

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00442/2016

Wednesday, this the 24th day of October, 2018

C O R A M :

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

K.Gopalakrishnan Nambiar,
S/o.late E.V.G.Nambiar,
H.R.No.199302008, JTO (O),
Groups Ramanthali,
Payyanur Division, Kannur SSA.
Residing at Neelkamal,
Temple Road, Payyannur.

...Applicant

(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 Limited,
Trivandrum – 695 033.
3. The General Manager,
O/o.the General Manager,
Telecom, BSNL, Kannur – 670 002.

...Respondents

(By Advocate Mr.George Kuruvilla)

This Original Application having been heard on 12th October 2018,
the Tribunal on 24th October 2018 delivered the following :

ORDER

The brief facts of the case are that the applicant voluntarily retired as JTO (officiating). He entered into service as Telephone Mechanic with effect from 30.1.1993. The Technician cadre was restructured as TTA and he came to the restructured cadre on 22.9.1996. He had passed the

.2.

screening test conducted to the post of JTO. He was given officiating promotion in the year 2005 and continued till the date of retirement. It is submitted that he was continuously officiating as JTO from 2005 with technical break after every 179 days without any change in duties and responsibilities. His officiating promotion was ordered because of the acute shortage of JTO officials. On completion of 179 days the respondents would effect a reversion to the applicant and by another order issued on the same day, re-promotion as JTO also was effected time and again. Finally order dated 9.3.2016 was issued where the applicant was re-promoted as JTO after giving an artificial break (Annexure A-2). This order was passed in respect of 100 officials. The applicant was at Sl.No.100. The brief note written thereto it is stated that Shri.Gopalakrishnan Nambiar K at Sl.No.100 is ordered to officiate locally with effect from 23.2.2016 to 29.3.2016 as the applicant's retirement was due on 31.3.2016. It is further submitted that the applicant has not been given the benefit of pension and other retiral benefits fixed with reference to his officiating pay in the revised scale under FR 22(1)a(1) along with revised fitment in Annexure A-8. Feeling aggrieved he has filed this O.A seeking the following reliefs :

1. To declare that the applicant retired from the post of JTO (Officiating) under the 3rd respondent is entitled to get monthly pension and other retiral fixed with reference to his officiating pay in the revised scale under FR 22(1)a(1), along with revised fitment in Annexure A-8 and as per the dictum in O.A.No.670/2009 and O.A.No.1022/2012 and connected cases.
2. To direct the respondents to grant monthly pension and other retiral benefits from the date of retirement based on the last pay drawn by him after extending the benefits ordered in Annexure A-8, and in terms of the directions of this Hon'ble Tribunal in Annexure A-5 and to release the arrears of pension and other retiral benefits with interest at the rate of 18% annum.

.3.

3. Grant such other reliefs as may be prayed for and as the Court may deem fit to grant and

4. Grant the cost of this Original Application.

2. Notices were issued and respondents appeared. They have filed a reply statement wherein it is stated that the applicant has erroneously submitted that he was officiating till the date of his retirement. Actually his officiating promotion ended on 29.3.2016. He has automatically got reverted to his parent cadre. This factual position is admitted by the respondents. It is submitted that the applicant cannot rely upon the order in O.A.No.961/2012 mainly for the reason that he was not a party in the said case and secondly the matter involved in the said case is entirely different from the issue involved in the applicant's case. The applicant in O.A.No.896/2012 was denied officiating in the last month of his retirement due to administrative reasons. Hence he got salary of TTA only in his last month which, no doubt, affected his pensionary benefits. As per Annexure A-4 court order, the applicant therein was given officiating in the last month also and got his benefits. It is further submitted by respondents that the case is entirely different. The applicant in the present case got officiating promotion as JTO even in the last month of his service, but reverted to parent cadre on 29.3.2016, 2 days before his last working day, which was done as per rules only. He was not denied any of his benefits as JTO (Officiating). However there was wrong fixation of his pay and now he is claiming some undue benefits resulted by way of wrong pay fixation in connection with 2nd PRC implementation. In fact such a wrong fixation of pay in the case of officiating JTOs was happened to be made

.4.

based on an order dated 16.3.2009 issued by the Accounts wing of the Kerala Circle, which in fact should not have been issued by it without receiving further instructions or clarifications from BSNL Corporate Office in that regard, whereby the pay of the Non-executives officiating in the Executive grade got fixed in the revised scale applicable to the higher post of JTO, directly from the pre-revised officiating pay attached to the said post, based on Pay Revision Order for Executives'. In fact their pay should have been fixed as per Annexure R-1 (a) Pay Revision order and should have been first fixed in the revised pay scale attached to the lower post and then fix their pay in the revised pay scale attached to the officiating post with respect to their pay in the lower post under FR 22 I (a) 1, which is now one increment equivalent to 3% of the basic pay in the lower post.

3. Heard learned counsel for the parties at length and perused the records. During the course of the argument learned counsel for the applicant has drawn my attention to Annexure R-1(f) wherein the applicant's pay was fixed at Rs.27320/- whereas it should have been fixed at Rs.28140/- as JTO (O). He has submitted that the applicant has thus deemed to have been continued on the said post and he is entitled to get the pensionary benefits according to the post of JTO (O).

4. To deal with issue raised by the applicant in present O.A that he is entitled for fixation as per his last pay drawn is not convincing. The officiating promotion is nothing but a stop gap arrangement given due to the

.5.

exigency of administration. Some times it is done without looking into the requisite qualification as per Recruitment Rules or ignoring the quota system. So this Tribunal is of the view that officiating promotion cannot be claimed as a matter of right and there is no deeming provision attached thereof as claimed by the applicant herein, particularly, when the department has clearly stipulated in Annexure A-2 that his period would come to an end on 29.3.2016. He was automatically reverted to his parent cadre ie. TTA. It is needless to say that while officiating promotion to the post of JTO he should have been given the benefit of the officiating post which is not the subject matter in the present O.A. Further fixation of which done wrongly applicant cannot claim benefit of it. It would amounts to undue enrichment meaning thereby that for the benefit of fixation availed by him which he is not entitled cannot be claimed as a matter of right.

5. This Tribunal is of the considered view that once the applicant has been reverted to parent cadre he is not entitled to get pay in the officiating post or fixation for the purpose of reckoning for pension etc. Even otherwise the respondents have clarified that his fixation was done in accordance with rules but he is claiming undue benefits resulted due to wrong fixation in connection with the second PRC implementation which was the outcome of the mistake committed by the Accounts Wing of the Kerala Circle. The applicant cannot take advantage of the same.

.6.

6. Thus this present O.A fails to convince this Tribunal on its merit. Thus this Tribunal held that the applicant is not entitled to pay fixation of the post of JTO (Officiating) and pay fixed by the respondents has no error. The O.A is dismissed accordingly. No costs.

(Dated this the 24th day of October 2018)

ASHISH KALIA
JUDICIAL MEMBER

asp

List of Annexures in O.A.No.180/00442/2016

1. **Annexure A1** - A true copy of the order No.ST-2/165/JTO offg/15 dated 6.8.2005 issued by the 3rd respondent.
 2. **Annexure A2** – A true copy of the order No.HR-111/2-5/offg/2012/Pt dated 9.3.2016 issued by the 2nd respondent.
 3. **Annexure A3** – A true copy of the Pay Slip for the month of March, 2016.
 4. **Annexure A4** - A true copy of the order dated 16.5.2013 in O.A.896/2012 of the Hon'ble Central Administrative Tribunal, Ernakulam Bench.
 5. **Annexure A5** - A true copy of the order dated 21.8.2013 in O.A.1022/2012 and connected cases.
 6. **Annexure A6** - A true copy of the relevant pages of the Pension Payment Order.
 7. **Annexure A7** – A true copy of the relevant pages of the pay revision order dated 5.3.2009.
 8. **Annexure A8** – A true copy of the order No.1-50/2008-PAT(BANL) dated 8.7.2013 issued by the 1st respondent.
 9. **Annexure A9** - A true copies of the pay slips of the applicant from June, 2015 to March, 2016.
 10. **Annexure R1(a)** - A true copy of the Non-Executive Pay Revision Order dated 7.5.2010.
 11. **Annexure R1(b)** - A true copy of the Clarificatory order dated 16.3.2009.
 12. **Annexure R1(c)** - A true copy of the order dated 11.10.2012 of the Chief General Manager Kerala Circle.
 13. **Annexure R1(d)** - A true copy of the Clarified Judgment in R.A.30/2015 in O.A.1022/2012 & connected cases.
 14. **Annexure R1(e)** - A true copy of the clarification letter of the BSNL CO dated 22.12.2015.
 15. **Annexure R1(f)** - True copy of the statement of fixation of pay of the applicant.
 16. **Annexure R1(g)** - True copy of the BSNL CO letter dated 10.6.2016.
-