supreme Court in Gurcharan Singh's case reported in (2009) 3 SCC 94 and in Annexure A7 order of this Hon'ble Tribunal;
- (iii) To direct the respondents to rectify the anomaly in the pay fixation of the applicants by stepping up their pay at par with their Juniors w.e.f. 01.10.2000;
- (iv) To direct the respondents to disburse the arrears of pay w.e.f. 01.10.2000 to the applicants consequent on stepping up their pay at par with that of their Juniors like sri. Thulaseedharan Nair, within a time limit;
- (v) To declare that the applicants are entitled to interest on the arrears fo pay consequent on stepping up w.e.f. 01.10.2000 till the date of payment of arrears in the light of the Judgment of the Hon'ble High Court of Kerala dated 24.07.2008 in W.P.(c) No. 30582 of 2005 and the order of this Hon'ble Tribunal dated 03.11.2010 in O.A. Nos. 623 of 2009 and connected cases as also Annexure A7 order of this Hon'ble Tribunal dated 01.03.2011 in O.A. No. 558 of 2010 and connected cases;
- (vi) To grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant; and
- (vii) To grant costs of this Original Application.

3. The reliefs sough by the applicant in **O. A. No.180/00806/2015** are as under:

- (i) To quash Annexure A4 order of 3rd respondent and direct the respondents to step up the pay of the applicant at par with that of his juniors like Sri. Sivadasan Nambiar since the inaction on the part of the respondents is against Clause 2 (g)

of Annexure A1 agreement and is highly arbitrary, discriminatory and issued in violation of the applicants' fundamental rights under Articles 14& 16 of the Constitution of India.

- (ii) To declare that the applicant is entitled to get his pay stepped up at par with that of their juniors like Sri. Sivadasan Nambiar w.e.f 01.10.2000 since the Anomaly occurred at the instance of the respondents while replacing the CDA Scale of Pay of their employees by IDA Scale of Pay w.e.f 01.10.2000, in the light of the decision of the Hon'ble supreme court in Gurcharan Singh's case reported in (2009) 3 SCC 94 and in various Orders of this Hon'ble Tribunal;
- (iii) To direct the respondents to rectify the anomaly in the pay fixation of the applicant by stepping up his pay at par with his junior w.e.f. 01.10.2000;
- (iv) To direct the respondents to disburse the arrears of pay w.e.f. 01.10.2000 to the applicant consequent on stepping up his pay at par with that of his juniors like Sri. Sivadasan Nambiar, within a time limit;
- (v) To declare that the applicant is entitled to interest on the arrears of pay consequent on stepping up w.e.f 01.10.2000 till the date of payment of arrears in the light of the Judgments of the Hon'ble High Court of Kerala dated 24.07.2008 in W.P.(c) No. 30582 of 2005 and the Order of this Hon'ble Tribunal dated 03.11.2010 in O.A. Nos. 623 of 2009 & connected cases.
- (vi) To grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant; and
- (vii) To grant costs of this Original Application.

4. Applicants in both these O.A. are aggrieved by the inaction of the respondents to stepping up their pay on par with their juniors. Applicants in O.A. 180/00498/2015 are retired Telephone Mechanics. They entered into service of Telecom Department as Regular Mazdoors in the year 1982 and were promoted in the post of Telephone Mechanic in 1997, prior to 1.10.2000 on which day the B.S.N.L. Came into existence. By virtue of become a company the pay scale of employees changed to IDA pay scale. This change

in pay scale generate an anomaly of basic pay to the employees of B.S.N.L. Among same category same cadre, i.e. the juniors who obtained promotion after the inception of B.S.N.L. Draw higher salary than the seniors who obtained promotion prior to 1.10.2000. The anomaly was rectified among the persons like Applicants after finding out, in most of the cases employees obtained orders from the Tribunal based on the earlier orders which was unsuccessfully challenged by the department before the Hon'ble Supreme Court.

5. Brief facts of the case as narrated by the applicants in O.A. 180/00498/2015 are that before the incorporation of the BSNL, the applicants had been promoted as Telecom Mechanic in the Department of Telecommunications. After the BSNL was formed, an agreement was entered into on 26.4.2002 between the Board of Directors of the BSNL and the Unions representing the employees of the BSNL which inter alia governs the scales of pay payable to Group C & Group D posts. Pursuant to the agreement entered into on 26.4.2002, Annexure A1 office order No. BSNL/26/SR/2002 dated 07.08.2002 was issued by the 1st respondent, BSNL introducing IDA pay scales w.e.f 1.10.2000 in replacement of existing CDA pay scale to the Non- Executive Staff (Group C &D) absorbed from DOT/DTS/DTO in BSNL w.e.f 1.10.2000. Pursuant to Annexure A1 order, the CDA scales were replaced by the corresponding IDA scales w.e.f. 1.10.2000. In Clause 2 (g) of Annexure A1, it is specifically stated by the 1st respondent that the pay fixation in the respective replacement/corresponding IDA pay scales will be on point to point basis and the anomalies, aberrations, other hardships and difficulties, if any, which may arise in pay fixation, will

be settled sympathetically, after these are pointed out.

6. It is submitted by the applicants that they were drawing Rs.4200/- as basic pay in the CDA scale of pay of Rs. 4000-100-6000 and their pay was fixed at Rs. 6020/- in the IDA scale of pay of Rs. 5700-160-8100 w.e.f 1.10.2000. But several juniors of the applicants who were drawing lesser pay in the CDA scale of pay were allowed to draw higher pay in the IDA scale of pay w.e.f. 1.10.2000. Hence, the pay of the applicants who were drawing Rs. 4200/- in the CDA Scale of pay of Rs. 4000-100-6000 was fixed at Rs.6020/- in the IDA scale of pay of Rs. 5700-160-8100. But the pay of several juniors of the applicants who were working as Line Men and were drawing lesser pay of Rs. 4050/- in the CDA scale of pay of Rs. 3200-85-4900 was fixed at Rs. 6220/- in the IDA Scale of Pay of Rs. 4720-150-6970 granting more increments due to point to point fixation. This resulted in an anomalous situation whereby the juniors of the applicants who were promoted to the post of Telecom Mechanic after 1.10.2000 are granted a higher stage of pay in the replacement IDA scale than the applicants who were promoted as Telecom Mechanic long prior to 1.10.2000 and were in the higher scale. The anomaly was further compounded when those juniors were promoted as Telecom Mechanic after 1.10.2000. Applicants submitted repeated representations before the respondents to rectify the anomaly and to step up the pay of the applicants on par with their juniors but nothing fruitful came forth. It is submitted by the applicants that they had filed O.A. 261/2014 before this Tribunal which was disposed of with direction to respondents to consider and pass appropriate order vide Annexure A2 order. Feeling aggrieved by this, the applicants approached this Tribunal seeking the above reliefs.

7. Notices were issued and respondents put their appearance and filed details written reply statement resisting the claim of the applicants.

8. It is submitted on behalf of the respondents that the above mentioned O.A. was filed by the applicant *inter alia* praying to direct the respondents to step up the pay of the applicants at par with that of their juniors like Shri Thulaseeharan Nair since the inaction on the part of the respondents is against clause 2 (g) of Annexure A1 agreement. Applicants were Phone Mechanics on 01.10.2000 and drawing Rs. 3455/- in the CDA scale of pay of rs. 3200-85-4900 was fixed at Rs. 5170/- (by granting 3 increments) in the IDA scale of rs. 4720-150-6970 on point to point fixation. The pay of Sri M. Thulaseedharan Nair, a junior who was Regular Mazdoor was drawing Rs. 3345/- in the CDA scale of Rs. 2610-60-3150-65-3540 (in OTBP Scale of RM) was fixed at Rs. 5560 (by granting 12 increments) in the IDA scale of Rs.4060-125-5935 on point to point fixation on 1/10/2000.

9. It is further submitted that as per CCS (RP) Rules under FR 22 GIO (23) the conditions prescribed for stepping up of pay of a Senior to that of a junior is as follows:

- (a) Both the Junior and Senior should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre.
- (b) The Scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical.
- (c) The anomaly should be directly as a result of the application of the provisions of Fundamental Rule of any other Rule of order regulating pay fixation on such promotion in the revised scale. If even in the lower post the junior officer was drawing from time to time a higher rate of pay than the senior by virtue of grant of advance increments the provisions will not invoke to step up of pay of the senior officer.

The stepping up of pay is not permissible under the existing rules mentioned above as the Officials are appointed in the same cadre but promotion in different scales and to in the same cadre as on 1/10/2000. Upto 18/08/1997 the pay scale as well as the pay drawn by the Seniors and Junior were same. Sri Nagappan Nair, K. Gopinathan Nair, Sundaresan Thampy and Reghuvaran Nair were promoted as Phone Mechanics on 19/08/1997 in the scale of pay of Rs.3200-85-4900 and pay fixed at Rs. 3200/ on 19/08/1997 and at Rs. 5170/- in the IDA scale of Rs. 4720-150-6970 on 01.10.2000. The junior Sri M. Thulaseedharan Nair was promoted under Time Bound Promotion in the scale of pay |Rs. 2610-60-3150-65-3540 on 22/03/1998 and pay fixed at Rs. 3215/ on 22/03/1998 and at Rs. 5560/ on 01/10/2000. After that Sri M. Thulaseedharan Nair got placement in IDA scale of pay Rs. 4250-130-6200 wef 18/11/2000 and pay fixed at Rs. 5680/ on 18/11/2000. On 03/01/2003 he got promotion as Telecom Mechanic in the scale of pay of rs. 4720—150-6970 and pay fixed at Rs. 5920/- wef 3/1/2003 to 28/02/2003 and Rs. 6070/ wef 01/03/2003 as per option in the increment date.

10. It is submitted by the respondents that the Junior got promotion under Time Bound Promotion on 22/03/1998 and placement in higher scale on 18/11/2000 and after that only he is promoted as Telecom Mechanic on 03/01/2003 where as the Seniors are not got Time Bound Promotion and placement in the higher scale due to promotion to TM earlier Shri M. Thulaseedharan Nair. As such it is found that the Seniors and Junior are not promoted in identical scale and hence the steeping up of pay is not permissible in this case as per existing rules.

11. It is further submitted by the respondents that as per the orders of the CAT. Ernakulam Bench stepping up of pay to Tms were given by this

SSA with regard to the cases of Senior getting less pay than junior consequent to point to point fixation in IDA scales as on 1/10/2000 which are covered under the provisions of FRs & SRs and are identical cadres as on 1/10/2000.

12. In O.A. No.180/00806/2015, the applicant is presently working as Telephone Mechanic in Malapuram Telecom District, BSNL. Applicant entered the service of BSNL as regular mazdoor/lineman in the year 1992 and he was promoted as Telephone Mechanic prior to 1.10.2000. On 1.10.2000 Department of Telecom was converted to BSNL thereby the scale of pay of all the employees were changed from CDA to scale to IDA scale. It is the case of the applicant that juniors in applicant's category were promoted after 01.10.2000 were got the priority of point o point fixation in IDA scale i.e. long period as RM than the early promoted seniors. Hence they got higher salary than their seniors who got promotion to 1.10.2000, there occurs an anomaly of juniors getting higher salary than seniors. So they approached the court to obtain favourable orders and their salary was stepped up on par that of the juniors, like Mr. Sivadasan Nambiar.

13. We have heard the learned counsel for the parties in both these O.As. perused the pleadings and considered the rival submissions.

14. The issue before this Tribunal is that whether the applicant's pay can be stepped up viz-a-via their juniors as claimed in the Original Application. During the course of arguments the learned Central Govt. Standing Counsel brought to our notice Annexure R1(d) order dated 17.June 2016 passed by this Tribunal in O.A. 180/59/2015 wherein this Tribunal had discussed the issue at length as under:

“7 Heard the counsel for applicant and respondents and the written

submissions made. Both sides produced judgments in support of their contention, but this case is being examined on its own merits.

8 Pay fixation in IDA pay scales was to be done in the manner, provided in the office order, which was agreed upon after protracted agreement with the Unions. The relevant provision is :

2.1(a) The basic pay of the non executive as on 1.10.2000 in the IDA pay scale would be fixed at the stage corresponding to the stage, which they had reached under CDA pay scale on 30.9.2000 i.e. Pay fixation will be on point to point basis.

2.1(e) The employees who have been promoted to the higher posts after 1.10.2000 will be fixed in the corresponding IDA pay scale from the date of promotion under the normal rules relating to the fixation of pay on promotion with reference to then pay in the IDA pay scale of pre-promoted post.

9 The fixation in IDA pay scale is governed by separate set of orders issued by BSNL H.Qrs. The applicants were not holding Group D post in BSNL, as on 01.10.2000 as they were all promoted to the post of Telecoms Mechanic prior to 1.10.2000. As a result the applicants were not in the same scale of pay compared to the juniors cited in the application. The issue came up for consideration by the learned single judge of Hon'ble High Court of Kerala in Writ Petition No.30582 of 2005 filed by Shri.George M.J and Others vide Annexure A-5 in the above O.A and the learned single judge of the Hon'ble High Court of Kerala declared that the petitioners therein who were promoted as Telecom Mechanic after 1.10.2000 were entitled to have their pay stepped up and equated with the pay of their juniors. The Hon'ble High Court has also mentioned that the matter can be referred to the Anomaly Committee for considering the matter or the respondents may enter into another settlement with the employees unions. The operative part of the judgment is as under:

“5. I have considered the submissions made at the Bar by the learned counsel appearing on either side. I find force in the contention raised by the learned counsel for the petitioner that in the absence of another agreement or an award by the Industrial Tribunal, the parties cannot depart from or ignore Ext.P1. Ext.P1 contemplates fixation of pay applying the provisions of the Fundamental Rules. It is settled law that the agreement between the union representing the employees and the employer can be altered only by another settlement or by an award of the Industrial Tribunal. No agreement other than the agreement referred to in

Ext.P1 has been brought to my notice. The service conditions stipulated in Ext.P1 even now hold the field.”

“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 1.10.2000 in the manner done in Exts.P2 and P3. The arrears of emoluments payable to the petitioners from January 2005 onwards shall be paid on the basis of the 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 judgment 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. “

10 As per the order in the said writ petition, the issue was brought to the notice of the Anomaly Committee, which consists of the representatives of the management and staff side and the committee members observed that aberrations regarding pay of senior officials in the higher grade getting fixed at a lower pay in the IDA pay scale than what their juniors in the lower grade are getting consequent upon fixation of pay in IDA pattern on point to point basis do not fall within the provisions of FR/SR for being dealt as anomaly and further the staff side pointed out that even though the situation of “senior getting less than that of the junior” cannot be recognized as anomaly under FR/SR, still apprehending the emergence of unforeseen situations, Annexure R1 issued regarding introduction of IDA pay scales for Non-Executives, issued in pursuance of wage agreement provided under para 2.1 (g) that the anomalies, aberrations, other hardships and difficulties, if any, which may arise in pay fixation, will be settled sympathetically, after these are pointed out. As such, in the spirit of these provisions, the aberrations need to be addressed appropriately. Accordingly, a settlement was reached by the staff side and the management and recommended for addressing the aberration cases in respect of Non-executives by the grant of personal pay.

11 For constituting an anomaly it should be directly as a result of application of Fundamental Rules 22 C. In the present case, the reason for senior getting less pay than the juniors, if any, is not on account of implementation of Fundamental Rules but due to the point to point pay fixation in tune with the fitment method approved by the unions on conversion from Central Dearness Allowance (CDA) scale of pay to

Industrial Dearness Allowance (IDA) scale of pay. Hence it is not an anomaly. The fixation under IDA pay scale on conversion of CDA pay scale is governed by separate set of orders issued by BSNL Head Quarter and not under Fundamental Rules (FR). These orders have been issued as per the agreement signed with the approved unions. FR 22(1)a(1) provides that 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 scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical. The anomaly should be directly as a result of the application of FR 22(1)a(1). If even in the lower posts, the junior officer draws from time to time a higher rate of pay than the senior by virtue of advance increments, the above provisions can not be invoked to step up the pay of the senior officials.

12 An anomaly committee was set up consisting of members from the side of the management and the staff. The committee has already made recommendations for the redressal of the grievance of the employees. The applicants, after giving consent through their representatives for the issuance of the report, are not entitled to keep away from the implementation of that report. That report was circulated which is consisting of a proforma to point out specifically the name of the junior to whom the senior wants to have his pay stepped up. Applicant did not submit any representation as directed.

13 In the above context, the Hon'ble Allahabad High Court in "**Masan Ali son of Sri Hamid and Ors. V. Union of India (UOI)**" decided on 16 November 2007 held "Section 18 of the Industrial Disputes Act, 1947 clearly provides that settlement arrived at by means of agreement in between employer and the workers otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. The respondents do not dispute that there is agreement and it is binding on them. If the settlement is between the employer and the workmen it would be binding on that particular employee and the employer; if it is between a recognized union of the employees and the employer, it will bind all the members of the union and the employer. That it would be binding on all the members of the union is a necessary corollary of collective bargaining in the absence of allegation of malafides or fraud.

14 In the case of Herbertsons Limited v. The Workmen of Herbertsons Ltd and Others reported in 1976 (4) SCC 36, the Hon'ble Supreme Court considered the effect of the settlement arrived at by the recognized union of majority workers. It was observed by Goswami J., speaking for the Court that when a recognised union negotiates with an employer, the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognized union, which is expected to protect the legitimate interest of labour, enters into a settlement in the best interest of labour. This would be the normal rule. It was further observed that it is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained, the Court will be slow to hold a settlement as unfair and unjust. Therefore, the settlement has to be accepted or rejected as a whole.

15 At the time of fixation of pay under IDA, the applicant had already been promoted to the cadre of Telecom Mechanic prior to 1.10.2000 and her pay was fixed in the IDA scale of pay. Shri.T.O Varghese became Telecom Mechanic only with effect from 6.11.2002 much after the applicant. Hence both these employees are in two categories as on 30.9.2000, and cannot be compared. Comparison can be made only with equals. The applicant and the persons who are promoted after the promotion of the applicant cannot be categorised as one group. The drawing of equal pay can be compared only for the employees who are from the same category and their service incidents also happened on the same day.

16 Respondent has produced the comparison statement of the applicant and the junior which reflects the difference in date of joining, date of promotion, the IDA fixation, and the number of increments 2 and 9 drawn by applicant and Mr.Varghese respectively. Respondents points out that there may be Regular Mazdoors who are drawing more pay than Telecom Mechanic on 1.10.2000, by virtue of their length of service and this is not represented as a case of anomaly. Those Regular Mazdoors who draw more pay than Telecom Mechanics on 1.10.2000 will continue to draw more pay on promotion. And when such Regular Mazdoor with more service is promoted

in 2002, he will concurrently get more salary. Stepping up of pay of Senior on promotion drawing less pay than his junior is done applying FR 22(1) a (i). In the case of the applicant in the above O.A, anomaly is alleged to have arisen not when senior is promoted or his pay is fixed.

17 As per Government of India order No.22 under FR 22(1)a(1) it is laid that 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 scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical. The anomaly should be directly as a result of the application of FR 22(1)a(1). If even in the lower posts, the junior officer draws from time to time a higher rate of pay than the senior by virtue of advance increments, the above provisions will not be invoked to step up the pay of the senior officials. Furthermore the applicable pay scales have already undergone changes with effect from 1.10.2000 and from 01.01.2007. In fact as on 01.10.2000 there was no pay revision but only conversion from Central Dearness Allowance (CDA) scale of pay to Industrial Dearness Allowance (IDA) scale of pay on 01.10.2000 applicant and Shri.T.O Varghese were in two different posts and scale of pay. .

18 In the present case Shri.T.O.Varghese, a junior to the applicant became entitled to a higher pay fixation on promotion as Telecom Mechanic in the year 2002. The applicant was not holding Group D post in BSNL, as on 1.10.2000 like Shri.T.O.Varghese as she was promoted to the post of Telecom Mechanic prior to 1.10.2000. As a result, the post held by the applicant carried a different scale of pay than the lower post held by Shri.T.O Varghese. Since the scales of pay in the higher post held by the applicant and lower post held by Shri.T.O.Varghese were not identical, the question of stepping up of pay for the purpose of removing any anomaly does not arise. This case is different from the facts of **Gurucharan Singh Grewal's case, (2009) 3 SCC 94**, relied upon by the applicant and substantially similar to the facts of cases; **ESI Corporation V. P.K.Srinivasmurthy (AIR 1997 SC 2983)**, **Union of India v. O.P Saxena (AIR 1997 SC 2978 (1))** and **Union of India v. E.S.Soundara Rajan (AIR 1980 SC 959)**. The disparity in the present case has not arisen from any disparity in incremental benefits, but from the different pay scales applicable to the applicant and Mr.T.O.Varghese and the different dates of entering service in different cadre as brought out in Annexure R4. Hence, the prayer of the applicant for stepping up of pay with her junior Shri.T.O

Varghese is devoid of merit. “

15. In view of the above facts and settled position of the law, this Tribunal is of the view that the applicant who were given IDA pay scale were never given the grade of pay vis-a-vis their juniors. They were not in the same care and post fro which they have been promoted which is the basic requirement for getting pay stepped up on par with the juniors. The pay scale should have been identical which is not the case here and even the anomaly should have been directly as a result of the application of the provisions of Fundamental Rule of any other Rule of order regulating pay fixation on such promotion in the revised scale. If we carefully read F.R.22 as quoted by the respondents above, the position is very clear.

16. For the reasons stated above the decision rendered in OA.180/59/15 dated 17.6.2016 is binding on us. Therefore, we are of the view that there is no disparity between the seniors and juniors as claimed by the applicants in both the O.As. Hence the prayer of the applicants for stepping up of their pay w.e.f. 1.10.2010 to Rs.6220/ in the IDA scale of pay of 4720-150-6970 granting more increments by way of point to point fixation is not feasible and is devoid of merits. Hence rejected.

17. In the result, both the O.As viz. 180/00498/2015 and 180/00806/2015 are dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sj*/

O. A. No. 180/00498/2015

List of Annexures of the applicant

- Annexure A-1 - True copy of the Office order No. BSNL/ 26/ SR/ 2002 dated 07.08.2002 issued by the 1st respondent, BSNL.
- Annexure A-2 - True copy of the Judgment in O.A No. 261/2014 dated 11.04.2014.
- Annexure A-3 - True copy of the letter No. ES/Genl/Stepping up/ TMs/2013-14/29 dated 27.06.2014 by the 2nd respondent.
- Annexure A-4 - True copy of the Lawyer notice by the Applicants dated 03.09.2014.
- Annexure A-5 - True copy of the salary slip in the year 2012 of the 1st applicant.
- Annexure A-5(a) - True copy of the salary slip in the year 2012 of the Junior.
- Annexure A-6 - True copy of the letter dated 21.10.2014 by the 2nd respondent.
- Annexure A-7(a) - True copy of the representation dated 03.01.2015 submitted by the 1st applicant.
- Annexure A-7(b) - True copy of the representation dated 03.01.2015 submitted by the 2nd applicant.
- Annexure A-7(c) - True copy of the representation dated 03.01.2015 submitted by the 3rd applicant.
- Annexure A-7(d) - True copy of the representation dated 03.01.2015 submitted by the 4th applicant.

List of Annexures of the Respondents

Annexure R-1 - True copy of the Pay Fixation Memo on introduction of IDA pay scale w.e.f. 01.10.2000 in replacement of existing CDA pay scales vide No. BSNL/26/SR/2002 dated 07.08.2002.

Annexure R-2 - True copy of the Nagappan Nair dated 31.12.1997.

Annexure R-3 - True copy of the Revision of pay fixation in the case of M. Thulaseedharan Nair.

Annexure R-4 - True copy of the Comparative statement of Nagappan Nair & others (Seniors) and Thulaseedharan Nair, TM (Junior).

Annexure R-5 - Photo copy of the Page Nos. 60, 61, 62 of SWAMYS – FUNDAMENTAL RULES.

Annexure R.1(d) - Copy of order in O.A. No. 180/59/2015 dated 17.6.2016 of the CAT, Ernakulam Bench.

O. A. No. 180/00806/2015

List of Annexures of the applicant

Annexure A-1 - True copy of the Office order No. BSNL/ 26/ SR/ 2002 dated 07.08.2002 issued by the 1st respondent, BSNL.

Annexure A-2 - True copy of the Judgment in O.A No. 688/2012 dated 09.01.2013.

Annexure A-3 - True copy of the Judgment in O.A. No. 646/ 2014 dated 23.03.2015.

Annexure A-4 - True copy of the order of 2nd respondent dated 26.05.2015.

Annexure A-5 - True copy of the salary slip of the applicant for the months of March, 2011.

Annexure A-6 - True copy of the salary slip of the applicant's pointed out junior Sri. Sivadasan Nambiar for the months of March, 2011.

Annexure A-7 - True copy of the representation dated 28.07.2015 before the 2nd respondent.

List of Annexures of the Respondents

Annexure R-1 - True copy of the Pay Fixation Memo on introduction of IDA pay scale w.e.f. 01.10.2000 in replacement of existing CDA pay scales vide No. BSNL/26/SR/2002 dated 07.08.2002.

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