

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

TA No. 5 of 2013 (WP No.24999/2006)

Reserved on: 26.02.2019

Pronounced on: 11.03.2019

Between:

1. K. Stalin, S/o. K. Rama Koteswar Rao,
Aged about 42 years, Telecom Mechanic,
Employee No. 14082, Telephone Exchange,
Macherla, under G.M.T.D., BSNL, Guntur.
2. M. John Prabhakara Rao, S/o. Yohan,
Aged 44 years, Telecom Mechanic,
Employee No.14088, Telephone Exchange,
Macherla, under G.M.T.D. BSNL, Guntur.
3. Shaik Khaleel, S/o. Hussain,
Aged about 39 years, Telecom Mechanic,
Employee No.14076, Telephone Exchange,
Mangalagiri, under G.M.T.D., Guntur.
4. P. Ramesh, S/o. Devaiah,
Aged about 39 years, Telecom Mechanic,
Employee No.14093, in Ponnur Telephone Exchange,
under G.M.T.D., BSNL, Guntur.

... Applicants

And

1. The General Manager,
Telecom District, BSNL, Guntur.
2. The Chief General Manager,
Telecom District, BSNL, AP Circle, Hyderabad.
3. The Chairman & Managing Director,
BSNL, New Delhi.

... Respondents

Counsel for the Applicants	...	Mr. K. Venkateswara Rao
Counsel for the Respondents	...	Mr.M.C. Jacob, SC for BSNL

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The applicants filed WP No. 24999 of 2006 before the Hon'ble High Court of Judicature of Andhra Pradesh at Hyderabad for drawl of pay on par with their junior and the same has been re-numbered in this Tribunal as TA No. 5/2013 upon remand from the Hon'ble High Court.

3. Brief facts of the case are that the applicants were appointed in 1995 as Regular Mazdoors and their pay was fixed in the pay scale of Rs.750-940. Their junior Sri R. Koteswara Rao was also appointed on the same day. The applicants passed screening test for promotion as Telecom Mechanic in the year 1996 and were promoted on 09.06.2000 to the said post in the scale of Rs.3200-4900. Consequent to the formation of BSNL on 01.10.2000, the applicants gave option to be absorbed in BSNL and accordingly, they were absorbed in IDA scale of Rs.4720-150-6970 with pay of Rs.4720/- on 01.10.2000. As on 01.06.2005, the applicants were drawing a pay of Rs.5470/-. In contrast, their junior Sri R. Koteswara Rao passed screening test later to the applicants and was appointed to the post of Telecom Mechanic on 18.07.2002, that is after formation of the BSNL on 1.10.2000. His pay was fixed at Rs.5320 in the grade of Telecom Mechanic as on 01.10.2002 in IDA scale of Rs.4720-150-6970. Applicants were drawing pay of Rs.5470 as on 01.06.2005 whereas their junior Sri R. Koteswara Rao in the same cadre of Telecom Mechanic was drawing pay of Rs.5770/-. Therefore, junior is drawing more pay than senior. Applicants represented to the respondents, but there was no response. Hence, the TA.

4. The contentions of the applicants are that Sri R. Koteswara Rao is junior to them as per the seniority list. Applicants are shown at Sl. No.468, 454, 434, 430 whereas Sri R. Koteswara Rao is listed at Sl. No. 725 in the seniority list. Besides, Sri R. Koteswara Rao passed the screening test for Telecom Mechanic and appointed in the said post on 18.07.2002, whereas the applicants passed the exam and got promoted to the post of Telecom Mechanic on 09.06.2000. It is well settled principle of law laid down by the Hon'ble Supreme Court that a senior should not draw lesser pay than his junior under identical circumstances and rules. Besides, the respondents have issued a circular dt. 07.08.2002 wherein they stated that anomalies, aberrations, if any, in the pay of the employees should be settled sympathetically. However, the respondents, despite pointing out the anomalies stated, have not taken any action.

5. Respondents in the reply statement have pointed out that Sri R. Koteswara Rao was appointed as Regular Mazdoor on 01.04.1995 in the pay scale of Rs.730-30-940. On introduction of V CPC, the said pay scale was revised to Rs.2550-3200. The applicants were promoted as Telecom Mechanic in the higher pay scale of Rs.3200-4900 w.e.f. 09.06.2000. On the formation of the BSNL, the applicants were absorbed in BSNL with a basic pay of Rs.4720-150-6970 corresponding to the CDA pay scale of Rs.3200-4900 and their pay was fixed at Rs.4720/- as per the fixation formula while converting CDA scale to the IDA scale. Further, BSNL has come out with a Non-Executive Promotion Policy (NEPP) to provide upgradation benefit to the employees on completion of certain number of years in a pay scale vide letter dt. 23.03.2010. According to this policy, employees absorbed from 01.10.2000 will get first upgradation on completion of four years in an IDA i.e. on 01.10.2004 and thereafter, on

completion of 7 years, they would be getting second upgradation and so on. Based on the said order, applicants completed four years as on 01.10.2004 in IDA pay scales of Rs.4720-6970 and thus, were granted pay scale of Rs.5700/-. Consequent to the revision of pay scales of BSNL employees w.e.f. 01.01.2007, pay scale of Telecom Mechanic was revised to Rs.9020-17430 and the upgraded pay scale is revised to Rs.10,900-20,400. In contrast, Sri R. Koteswara Rao was absorbed in BSNL as Mazdoor in the IDA pay scale of Rs.4000-5800 and his pay was fixed at Rs.4840 based on the conversion formula of pay scales from CDA to IDA. Thus, Sri R. Koteswara Rao was drawing more pay in the pay scale of Rs.4000-5800 as on 01.10.2000, whereas the applicants pay was Rs.4720/- in the promoted pay scale of Rs.4720-6970. Sri R. Koteswara was promoted as Telecom Mechanic on 18.07.2002 and his pay was fixed at Rs.5020 in the pay scale of Rs.4720-6970 and from 01.10.2002 at Rs.5320/-. However, R. Koteswara Rao continued in the said pay scale and his pay scale of Rs.4720-6970 was revised to Rs.9020-17430 w.e.f. 01.01.2007 and after completion of 7 years, i.e. on 18.07.2009, Sri R. Koteswara Rao got second upgradation and his pay was fixed at Rs.14,650/-. As per the DOPT OM dt. 04.11.1993, stepping up of pay is permitted subject to the conditions thereof. The applicants are not eligible for the relief sought. Besides, anomaly disappeared from 01.10.2004 when the applicants were granted first upgradation by virtue of Non-executive promotion policy with retrospective effect. Therefore, as on date, there is no cause for the applicants to file the present TA.

6. Heard learned counsel for both sides and perused the documents on record.

7(I) It is settled law that senior should not draw lesser pay than his junior. In this regard, from the reply statement, pay drawn by the applicants and that of their junior are given hereunder:

Applicants pay w.e.f. 01.10.2000 in the pay scale of is as under:

Date	Pay in Rs.
01.10.2000	4720 (Rs.4720-150-6970)
01.06.2001	4870
01.06.2002	5020
01.06.2003	5170
01.06.2004	5320
01.10.2004	5700 (1 st upgradation Rs.5700-160-8100)
01.10.2005	5860
01.10.2006	6020
01.01.2007	Rs. (Pay revised Rs.10,900-20400)

Pay of Sri R. Koteswara Rao with effect from 01.10.2000 is as under:

Date	Pay in Rs.
01.10.2000	4840 (IDA pay scale Rs.4000-120-5800)
01.10.2001	4960
18.07.2002	5020 (Promoted as TM Rs.4720-150-6970)
01.10.2002	5320
01.10.2003	5470
01.10.2004	5620

As seen from the above table, the applicants were drawing lesser pay from 01.10.2000 till 01.10.2004 than his junior Sri R. Koteswara Rao. The anomaly got rectified after the applicants got first upgradation on 1.10.2004. Hon'ble Supreme Court in **Gurucharan Singh Grewal vs Punjab State Electricity BTard - 2009 (3) SCC 94** observed that senior should not draw lesser pay than his junior. Applying the said legal principle urged by the applicants, the applicants are entitled for pay on par with their junior from 01.10.2000 till

01.10.2004. It is also observed that the applicants were appointed in the same grade as that of their junior Sri R. Koteswara Rao and they also got promoted to the similar higher grade of Telecom Mechanic. Important aspect to be examined is as to whether the junior is drawing more pay for discharging similar responsibilities and duties. Both the applicants and their junior discharged similar duties and responsibilities both in the lower grade and the promoted grade. Therefore, for discharging similar duties, seniors should not be discriminated by giving lower pay than their junior, which would obviously be termed as irregular. In the present case, we find the anomaly established by the applicants.

II. Respondents are trying to resist the resolution of the anomaly by stating that the junior got promotion to the post of Telecom Mechanic in the IDA scales whereas the applicants got promotion in the CDA scales prior to formation of BSNL and therefore, the difference arises. In this regard, it needs to be adduced that the fundamental precept is that senior should not draw lesser pay than the junior. The anomalies are bound to arise while implementing pay revision and it is for the respondents to ensure that the principle of senior drawing higher pay is abided by. The action of the respondents is thus arbitrary. Therefore, the TA succeeds in the light of the law laid down by the Hon'ble Supreme Court as cited above. Consequently, respondents are directed as under:

- i) to fix the pay of the applicants on par with that of their junior Sri R. Koteswara Rao from the date on which he has been drawing higher pay than the applicants till the pay of the applicants and that of their junior has been made equal.

ii) time calendared to implement the order is three months from the date of receipt of this order.

iii) TA is allowed with above directions, with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 11th day of March, 2019

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