

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/880/2010

Jabalpur, this Friday, the 04th day of January, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Rakesh Gunwant Tamhankar, S/o Late Gunwant Sadashiv Tamhankar, aged 52 years, working as Senior S.S. (OP) Bharat Sanchar Nigam Ltd. Office of the Chief General Manager, Inspection Circle (T&D), Residence Road, Jabalpur (MP) – 482001, R/o 497, Radhika Apartment, Yadav Colony, Jabalpur (MP) – 482002.
2. Prithvi Raj Singh Chauhan, S/o Shri C.B.S. Chauhan, aged 51 years, working as Sr. Section Supervisor, office of the Chief General Manager, T & D Circle, Bharat Sanchar Nigam Ltd. Residency Road, Jabalpur – 482001, R/o 858/A-1, Amanpur, Madan Mahal, Jabalpur – 482003.
3. Smt. Sharmila Mukharjee, Wife of Shri Dhruv Jyoti Mukherjee, aged 49 years, working as Senior Section Supervisor (Op) Office of the Chief General Manager T & D Circle, Bharat Sanchar Nigam Ltd. Residency Road, Jabalpur – 482001, R/o MIG 50, Housing Board Colony Katang, Jabalpur – 482001.
4. Smt. Usha R Telang, Wife of Late R Telang, Working as Section Supervisor (Op) Office of the Chief General Manager T & D Circle, Bharat Sanchar Nigam Ltd. Residency Road, Jabalpur – 482001, R/o III/8/T & D Colony, Theatre Road, Jabalpur – 482001.
5. Smt. Vimla Meshram, Wife of Shri Kaviraj Meshram, aged 52 years, working as Section Supervisor (Op), Office of the Chief General Manager, T & D Circle, Bharat Sanchar Nigam Ltd., Residency Road, Jabalpur – 482001, R/o Type-III, 16, T & D Colony, Jabalpur – 482001.

6. Sanjay Haridas, S/o Shri Vasant Haridas, aged 51 years, working as Junior Accounts Officer, Office of the Chief General Manager T & D Circle, Bharat Sanchar Nigam Ltd. Residency Road, Jabalpur – 482001, R/o 24, Vivekanand Nagar, Yadav Colony, Jabalpur – 482001.
7. Biswajeet Dutta, S/o Late S.P. Dutta, aged 48 years, working as Section Supervisor, office of the Chief General Manager, T & D Circle, Bharat Sanchar Nigam Ltd., Residency Road, Jabalpur – 482001, R/o III/07, T & D Circle Colony, Theatre Road, Jabalpur (MP) – 482001.
8. Sunil Shastry, S/o Late K.S. Shastry, aged 40 years, Section Supervisor, Inspection Circle Office, Office of the Chief General Manager, T & D Circle, Bharat Sanchar Nigam Ltd., Residency Road, Jabalpur – 482001, R/o 108, Nav Adarsha Colony, Behind Mehta Petrol Pump, Jabalpur – 482001.
9. Suresh Chand Rajput, S/o Late Munnilal Rajput, aged 46 years, working as Section Supervisor, Office of the Chief General Manager, T & D Circle, Bharat Sanchar Nigam Ltd. Residency Road, Jabalpur – 482001, R/o Old Mess Barick, Near Sheela Talkies, Backside of T & D Circle, Jabalpur – 482001.
10. Shaji Varghese, S/o K.T. Varghese, aged 41 years, working as Section Supervisor (Op), Inspection Circle Office, Office of the Chief General Manager, T & D Circle, Bharat Sanchar Nigam Ltd., Residency Road, Jabalpur – 482001, R/o 1917, Vijay Nagar (Chhaper), Rampur, Jabalpur – 482008.
11. Ram Sajwan Tiwari, S/o Shri Kalika Prasad Tiwari, aged 48 years, working as Section Supervisor (Op), Office of the Chief General Manager, T&D Circle, Bharat Sanchar Nigam Ltd., Residency Road, Jabalpur – 482001, R/o 2739/1, Shakti Bhavan Road, Indira Nagar, Gali No.2, Rampur, Jabalpur – 482008.
12. G.S. Pawar, S/o Dayaram Pawar, aged 51 years, working as Section Supervisor (Op), Office of the Chief General Manager T&D Circle, Bharat Sanchar Nigam Ltd., Residency Road, Jabalpur – 482001, R/o III/9, T & D Circle Colony 7, Theatre Road, Jabalpur (MP) – 482001.

13. Ratan Lal, S/o Late Shri Gokul Prasad, aged 53 yeas, working as Section Supervisor (Op), Office of the Chief General Manager T & D Circle, Bharat Sanchar Nigam Ltd. Residency Road, Jabalpur – 482001, R/o Jawahar Nagar, Adhartal, Jabalpur – 482001.

14. Shivdasan Nair, S/o Late K.K. Nair, aged 50 years, Section Supervisor (Op) Office of the Chief General Manager, T & D Circle, Bharat Sanchar Nigam Ltd., Residency Road, Jabalpur – 482001, R/o H. No.1210 – E, Modi Bada, Cantt, Jabalpur – 482001.

15. Devideen Singrore, S/o Late L.R. Singrore, aged 53 years, Section Supervisor (Op), Office of the Chief General Manger, T & D Circle, Bharat Sanchar Nigam Ltd. Residency Road, Jabalpur – 482001, R/o Ward No.1, Kishanin Mohalla, Barela, Jabalpur (MP) – 482008.

16. Kamla Prasad Pasi, S/o Late Raj Bahadur Pasi, aged 51 years, Section Supervisor (Op), Office of the Chief General Manager, T & D Circle, Bharat Sanchar Nigam Ltd., Residency Road, Jabalpur – 482001, R/o 1600, Pande Vyas Chowk, Gupteshwar, Jabalpur - 482002

-Applicants

(By Advocate – Smt. Shobha Menon, Sr. Advocate, assisted by Ms. Palak Nema)

V e r s u s

1. Deleted.

2. Bharat Sanchar Nigam Ltd. (A Government of India Enterprise) Corporate Office, Bharat Sanchar Bhawan, Janpath, New Delhi – 110001 through : Its Chairman cum Managing Director.

3. Chief General Manager, Bharat Sanchar Nigam Ltd. (A Government of India Enterprise) Inspection Circle (T & D) Sanchar Vikas Bhawan, Jabalpur – 482001 (MP) - Respondents

(By Advocate – Shri Surendra Pratap Singh)

(Date of reserving order : 13.08.2018)

O R D E R

By Ramesh Singh Thakur, JM.

The applicants are challenging the introduction of policy dated 23.03.2010 (Annexure A-1), whereby it has been decided to implement Non-Executive Promotion Policy (NEPP) for employees in the IDA pay scales of Bharat Sanchar Nigam Limited (BSNL). They are also aggrieved by the order dated 15.02.2010 (Annexure A-2), whereby their representation for grant of parity with Stenographer has been rejected.

2. The applicants have, therefore, sought for the following reliefs:

“8. (i) To issue appropriate direction to the respondents to grant applicants parity within the Stenographers Grade III for the reasons aforementioned;

(ii) to direct respondents to grant ACP to the applicants in the scale of Rs. 9850-14600/- as per the orders contained in the ACR Scheme;

(iii) to direct the respondents to confer all the translational, fixation, revisional benefits etc of the pay scales of Stenographer Grade III granted from time to time to the applicants also;

(II) to grant any other relief which this Hon’ble Tribunal deems fit and proper in the facts and circumstances of the case.

(III) Cost of the application be awarded.”

3. The brief facts of the case, as stated in the Original Application are that the BSNL issued order dated 31.03.2009

(Annexure A-3) regarding revision of scales of pay of Board level and below Board level Executives at BSNL w.e.f. 01.01.2007. According to the said order, Stenographers will get promotion under the ACP scheme after completion of 12 years of service from the scale of Rs. 5700-160-8100 to the scale of Rs.9850-250-14600, whereas the Senior TOA will get One Time Bound Promotion (OTBP) from the scale of Rs.5700-160-8100 to the scale of Rs.7100-200-10,100, after 26 years service in the scale of Rs.7800-225-11775, while other conditions remain the same.

4. It has been submitted that the Recruitment Rules for Stenographers and Clerks are almost same, i.e. for Stenographer, educational qualification is 10+2 with Shorthand, whereas for Clerk, 10+2 with typing . The pay scale of Steno (Rs.330-560) and Clerk (LDC/UDC) (Rs.260-400/330-560) are the same as per the 3rd Pay Commission. The applicants have filed Recruitment Rules of Sr. TOA dated 31.05.1996 (Annexure A-4) and Recruitment Rules of 1994 (Annexure A-5) pertaining to Stenographers.

5. Due to introduction of Electronic Exchanges and scrapping of manual local and trunk exchanges, a large number of Telephone Operators were rendered surplus. Also due to the expansion of networking, there was a need of large number of clerical staff.

Therefore, the respondents converted the LDC/UDC cadre to TOA cadre with OTBP, BCR etc in the year 1992. The conversion of LDC/UDC to TOA was streamlined as per orders dated 9.9.1992 (Annexure A-6). However, during the regime of 4th Central Pay Commission, the TOA post was upgraded to that of Senior TOA in the ratio 2:1. The applicants contend that the grading envisaged in Annexure A-6, was not changed according to the changed nomenclature, responsibilities and qualification requirement of the applicants.

6. Further, the TOA pattern was again restructured and the TOAs were converted to the post of Sr. TOA in the ratio of 2:1, as per Department of Telecommunication letters dated 29.3.1994 and 30.10.1998. The applicant submits that mobility provided on award of ACP is hierarchical and the UDC/Stenographer grade III could jump to the scale of Rs.6500-10500 on award of ACP, while there was no proper hierarchy system on restructuring the TOA to that of Sr. TOA even though they were doing the same ministerial works as that of UDC and Stenographer Grade-III.

7. The applicants further submit that after formation of BSNL, Stenographers cadre was restructured w.e.f. 01.01.2004 vide order dated 20.02.2004 (Annexure A-7) by declaring Steno Grade-III

dying/wasting cadre. The pay scale of Stenographer Grade-II (Rs.5000-8000) and Stenographer Grade-I (Rs.5500-9000) were merged with the pay scale of Rs.5500-9000 and upgraded to Rs.6500-10500 (CDA). The grade of Stenographers-III, which was declared as dying/wasting cadre, was placed directly in the pay scale of Rs.9850-250-14600 after getting ACP/promotion, whereas Sr. TOAs were placed in the scale of Rs.7100-200-10100 after 16 years of service. Therefore, the applicants are claiming parity with the Stenographers on the ground of slight modification in recruitment qualifications, mode of recruitment and nature of duty etc.

8. The applicants, therefore, made Annexure A-9 representation to the respondent department. Since, no response was given by the respondents, they filed OA No.669/2009 before this Tribunal, which was disposed of on 14.12.2009 with a direction to the respondents to consider the grievance of the applicants within six months. In the meantime, the respondents introduced a Non-Executive Promotion Policy (NEPP) for employees in the IDA Pay Scale of NE-1 to NE-10 of BSNL, vide their letter dated 23.3.2010 (Annexure A-1). As per this policy, Non-Executive employees in a substantive non-executive post and

drawing non-executive pay scales of NE-1 to NE-10 will be covered by this policy. Further, as per Clause 6.4 of the Policy, upgradation in pay scale availed by a Non-Executive Employee on the basis of existing OTBP/BCR Grade IV/ACP Scheme etc. or by way of conversion/restructuring/pay scale upgradation etc. after 1.10.2000 and before notification of this Policy, will be treated as the first upgradation. Since no decision was taken on the applicants' representations, they again preferred OA No.494/2010 before this Tribunal, which was disposed of vide order dated 13.07.2010 with liberty to the applicants to file individual representation before the authorities. The respondents, vide order dated 15.05.2010 (Annexure A-2), have rejected the representation on the premises that no comparison could be drawn between the two cadres in as much as, the nature of duties and responsibilities are different. It has been further mentioned in the order that the revision of pay scale has to be done as per the wage agreement arrived at in consultation with the representative Union and in respect of the Non-Executive employees.

9. It is the case of the applicants that the conversion from LDC/UDC pattern to that of TOA/Sr. TOA pattern has turned to the disadvantage of the applicants and had they remained in the

LDC/UDC pattern, they would have treated at par with the Stenographer Grade III for promotions and ACP. Further, since qualifications prescribed for both posts are similar and method of recruitments are also identical, the applicants are entitled to similar treatment like those of Stenographers.

10. The respondents have filed their reply. It has been submitted that the BSNL formed out of erstwhile Department of Telecommunication w.e.f. 01.10.2000 and the staff and officers of DOT were treated as on deemed deputation. Subsequently, the services of the employees of Group-C and D, were transferred to BSNL and as per the options, orders of their permanent absorption in BSNL were issued. The Department of Telecommunication Service has decided to implement the ACP scheme in respect of those Group C & D cadre/posts, which are not covered by OTBP and BCR schemes. Accordingly, ACP scheme was introduced w.e.f. 09.08.1990, which was endorsed by DOT w.e.f. 09.08.1999. During DOT period, the cadre of Stenographers was covered under ACP scheme and the cadre of Sr. TOAs were covered under OTBP/BCR scheme. After, their absorption in BSNL, these cadres are still continuing under the same promotional scheme. At the time of absorption of Group-C & D (Non-Executive) Employees in

BSNL, it was agreed that the promotion system of OTBP/BCR/Grade-IV and ACP will continue in BSNL till revised by an agreement. Subsequently, a promotion committee comprising of members from the management and the recognized union was constituted to consider and recommend the time bound promotion policy for Non-Executive of BSNL. Based on the recommendations of the aforesaid promotion committee, the Non-Executive Promotion Policy was issued vide BSNL Corporate Letter dated 23.03.2010, which is applicable for all the Non-Executive (absorbed or BSNL recruited) working in BSNL.

11. It has been further submitted by the respondents that the recruitment rules and educational qualification for Stenographers and Clerks are different. The Stenographers should have a speed of 80 words per minute in shorthand and 30 words per minute in typewriting, whereas in case of Sr. TOA, the officials are recruited originally as LDC and subsequently were converted into TOA pattern and further restructured as Sr. TOA. The educational qualification for LDC was matriculation. The applicants are comparing Sr. TOA with Stenographer cadre, which has been declared as wasting/dying cadre hence, to compare with dying cadre is not logical.

12. The applicants have filed their rejoinder. It has been submitted in the rejoinder that they had been working in the LDC/UDC pattern in the DOT. In the year 1992, LDC/UDC pattern was converted into TOA (Telecommunications Operating Assistant) pattern. The LDC carried the pay scale of Rs.950-1500 in the 4th CPC, whereas the pay scale of TOA was Rs.975-1660. Thus, the TOA grade post was higher than that of LDC. Further, the Senior TOA Recruitment Rules, 1996 (Annexure A-4) was the statutory rules and the executive orders contained in Annexure A-6, cannot override it. The applicants, who were ministerial staff above the level of UDC/Stenographer Grade III during the implementation of 5th CPC, were granted OTBP in the next higher pay scale, whereas the Stenographer Grade III were given ACP in the higher promotional grade. Therefore, they deserve equitable treatment at par with Stenographer Grade-III.

13. The respondents have also filed their additional reply and have reiterated their earlier stand. It has been stated that in Stenographer cadre, there are three grades namely; Steno Grade-I, Steno Grade-II and Steno Grade-III. The Steno Grade-II and Grade-I, who were merged and re-designated as PA, are granted CDA pay scale of Rs.6500-10500. Subsequently, the PAs are

converted in the IDA pay scale of Rs.9850-250-14600. The cadre of Stenographer Grade-III was re-designated as Steno and declared as wasting cadre. The post of Stenographer Grade-II and Grade-I was merged in a common grade and upgraded to Rs.6500-10500 (CDA) and not Stenographer Grade-III. Hence, the applicants are comparing with Stenographer Grade-III, which has been declared as wasting cadre. Further, all the applicants are eligible for OTBP & BCR or NEPP as per the option exercised by them, which envisages only financial upgradation to the higher pay scales. Since the OTBP & BCR schemes were not applicable to the cadre of Stenographers, hence, they were eligible for scale upgradation under ACP scheme.

14. We have heard the learned counsel for the parties and perused the pleadings and documents available on record.

15. From the pleadings, it is an admitted fact that the BSNL formed out of erstwhile Department of Telecommunication w.e.f. 01.10.2000 and the staff and officers of DOT were treated as on deemed deputation. Subsequently, services of the employees of Group-C and D, were transferred to BSNL and as per the options, orders of their permanent absorption in BSNL were issued. It is also admitted fact that the DOT has decided to implement the ACP

scheme in respect of those Group C & D cadre/posts, which are not covered by OTBP and BCR schemes. Accordingly, ACP scheme was introduced w.e.f. 09.08.1990, which was endorsed by DOT w.e.f. 09.08.1999. The officials are eligible for two financial upgradation, i.e. after completion of 12 and 24 years of service respectively. Accordingly, Stenographers were eligible for scheme of upgradation under ACP scheme. The replying respondents have further submitted that consequent upon issuance of orders vide BSNL Co. Letter No.1-50/2008-PAT (BSNL) dated 05/03/2009 on revision of pay scales of pay of Board level and below Board level Executives of BSNL w.e.f. 01/01/2007, various references were received from field units seeking clarifications in this regard. Accordingly, vide BSNL Co. Letter No.1-11/2009-PAT (BSNL) dated 31/03/2009 certain clarifications were issued in this regard. During DOT period, the cadre of Stenographers was covered under ACP Scheme and the cadre of Sr. TOAs was covered under OTBP/BCR Scheme. After their absorption in BSNL, these cadres are still continuing under the same promotional scheme.

16. In the present case, the applicants are claiming parity while awarding ACP to the Stenographers. From the pleadings itself, it is clear that as per R&P Rules, the qualification for Stenographer is

10+2 with shorthand with 80 words per minute, whereas for Clerks, the qualification is 10+2 with typing 30 words per minute. Subsequently, the applicants claim that due to introduction of Electronic Exchanges and scrapping of manual local and trunk exchanges, a large number of Telephone Operators were rendered surplus and due to expansion of networking there was need of large number of Clerical staff, the respondents converted the LDC/UDC care to TOA cadre with OTBP, BCR scheme in 1992. After implementation of 4th CPC, the TOA post was upgraded to that of Sr. TOA in the ratio of 2:1. Later on, the TOA pattern was again restructured and the TOA were converted to the post of Sr. TOA. The main grievance of the applicant is that after formation of BSNL, Stenographers cadre was restructured w.e.f. 01.01.2004 vide order dated 20.02.2004 by declaring Steno Grade-III as dying/wasting cadre. The pay scale of Stenographer Grade-II and Stenographer Grade-I were merged with the pay scale of Rs.5500-9000 and upgraded to Rs.6500-10500 (CDA). So, the grade of Steno-III was placed directly in the pay scale of Rs.9850-250-14600 after getting ACP/promotion, whereas Sr. TOAs were placed in the scale of Rs.7100-200-10100 after 16 years of service.

17. The main grievance of the applicants is that conversion of UDC/LDC pattern to TOA/Sr. TOA has turned to the disadvantage of the applicants. The qualification of both course, i.e. Stenographer Grade-III and TOA/Sr. TOA are similar and method of recruitment are also identical. But, it is not so, which has been spelt in the reply filed by the respondents. It is relevant to mention that the qualification prescribed for both the post namely; Stenographer Grade-III and LDC/TOA were different. The respondents have specifically submitted in their reply that ACP scheme was introduced w.e.f. 09.08.1990, which was endorsed by DOT w.e.f. 09.08.1999. During DOT period, the cadre of Stenographers was covered under ACP scheme and the cadre of Sr. TOA was covered under OTBP/BCR scheme. It has been further specifically submitted by the respondents that after their absorption in BSNL, these cadres are still continuing under the same promotional scheme and at the time of absorption of Group-C & D (Non-Executive) employees in BSNL, it was agreed that the promotion system of OTBP/BCR/Grade-IV and ACP will continue in BSNL till revised by an agreement. Subsequently, a promotion committee comprising of members from the Management and the recognized union was constituted to consider and recommend the time bound promotion policy for None-Executive of BSNL. Based

on the recommendations of the aforesaid promotion committee, the Non-Executive Promotion Policy was issued, which is applicable for all the Non-Executive working in BSNL.

18. It is clear from the pleadings itself that as per Recruitment Rules, the education qualification of Stenographers and Clerks are different. The respondents have specifically submitted that qualification for Stenographers should have 10+2 and speed of 80 words per minute in shorthand and 30 words per minute in typewriting and for LDC/UDC the qualification is 10+2 and speed of 30 words per minute in typewriting. In case of Sr. TOA, the officials are recruited originally as LDC and subsequently were converted into TOA pattern and further restructured as Sr. TOA and the educational qualification for LDC was 10+2. So, it is clear that educational qualification of Stenographers are quite different from the Clerks/TOA.

19. It is settled principle of law that the employee with the different qualification and of different cadre, cannot be equated equal. Merely, by saying that qualification of Clerk/TOA is almost same, is not tenable in the eyes of law. As per reply of the respondents, it is very clear that qualification for Steno is 10+2 with shorthand speed of 80 W.P.M, whereas for the Clerks/TOA,

the qualification is 10+2 with 30 W.P.M typing speed. So, it clearly establishes that there is a separate cadre for Stenographers and Clerks and these are two different class, which cannot be equated with each other. Moreover, it is settled principle of law that it is for the employer to see that to which category the ACP or OTBP/BCR is to be given.

20. From the reply of the respondents, it has been clearly spelt out that ACP scheme was retained for the Stenographers, whereas for Sr. TOA, the scheme of OTBP/BCR was there. There is no whisper on the pleadings or any word regarding arbitrariness while providing ACP to the Stenographers and not to the TOA/LDC. In the instant case, both the categories are quite different having different qualification and merely by saying that both the categories have almost same qualification, is not a ground for seeking parity by the applicants. Moreover, the applicants have failed to prove the hostile discrimination qua the applicants.

21. It is clear from the additional reply filed by the respondents wherein it is stated that in Stenographer cadre, there are three grades namely; Steno Grade-I, Steno Grade-II and Steno Grade-III. The Steno Grade-II and Grade-I, were merged and re-designated as PA, are granted CDA pay scale of Rs.6500-10500. Subsequently,

the PAs are converted in the IDA pay scale of Rs.9850-250-14600. The cadre of Stenographer Grade-III was re-designated as Steno and declared as wasting cadre. The post of Stenographer Grade-II and Grade-I was merged in a common grade and upgraded to Rs.6500-10500 (CDA) and not Stenographer Grade-III. The applicants are comparing themselves with Stenographer Grade-III, which has been declared as wasting cadre. All the applicants are eligible for OTBP & BCR or NEPP as per the option exercised by them, which envisages only financial upgradation to the higher pay scales. Thus, there is no question of granting pay upgradation to the higher promotion grade to the applicants as given to the Stenographers because both the cadres are different with different qualification.

22. In view of the above, there is no illegality in the impugned order dated 15.02.2010 (Annexure A-2), whereby case of the applicants for seeking parity with the Stenographers for granting ACP, has been rejected. Resultantly, the O.A is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

am/-

(Navin Tandon)
Administrative Member