

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/01057/2014

Tuesday, this the 26th day of February, 2019.

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Hon'ble Mr.Ashish Kalia, Judicial Member

A.K.Thankappan Nair, aged 54 years

S/o Late Krishnan Nair

HR No.198010371

Senior Telecom Supervisor, BSNL Project Udan

Kothamangalam,

residing at "Pranavam"

Govt Model High School Road

Muvattupuzha P.O.-686 661.

Applicant

[Advocate: Mr.C.A.Joy]

versus

1. Bharath Sanchar Nigam Limited
rep by the Chairman & Managing Director
Corporate Office, Statesman House,
Barakhamba Road, New Delhi.
2. The Principal General Manager
BSNL Bhavan, Ernakulam SSA
Ernakulam, Cochin-16.
3. The Accounts officer, Estt.
Office of TGMP, BSNL Bhavan
Ernakulam, Cochin-16.

Respondents

[Advocate: Mr. P. Muraleedharan, ACGSC]

This OA having been heard on 13th February, 2019, this Tribunal delivered the following order on 26.02.2019:

ORDER

By Ashish Kalia, Judicial Member

The applicant seeks the following reliefs:

- (i) Set aside Annexure A6 communication dated 29.5.2014.*
- (ii) Declare that the applicant is entitled for re-fixation of his pay by providing the pay applicable to his junior, N.G.Suresh and issue an order directing the respondents to disburse the arrears of salary and other benefits within a time limit fixed by this Tribunal.*

2. Applicant commenced service as Telecom Mechanic with BSNL in the year 1980. On completion of 16 years of service, he was given One Time Bound Promotion (OTBP) fixation on 18.9.1996 and his pay was fixed as Rs.4500/- in the pay scale Rs.4500-125-7000. The applicant's junior one N.G.Suresh joined as Telephone Operator (later re-christened as Telephone Mechanic) in 1982. He was given OTBP fixation in 1995 and his pay was fixed as Rs.4500/- w.e.f. 9.2.1995. Based on Annexure A2, the pay of the applicant as well as his junior was fixed as Rs.5000/- w.e.f. 1.12.1998. On adoption of IDA pay scale, the applicant's pay was fixed as Rs.7300/- as on 1.10.2000 and that of his junior was fixed as Rs.7500/-. The aforesaid anomaly continued to exist even while implementing the 2nd pay revision as well. According to the applicant, he has been getting a lesser pay than that of his junior since February 1999. Various representations made by the applicant having yielded no positive result, the applicant has filed this OA.

3. Notices having being served on the respondents, they have filed a reply statement. In the reply statement, it is contended that the OA is not sustainable in law or facts. No legal rights of the applicant are infringed to approach this Tribunal. Applicant's junior Sri Suresh N.G. belongs to Scheduled Caste category and by virtue of being SC category, he was bestowed with One Time Bound

Promotion in the pre restructured cadre w.e.f. 9.2.1995 under shortfall vacancy of SC/ST, before completion of the mandatory period of 16 years, consequent to Annexure R3(a) order of Department of Telecom, dated 14.8.1989, following the judgment of the Hon'ble Supreme Court of India in WP(C) 1003-1005/1984. The applicant was given OTBP on 18.9.1996 after completion of 16 years. Hence the pay fixation of both officials shall not be compared with each other. It is further submitted that the applicant entered the P&T Department on 16.09.1980 as a Telephone Operator. He was given OTBP with effect from 18.9.1996 on completion of 16 years as per the existing rules. As per the Gradation List, the applicant is senior. Since Sri N.G.Suresh who is junior to the applicant belongs to SC category, he was given OTBP promotion in the pre-structured cadre with effect from 9.2.1995 as per Annexure R2(a). Even though OTBP given to Sri N.G.Suresh was before completion of 16 years, the placement to the scale of Rs.5000-150-8000 was given to both officials with effect from 1.12.1998 as per Annexure R2(b). Changes occurred in the pay during the course of the career of the applicant cannot be attributed to any kind of pay aberration. Heard learned counsel for the parties, Sri C.A.Joy for the applicant and Sri P.Muraleedharan, ACGSC on behalf of the respondents.

4. The short question raised in this OA is whether the applicant is entitled to re-fixation of his pay, in preference to his junior Sri N.G.Suresh or not. The answer is in the negative. The junior to the applicant, Sri Suresh belongs to SC category. Under the Constitution, special privileges are given on implementation of the judgment passed by the Apex Court in WP(C)No.1003-1005 of 1984. Being an SC candidate, the Department has given him one time bound promotion before completion of 16 years of service. Thus it cannot be said that

any anomaly vis-a-vis his junior is there. The applicant cannot compare with his junior who belongs to the reserved category. Applicant who is a general candidate is comparing himself with a candidate of special category i.e. SC. If it is allowed, there can be chaos in the administration and there would not be any benefit left for these categories which is not permissible under any law. The Constitution has laid much stress on special treatment for the reserved categories in view of lack of opportunities. The applicant belongs to a community which is a general category. General category candidate cannot be compared with a candidate who belongs to special category. Even otherwise, the applicant has not brought any other point for comparison or violation of his personal rights. The privileges given by the Constitution or statute in a particular reserve category is personal in nature that cannot undergo any change by way of comparison. Finding no merit in the OA, the same is dismissed.

[Ashish Kalia]
Judicial Member

[E.K.Bharat Bhushan]
Administrative Member

aa.

Annexures filed by the applicant:

- Annexure A1: Copy of the pay fixation order of the applicant dated 28.08.98.
Annexure A2: Copy of the relevant page of the order, DOT ND No.1-38/MPP-98 dated 20.4.99 with pay fixation of the applicant dated 14.10.99.
Annexure A3: Copy of the fixation memo of the applicant dated 1.10.2000.
Annexure A4: Copy of the pay fixation memo issued to the applicant based on the 2nd pay revision.
Annexure A5: Copy of the representation dated 29.4.2014.
Annexure A6: Order No.Q 5635008/110 dated 29.5.2014 issued by the 3rd respondent.
Annexure A7: Copy of the representation dated 13.8.2014.

Annexures filed by the respondents:

- Annexure R2(a): Copy of the letter from AGM (Adm), O/o PGMT BSNL Ernakulam dated 4.7.95.
Annexure R2(b): Copy of the order from Director (MPP) DOT New Delhi letter No.38/MPP-98 dated 16.3.2000.