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CENTRAL ADMINISTRATIVE TRIBUNAL  
 ERNAKULAM BENCH

TRANSFER APPLICATION NO. 05/2009

Monday this the 14<sup>th</sup> day of June, 2010

CORAM:

HON'BLE Mr. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER  
 HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. N. Vijayan,  
 Retired Chief Accounts Officer,  
 O/o. General Manager,  
 Bharat Sanchar Nigam Limited, Kollam,  
 Residing at 'Nisha', T.C XIII/1755,  
 MPRA-34, Murijapalam, M.C.P.O.,  
 Thiruvananthapuram.
2. D. Japamony,  
 Retired Sub Divisional Engineer,  
 Sreekariyam, Bharat Sanchar Nigam Limited,  
 Thiruvananthapuram,  
 Residing at Athuloysa, H.No.39,  
 Sree Krishna Nagar, Chavedimukku,  
 Sreekaryam P.O., Thiruvananthapuram-17
3. P. Sundaresan,  
 Retired Divisional Engineer,  
 O/o. The Principal General Manager (Telecom),  
 Bharat Sanchar Nigam Limited,  
 Thiruvananthapuram,  
 Residing at Puthcoram Veedu,  
 Thudathil Post, Kanyavattom,  
 Thiruvananthapuram
4. S. Vikraman Nair,  
 Retired Assistant General Manager,  
 Bharat Sanchar Nigam Limited,  
 Thiruvananthapuram SSA,  
 Residing at H.No. 35-A, Sreensgar,  
 Paruthipara, Thiruvananthapuram-25
5. P.C. Samuel,  
 Retired Divisional Engineer,  
 Telephone Exchange, Kaithamukku,  
 Bharat Sanchar Nigam Limited,  
 Thiruvananthapuram,  
 Residing at Laariska, No. 12, Karail Gardens,

13. K.G. Krishna Kumar,  
Retired Divisional Engineer,  
O/o. Divisional Engineer,  
Transmission Installation,  
Bharat Sanchar Nigam Limited, Kollam,  
Residing at Lalitha Bhavan,  
Mundakkai West, Kollam - 691 001
14. R. Vijayan,  
Retired Divisional Engineer,  
Bharat Sanchar Nigam Limited, Kollam SSA,  
Residing at Ushus, Komelam, Vadamon, Anchal.
15. S. Narayana Aiyar,  
Retired Divisional Engineer,  
RTTC, Bharat Sanchar Nigam Limited,  
Thiruvananthapuram,  
Residing at Sree Hari, BN 72,  
Microwave Lane, Pongumoodu,  
M.C.P.O., Thiruvananthapuram.
16. K. Bala Rajan,  
Divisional Engineer, Telecom,  
Bharat Sanchar Nigam Limited, Kayamkulam,  
Residing at Pichinattukandathil, Karuvattunkuzhy,  
Kareelakulangara P.O. ; 690 572.
17. K. Bharumathy Amma,  
Sub Divisional Engineer,  
Bharat Sanchar Bhawan Limited,  
Telephone Exchange, Kottarakara,  
Residing at Aiswarya, H No. 127,  
Temple Nagar, Padinjattinkara,  
Kottarakara, Kollam . 691 506

Applicants.

(By Advocate Mr. Vishnu Chempazhanthiyil for Mr. G. Saisdharan  
Chempazhanthiyil)

v e r s u s

1. The Controller of Communication Accounts,  
Department of Telecommunication,  
DOT Cell, 5<sup>th</sup> Floor, Door Sanchar Bhavan,  
Kerala Circle, Thiruvananthapuram-33.
2. The Chief General Manager, Telecommunications,  
Bharat Sanchar Nigam Limited,  
Thiruvananthapuram-33
3. The Chairman & Managing Director,  
Bharat Sanchar Nigam Limited,

4. Union of India, represented by its Secretary,  
Ministry of Communications & IT,  
Department of Telecommunications,  
Asoka Road Sanchar Bhavan,  
New Delhi-1.

..... Respondents

[By Advocates – Mr. Sunil Jacob Jose, SCGSC (R1 & 4) and  
Mr. Mathews K. Phillip (R2 & 3)

The application having been heard on 4<sup>th</sup> & 11<sup>th</sup> June, 2010, this Tribunal on 14.06.10 delivered the following:

### O R D E R

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicants are aggrieved by the cancellation of their options and consequent fixation of their pay after retirement reducing their pensionary benefits by the Controller of Communication Accounts, a subordinate unit of Department of Telecommunications, Kerala Circle, Trivandrum. They seek a direction to the Controller of Communication Accounts (CCA, for short), Kerala Circle, to re-fix their pensionary benefits on the basis of their pay at the time of superannuation and to pay interest on the arrears of pensionary benefits.

2. The applicants who were recruited as Government of India employees in the Department of Telecommunications were absorbed as BSNL executives with effect from 01.10.2000. In accordance with para 4 of DOP & PW O.M. No 4/18/87/P&PW dated 5.7.1989, the applicants had opted to continue in the CCA scale (Government pay scale) in they are promoted on regular basis and thereafter, to come to the IDA scale (BSNL scale). Their options were accepted by the BSNL. Their pay was fixed and regulated in terms of the options exercised and they relied on attaining the age of superannuation

3 Contrary to the pension papers processed by the BSNL, the CCA who is the pension paying authority as per the agreement between DOT and BSNL in respect of BSNL employees who have been absorbed, cancelled the option exercised by the applicants and the consequential fixation without any notice. As a result, their pay was reduced and the retirement benefits were worked out on the basis of reduced pay thereby reducing pension and commuted value of pension. On agitating the matter, the applicants were informed that clarification has been sought from the Department of Telecommunications and on receipt of clarification pensionary benefits would be suitably revised. In spite of taking up the matter repeatedly, no response was forthcoming either from CCA or DOT, hence a Writ Petition (C) No. 26257/2008 was filed in the High Court of Kerala which was transferred to this Tribunal.

4. M.A. Nos. 331/10 and 415/10 filed by the applicants are allowed for the reasons stated therein. M.A. No. 986/2009 was filed by 19 persons who were similarly placed as the applicants for impleading themselves as additional respondents was dismissed as misconceived.

5 Respondents No. 1 and 4, namely the Controller of Communication Accounts, Kerala Circle, Thiruvananthapuram and the Union of India represented by its Secretary, Ministry of Communications & IT, New Delhi, respectively are the main respondents in this case. In spite of granting repeated opportunities to file reply to the T.A., the respondents No. 1 and 4 have not availed of the same. The reply statements for R2 and R3 was not re-presented after curing defects.



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6. The applicants submitted that the cancellation of the options exercise them to retain CDA scale till they are promoted on regular basis consequential reduction of pay without giving notice to them are illegal arbitrary. The action of the 1<sup>st</sup> respondent is violative of the basic principle of natural justice. The applicants are incurring heavy loss by way of reduction of pension and other pensionary benefits. The 1<sup>st</sup> respondent is bound by the terms and conditions of absorption order dated 23.02.2004. The first respondent is totally incompetent to cancel the pay fixation done pursuant to the options exercised by the applicants in terms of clause 5 of the order of absorption mentioned above. It is only in the Kerala Circle that the options exercised by BSNL employees who retired from service, are cancelled. In all other E Circles throughout India, the concerned DCAs have not done so. While some employees of BSNL continue to enjoy the benefit of fixation of pay in terms of options exercised, the retired employees like the applicants, are subjected to hostile discrimination. Even in the case of retired employees, the respondents have acted in a pick and choose manner. One Shri K. Govindan, employee 1269011, who retired just after 2 months of the retirement of the 1<sup>st</sup> applicant was granted the fixation of pay from CDA scale to IDA scale by the respondent himself. The same is in the case of another employee, one Sri Suseelan Nair, retired AGM (Recruitment) and Ms. Annamma Thomas, retired DE. The 1<sup>st</sup> respondent does not state any rule or order that has been violated in granting the benefit of fixation by the BSNL. If a subordinate unit, like the respondent erred, it is the bounden duty of the 4<sup>th</sup> respondent to issue an appropriate order clarifying the position. Therefore, the applicants pray for a direction to the respondents to extend the benefit of the order of this Tribunal

TA No 115 of 2008 decided on 14.12.2008 and for other reliefs enumerated

7. As stated earlier, the main respondents in this T.A. have not filed any reply statement. The learned counsel for the respondents admitted that the order in TA No. 115/2008 squarely covers this T.A. Also.

8. Arguments were heard and documents perused.

9. The condition No. 6 of the absorption order No. CCA/KRL/6-67/2003-04 dated 23.02.2004 reads as follows:

"Regulation of pay on absorption: To be regulated in terms of para 4 of DOP&PW O.M. No. 4/18/67-P&PW(D), dated 05.07.1989."

10. The condition No. 4 of the said O.M. Dated 05.07.1989 reads as under:

"4. The Public Sector Undertaking/Autonomous Body will formulate the terms and conditions of service in the new Body at the earliest possible date. The employees will, however, have an option to retain Government pay scales till their promotion or retirement (whichever is earlier) or to come over to the service conditions of PSU/Autonomous Body. However, until the exercise of this option, they will continue to be governed by the pay scales, leave entitlements and terminal benefits under the Government."

11. Vide order No. 1-5/2004-PAT(B) dated 30.06.2004, an option is given to the Government employees who joined the BSNL, which is reproduced as under:

"BHARAT SANCHAR NIGAM LIMITED  
(A Govt. of India Enterprise)  
(PAT Section)  
Statesman House, New Delhi - 110 001

No. 1-5/2004-PAT(B)

30.06.2004

OFFICE ORDER

Sub: Introduction of IDA Pay Scales w.e.f 01.10.2000 in replacement of existing ODA Pay Scales for Executives Staff (Group 'B' absorbed from DOT/DTS/DTO in BSNL

In continuation of this office order of even number dated 18.03.2004 on the above subject, it is stated that an option is available to the employees to come over to the service condition of the PSU from the date of their promotion or retirement (whichever is earlier) and until then they will continue to be governed by the pay scales, leave entitlements and terminal benefits under the government as per para 4 of DOP&PW O.M. No. 4/18/87P&PW(D) dated 05.07.1989.

This option is admissible to those employees, who are regularly promoted in the higher grade, for fixation of their pay in IDA pay scale of the promoted post.

Hindi version will follow.

Sd/-  
(Sheo Shankar Prasad)  
Section Officer (PAT)"

Thus, it is very clear that the applicants were given an option as per the orders of the Government of India as well as the order of BSNL to continue in the CDA scale till they are promoted on regular basis and thereafter to come to the IDA scale.

12. In response to the representation made by the applicant No. 17, Smt K. Bhanumathy Amma, the Communication Accounts Officer stated vide his letter No. CCAKRL/1-3/C-316/06-07 dated 19.10.2006 that "However, a clarification had already been sought for from the DOT Headquarters regarding the method of pay fixation in similar cases. Your pensionary benefits will suitably be revised as and when the clarification from DOT is received which is expected shortly". Vide letter dated 24.09.2008, the Department of Telecommunications conveyed that the CCA may decide the case of pay fixation in case of Group 'B' officers like the applicants, provisionally based on existing instructions of BSNL in this regard. The relevant letter dated 24.09.2008 is reproduced below :



"File No.1-1(04)2005-PAT(Pl.)  
Government of India  
Department of Telecommunications  
PAT Section : Sanchar Bhawan  
New Delhi

Dated : 24/09/2008

To:

The Controller of Communications Accounts,  
DOT Cell, Department of Telecom,  
Kerala Circle, Door Sanchar Bhavan,  
Thiruvananthapuram : 695 033

Sub: Pay Fixation in case of Group "B" officers who have  
opted for IDA pay scale from the date of promotion  
which happens to fall after 01.10.2000 - clarification  
regarding.

Sir,

I am directed to refer to your letter No. CCA/KRL/1-  
1/RLGS/2008-09 dated 5.9.2008 regarding above stated  
subject.

In this regard, it is stated that the matter regarding pay  
fixation in case of officials who had opted for pay fixation in IDA  
pay scale from the date of their promotion which happens to fall  
after 01.10.2000 was examined in consultation with DPE and  
DPE has reiterated its view given vide their O.M. No.2(II)94-  
DPE(WC) dated 26.04.2007, The same is under consideration  
in this department.

Till any further clarification is issued by this office, CCA  
may decide the case provisionally based on existing  
instructions of BSNL in this regard.

Sd/-  
(Bal Kishan)  
Director (Estt)"

But the above direction to decide the cases of the applicants provisionally  
on the existing instructions has not been complied with by the CCA.

13. T.A. No. 115/2008 was disposed of with a direction to the first a  
respondents to extend the benefit of option exercised with effect from the di



retirement of the applicants therein on the IDA pay scale and pay pensionary benefits, if necessary, on furnishing necessary undertaking for refund of excess money, if any, paid (The order in TA No. 115/2008 is read with the order in RA No. 11/10 in TA 115/08).

14. In M.A. No. 413/10 in the instant T.A., the applicants had sought a direction to the respondents to extend the benefit of the order of this Tribunal in TA No. 115/08 as modified in RA No. 11/10 in TA No. 115/08. This prayer is made in addition to the reliefs in the instant T.A. listed below :

1. A writ of certiorari or other appropriate writ or order to call for the records leading to the issue of Exhibit P9 to P9(h) and set aside Exhibit P9 to Exhibit P9(h).
2. A writ of certiorari or other appropriate writ or order to call for the records leading to the issue of Exhibit P10 and Exhibit P10(a) and set aside Exhibit P10 and Exhibit P10(a).
3. Declare that the action of the 1<sup>st</sup> respondent in nullifying the options exercised by the petitioners and the consequential fixation of pay granted by the BSNL in terms of Exhibit P3 to come over from CDA scale to IDA scale without notice to the petitioners is illegal and arbitrary.
4. A writ or mandamus or other appropriate writ or order or direction, directing the 1<sup>st</sup> respondent to abide by the options exercised by the petitioners and the fixation of pay granted by the BSNL in terms of Exhibit P3 and regulate the pensionary benefits of the petitioners accordingly.
5. A writ or mandamus or other appropriate writ or order or direction, directing the 1<sup>st</sup> respondent to immediately re-fix the pensionary benefits of the petitioners in terms of the actual last 10 months average pay drawn by the petitioners and regulate further payment of pensionary benefits accordingly.
6. Declare that the petitioners are entitled to interest on the arrears of pensionary benefits due to the petitioners in terms of the actual last 10 months average pay drawn by the petitioners.
7. Declare that the action of the 1<sup>st</sup> respondent in objecting to pay fixation granted in terms of Exhibit P3 to come over from CDA scale to IDA scale in respect of retired BSNL employees alone is discriminatory and arbitrary.

based on existing instructions of BSNL in this regard, the 1<sup>st</sup> respondent does appear to have rectified his mistake in reducing the pensionary benefits of applicants. The intransigent and callous behaviour on the part of the respondent is not questioned by the DOT. Therefore, in our considered view the interest of justice, the applicants should be given the arrears of pension benefits with interest.

18. In the result, the O.A. is allowed. The respondents are directed to re-fix pensionary benefits of the applicants in terms of the actual last ten months average pay drawn by them and to regulate further payment of pension benefits accordingly and to make payment of consequential arrears along with interest @ 8% per annum from the dates of retirement of the applicants from the actual date of payment, within a period of three months from the date of receipt of a copy of this order.

19. There shall be no order as to costs.

(Dated, the 14<sup>th</sup> June, 2010)

*[Signature]*  
K. GEORGE JOSEPH  
ADMINISTRATIVE MEMBER

*[Signature]*  
JUSTICE K. THANKAPPAN  
JUDICIAL MEMBER

ovr.

CERTIFIED TRUE COPY  
Date 21-06-2010

*[Signature]*  
Deputy Registrar

8. Any other further relief or order as this Hon'ble Court may deem fit and proper to meet the ends of justice

9. Award cost of these proceedings.

10. Declare that the applicants are entitled to the benefit of Annexure A20 and direct the respondents to extend the benefit of A20 to the applicants

15. There is no reason to deny the benefit of option exercised by the applicants in accordance with the orders of the Government of India and BSNL. The denial becomes all the more repugnant, when persons similarly placed as the applicants, enjoy the benefit of the option in service and on retirement. This selective denial is hostile discrimination, pure and simple.

16. The first respondent is not in a position to point out which rule or order is violated in granting the benefit of option to the applicants alone. Much worse, he is not the competent authority to reduce the pay of the applicants fixed on the basis of the orders of the Government of India and the BSNL under any circumstance. He has exercised authority which he is not invested with, arbitrarily and without bothering to give the applicants an opportunity of being heard. The cancellation of the options exercised by the applicants, by the 1<sup>st</sup> respondent is thus doubly illegal.

17. In the instant case, the applicants who are retired are made to run from pillar to post for their full pensionary benefits because the 1<sup>st</sup> respondent adopted a method of pay fixation different from the method adopted by BSNL, according to his own understanding. Before adopting a different method just for a few persons in Kerala Circle, he should have got clarification from the DGT. Even after getting a direction vide Annexure A-20 letter dated 04.06.2008 from the