

5894/J

61/35  
 Copernicus Marg,  
 New Delhi  
 Date : 26/11/2014

From  
 The Principal Registrar  
 Central Administrative Tribunal  
 Principal Bench, New Delhi

To

- 1 Mrs. Rani Chhabra, counsel for the applicant, 125, Lawyers Chamber  
 Supreme Court of India New Delhi.
- 2 B. S. N. L. A Govt. of India Enterprises Corporate Office, Personnel  
 Branch, 5th Floor, Bharat Sanchar Bhavan, Janpath, New Delhi.
- 3 Assistant General Manager (Personnel) 5th Floor, Bharat Sanchar  
 Bhavan, Janpath, New Delhi.

Regn. OA No. 3883/2014, MA No. 3364/2014  
 MA No. 3365/2014

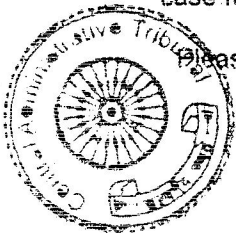
All India BSNL Executive Asso. & Ors Applicant(s)  
 Versus

BSNL & Anr Respondent(s)

Sir,


I am directed to forward herewith a copy of Judgment/Order 03/11/2014  
 dated: passed by this Tribunal in the above mentioned  
 case for information and necessary action if any.

Please acknowledge the receipt.



Encl: as above Paper book of OA

Yours faithfully,

  
 Section Officer-I-I  
 For Principal Registrar

244. R. Jeevananthan  
S/o Ramanathan  
Aged about 48 years  
HR No.199300408  
O/o DE Extnl. P.  
Kancheepuram 631502.

245. P. Krishna Reddy  
S/o P. Ranga Reddy  
Aged about 54 years  
HR No.198900282  
O/o SDE Gr. Thiruthani  
Kancheepuram 631209.

....Applicants

(By Advocate : Mrs.Rani Chhabra)

versus

1. Bharat Sanchar Nigam Limited  
A Government of India Enterprises  
Corporate Office, Personnel Branch,  
5<sup>th</sup> Floor, Bharat Sanchar Bhavan,  
Janpath, New Delhi
2. Assistant General Manager  
(Personnel)  
5<sup>th</sup> Floor, Bharat Sanchar Bhavan,  
Janpath, New Delhi

....Respondents

**ORDER (ORAL)**

**SHRI G. GEORGE PARACKEN, MEMBER (J) :**

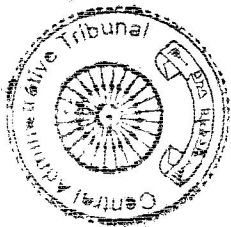
**MA 3365 of 2014**

The applicants have filed this Misc. Application seeking joining together in a single Original Application. For the reasons stated therein, the same is allowed.

**OA No.3883 of 2014**

The applicants have filed this OA seeking the following reliefs:-

- "a. that the Respondents be directed to extend the benefits of the judgment and order dated 26.08.2010 passed by this Hon'ble Tribunal in O.A. No.1282 of 2010 including the order dated 13.03.2014 passed in Contempt Petition No.515 of 2013 to all the members of the Association - Applicant No.1, as well as the Applicants who are similarly situated

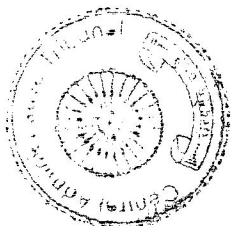


officiating Junior Telecom Officer in different circles and also the officiating Junior Telecom Officers in all circles of India; and

- b. Any other or further order/s which this Hon'ble Tribunal may deem fit and proper may also be passed."

2. According to learned counsel for the applicants, this case is squarely covered by the Order of this Tribunal dated 26.8.2010 in OA No.1282 of 2010 (***BSNL Officers Association (Regd) and another vs. BSNL (a Government of India Enterprises) and others***). In the said Order, the applicants therein have sought direction to quash the Order No.3-2/2009-Pers-IV dated 5.1.2010 and consequent on setting aside the order aforesaid to direct the respondents to extend the same benefits of fixation of pay and allowances under Rule 22 (1)(ia) of the Fundamental Rules to the Members of the applicant - Association as admissible to JTOs, as they have been officiating on the said posts for the last more than five years. The said OA was allowed by this Tribunal vide Order dated 26.8.2010 and its relevant paras read as under:-

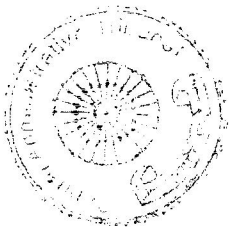
"3. We have gone through the judgment passed by Ernakulam Bench of this Tribunal and are in respectful agreement with the same. We are, however, informed that against the judgment aforesaid, respondents have filed two writs in the Hon'ble High Court of Kerala and the same have been admitted, but in none of these two writs, stay has been granted. If perhaps, the respondents would have obtained the stay, we may have adjourned this case sine die. But, inasmuch as, once there is no stay and, therefore, the applicants in TAs are getting the relief granted to them, there will be no need whatsoever to stay the proceedings of this case.



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."

The respondents have challenged the aforesaid Order before the Hon'ble High Court of Delhi vide Writ Petition No.243/2012 (**Bharat Sanchar Nigam Limited and others vs. BSNL Officers Association (Regd.) and another**) and the same was dismissed by the High Court vide its Order dated 13.1.2012. The relevant paras of the said Order reads as under:-

"3. It has now been contended by the learned counsel for the petitioner that it had been pointed out before the Tribunal that the facts of the Ernakulam case and the present case were different. However, as already pointed out above, this is not apparent from the order dated 26.08.2010. In any event, if such a position had arisen, it was open for the petitioner to have, first of all, filed a review application before the Tribunal itself in order to have this issue sorted out. Instead of doing so, the petitioner filed a writ petition being WP(C) 1339/2011 before this Court. A Division Bench of this Court took up the matter for hearing on 28.02.2011, when it was submitted by the learned counsel for the petitioner that the Tribunal had erroneously placed reliance on the decision in Ernakulam case, whereas the factual matrix was absolutely different and the said decision was not applicable to the case at hand. The Division Bench had observed that it did not perceive that this stand had been taken before the Tribunal. However, since the learned counsel for the petitioner submitted that the stand was taken but the same had not been adverted to in the order, the Division Bench granted liberty to the



petitioner to file an application for review under Section 22(F) of the Administrative Tribunals Act, 1985. The writ petition was disposed of in that manner.

4. Thereafter, the petitioner filed the review application No. 125/2011, in which the impugned order dated 05.09.2011 has been passed. After hearing the counsel for the parties, the Tribunal has noted as under:-

"It is only towards the end of para 2(i) at the bottom of page 7 that, for the first time, it is mentioned that as the applicants before the Principal Bench of the Tribunal did not satisfy the requirements stipulated under the JTO Recruitment Rules of 1996, their pay was rightly fixed under FR-35, and thus they would be on a completely different pedestal with no similarity whatsoever with the applicants before the Ernakulam Bench of the Tribunal. It is surprising to note that if it was the case of the review applicants that the facts leading to filing of the TA culminating into decision by the Ernakulam Bench are entirely different, why at every stage, be it in the OA or the review application, it has been time and again mentioned that the respondents (review applicants) had not accepted the judgment of the Ernakulam Bench and had, therefore, filed a writ against the same. It could well be said that in the case before the Ernakulam Bench and the writ that has been filed in the Kerala High Court the facts are entirely different and the said judgment would have no relevance whatsoever in deciding the controversy in issue. Such was never the case of the respondents. In the order impugned in the OA which came to be passed pursuant to directions given by us on 11.11.2009 in QA No.3213/2009 it has been clearly mentioned in clause (v) that "BSNL has not accepted the judgment dated 15.07.2009 of Hon'ble CAT, Ernakulam and has initiated necessary action for challenging the said judgment before the Hon'ble High Court of Kerala". What really surprises us is that what was the need of saying so if the facts of the case in hand and the one subject matter of decision by the Ernakulam Bench were different. We are not making a mention of the reply filed on behalf of the respondents in the OA as the same would



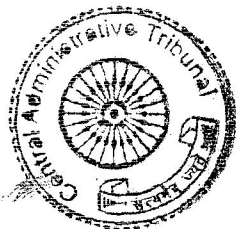
unnecessarily burden the judgment. We would rather prefer to annex with this judgment as Annexure-A copy of the reply filed on behalf of the respondents in the OA, which we order to be read as part of the judgment. There is not a single sentence mentioned therein that the facts of the case before the Ernakulam Bench and the one before us would be entirely different."  
(underlining added)

5. Even before us, the learned counsel for the petitioner was asked to show us from his reply as to where he has pleaded that the facts of the present case are different from the Ernakulam case. He drew our attention to paragraph 4.14 of his reply to the OA before the Tribunal. Unfortunately, on going through the entire paragraph, we do not find a single statement to the effect that the facts of the Ernakulam case are different from the facts of the present case.

6. In view of the foregoing circumstances, we do not see any infirmity in the orders passed by the Tribunal and consequently this writ petition is dismissed."

Learned counsel for the applicants has also brought to our notice that the aforesaid Order of the High Court was challenged by the respondents before the Hon'ble Supreme Court vide Special Leave to Appeal (Civil) No.4583 of 2012 (*B.S.N.L. and others vs. BSNL Officers Assn. (Regd) and another*). The said SLP was also dismissed by the Hon'ble Supreme Court vide its Order dated 20.2.2013. The said Order 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."

3. Learned counsel for the applicants has also submitted that as the respondents have not complied with the aforesaid Order of this Tribunal even after the final disposal of the aforesaid SLP, they have filed CP No.515/2013 in OA No.1282 of 2010 and it was only thereafter the aforesaid Order of this Tribunal in OA No.1282/2010 has been complied with by the



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respondents. Thereafter, the said CP was closed on 13.3.2014.

4. In the above facts and circumstances of the case, we dispose of this OA at the admission stage itself by directing the respondents to consider the cases of the applicants in the light of the aforesaid Orders and after consideration, if they found that the applicants are covered by the aforesaid decisions, they shall be extended the same benefits and in any case, they shall pass appropriate orders 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.

(SHEKHAR AGARWAL)  
MEMBER (A)

(G. GEORGE PARACKEN)  
MEMBER (J)

/ravi/



Free Copy U/R 22 of CAT  
(Procedure Rules)  
प्रमाणित सत्यप्रतिलिपि  
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दिनांक/Date: 20/11/14

अनुभाग अधिकारी (न्या.)  
Section Officer (J)  
केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
प्रधान न्यायपीठ, नई दिल्ली  
Principal Branch, New Delhi