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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/00996 of 2015

Thursday, this the 26th day of September, 2019

CORAM

**Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

Shri N.Ganeshan,
Aged 53 years,
S/o Madhavan,
Junior Telecom Officer (Internal)
Thaliparamba Telephone Exchange,
Thaliparamba, Kannur Dist., PIN: 670 147,
Residing at: "Madhavam", Muthuvani,
Morazha P.O., Kannur Dist., PIN 670 331. ... Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. The Chairman & Managing Director,
Bharat Sanchar Nigam Ltd.,
NEW DELHI – 110 001.
2. The Chief General Manager (Telecom),
Bharat Sanchar Nigam Ltd.,
Kerala Telecom Circle, PNG Junction,
Thiruvananthapuram – 695 033.
3. The General Manager (Telecom),
Bharat Sanchar Nigam Ltd.,
BSNL Bhavan, Telecom District,
Kannur – 670 002.
4. The Accounts Officer (Establishment),
Office of the General Manager (Telecom),

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Bharat Sanchar Nigam Ltd.,
BSNL Bhavan, Telecom District,
Kannur – 670 002.

..... **Respondents**

(By Advocate Shri K.Anand for Respondents)

This application having been heard on 24th September, 2019, the Tribunal on 26th September, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.996/2015 is filed by Shri N.Ganeshan, aggrieved by the alleged wrong fixation carried out in the 'Pay Fixation Memo', by which his pay has been fixed with effect from 01.09.2013. The reliefs sought in the OA are as follows:

- (i) Call for the records leading to the issue of Annexures A2 and quash the same to the extent it relates to the applicant;
- (ii) Declare that the penalty contemplated in Annexure A3 is incapable of being operated in the upgraded scale and that at any case, the same can be operated only to a proportionate extent, and direct the respondents accordingly; alternatively,
- (iii) Call for the records leading to the issue of Annexure A1 and quash the same to the extent it does not restore the basic pay of Rs.28460/- on expiry of the penalty on 01.09.2013 and also to the extent it does not draw the applicant's annual increment due to 01.11.2013;
- (iv) Direct the respondents to restore the basic pay of Rs.28,460/- (which the applicant was drawing as on 31.08.2011) on completion of the penalty of reduction by two stages for a period of two years, i.e., with effect from 01.09.2013 and direct further to draw the applicant's annual increment due on 01.11.2013, with future increments on 1st of November every year;
- (v) Direct the respondents to grant the consequential benefits of the reliefs prayed for in paras 8(ii) to 8(iv) above within a time frame as may be found just, fit and proper;

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- (vi) Award costs of the incidental to this application;
- (vii) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

2. While officiating as Sub-Divisional Engineer (SDE), the applicant had been imposed with a penalty of reduction of pay by two stages of acquired increments. By that process the applicant's basic pay of Rs.26190/- in the scale of pay of Rs.16400-40500 was reduced to the basic pay of Rs.24690/- for a period of two years starting from 01.09.2011. As per penalty advice dated 22.07.2011 issued by the office of the 3rd Respondent, a copy of which is at Annexure A3, it was further directed that the applicant would not earn increments of pay during the period of such reduction and on expiry of this period, the reduction would have the effect of postponing the applicant's further increments. The applicant filed an appeal against the Annexure A3 order which was rejected by order dated 15.12.2011, a copy of which is available at Annexure A4.

3. The applicant suffered the penalty and on expiry of the period of two years from 01.09.2011, he was entitled to have his pay restored to the pay he was drawing as on 01.09.2011. As matters stood thus, in line with the Time Bound Promotion policy adopted by the BSNL, the applicant who was in the scale of pay of Rs.16400-40500 (E-1) was upgraded to Rs.20600-46500 (E-2) with effect from 01.11.2008 as per orders dated 13.03.2015, a copy of which

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is available at Annexure A5. The applicant figures at Sl. No.5 in the said document.

4. In Annexure A1, pay fixation memo, the applicant cites the following conspicuous errors:

- (i) As on 01.11.2010 the applicant was drawing a basic pay of Rs.28460/-
- (ii) The pay was reduced by two stages with effect from 01.09.2011 and fixed at Rs.26820/-
- (iii) The penalty of reduction in stage is only for two years. Therefore, on and with effect from 01.09.2013 the pay of Rs.28460/- should have been restored in the scale of Rs.20600-46500/-

THIS HAS NOT BEEN DONE.

- (iv) Similarly, normal increment due on 01.11.2013 should have been drawn and the applicant's pay fixed as Rs.29320/- with effect from that date.

THIS HAS NOT BEEN DONE.

- (v) On this basis, after drawing one increment as on 01.11.2014, the applicant's pay should be fixed as Rs.30,200/-.
- (vi) The pay as on 01.11.2015 should have been fixed as Rs.31,110/-.

5. It is a pertinent fact that the penalty imposed in a lower scale of pay at a particular stage in that scale, that scale of pay and the stage at which the pay was being drawn as on 31.08.2011 subsequently became non-existent with upgradation in line with TBOP. The applicant argues that the quantum of punishment originally imposed in the lower scale has to be effected only to a proportionate extent in the upgraded scale. The representation that the

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applicant submitted on 06.07.2015 (Annexure A6) came to be rejected by Annexure A2 order issued by 4th Respondent.

6. The applicant argues that orders implied in Annexure A1 and A2 are arbitrary, discriminatory and contrary to law. Annexure A3 penalty had already been imposed and he had suffered the punishment; this has not been varied by any process known to law, unless the quantum of penalty imposed originally has proportionately been worked out in the new scale of pay brought out by upgradation. Annexure A1 would have the effect of enhancement of punishment and such enhancement is opposed to law. As the reduction in stage is only for a period of two years, on expiry of punishment, the respondents are bound to restore the pay which the applicant was drawing on the date of imposition of penalty i.e., Rs.28460/-. It is claimed that this scale restored on 01.09.2013 would be due for annual increment which falls on 1st November every year.

7. The respondents have filed a reply statement wherein the contentions of the applicant have been opposed. It is maintained that the pay of the applicant was reduced by two stages of acquired increment in the same scale of pay for a period of two years starting from 01.09.2011 and he would not earn increments of pay during the period of such reduction. On expiry of this period the reduction will have the effect of postponing his future increments of pay. Accordingly his pay was regulated as below:

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01.09.2011	24690
01.09.2012	24690
01.09.2013	24690
01.09.2014	25430

8. Heard Shri T.C.Govindaswamy on behalf of the applicant and Shri K.Anand on behalf of the respondents, BSNL. There is no ambiguity in the terms of punishment ordered as per Annexure A3. The operative part of the said order reads as follows:

“Accordingly I, S.S.Thampi, General Manager BSNL Kannur hereby order that Shri N.Ganeshan, Junior Telecom Officer, Taliparamba (HRMS No.198305060) drawing a Basic pay of Rs.26190/- in the Scale of Pay Rs.16400-40500 be reduced to Basic Pay of Rs.24690/- (Reduction by TWO stages of acquired increments) in the same scale of Pay, for a period of Two years starting from 01.09.2011. It is further directed that Shri N.Ganeshan JTO, will not earn increments of pay during the period of such reduction and on expiry of this period the reduction will have the effect of postponing his future increments of pay; and

Recover Rs.35500/- (Rupees Thirty five thousand five hundred only) from the Pay of Shri N.Ganeshan JTO Taliparamba against the loss caused by him to the Company by false claims.

At the time of imposition of punishment he was drawing a basic pay of Rs.26190/- and this was to be reduced to 24690/- for a period of two years starting 01.09.2011. It was further directed that he shall not earn increments of pay during the period of such reduction and on expiry of this period the reduction will have the effect of postponing his future increments of pay. At this stage the TBOP upgradation occurred. As a result his pay remained fixated at Rs.26820 having been reduced from the pay he was drawing on

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01.11.2010 which was Rs.28460/-. His pay on expiry of the punishment period was to be restored to Rs.28460/- on 01.09.2013 i.e., after the two years punishment period. This is not seen done in the pay fixation memo. Further at the time of his next increment due, which fell on 01.11.2013, the applicant's pay ought to have been fixed at the next higher grade of Rs.29320/- with subsequent annual increments as eligible in the scale of pay.

9. We have no hesitation in coming to the conclusion that the applicant has merit on his side and the respondents have patently erred in issuing the pay fixation memo at Annexure A1. The applicant is entitled to the benefits as claimed. Orders in consequence to be issued within 30 days of receipt of a copy of this order. OA stands disposed of. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.181/00996/2015

- 1.** Annexure A1 - True copy of the 'Pay Fixation Memo' bearing No.Q-691-II/120 dated 14.05.2015 issued by the fourth respondent.
- 2.** Annexure A2 - True copy of the letter bearing No.Q-691-II/122 dated 27.11.2015 issued by the fourth respondent.
- 3.** Annexure A3 - True copy of the penalty advice bearing No.X-1/GMT-CNN/DISC/2010-12/15 dated 22.07.2011 issued from the office of the third respondent.
- 4.** Annexure A4 - True copy of an order bearing No.HR-III/2-20/N. Ganeshan/2011 dated 15.12.2011.
- 5.** Annexure A5 - True copy of an order bearing No.HR-III/TBP/2014/21 dated 13.03.2015, issued from the office of the 2nd respondent.
- 6.** Annexure A6 - True copy of the representation submitted by the applicant dated 06.07.2015, addressed to the 3rd respondent.
- 7.** Annexure R1(A) - Copy of the order no.X-1/GMT-CNN/DISC/2010-12/15 dated 22.07.2011.
- 8.** Annexure R1(B) - True copy of the Orders No.HR-III/2-20/N.Ganeshan/2011 dated 15.12.2011 & 30.12.2011.
- 9.** Annexure MA(1) - Copy of the Pay Fixation Memo of Q-691-II/120 dated 14.05.2015.
- 10.** Annexure MA (2) - Copy of the Corrigendum No.X-1/GMT-CNN/DISC/2010-12/4 dated 18.03.2016.
