

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**



**OA No.892/2016  
AND  
OA No.1867/2016**

**New Delhi, this the 5<sup>th</sup> Day of January, 2020**

**Hon'ble Mrs. Justice Vijay Lakshmi Member(J)  
Hon'ble Mr. Pradeep Kumar, Member (A)**

**OA No.892/2016**

1. All India BSNL Executive Officers Association  
Through its Secretary, Prahlad Rai  
S/o Sh. Keshar Lal, Aged about 57 years,  
Group: B, Designation: GS  
CH-17-2-15, P&T Chemmery Staff Quarters,  
Atul Grove Road, New Delhi-110001  
WITH  
Applicant Nos. 2 to 54 as per Memo of parties

...Applicants

(By Advocate: Ms. Rani Chhabra)

VERSUS

1. Bharat Sanchar Nigam Limited  
(A government of India enterprises)  
Through its Chairman-cum-  
Managing Director, Corporate Office:  
Personnel Branch, 5<sup>th</sup> floor  
Janpath, New Delhi.
2. Assistant General Manager–Personnel  
Bharat Sanchar Nigam Limited  
Corporate Office: Personnel Branch,  
5<sup>th</sup> floor, Janpath, New Delhi. ...Respondents

(By Advocate: Shri Sameer Aggarwal)

**O.A. NO. 1867 OF 2016**

1. BSNL Officers Association,  
Thru. its General Secretary  
Sh. H.P. Singh, S/o Late Sh. Umrao Singh



Aged about 59 years, Group B  
 Department: BSNL, Designation: GS  
 Nature of grievance: Pay Fixation  
 T-15, Atul Grove Road, New Delhi.

WITH

Applicant Nos.2 to 170 as per Memo of Parties  
 ....Applicants

(By Advocate: Ms. Rani Chhabra)

Vs.

1. Bharat Sanchar Nigam Limited  
 (A Government of India enterprise)  
 Through its Chairman-cum-Managing  
 Director, Corporate Office  
 Personnel Branch, 5<sup>th</sup> Floor  
 Janpath, New Delhi.
2. Assistant General Manager-Personnel  
 Bharat Sanchar Nigam Limited  
 Corporate Office: Personnel Branch  
 5<sup>th</sup> Floor, Janpath, New Delhi.  
 ...Respondents

(By Advocate: Shri Sameer Aggarwal)

### **Order (Oral)**

#### **Hon'ble Mr. Pradeep Kumar, M(A)**

As the issue involved in both the OAs is same, they are being disposed of by this common order. With a view to understand the grievance, it is necessary to recapitulate the background of this case. Same is summarized in para 2 to 9 below.

2. The applicants herein were working on the Non Executive post of Telecom Technical Assistant (TTA for



short) in scale of Rs.7100-10100/- in Bharat Sanchar Nigam Limited(BSNL). They appeared in a qualifying examination which was held to fill up 35% of the vacancies of Junior Telecom Officers in scale of Rs.9850-14600/-, as per Recruitment Rules of 08.02.1996. They qualified in the said examination.

However, BSNL had a system wherein the employees who qualified in such an examination, were also required to undergo phase 1 as well as Phase 2 of the training, before they could be regularly promoted on the post of JTO. It appears, for certain situation that prevailed at that point of time, the TTAs, who qualified in the said examination, were made to officiate as JTO only after phase 1 of the training. Since it was taken to be an officiating arrangement, they were not granted the regular pay scale applicable to JTO.

3. They felt aggrieved and filed writs in High Court of Ernakulam. These writs, Writ Petition(C) No.28349/2005 and batch were allowed by judgment dated 24.03.2006. The operative part reads as under:-



“The learned counsel for the petitioners made available to me the Recruitment Rules governing the qualification and method of appointment to the post of Junior Telecom Officer. 50% of the vacancies are to be filled up by direct recruitment and the remaining by promotion. Out of the 50% set apart for promotion 35% vacancies are to be filled up by promotion from various categories of employees including Telecom Technical Assistants. The qualification prescribed for them is High School/Matriculation and six years regular service. They have to qualify a screening test also. It is common case that the petitioners possess the above three qualifications. So, they are eligible to be promoted on temporary basis to the post of Junior Telecom Officer. The dispute raised, concerning lack of Phase II and Phase III training, cannot be upheld, in the light of the Recruitment Rules. F.R. 22 (I)(a)(i) specifically says that they should possess the qualifications prescribed in the Recruitment Rules. Since completion of the training in three phases is not a prescribed qualification in the Recruitment Rules, the respondents cannot deny them the fixation benefit under F.R.22 (I)(a)(1) in the scale of pay applicable to the post of Junior Telecom Officer, on the ground that they have not cleared the three phases of training. The temporary nature of the posts or the non-regularization of the posts etc. are matters irrelevant as far as fixation of pay is concerned. So, I feel that the objections raised by the respondents will not disentitle the petitioners to continue to get the scale of pay that has been fixed and granted to them under F.R.22(I)(a)(1). In the result, the Writ Petitioner is allowed and Ext.P7 is quashed.”

This was challenged before the Division Bench in WA No.1735/2006. This was decided in a Batch judgment on 01.06.2007. The judgment by Single

Bench was set aside and certain directions were issued.



Operative part reads as under:-

"3. We are of the view that before re-fixing the pay the affected parties should have been given an opportunity of being heard. This has not been done in this case. In such circumstances, we are inclined to dispose of these Writ Appeals directing the appellants to give an opportunity to the respondents – writ petitioners to file objections, if any, against Ext.P7 communication and to the consequential memos issued to them for re-fixation of the pay. Writ petitioners shall file their objections before the first appellant within three weeks from today. The first appellant will consider their objections after giving an opportunity of being heard to the representative nominated by the officers and pass appropriate orders in accordance with law within three months from the date of receipt the objections. Till final decision is taken by the first appellant or the concerned officer, status quo as on today will be maintained.

Judgment of the learned single Judge is therefore set aside and the Writ Appeals are disposed of as above."

It appears that follow up action taken by respondents, did not satisfy the applicants and they again filed writs in Hon'ble High Court. However, by that time jurisdiction was conferred to CAT and these matters were transferred to Tribunal for adjudication.

3.1 Applicants approached the Ernakulam Bench of the Tribunal by filing many applications in the year



2008. These TA Nos.84/2008 and batch (**M.V. Salilakumar & Ors. Vs. CMD**) were decided by a common order dated 15.07.2009, where operative part reads as under:-

"1. These cases have been filed by the petitioners earlier before the Hon'ble High Court of Kerala as Writ Petitions. When the original jurisdiction of the parties in the service matters has been conferred upon this Tribunal, they have been transferred and got re-numbered as Transfer Applications. As all these cases are identical, they have been heard together and disposed of by this common order.

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10. We have heard Shri TC Govindaswamy, Shri V.Sajithkumar and Shri P Chandrasekharan for applicants and Shri Mathew K Philip, ACGSC for respondents. In our considered view, the Single Judge of the High Court in his Annexure P-23 in W.P.(C) No.28349/2005 and connected cases, considered the case in detail and held in clear terms that since the completion of the training in three phases is not a prescribed qualification in the Recruitment Rules, the respondents cannot deny petitioners therein the benefit of fixation of their pay under F.R.22(I)(a)(1) in the scale of pay applicable to the post of Junior Telecom Officer on the ground that they have not cleared the three phases of training. **It was further held that the temporary nature of the posts, the non-regularisation of the posts etc are matters irrelevant as far as fixation of pay is concerned.** The High Court vide judgment in W.A.No.1735/2006 and



connected cases, set aside the aforesaid judgment of the Learned Single Judge only for the reason that the applicants have not been given any notice before their pay was fixed under FR 35 causing reduction in their emoluments. As held by the single judgment of the High Court (supra) what is relevant in the matter of fixation of pay is whether the applicants are performing duties attached to the posts of JTOs having higher responsibilities. There is no dispute in this regard. Hence these T.As succeed. Consequently, we set aside the Annexure P25 and P26 orders dated 20.11.2007 and 4.12.2007 respectively. Respondents are directed not to recover the pay and allowances already paid to the applicants in the scale of pay of JTO. **They are further directed to continue to pay to the applicants pay and allowances due to them in the scale of pay of JTO as per Rule 22(I)(a)(1) of Fundamental Rules."**

(Emphasis supplied)

4. Applicants plead that this decision was challenged by respondents in Hon'ble High Court first in WP(C) No.7723/2010 and batch which were decided on 15.09.2017. The operative part reads as under:

"19. It is also brought to the notice of this Court by the learned counsel for the applicants that the applicants were working as Telecom Technical Assistant (TTA) in the scale of pay of 7100-200-10100 and that the scale of pay of Junior Telecom Officer (JTO) was 9850-250-14600. By the time they were sent for training and came to be given the officiating promotion, they had almost reached the end of the Scale, though failing



short by one or two increments. It is further brought to the notice of this Court that, almost all the applicants have been regularised in service, particularly by virtue of the amendment of the relevant Recruitment Rules. This being the position, the point to be considered is whether any interference is to be made with the order passed by the Tribunal. In so far as we have already held that it is the '2001 Rules' which are to govern the situation and not the 1996 Rules, the case projected by the BSNL (as in the Ground extracted above) does not remain to sustain the cause projected before this Court.

In the above facts and circumstances, the finding rendered by the Tribunal that the fixation has to be effected based on FR 22(1)(a)(i) is perfectly within the four walls of law and is not assailable. The writ petitions/Original Petition fail and they are dismissed accordingly. All pending interlocutory applications are also dismissed."

This dismissal was challenged by respondents before Hon'ble Apex Court also but without success (SLP 19304/2018 which was decided on 30.07.2018).

This order reads as under:-

"As per the similar petition bearing SLP(C) D.no.19274 of 2018 & connected matters titled The Chairman and Managing Director & Ors. Vs. Jyotiprasadan P.K. & Ors. Etc.Etc. have already been dismissed by this court on 20.07.2018, the instant special leave petitions are also dismissed."

The order dated 20.7.2018 in SLP No.19274/2018 which has been referred above, reads as under:-





"We are not inclined to interfere with the impugned judgment and order. Consequently, the special leave petitions are dismissed."

4.1 Thereafter, the decision in TA-84/2008 by Ernakulam Bench attained finality and was implemented (para 3.1 supra).

5. Therefore, while the question of regularization was not adjudicated by the Ernakulam Bench, yet the Bench held that while officiating on the post of JTO, the pay is required to be fixed in the pay scale of JTO by also granting them the benefit of pay fixation under FR 22(1)(a)(1).

6. Meanwhile, relying on judgment by Ernakulam Bench (Para- 3.1 and 4.1 supra), some other similarly placed employees approached the Principal Bench of the Tribunal by filing OA No.1282/2010. This was decided on 26.08.2010 wherein following directions were passed:-

"4. For parity of reasons, we allow present Original Application in terms of the decision of Ernakulam Bench of this Tribunal in the matter of M.V. Salilakumar & Ors. V/s The Chairman & Managing Director & Ors.(supra). However, we make it absolutely clear that the fate of the applicants herein would be dependent upon the writs filed by the respondents in Kerala High Court. That being so, if the writs are allowed, the



respondents may withdraw the benefits given to the applicants and, therefore, there will be no need for the respondents to file separate writ in this case.”

7. The above decision of the Principal Bench was upheld by Hon’ble High Court of Delhi (WPC No.243/2012 decided vide Orders dated 13.01.2012) and thereafter by Hon’ble Apex Court (SLP No.4583/2012 decided vide Orders dated 20.02.2013).

The order by Hon’ble Apex Court reads as under:-

“Heard learned counsel for the parties at some length. We do not see any reason to interfere with the impugned order, especially, when the Principal Bench of the Tribunal has in the present case arising out of O.A. No.1282 of 2010 made it clear that the fate of the respondents herein, who were applicants before the Tribunal, would be dependent upon the result of the Writ Petitions filed by the petitioner – Corporation in the Kerala High Court. The Tribunal has further held that if said Writ Petitions are allowed, the petitioner – Corporation shall be free to withdraw the benefit given to the respondents herein. These observations, in our opinion, sufficiently protect the petitioner – Corporation against any prejudice. It goes without saying that in the light of the observations made by the Tribunal and those made by the High Court if the Writ Petitions filed by the petitioner – Corporation before the Kerala High Court are eventually allowed and the Judgment of the Ernakulam Bench of the Central Administrative Tribunal (CAT) is set aside, any benefit which the petitioner – Corporation may have extended to its employees pursuant to the said Judgment can



be reversed not only qua those who are parties to the said case but also qua all such employees as have on the analogy of the said order obtained benefit from the petitioner – Corporation with or without intervention of the CAT or the High Court.

It is common ground that pursuant to the order passed by the Ernakulam Bench of CAT the petitioner has already extended the benefit claimed by the applicants in that case. The CAT (Principal Bench) has on the analogy of that order, simply directed a similar benefit to the respondents herein, subject to the condition mentioned above, which as mentioned earlier, sufficiently secures the interest of the petitioner – Corporation, hence calls for no interference from us. With these observations the Special Leave Petition fails and is accordingly dismissed.”

7.1 This decision was, however, not implemented. The applicants of OA No.1282/2010 preferred Contempt Petition No.515/2013. This was disposed of on 13.03.2014 with following orders:-

“2. Today when the matter was taken up for consideration, learned counsel for the parties have submitted that the aforesaid Order of this Tribunal has been complied with except for payment of arrears. The petitioners’ counsel has also acknowledged to that extent.

3. In view of the above position, this Contempt Petition is closed. Notices issued to the alleged contemnors are discharged. However, it is hoped that the respondents would pay the arrears arising out of the aforesaid order to the applicants within a reasonable time preferably within a period of



two months from the date of receipt of a copy of this Order. There shall be no order as to costs.”

7.2 Thus the decision to grant officiating pay even without regularization stood implemented by the respondents.

8. Subsequently, it appears that there were certain pay related dispute between BSNL management and Union of Non-executive employees of BSNL and an agreement took place on 07.05.2010 for “Revision of pay scale for Non-Executive employees in BSNL w.e.f. 01.01.2007” and the same was notified vide office order No.10/2010 dated 07.05.2010 by the respondent BSNL. The relevant part of fitment method as contained in para 2 of this agreement reads as under:-

“2.1 Non-executives who were in the pre-revised non-executive pay scales before 01.01.07 will be placed in the corresponding revised non-executive pay scales as per the fitment given in para 2.3 below.”

In this agreement, it was clearly brought out that the employees shall be fixed first from their substantive pay scales of TTA to the revised substantive pay scales of TTA and shall be fixed in the officiating pay scales of JTO thereafter.



8.1 The respondents plead that this agreement has been implemented. In this regard, they also drew attention to an order dated 10.06.2016 issued by Corporation Office of BSNL which reads as under:-

“Subject: Revision of scales of pay of Board level and below Board level Executives of BSNL w.e.f. 1.1.2007-clarifications regarding.

Sir,

In continuation of the clarification issued under S.No.7 of the letter No.1-11/2009-PAT (BSNL) dated 31.3.2009, with regard to the pay revision/fixation of officials, holding substantive grade of Non-executive but working in the Executive grade on local officiating basis and drawing pay in the Executive grade with or without restriction of FR 35, it is further clarified with the approval of competent authority that –

“The officials holding the substantive grade of Non-executive but working in the executive grade on local officiating basis, the pay is to be revised w.e.f.1.1.2007 firstly in the substantive grade as per Office order(s) No.1-16/2010-PAT (BSNL) dated 7.5.2010 & 10.6.2013 and then the pay may be fixed on local officiating basis in the Executive grade by giving a notional increment @ 3%, with or without restriction of FR-35 as the case may be.”

Rest of the clarification under S.No.7 will remain unchanged.”

9. The applicants are aggrieved that since they were already granted the scale of JTO on officiating basis,



they are required to be fixed directly from the said officiating JTO scale of pre agreement stage, to the revised JTO scale of post agreement stage, without any reference to refixation to their substantive pay scale of TTA from pre-agreement to post agreement stage.

The applicants are also aggrieved with the BSNL order dated 22.12.2015 which contains following provisions also:-

“2. The matter has been examined and it has been decided to revert the officiating JTO’s before they are sent for Phase-I training. If they have been already sent for phase I training without reversion, they may be reverted from the post of officiating JTO from retrospective date.”

This is the grievance raised in instant OA.

10. Matter has been heard at length. Ms. Rani Chhabra, learned counsel represented the applicants and Shri Sameer Aggarwal, learned counsel represented the respondents.

11. The guiding judgment is the judgment given by the Ernakulam Bench as reproduced above (para 3.1 supra). It is very clear that the Ernakulam Bench has directed that since higher level of responsibility was being discharged by the selected candidates, they ought to be paid for the higher post even if they were



treated to be officiating. Accordingly, there is no doubt that the applicants herein continued to be in the substantive pay scale of TTA, unless at some stage they were regularized as JTO.

12. Accordingly, the Tribunal finds it in order that once pay revision agreement was arrived at (paras 8 and 8.1 supra), and the pay was to be revised w.e.f. 01.01.2007, this revision needs to be in conformity of the decision by Ernakulam bench in TA No.84/2008 as the same was upheld by Hon'ble Apex Court also. Para 3 of BSNL order dated 22.12.2015 already provides for this fixation, which reads as under:-

"3. As regards pay fixation of JTO's under FR 22 (a) (i), it is clarified that pay of officiating JTOs for whom orders have been issued from this office for fixation of pay under FR 22 1(a) (i), may be fixed under FR 22 1 (a) (i) from the date they started to officiate in the grade of JTO. This is as per the earlier instructions from this office. At the time of revision of pay w.e.f. 1.1.2007, then pay may be fixed in the substantive grade (i.e. TTA) and be referred in the capacity of officiating JTO as per existing provision of pay fixation by grant of 3% of basic pay in the substantive grade. An example of pay fixation is enumerated below."

Accordingly, for the applicants who were still officiating as JTO, on or after 01.01.2007, they shall continue to be treated as JTO on officiating basis, and



their pay is required to be first revised as per the substantive pay scales of TTA w.e.f. 01.01.2007 and since they still continue to officiate as JTO, they are required to be granted the new pay scale of JTO on officiating basis following the same principles as were arrived at by the Ernakulam Bench (para 3.1 supra).

The provision for reversion as contained in para 2 of order dated 22.12.2015 (para 9 supra), is set aside in respect of those who are continuing to work as JTO on officiating basis as of 1.1.2007.

13. In case there are any employees, who are continuing as JTO on officiating basis and to whom the pay fixation as per para 12 above, has not been granted so far, the respondents shall fix the same as per directions in para 12 above within a period of three months from the date of receipt of a certified copy of this order. They shall be paid arrears also as due but without any interest. The OA is accordingly disposed of. There shall be no order as to costs.

**(Pradeep Kumar)**  
**Member(A)**

**(Justice Vijay Lakshmi)**  
**Member(J)**

/vb/