

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A No. 180/00914/2014**

Friday, this the 21<sup>st</sup> day of September, 2018.

**CORAM:**

**HON'BLE Mr. E.K. BHARAT BHUSHAN, ADMINISTRATIVE MEMBER  
HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER**

1. Vamanan C. aged 55 years, S/o Narayanan,  
Junior Telecom Officer (External)  
Bharat Sanchar Nigam Ltd., Perambra, Calicut, 673 525,  
Residing at : "Prasadam House", P.O.  
Balussery, Calicut, 673 612.
2. Shyamkukmar T.K., aged 54 years, S/o Damodaran,  
Junior Telecom Officer (OFC – Installations)  
Bharat Sanchar Nigam Limited, Telephone Bhavan, Vellayil,  
Calicut – 673 0332, Residing at: "No. 9/144 A, "Screepadam"  
Padinjattinmuri, Post Kakodi, Calicut 673 611. - **Applicants**

**[By Advocate Mr. T.C.G.Swamy]**

**Versus**

1. The Chairman & Managing Director  
Bharat Sanchar Nigam Ltd.  
New Delhi 110 001.
2. The Chief General Manager (Telecom)  
Bharat Sanchar Nigam Ltd.  
Kerala Circle, Trivandrum 695 033.
3. The General Manager,  
Bharat Sanchar Nigam Ltd.  
Calicut 673 032.
4. The Accounts Officer (Estt./CA)  
Office of the General Manager,  
Bharat Sanchar Nigam Ltd.  
Calicut 673 032. - **Respondents**

**[By Advocate : Mr. George Kuruvila ]**

The application having been heard on 05.09.2018, the Tribunal on 21.09.2018 delivered the following:

## O R D E R

**Per: Ashish Kalia, Judicial Member:**

Applicants have filed M.A. 180/001138/2014 seeking permission to file joint application. Heard. M.A. for joining together is allowed.

2. Applicants seek the following reliefs:

(i) Call for the records leading to the issue of Annexures A1 and A2 and quash the same.

(ii) Declare that the applicants are entitled to have their initial pay fixed on regular promotion as Junior Telecom Officers duly taking into consideration the pay drawn by them in the post of Junior Telecom Officers while working against the said post on officiating basis.

(iii) Direct the respondents to fix the initial pay of the applicants on regular promotion as Junior Telecom Officers, duly protecting the pay last drawn by the applicants while officiating as Junior Telecom Officers; and

(iv) Direct further to grant all the consequential benefits of such fixation within a time frame as may be found just and proper by Tribunal.

Declare that the applicants must be deemed to have been regularly promoted Junior Telecom Officers with effect from 09.08.2005 and 10.08.2005 respectively and direct the respondents to grant all the consequential benefits emanating there from;

Award costs of and incidental to this application.

Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

3. The brief facts leading to the present O.A. are that applicants are working as Telecom Technical Assistants (TTAs) holding the post on regular basis in the Kerala Circle of the Bharat Sanchar Nigam Limited (BSNL), a Govt. Of India Enterprise. They are qualified in Screening Test for being promoted as Junior Telecom Officers and they have been empanelled for the promotion of the said post as per the rules. After completion of successful training they were promoted to officiate as JTOs with effect from 9.8.2005 and 10.8.2005 respectively. The said promotion was ordered initially for 179 days and was extended from time to time. Their pay was fixed by applying F.R. 22 -I (a) (1) with effect from their respective dates of promotion. Their pay was fixed at the minimum of the scale of pay of the higher post i.e. at Rs. 9850 in the scale of Rs. 9850-250-14600. Later on the respondent have reduced the pay of applicant and fixed at the stage which was lower than the minimum of the scale of pay of the promoted post as the applicants were drawing pay while working

as TTA was Rs. 8100/- in the scale of 7100 – 200 – 10100 and their pay was fixed by adding Rs.1000 to the basic pay being drawing at the lower post at the rate of Rs. 9100/-. Since the reduction of pay would result in substantial injury and substantial loss to the applicants and hence they approached the Hon'ble High Court by filing various Writ Petitions. One of the prayers before the Hon'ble High Court was for a declaration that the pay of the applicants upon temporary promotion as JTO is to be fixed under FR 22-I(a)(1) as correctly done and being drawn by the officiating TTAs and for a direction to the respondents to grant the consequential benefits thereof. Finally, the Writ Petition was allowed vide judgment dated 24.3.2006 and it was held that they were entitled to have their pay fixed by applying F.R. 22 -I(a) (1). Feeling aggrieved by this the present applicants has approached this Tribunal, seeking protection of their last pay drawn in the officiating post of JTO after successfully getting promotion to the post of JTOs.

4. Notices were issued to the respondents. Respondents put their appearance through counsel and filed their detailed reply.

5. In the reply statement the respondents submitted that Telecom Technical Assistants (TTAs) who qualified in the Screening Tests in the year 2000 based on JTO Recruitment Rules 1996 but could not be appointed as regular JTOs for want of vacancies and were promoted in the years 2005 on temporary basis to officiate as Junior Telecom Officers but giving intermittent breaks over 179 days. The applicants who are also substantive holder of posts of T.T.As were accordingly promoted in the year 2005 on temporary basis to officiate as JTOs. This arrangement was continuing till they were regularly selected for the post of JTOs.

6. Applicants along with some of the TTAs officiating as JTOs opted to write the Limited Departmental Competitive Examinations (LDCE) out of which 131 candidates including the applicants came out as successful. Since they have to mandatorily undergo the training process as required under the JTO, Recruitment Rules 2001 they were reverted back to their substantive cadre of TTAs and have

undergone mandatory training for about 14 weeks. Having successfully completing the training they have now been appointed on the regular posts of JTOs. It is further submitted that the applicants have been paid only salary attached to the TTAs and accepted the same without any complaint or objection. Thus, as on the date of promotion and the appointment as JTOs, the applicants belonged to the TTA cadre, a non executive cadre and therefore, entitled for a notional increment of 3% of the existing basic in the cadre of TTA and on their regular promotion as JTOs as per the pay fixation rules on the subject and the applicants are not entitled for any protection of pay which they have been drawn during the officiating period. This Tribunal in Original Application No. 161/2012 and connected cases thereto had passed an order dated 13.12.2012 holding that “ **getting qualified for promotion does not confer any indefeasible right for promotion. The applicants who qualified could not be promoted to the post of JTO for want of vacancies. Matters of Recruitment Rules and departmental examinations are absolutely within the domain of the executive. Such matter has to serve the need of the organisation. The promotion to the post of JTO is now regulated by RR's of 2001. Applicants have to be satisfied with the condition as per the RRs 2001 and will have to appear for the JTO examination. The applicants cannot be regularised as per the existing Recruitment Rules.** It is further submitted that the applicant have already drawn excess payment than what they are actually entitled for during their officiating period, on the strength of court orders become final. Firstly they have got the pay attached to JTO's post on their officiating capacity and also earned increments based on the Annexure A7 judgement which is being questioned by the respondents in WP 23141/2010 and connected cases thereto.

7. We have heard the learned counsel for the parties at length and perused the pleadings and have considered the rival submissions. We have also carefully perused the judgements cited by the learned counsel for the applicant.

8. The short question the applicants raised before this Tribunal is whether the

officiating promotion as JTO and getting the pay of the said post could be protected on being promoted on the said post of JTO on regular basis.

9. During the course of arguments, Mr. T.C.Govindaswamy learned counsel for the applicant relied upon FR 22 (I) (a) (1). He has emphasised that as the applicants were eligible for promotion for the higher post i.e. JTO on officiating basis which carries a higher duties and responsibilities their pay should be fixed at the minimum of the pay in the time scale of higher post. In short, he has submitted that their pay should have been fixed at the minimum of the higher pay scale that comes to Rs. 9850/- the reduction thereto was done erroneously by the respondents and being eligible for said post they are entitled to pay protection. He relied upon above said F.Rs.

10. Contrary to this learned Standing Counsel for the respondents Mr. George Kuruvila, submitted that the applicants were qualified as per the new Recruitment Rules effective from 2001. But at the time of adhoc promotion for the post of JTO they were not eligible under the new Rules which is mandatory in nature. The moment they have acquired the qualification, under New Rules of 2001 they have been promoted to the post of JTO on regular basis and Regular scale of pay was granted to them i.e. for the year 2005. He further submitted that the applicants were reverted to the substantive cadre i.e (TTA) and later on they have acquired the eligibility of the criteria for the post of JTOs under the old Recruitment Rules of 2001. He further emphasised that under the Recruitment Rules the training is mandatory for the regular posts of JTOs whereas marks obtained in the training is essential for eligibility and seniority purpose.

11. If we scrupulously examine the rule 17 of F.R./S.R. which is reproduced hereunder:

"F.R. 17(1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he

ceases to discharge those duties:"

The above rule clarifies that pay and allowances attached to the officiating post lasts till he ceases to draw pay and allowances attached to the officiating posts are admissible when the employee assumes the duties of the post and it shall ceases to draw as soon as he ceases to discharge those duties.

Along with this rule 22, I (3) (b) and provision attached to it read as under:

"F.R.22(I): The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows :-

(a)(1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment **Rules**, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at the increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more."

XXXXXXXXXXXX

(2) xxxxxx

(2) is appointed subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules to a tenure post on a time scale identical with that of another tenure post which he has previously held on regular basis.

then the initial pay shall not, except in cases of reversion to parent cadre governed by proviso (1) (iii), be less than the pay, other than special pay, personal pay or any other emoluments which may be classed as pay by the President under **Rule 9(21) (a) (iii)** which he drew on the last occasion, and he shall count the period during which he drew that pay on a regular basis on such last and any previous occasions for increment in the stage of the time scale equivalent to that pay.

12. Rule FR 22 (3) (b) says in case of eligibility conditions are not fulfilled he shall draw as initial pay on the minimum of the time scale subject to fulfillment of eligibility condition as prescribed in the relevant recruitment rules to the tenure post of time scale identical to that of another tenure post which he has previously held on regular basis their initial pay shall not except in cases of reversion to parent cadre governed by above-said proviso . The applicants were not eligible for the JTO post under the New Recruitment Rules of 2001. Thus they were not entitled for fixation

of their pay in the minimum pay of time scale of the higher post. Hence their pay was rightly fixed by the Respondents at Rs. 8100/- + 1000 under the F.R. 22 (3) (b) and as per Rule 17 they shall begin to draw the pay and allowances attached to his tenure post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he discharge those duties.

13. Proviso to FR. 22 (2) made exception only to the cases where reversion to parent cadre is there then employee is not entitled to get higher pay fixation and continuation of its protection of time scale of minimum of next higher post after reversion. Meaning thereby the pay of the employee would not be protected. It can only be claimed in the cases where adhoc officiation was given for some other reason despite the fact that employee was eligible to be promoted to the higher post. In the present case applicants were also reverted to their parent cadre to the post of TTA. Thus above proviso to FR 22 (2) made exception to rule would be applicable to the present case. The applicants have never challenged their reversion to the post of T.T.A. So they have accepted the contention of the respondents that they are not eligible to be promoted on regular basis on the next post of JTO. Thus the moment they were reverted they are not entitled to higher pay and its protection.

14. After going through the records and having heard the rival submissions, this Tribunal is of the view that the present application is nothing but an experimentation as submitted by the respondents. Rules F.R. 17 and 22 are very clear that there is hardly any scope in the said rules for the applicants case as we found that the respondents have adopted the right course of action in the matter of pay fixation of applicants. The present O.A. is devoid of merits and liable to be rejected. We do so.

15. Accordingly, the present O.A. is dismissed. No order as to costs

**(Ashish Kalia)**  
**Judicial Member**  
sj\*

**(E.K. Bharat Bhushan)**  
**Administrative Member**

Applicant's Annexures

- Annexure A1 - Memo bearing No. EEF-6002/2007-2014/44 dated 20.09.2014 issued by the fourth respondent as regards the first applicant.
- Annexure A2 - Memo bearing No. EEF-6002/2007-2014/43 dated 20.09.2014 issued by the fourth – respondent as regards the second applicant.
- Annexure A3 - A true copy of the JTOs Recruitment Rules of 1996.
- Annexure A4: A true copy of the relevant pages of “Swamy's Compilation of FR-SR Part I – General Rules “ containing FR 17, FR 22, FR 22, FR 26 and FR 35.
- Annexure A5: A true copy of the Interim Order in WP(C) No. 35481/05 dated 20 December 2005, rendered by the Hon'ble High Court in one of the cases filed by the applicants and like others.
- Annexure A6: True copy of the common judgment dated 24.3.2006 in WP(C) No. 35481/05 and connected cases.
- Annexure A7: True copy of the order of this Hon'ble Tribunal in TA Nos. 84 of 2008 and connected cases dated 15<sup>th</sup> July, 2009.
- Annexure A8: True copy of the notification bearing No. Rectt./30-4/2013/15 dated 01.03.2013, issued by the Assistant General Manager (Rectt. & Estt.) in the office of the second respondent.
- Annexure A9: True copy of the order bearing No. AGM (R&E)/CON/LICE/TO 35%/15%/45 dated 12.02.2014, issued by the Assistant General manager (Rectt.) in the office of the second respondent.
- Annexure A10: True copy of communication bearing No.ES/22-2/203-2014/32 dated 12.03.2014, issued from the office of the second respondent.
- Annexure A11: A true copy of the pay slip of the first applicant for the month of February 2014.
- Annexure A12: A true copy of a common representation sent by all the affected parties including the applicants.
- Annexure A13; True copy of FR 22 I as it exists today published in the Swamy's Compilation of FR and SR 2010 Edn.
- Annexure A14: A true copy of the Government of India orders OM.

No.19/2/2013 dated 12.12.2013 in matter of counting of past officiating spells in the higher post of drawal of increments.

Annexure A15: True copy of the above said Judgment of the Hon'ble High Court of Kerala in OP (CAT) No. 2017 of 2011 (Z) dated 15/09/2017

Annexures of Respondents

Annexure R1 (h) - True copy of the officiating promotion orders of the Applicants.

Annexure R1 (i) - True copy of Kerala Circle Office order No.LC-III/OA.No.299/2014/7 dated 29.5.2014.

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