

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 26000070 2017
Cuttack, this the 29th day of March, 2017

CORAM
HON'BLE MR. R. C. MISRA, MEMBER (A)

.....

1. Kishna Chandra Choudhury, aged about 45 years, Son of Sh. N. V. Choudhury, at present working as JAO, O/o CGM, BSNL, Bhubaneswar.
2. CH. Katyayani, aged about 51 years, Wife of Sh. N. Hari Kumar, at present working as JAO. O/o CGM, BSNL, Bhubaneswar.
3. Hrudananda Behera, aged about 47 years, Son of Late Natabar Behera, at present working as JAO, O/o CGM, BSNL, Bhubaneswar.
4. Premchand Das, aged about 49 years, Son of Late Babulal Das, at present working as AO, O/o CGM, BSNL, Bhubaneswar.
5. Achyutananda Nayak, aged about 49 years, Son of Late Gangadhar Nayak, at present working as AO, O/o CGM, BSNL, Bhubaneswar.
6. Laxmipriya Behera, aged about 45 years, Wife of Sh. Ajaya Kumar Behera, at present working as AO, O/o CGM, BSNL, Bhubaneswar.
7. P. Ramesh Chandra Patro, aged about 53 years, Son of Late P. Subharao Patro, at present working as JAO, O/o CGM, BSNL, Bhubaneswar.
8. Manjulata HO, aged about 53 years, Wife of Sh. Sitaram Tamsoy, at present working as AO, O/o CGM, BSNL, Bhubaneswar.
9. Dhirendra Rout, aged about 48 years, Son of Sh. Duryodhan Rout, at present working as JAO, O/o GMTD, BSNL, Bhubaneswar.
10. Jagadish Panda, aged about 50 years, Son of late Uma Charan panda, at present working as JAO, O/o GMTD, BSNL, Bhubaneswar.
11. Prasad Kumar Tandy, aged about 53 years, Son of Late Samuel Tandy, at present workings as JAO, O/o GMTD, BSNL, Bhubaneswar.
12. Ramesh Chandra Sahoo, aged about 49 years, Son of Sh. Kapila Sahoo, at present working as JAO, O/o GMTD, BSNL Bhubaneswar, Dist-Khurda, Bhubaneswar.
13. G. Nagaraju, aged about 47 years, Son of Late G. Chandra Sekhar Rao Achary, at present working as JAO, O/o GMTD, BSNL, Berhampur.
14. M. Sudhkar, aged about 36 years, Son of Late M. B. Reddy, at present workings as JAO, O/o GMTD, BSNL, Berhampur.
15. Rabindra Mohapatra, aged about 55 years, Son of Late Braja Sundar Mahaparate, At present working as JAO, O/o GMTD, BSNL, Berhampur.
16. Debendra Prasad Dash, aged about 46 years, Son of Sh. Rama Chandra dash, at present working as JAO, O/o GMTD, BSNL, Koraput.
17. Sujata Mohanty, aged about 48 years, Wife of Sh. Surendra Pattanayak, at present working as JAO, as JAO, O/o GMTD, BSNL, Koraput.
18. Satikanata Sahoo, aged about 51 years, Son of Late Ghanashyam Sahoo, at present working as JAO, O/o GMTD, BSNL, Rourkela.
19. Shambhu Nath Prasad, aged about 52 years, Son of Prem Nath, at present working as JAO, O/o GMTD, BSNL, Rourkela.
20. Sk. Abdul Kayam, aged about 59 years, Son of Late Shaikh Abdul Hamid, at present working as JAO, O/O GMTD, BSNL, Rourkela.
21. BishunuPada Das, aged about 41 years, Son of Keshab Chandra Das, at present working as JAO, O/O GMTD, BSNL, Rourkela.

22. Sukanta Kumar Behera, aged about 51 years, Son of late Bishnu Charan Behera, at present working as JAO, O/O GMTD, BSNL, Cuttack.

...Applicant

(By the Advocate-M/s. K.B. Panda, S.K. Rath, S.K. Nayak, M. Behera)

-VERSUS-

Union of India Represented through

1. The Secretary, Department of Communications and Information Technology, Union Secretariat, New Delhi.
2. Bharat Sanchar Nigam Limited, represented through its Chairman-cum-Managing Director, having its registered head office at New Delhi.
3. Chief General Manager, Odisha BSNL Circle, Bhubaneswar-751009, Dist-Khurda.
4. Dy. General Manager, (HR/Admn.) Office of CGMT, BSNL, Bhubaneswar-751009, Dist-Khurda.

...Respondents

By the Advocate- M/s. K.C. Kanungo, HVBRK Dora (BSNL) & Mr. S. Behera, SCGPC

ORDER

R.C. MISRA, MEMBER(A):

On 27.02.2017 after hearing the Ld. Counsels appearing for both the sides this O.A. was admitted. As regards the interim relief, on the prayer made by the Ld. Counsel for the BSNL that he would obtain certain instructions in this matter, the matter was directed to be listed to 16.03.2017, and thereafter to 23.03.2017, when after hearing the Ld. Counsels for both the parties, orders on interim relief was reserved.

2. During the course of hearing, the Ld. Counsel submitted that the applicants were selected for appointment to the post of Junior Accounts Officer and Accounts Officers in various offices of BSNL across the State. The applicants got selected to the post of Junior Accounts Officer(JAO) on 19.03.2010 and their pay was fixed at Rs.9850/- in the Executive Pre-revised scale of Rs.9850-250-14600/-. Since the Non-Executive 2nd Pay Revision was not published, they were entitled to Pre-revised Executive scale. Subsequently, the salary of the applicants was fixed at Rs.21,620/- and Rs.22,820/- w.e.f. the date of promotion as per the option

exercised by them. While exercising options the applicants have refunded 06 months' salary in advance and they have not taken the pay revision arrears arising due to 2nd PRC from 01.01.2007 to the date of promotion. In the year 2016, BSNL issued individual Memos to applicants informing them that their pay had been fixed on a notional basis w.e.f. the date of promotion till 23.07.2015 and that the actual benefit of the notification as per Annexure-A/2 was being given w.e.f. 24.07.2015. While the matter stood thus, BSNL vide letter dated 23.11.2016 directed implementation of revised pay fixation of the Departmental JAO's 2010 Batch and recovery of excess payment from the concerned Executives. Being aggrieved by the order of recovery the applicants made representations to the Chief General Manager, BSNL, Orissa Circle, Bhubaneswar. Since there was no response from the Respondents to the representation, the applicants approached the Tribunal in O.A. No.910/2016. This Tribunal disposed of the said O.A. vide order dated 21.12.2016 by directing the Respondents to dispose of the pending representation by way of a well reasoned order and not to take any coercive measure for a further period of one month of such consideration. By an order dated 19.01.2017 the concerned authorities considered and rejected the said representations after which applicants have filed the present O.A. No.70/16 praying for quashing the impugned orders dated 23.11.16 & 24.11.16.

3. With regard to interim prayer the applicants have prayed that the orders under Annexures-A/5 and 6 series and order dated 19.01.2017(Annexure-A/9 series) be stayed/kept abeyance till final disposal of the present O.A.

4. Ld. Counsel for the BSNL has filed an objection to the interim prayer in which he has submitted that the pay fixation of the applicants in violation of the BSNL Corporate Office orders dated 07.05.2010 under Annexure-A/1 and 18.05.2011 was detected by the Chief Vigilance Officer, BSNL on the basis of a complaint and accordingly the whole matter was investigated. It is further submitted by the Counsel that the applicants have taken the benefit of pay revision in an irregular manner when they were not entitled to the same. The same issue was agitated before the Kolkota Bench and also Ernakulum Bench of the C.A.T in O.A. No.350/01393/2014 and O.A. No.306/2013 decided on 01.07.2016 and 06.02.2017 respectively. The orders of Kolkota Bench and also Ernakulum Bench of the Tribunal have gone in favour of the Respondents. In view of the final decision disallowing the claim of the applicants in similar matters the prayer for interim relief should be simultaneously rejected by the Tribunal as contended by the Ld. Counsel for the BSNL. With regard to the recovery the Ld. Counsel for the BSNL submits that since the applicants have furnished undertakings along with option forms the decision of the Hon'ble Apex Court in the case of State of Punjab and Others Vs. Rafiq Masih 2015 (4) SCC 334 is not applicable and stands distinguished in view of a subsequent judgment dated 29.07.2016 of the Hon'ble Apex Court in High Court of Punjab and Haryana Vs. Jagdev Singh Civil Appeal No.3500 of 2006.

5. In response to the objections raised by the Ld. Counsel for the BSNL to the interim prayer the Ld. Counsel for the applicants has submitted that there is no doubt that the Kolkota Bench of the Tribunal in O.A.

No.350/01393/2014 i.e., Shri Ankur Kumar Singh Vrs. BSNL & Ors. has dismissed the said O.A. filed by Shri Ankur Kumar Singh. It is the further submission of the Ld. Counsel for the applicants is that the facts of that O.A are not identical with the facts of the O.A. filed by the present applicants. Therefore, the prayer of the Ld. Counsel for the BSNL that because of the final decision interim prayer should not be granted is not sustainable, submission as contended by the Ld. Counsel for the applicants.

6. The Ld. Counsels for both the parties have vociferously argued for and against the prayer for interim relief. It is however observed that in course of the hearing of the interim relief, a large number of issues with regard to the case were also discussed and deliberated. The Tribunal is at this stage only considering the prayer for interim relief. I therefore, do not consider it necessary to discuss each and every submissions of the Ld. Counsels pertaining to the merit of the case. After carefully considering the submissions of the Ld. Counsels for both sides I am of the view that even though there may be some wrong that has been detected some vigilance angle in the matter of pay fixation when the case has been admitted for adjudication basing on some *prima facie* ground, it will be proper to pass an interim order stopping further recovery as directed under the orders as at Annexure-A/5 & A/6 series. Since the applicants are serving as officers in BSNL balance of convenience lies to stay the orders of recovery because in a situation where the applicants are not able to establish their case, they will have to refund the amount to the employers i.e., the BSNL.

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7. After considering all aspects of the case, I therefore, direct that the orders under Annexure-A/5 & A/6 series and order dated 19.01.2017 (Annexure-9 series) may be kept in abeyance until further orders. The Respondents are directed to file their counter affidavit within a period of four weeks by serving copy thereof on the Ld. Counsel appearing for the applicant so that he should file rejoinder within a period of 02 weeks so that process of hearing in this matter may be expedited and final decision should be taken by the Tribunal. With this order the prayer for interim relief is allowed.

8. Copy of this order be made over to Ld. Counsels for both the sides as per Rule.

(R.C.MISRA)
MEMBER(A)

K.B.

