

CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA

O.A. No. 117/2013

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

1. Ms Sudeshna Pal,
Daughter of Late Samarendra Mohan Pal,
Aged about 39 years, working as Junior
Accounts Officer, Office of the
Deputy General Manager (SEA/TR),
BSNL, Kolkata, residing at 216E
N.S.C Bose Road, Kolkata-700047.
2. Sri Tarun Roy, son of late Sambhu Nath Roy,
Aged about 41 years, working as Junior
Accounts Officer/CA-IV, , Office of the
Deputy General Manager (SEA/TR),
BSNL, Kolkata, residing at 61
N.N Road, Kolkata-700028.
3. Sri Timir Baran Sarkar, son of late
Suhrid Baran Sarkar, aged about 49
Years, working as Junior Accounts Officer/
Cash Collection, office of the Deputy General
Manager (SEA/TR), residing at 16/2
Nandan Nagar, Govt. Quarters, P.O.
Nandannagar, Belgharia, Kolkata-700083.

..... Applicants.

Versus

1. Bharat Sanchar Nigam Limited,
Through the Chairman & Managing
Director, Bharat Sanchar Nigam
Limited, Bharat Sanchar Bhawan,
7th Floor, Harish Chandra Mathur Lane,
Janpath, New Delhi – 110001.
2. The Chairman & Managing
Director, Bharat Sanchar Nigam
Limited, Bharat Sanchar Bhawan,
7th Floor, Harish Chandra Mathur Lane,
Janpath, New Delhi – 110001.
3. The Director (Finance)
Bharat Sanchar Nigam
Limited, Bharat Sanchar Bhawan,
7th Floor, Harish Chandra Mathur Lane,

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Janpath, New Delhi – 110001.

4. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Calcutta Telephones, Telephone Bhawan,
34, B.B.D. Bag (South) Kolkata-700001.
5. The Deputy General Manager (HR & Admn).
Bharat Sanchar Nigam Limited,
Calcutta Telephones, Telephone Bhawan,
34, B.B.D. Bag (South) Kolkata-700001.
6. The Chief Accounts Officer (FA),
BSNL, Calcutta Telephones,
8, Hare Street, Kolkata – 700001.

..... Respondents.

For the Applicants :Mr B. Bhushan, Counsel

For the Respondents :Mr S. Panda, Counsel.

Date of hearing: 26-08-2016

Date of order:

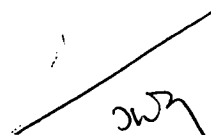
2.9.2016

ORDER

MS JAYA DAS GUPTA, JM

The applicants in this case i.e. applicant No. 1 Ms Sudeshna Pal, applicant No.2, Tarun Roy and applicant No.3 Sri Timir Baran Sarkar have approached CAT under Section 19 of the Administrative Tribunals Act 1985 seeking the following reliefs :

- (a) An order granting leave to the applicants under Rule 4(5) (a) of the Central Administrative Tribunals (Procedure) Rules 1987 to move this application jointly.
- (b) An order holding the impugned decision changing date of effect of non-executive pay revision made timely option of the applicants as per para 3.6 of the circular dated 7.5.2010 and having adverse effect on the pay of the applicants by way of reduction is bad in law and unsustainable.
- (c) An order quashing and/or setting aside the impugned re-fixation vide orders dated 7.2.2013 (A-6 Coll) and directing the respondents to continue the payoff the applicants as per A-5 Coll and an order directing the respondents to grant



all consequential benefits to the applicants and setting aside the recovery, if any.

- (d) An order directing the respondents to produce/cause production of all relevant records.
- (e) Any other order or further order/orders as to this Hon'ble Tribunal may deem fit and proper."

2. On perusing the pleadings it is abundantly clear that we have passed orders on exactly similar cases in O.A.350/01393/2014, Sri Ankur Kumar Singh vs. BSNL and O.A.350/01324/2014 Sri Kamadev Nayak vs. BSNL. Orders were passed on 21.06.2016 and relevant portion of our order is set out below :

"These two Original Applications are analogous and similar question of law and facts are involved hence they are being decided by this common judgment.

2. In nut shell the case of the Applicant in OA No. 350/01393 of 2014 (Shri Ankur Kumar Singh) is that after passing the departmental examination he was promoted from non executive to executive grade as Junior Accounts Officer with effect from 14.06.2010. Accordingly, on exercising option, his pay was fixed in the revised IDA scale of pay with effect from the date of his promotion. Subsequently, the said fixation of pay was upset by an order dated 12.09.2014. He preferred representation dated 18.09.2014 against such order refixing his pay dated 12.09.2014 which was rejected vide order dated 23.09.2014. Against the said communicated dated 23.09.2014, he preferred another representation dated 23.09.2014. Alleging non consideration of his representation and on the other hand reducing his pay thereby and anticipating recovery from his salary he has filed the instant OA under section 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:

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"(a) An order quashing and/or setting aside the order dated 20.12.2012, 18.5.2011 letter dated 4.9.2014 revision fixation Memo dated 12.9.2014 and communication dated 23.09.2014;

(b) An order holding that the applicant is entitled to the benefits of pay as was granted to him on the basis of its option with effect from 14.06.2010 with all consequential benefits and directing the respondents to grant the said benefits accordingly as well as holding that the clarification dated 18.5.2011 is not applicable to the case of the Applicant.

(c) An order holding that the withdrawal of/cancellation of the option exercised by the applicant as per para 3.6 of BSNL CO order dated 7.5.2010 is bad in law and arbitrary;

(d) An order directing the respondents to grant all consequential benefits to the Applicant;

(e) An order directing the respondents to produce/cause production of all relevant records;

(f) An order directing the respondents to produce/cause production of all relevant records;

(g) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

3. The Respondents filed counter and supplementary counter also as per the order of this Tribunal. According to the Respondents, the Applicant while working in the BSNL in a non executive cadre was promoted to the post of Junior Accounts Officer vide order dated 14.6.2010 which is an executive care in BSNL. In the said order of promotion it was specifically mentioned that on his appointment and joining as JAO on promotion his pay will be fixed in the IDA Pay scale of Rs. 16400-40500/- as per PAT Branch Co BSNL letter dated 05.03.2008. On his promotion, the applicant submitted an option on 18.07.2010 in terms of para 3.6 of the Office order dated 07.05.2010 which is exclusively applicable for non executive employees of BSNL only and not for Executive cadre employees of the BSNL. In the option there was a specific provision for giving an undertaking to the effect that any excess payment that shall be found to have been made as a result of incorrect

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fixation of pay or any excess payment effected in the light of discrepancies noticed subsequently will be refunded by the employee concerned to the BSNL. But the applicant intentionally did not sign and furnish such undertaking. The instruction was issued by the BSNL Hqrs, New Delhi dated 20.12.2012 to fix the pay of JAO who were appointed on promotion out of 10 and 40% Departmental quota in 2010, they are entitled to the revised E-1 Pay scale of Rs. 16400-40500/- by granting one notional increment @ 3% of the existing pay in the feeder grade or at Rs. 19020/- by way of granting five advance increments on the minimum of the revised E1 scale, whichever is higher. Accordingly the pay of the applicant and two others in the executive grade as JAO was revised/corrected fixing the pay of the applicant at Rs. 19020/- as per rules. Accordingly vide Memo dated 12.09.2014 the pay of the applicant was refixed at Rs. 19020/-. The excess amount was calculated as Rs. 4, 19, 933/- which was sought to be recovered. The representation submitted by the applicant was considered but the same was rejected and intimated to the applicant in a detailed order. Accordingly, the Respondents have prayed for the dismissal of this OA.

4. Admittedly, both the applicants were initially appointed in the **Non Executive Cadre** in BSNL. On **14.06.2010** & **11.06.2010** respectively, they were promoted to **Executive Cadre** of BSNL as Junior Accounts Officer.

5. On 07.05.2010 an order of pay revision from 01.01.2007 was announced for **Non Executive Grade** employees of the BSNL only. Para 3.6 of the said Office Order provides exercising of option for revision of pay from 01.01.2007 or from the date of promotion after 01.01.2007 or



from the date of next increment in the existing scale. Accordingly, option was exercised by both the applicants. The option exercised by **Shri Ankur Kumar Singh**, the applicant in **OA No. 350/01393 of 2014** is extracted hereunder for ready reference:

"

SR-3

FORM OF OPTION

(i) I,.....hereby elect the revised scale with effect from 1st January, 2007.

(ii) I, Ankur Kumar Singh hereby elect to continue on the existing scale of pay of my substantive/officiating post mentioned below until;
the date of my next increment promotion i.e. 14.6.2010
the date of my subsequent increment raising my pay to

Rs.....

I vacate or cease to draw pay in the existing scale.

Existing scale.

Date 18.7.2010

Station: Kolkata

Signature Sd/-

Name Ankur Kumar Singh

Designation JAO

Office to which employed DGM,"

6. From the above, it would be evident that the option given is defective because the applicant has changed the format of the form of option. He had scored through the word "increment" and added in his own hand writing "promotion i.e. 14.06.2010". However, para 3.6 of the order dated 07.05.2010 was superseded vide clarification order No. 1-37/2010-Pat (BSNL) dated 18.05.2011 wherein it was stated that promotion from Non Executive Grade to Executive Grade between the period 01.01.2007 i.e. the date of revision of IDA pay scale and 07.05.2010 i.e. the date from issuance of office order No.1-16/2010-PAT(BSNL) may be allowed to exercise option for fixation of pay in the revised pay from the date of their promotion/financial up gradation

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under ACP Scheme. The clarification dated 18.5.2011 is filed herewith as Annexure-A/6 which reads as under:

"BHARAT SANSCHAR NIGAM LTD

(A Govt. of India Enterprise)

No. 1-37/2010-PAT(BSNL)

dated the 18.5.2011

To

All Heads of Telecom Circles/

All Heads of other Administrative Units,

Bharat Sanchar Nigam Ltd.,

**Sub: Revision of pay of Non executive Employees in BSNL
w.e.f. 1.1.2007 –clarification reg.**

Sir,

References have been received from several field units seeking clarification on exercise of option for fixation of pay from the date of promotion after 1.1.2007 in respect of Non executives with reference to Para 3.6 of this office order No. 1-16/2010-PAT (BSNL) dated 7.5.2010.

2. The matter has been examined in consultation with BSNL Finance and accordingly, it is clarified that the Non executives, who got promotion/financial up gradation under ACP Scheme from Non executive grade to Executive grade between the period 1.1.2007 i.e. the date of revision of IDA pay scales and 7.5.2010 i.e. the date of issuance of Office Order No. 1-16/2010-PAT (BSNL) may be allowed to exercise of option for fixation of pay in the revised pay from the date of their promotion/financial up gradation under ACP Scheme.

3. Regarding furnishing of option for revision of pay from the date of next increment, the non executive can opt from the DNI in the existing scale if the next increment falls subsequently to 1.1.2007.

4. Any change of option as per this clarification shall be exercised in writing within one month from the date of issue of this order.

Hindi version will follow.

Yours faithfully,

Sd/-

(Sheo Shankar Prasad)

Asstt. General Manager (Pers.V)"

As stated above, the applicants got promotion on 14.06.2010 & 11.06.2010 respectively, which was not falling under the period from 01.01.2007 to 07.05.2010. As such, the option dated 18.07.2010 by Shri Ankur Kumar Singh became invalid and their pay was revised with effect

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from 01.01.2007 by default. It has been submitted at the Bar that no option was given following to the option given on 18.7.2010 by Shri Singh. Shri Kamdev Nayak had given his option but no change of option was given by him as required, which he fairly admitted in para 10 of his rejoinder.

7. Further an office order dated 20.12.2012 was issued in the matter of promotion from Non Executive Cadre to Executive Cadre involving the issue of grant of five advance increments on the minimum of the revised E1 IDA pay scale of Rs. 16400-40500/- of JAO (Departmental) to make their pay at par with directly recruited JTOs/JAOs. Such order is set out below:

"BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprise)
No. 1-5/2012-PAT (BSNL) dated 20.12.2012
OFFICE ORDER

Sub: Issue of grant of 5 (five) advance increments on the minimum of revised E1 IDA pay scale of Rs. 16400-40500/- to JAO (Departmental) at par with directly recruited JTOs/JAOs.

Pay of internal candidates who were promoted as JAO after they qualified in LICEs held for the post of JAO under 10% quota & 40% quota (Main exam) in Nov, 2009 & Jan/Mar, 2010 was fixed in the revised E1 pay scale in the absence of revised E1A pay scale. As per BSNL Corporate office letter No. 1-29/2010-PAT (BSNL) dated 3.1.2012 and 19.3.2012, the pay of directly recruited JTOs of 2007 and 2008 batch and directly recruited JAOs in respect of whom result declared in 2010 have been ordered to be fixed at Rs. 19020/- after grant of whom result declared in 2010 have been ordered to be fixed at Rs. 19020/- after grant of 5 (five) advance increments on the minimum of the revised E1 pay scale of Rs. 16400-40500/-.

2. Accordingly, it has been decided with the approval of BSNL Board that on promotion to the grade of JAO through Internal departmental competitive exams for which results were declared in year 2010 (both 10% Quota & 40% Quota), the pay of such JAOs may be fixed in the revised E1 pay scale of Rs. 16400-40500/- by granting one notional increment @ 3% of their existing pay in the feeder grade or at Rs. 19020 by way of

JWZ

granting five advance increments on the minimum of the revised E1 scale whichever is higher.

3. The Board of Directors has further approved that in case revised E1A pay scale is approved by the Government subsequently, the same may be extended to those JAOs and accordingly their pay may be regulated in the revised E-1A pay scale. An undertaking in this regard may be obtained from the officers.

4. Errors & Omissions occurred while calculating the arrears therein are subject to rectifications and correction. Overpayments made, if any, shall be recovered as per rules.

Sd/-

(Sheo Shankar Prasad)

Assistant General Manager (Pers.V)"

8. It is clearly mentioned in para 4 of the aforesaid office order that errors & Omissions occurred while calculating the arrears therein are subject to rectifications and correction and any overpayments made, shall be recovered as per rules.

Thereafter, pay fixation was made in respect of the applicants and it would suffice to extract the pay fixation made in respect of Shri Ankur Kumar Singh which is quoted herein below:

"Pay fixed As on 1.1.07	Pay	7140		7140.00
	68.80%	4912.32	78.20%	5583.48
	Total	12052.32		12723.48
	80%	3615.696		8817.044
	Total	15688.016		16510.524
	Say R/o	15670 (pre revised IDA scale 5700-160-8100 (revised IDA Scale 10900-20400)		
01.07.2007		16140		17040
01.07.2008		16630		17560
01.07.2009		17130		18090

Fixation of pay on promotion as JAO w.e.f. 14.06.2010 in the scale of pay of Rs. 16400-40500/-.

A) 3% Inc on old basic pay	17650	18640
B) Min of the scale i.e. Rs.16400 Plus 5 increments which is Beneficial to the official	19020	19020

B. Is more beneficial to official. Hence pay should be re fixed at Rs. 19020/- on 14.6.2010 in the scale of pay 16400-40500/-."

9. This shows that his pay w.e.f. 14.6.2010 i.e. the date of promotion has been fixed at Rs. 19020/-. Earlier on 21.6.2013, (Ref. SR-4) the pay of

the applicant was erroneously fixed based on the invalid option submitted by the applicant Shri Ankur Kumar Singh on 18.7.2010 and this error was detected within five years and the over drawn amount was bound to be recovered.

10. As discussed above, the option was defective and therefore, could not be acted upon. Any pay revision based on such invalid option cannot be entertained.

16. It is also noteworthy that while making payments, on the basis of revisions under a Pay Commission, a certificate is invariably obtained from the employee, undertaking to refund any excess drawal. This is a regular practice in dealing with fixation of emoluments on the basis of Pay Commission recommendations. Therefore, the applicants are aware that any overpayment has to be recovered.

11. Here the applicant Shri Ankur Kumar Singh had submitted an invalid option on which erroneously the respondent authorities had initially fixed the pay o 21.6.2013 (Annexure SR-4) which was subsequently corrected on 12.09.2014.

12. The case of the Applicants are entirely different. They were erroneously over paid by the Respondents because of wrong fixation based on an invalid option exercised in pursuance of the order dated 7.5.2010 which applies to Non Executive Cadre employees only. The applicants did not take any action on clarification dated 18.5.2011 of order dated 7.5.2010, to the effect that the date of promotion to Executive Cadre should be between 1.1.2007 and 7.5.2010 for exercising option. The Applicants were promoted after 7.5.2010.

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13. On examination of the matter we do not see any merit in both the OAs which are accordingly dismissed by leaving the parties to bear their own costs."

3. Coming to the case of Smt Sudeshna Pal, applicant No.1 in present O.A, we find that her option dated 6.7.2010 for coming to the regular promotion post of JAO cadre on 14.06.2010 is not valid. The said option form with the undertaking is set out below :

"OPTION FORM

I Sudeshna Pal hereby elect to continue on the existing scale of pay of my substantive cadre upto the date of my Regular Promotion to JAG cadre on 14.06.2010. My pay in revised IDA Pay Scale (i.e. 2nd PRC) may be fixed in the JAO Cadre on 14.06.2010 vide para 3.6 of BSNL, Corporate Office Order No.1-16/2010-PAT(BSNL) dated 07.05.2010.

Date 06/07/2010
Place Kolkata

Signature
Name SUDESHNA PAL
Designation JAO(W&B)/CMTS
Office DGM/F/CMTS

UNDERTAKING

I, hereby, undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the BSNL either by adjustment against future payments due to me or otherwise.

Date 06/07/2010
Place Kolkata

Signature
Name SUDESHNA PAL
Designation JAO(W&B)/CMTS
Office DGM/F/CMTS"

3.6 JWZ
4. Para 36 of BSNL Corporate Office order dated 7.5.2010 applies to promotion in non executive cadre only. Also as per communication dated 18.05.2011, extracted herein above (page 7 of this order) promotion has to be

JWZ

between 01.01.2007 and 07.05.2010. But she has been promoted on 14.06.2010 which after 07.05.2010. Similar are the case of Shri Tarun Kumar Roy who had given option on 23.7.2010 and Timir Baran Sarkar. The facts clearly show that the applicants will not be guided by Para 3.6 of the Office Order of BSNL dated 07.05.2010 as they were promoted after 07.05.2010.

5. The pay fixation on grant of 5 advance increments in the minimum of revised E-1 IDA pay scale to the promote Junior Accounts Officer regarding Smt Sudeshna Pal is set out below :

"BHARAT SANSAR NIGAM LIMITED
(A Government Enterprise)
O/O the Chief General Manager, Calcutta

Telephones,
700001.

Taher Mansion, 18th Floor, 8 Bentinck Street, Kolkata-

No.SSR-3015/General/JAO/2012-13/68 Dated Kolkata the
07.02.2013.

Sub : Grant of 5(Five) advance Increments on the minimum of revised E1 IDA Pay Scale of Rs.16400-40500/- to JAO (Departmental) at par with Directly Recruited JTOs/JAOs.

In pursuance of order contained in BSNL Co. New Delhi order No:1-5/2012-PAT (BSNL) dt.20.12.12 & endorsed by CAO/FA No.ABB-3119/FA/CIRCULAR/193 dt. 03.01.2012 the pay of the following official who was promoted to the grade of JAO on regular basis w.e.f. 14.06.2010 are being fixed in the pay scale of Rs.16400-40,500/-(Provisional) as follows :-

5. Smt Sudeshna Pal/AOTR,CB-III,JAO (HR No.199603201)

Period	Scale of Pay Rs.6550- 185-9325/- (NE-8)	Scale of Pay Rs.7100-200- 10100/- (NE-9) Rev.Scale Rs.13600- 25420/-	Scale of Pay Rs.16400- 40500/- (E-1)	Remarks
01-01-2006	Rs.7105/-	-	-	Existing pay
29-04-2006	-	7105/-	-	Promoted to TTA
01-01-2007	-	15600/-	-	2 nd PRC
01-01-2007	-	16540/-	-	Re-fixed,Actual benefit will be given w.e.f.29-04-2006
01-01-	-	17040/-	-	Inc.

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2008				
01-01-2009	-	17560/-	-	Inc.
01-01-2010	-	18090/-	-	Inc.
14-06-2010	-	-	19020/-	Promoted to JAO on regular basis and granted 5 Adv. Inc.
01-06-2011	-	-	19590/-	Inc
01-06-2012	-	-	20180/-	Inc

D.N.I on 01-06-2013, if otherwise not effected."

It is clear that her pay has been fixed at Rs.19020/- on promotion to JAO on regular basis as the same is more beneficial to her and there is nothing wrong in fixing her pay at Rs.19020/- which is as per BSNL Office Order dated 20.12.2012, Annexure R-6, which is extracted herein below :

The above fixation order dated 20.12.2012 is set out below :

"OFFICE ORDER

Sub : Issue of grant of 5 (Five) advance increments on the minimum of revised E1 IDA pay scale of Rs.16400-40500/- to JAO(Departmental) at par with directly recruited JTOs/JAO.

Pay of internal candidates who were promoted as JAO after they qualified the LICEs held for the post of JAO under 10% quota & 40% quota (Mam exam) in Nov'2009 & Jan/Mar 2010 was fixed in the revised E1 pay scale in the absence of revised E1A pay scale. As per BSNL Corporate Office letter No.1-29/2010/PAT/BSNL dated 3.01.2012 and 19.03.2012 the pay of directly recruited JTOs of 2007 and 2008 batch and directly recruited JAOs in respect of whom result declared in 2010 have been ordered to be fixed at Rs.19020/- after grant of 5(five) advance increments on the minimum of the revised E1 pay scale of Rs.16400-40500/-.

2. Accordingly it has been decided with the approval of BSNL Board that on promotion to the grade of JAO through internal departmental competitive exams for which results were declared in year 2010 (both 10% and 40% quota) the pay of such JAOs may be fixed in the revised E1 pay scale of Rs.16400-40500/- by granting one notional increment @ 3% of their existing pay in the feeder grade or at Rs.19020/- by

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way of granting five advance increments on the minimum of the revised E1 scale, whichever is higher.

3. The Board of Directors has further approved that in case revised E-1A pay scale is approved by the Government subsequently the same may be extended to these JAOs and accordingly their pay may be regulated in the revised E-1A pay scale. An undertaking in this regard may be obtained from the officers.

4. Errors & omissions occurred while calculating the arrears therein are subject to rectifications and correction. Overpayments made, if any, shall be recovered as per rules.

Sd/-

(Sheo Shankar Prasad)

Assistant General Manager (Pers.V)"

6. For applicant No.2 and applicant No.3 it is clear from the pleadings at para 4(h) that undertakings were taken that they would accept any refixation due to receipt of any subsequent clarification from Corporate Office, New Delhi and they would refund the excess amount or same may be adjusted against future claims, payments due to them or otherwise.

7. Therefore, we find that the present case of the 3 applicants in O.A.117/2013 is exactly similar to those relating to O.A.Nos. O.A.350/01393/2014 and O.A.350/01324/2014 (supra), which were already dismissed earlier. Accordingly the present O.A is also dismissed. Interim order is vacated.

No order as to costs.

(Jaya Das Gupta)
Administrative Member

(Justice V.C.Gupta)
Judicial Member