
(2023) 10 CAT CK 0009

In the Central Administrative Tribunal

Case No : Original Application No. 180, 185 Of 2016

P.M. Unnikrishnan & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 06-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2023) 10 CAT CK 0009

Hon'ble Judges : K. Haripal, Member (J); K.V. Eapen, Member A

Bench : Division Bench

Advocate : P.A. Kumaran, Pradeep Krishna

Final Decision : Allowed

Judgement

K. Haripal, Member J

1. Applicants, 11 in number, had commenced service as Group-D employees in the erstwhile Telecom Department. During 1998-1999 they were promoted to the cadre of Telecom Mechanic, a Group-C post. All of them are working in the Thrissur Secondary Switching area. Bharath Sanchar Nigam Limited, BSNL for short, was incorporated on 01.10.2000. Following its incorporation the employees were put on deemed deputation and had given option for absorption in the BSNL. Based on the options, the applicants were absorbed in the BSNL with effect from 01.10.2000. Subsequent to the incorporation, on the basis of the agreement entered into between the Union representing the employees and the BSNL, pay scales of Group-D and Telecom Mechanic in Rs.2550-50-3200 and Rs.3200-85-4900 respectively in the Central Dearness Allowance-CDA-pay scales were replaced by Industrial Dearness Allowance-IDA-scales of Rs.4000-5800 and Rs.4720-6970 respectively. The conversion of the pay in the CDA scales to IDA scales was done based on point to point fixation depending upon the stage in the pay scale in which the incumbent was drawing his pay on 01.10.2000. It was also agreed that anomaly arising out of such point to point fixation would be rectified in accordance with the Fundamental Rules.

2. Referring to Annexure-A2 series, it is submitted that on 30.09.2000, the applicants were drawing at pay of Rs.3370/- in the CDA scale. When it was fixed in the IDA scale, it became Rs.5020/- as on 01.10.2000. But it is noticed that one T.O.Varghese, who is junior to the applicants in the Regular Mazdoor cadre was drawing only a pay of Rs.3235/- in the CDA scale of Rs.2550-3200. But on implementation of the IDA scale, he began to draw at Rs.5225/-. Subsequently, when he was promoted as Telecom Mechanic on 06.11.2002, he started drawing a pay of Rs.5,770/- on being granted the benefit of fixation under FR 22(I)(a)(1). Such an anomaly was the direct consequence of the point to point fixation done on conversion from CDA scale to IDA scale.

3. But when the applicants approached the respondents to set right the anomaly and step up their pay to that of the level of the junior, they were informed that the standing committee would consider the anomaly. Meanwhile, some of the Telecom Mechanics under the Ernakulam SSA moved the Hon'ble High Court with WP(C) No. 30582/2005, which was allowed under Annexure-A5. Writ Appeal filed against that judgment was dismissed by Annexure-A6 and thus the applicants in Annexure-A5 were granted benefits. While so, the anomaly committee submitted report recommending grant of personal pay as one time measure to solve the issue. That report was challenged before the Tribunal with O.A.1025/2010 and connected cases. The Tribunal allowed the O.A. and directed stepping up of the pay of the applicants therein, that report and decision of the committee recommending grant of personal pay were quashed. That order was challenged before the Hon'ble High Court, but the High Court by Annexure-A8 common judgment dated 08.08.2011 dismissed the O.P.s. Original Applications seeking similar reliefs were filed by similarly situated persons before this Tribunal and those applications have been allowed.

4. The applicants claim that they are also entitled to get similar reliefs. While so, the 2nd respondent issued direction to the 3rd respondent to rectify the anomalies caused due to the point to point pay fixation. In spite of Annexure-A9 direction, the applicants have not been granted reliefs. They made Annexure-A10 series representations, but that have not been considered. They would be granted reliefs only if directed by the Tribunal. Such a conduct of the respondents is illegal, unjust, unfair and violative of mandates in Articles 14 and 16 of the Constitution. Despite reliefs granted by this Tribunal as well as the High Court to similarly situated Telecom Mechanics, the respondents remain unmoved. Hence the applicants have approached this Tribunal for a declaration that they are entitled to get stepping up of pay with that of junior T.O. Varghese, who started to draw higher pay by virtue of pay fixation granted on point to point basis in the IDA pay scale and due to fixation given under FR 22 (I)(a)(1) and to direct the respondents to consider Annexure-A10 series representations, to pay them arrears and consequential benefits from the date of stepping up with interest @ 12% per annum from the amount became due till the date of payment.

5. The claim has been disputed by the respondents. According to them, there is

inordinate delay in approaching the Tribunal. The applicants who have chosen to acquiesce the present anomaly/aberration for all these periods are not entitled to get a discretionary relief. They were sleeping over their remedy from 2000 onwards. Such a claim is barred by limitation. Referring to Annexure-R2(a) order of this Tribunal in O.A.333/2014 dated 22.05.2014 they submitted that a similar claim was dismissed as barred by limitation.

6. Further it is submitted that the applicants had become Telecom Mechanics on promotion from the cadre of Regular Mazdoor before 01.10.2000. At the time of incorporation of the BSNL, they were Telecom Mechanics. Applicants and persons who were promoted after 01.10.2000 cannot be compared. Regular Mazdoors might be drawing pay more than Telecom Mechanics as on 01.10.2000 by virtue of their length of service. It is not a case of anomaly. The agreement reached between the Union and the BSNL and subsequent office orders are complete in itself and capable of redressing all eventualities. The said T.O. Varghese, who is junior to the applicants, was promoted as Telecom Mechanic only on 06.11.2002. Till that time, the applicants were in a different cadre with its own seniority carrying a different scale of pay. Since the cadre and scale of pay held by the applicants and Sri.T.O.Varghese were not identical, question of stepping up for the purpose of removing any anomaly does not arise. Equality postulates identity of class, once that identity is absent, there is no discrimination. T.O.Varghese had joined the department on 26.02.1983, he had become Telecom Mechanic only on 06.11.2002, on 30.09.2000 he and the applicants were working in two categories with different pay scales.

7. According to the respondents, as per the agreed pay scales it is natural that some RMs who have longer service may get more salary than Telecom Mechanics even before promotion. It is not an anomaly.

8. In substance, the respondents contended that the applicants are not entitled to get any relief.

9. The applicants filed a rejoinder along with Annexure-A12 and A13 orders passed by this Tribunal granting reliefs to similarly placed Telecom Mechanics. They have reiterated their contentions in the O.A.

10. We heard the learned counsel for the applicants as well as the learned Standing Counsel for the respondents.

11. According to the learned counsel for the applicants, such an anomaly is liable to be rectified by the respondents. They are also aware of the decisions rendered by this Tribunal as well as by the Hon'ble High Court on similar circumstances. The learned counsel also pointed out, with reference to decisions reported in *M.R.Gupta v. Union of India* [(1995) 5 SCC 628], *Union of India v. Tarsem Singh* [(2008) 8 SCC 648] and *State of Madhya Pradesh and others v. Yogendra Shrivasthava* [(2010) 12 SCC 538] that it being a continuing wrong, the argument that the O.A. is barred by limitation is not sustainable. He also produced for our perusal a recent order of this Tribunal in O.A.184/2016 dated

14.06.2023, in which one of us, Hon'ble the Administrative Member, is a party.

12. According to the learned Standing Counsel, the cause of action had arisen in the year 2000. But the applicants, who are fence sitters, cannot be allowed to raise the contentions after long lapse of time. According to him, the O.A. is liable to be dismissed on that score itself. He reiterated the other objections in the reply also.

13. The facts are not in dispute. Applicants who commenced service as Regular Mazdoors in the Department of Telecom were promoted as Telecom Mechanics during 1998-1999. On incorporation of the BSNL with effect from 01.10.2000 they were on deemed deputation and later opted for absorption in the BSNL. Consequently, change over from CDA to IDA pay scale became necessary. Basing on Annexure-A2 series they contended that their pay was fixed in the IDA scale of Rs.4750-150-6970 at Rs.5020/-. But the said T.O.Varghese, who is their common junior started getting Rs. 5770/- on 06.11.2002, on being promoted as Telecom Mechanic. When this anomaly was pointed out, the respondents refused to rectify the same and that prompted them to approach this Tribunal.

14. It is pertinent to note that the respondents have not disputed this anomaly. But according to them, the applicants cannot be granted reliefs for twin reasons that the O.A. is barred by limitation and that the anomaly is the natural consequence of the length of service of the said T.O.Varghese, who had joined the department on 26.02.1983, long before the applicants had commenced service.

15. As a matter of fact, in order to resolve the rival contentions, much research is necessary. Both the objections raised by the respondents stand decided against them.

16. As held by the Hon'ble Supreme Court in M.R.Gupta, quoted supra, such grievance of employees on the fixation of pay is a continuing wrong, giving rise to recurring cause of action every month on the occasion of the payment of salary and that claim does not get barred by the law of limitation. The same view has been reiterated in the other decisions also; but arrears can be restricted to three years prior to the filing of the lis. Therefore, the plea regarding bar under limitation is not available to the respondents.

17. The other contention was also considered by this Tribunal on a volley of occasions and all the time the grievances of similarly placed Telecom Mechanics were upheld by the Tribunal and the High Court. Atleast Annexure-A9 implementation order dated 04.05.2012 indicates that the Annexure-A8 common judgment of the Hon'ble High Court was taken up in SLP and the SLP was dismissed by the Supreme Court.

18. Annexure-A9 further indicates that such an anomaly was directed to be rectified by the respondents. Therefore, there is no option but to rectify the same. There is no basis in the contention of the respondents that a comparison

between scales of two cadres is not possible etc. The applicants have highlighted the pay drawn by Sri.T.O.Varghese on his promoted as Telecom Mechanic on 06.11.2002. Thus from 06.11.2002 onwards applicants and Sri.T.O.Varghese are working in the same cadre but the junior drawing a higher pay, which is illegal.

19. As indicated earlier, the respondents also accept the anomaly. At one stage they wanted to rectify the same by giving personal pay which was not approved by this Tribunal and the High Court.

20. It is also settled that a senior cannot be paid less than his junior even if anomaly in senior's pay is due to difference of increment and benefits. The Hon'ble Supreme court in Gurcharan Singh Grewal and another v. Punjab State Electricity Board and others [(2009) 3 SCC 94] held that such an anomaly should not be allowed to continue and the senior is entitled to get his pay stepped up to that of the junior. It is not disputed that the said T.O.Varghese is the common junior of the applicants. Similarly, the contention that on being promoted as Telecom Mechanic on 06.11.2002 he started drawing a higher pay than that of the applicants. So the applicants are entitled to get their scales stepped up.

21. In all previous litigations, except probably in Annexure-R2(a), this Tribunal as well as the High Court have consistently upheld the plea of similarly placed employees and therefore the applicants are entitled to get the benefit of such stepping up. Annexure-R2(a) is an isolated verdict which was rendered without adhering to the binding precedents quoted above, where the Apex Court has succinctly held that, in such cases, plea of limitation is not available as a defence.

22. Resultantly, the O.A. is allowed and the respondents are directed to step up the pay of the applicants at par with that of their juniors. It is made clear that monetary benefits shall be limited to three years prior to the filing of the O.A. The entire arrears in the above terms shall be worked out and disbursed to the applicants within a period of three months from the date of receipt of a copy of this order.

The O.A. is allowed as above. No costs.

(Dated, this the 6th October, 2023)