

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HON'BLE ACTING CHIEF JUSTICE MRS.MANJULA CHELLUR

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 10TH DAY OF JULY 2012/19TH ASHADHA 1934

OP (CAT).No. 1576 of 2012 (Z)

-----  
OA.109/2011 of CENTRAL ADMINISTRATIVE TRIBUNAL,  
ERNAKULAM BENCH

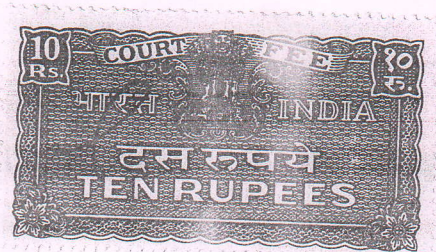
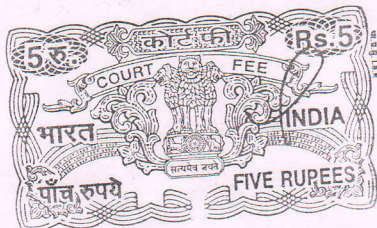
PETITIONER(S):

- 
1. BHARAT SANCHAR NIGAM LIMITED  
REPRESENTED BY ITS MANAGING DIRECTOR  
CORPORATE OFFICE, 4TH FLOOR, BHARAT SANCHAR BHAVAN  
NEW DELHI-110 001.
  2. THE CHIEF GENERAL MANAGER  
TELECOM,  
KERALA CIRCLE, THIRUVANANTHAPURAM-695 033.

BY ADV. SRI.V.R.KESAVAKAIMAL, SC, BSNL

RESPONDENT(S):

- 
1. M.SETHUMADHAVAN  
S/O.LATE M.KRISHNAN NAIR, DIVISIONAL ENGINEER  
TELECOM, TRANSMISSION PROJECTS, 1ST FLOOR  
MICROWAVE BUILDING, VELLAYIL TELEPHONE BHAVAN  
GANDHI ROAD, KOZHIKODE-673 001.
  2. GOVINDAN V.,  
S/O.ACHUTHAN T., ASSISTANT GENERAL MANAGER  
(TRANSMISSION), OFFICE OF THE GENERAL MANGER  
TELECOM, PALAKKAD-678 014  
RESIDING AT THAZHATHETHIL HOUSE, PUNCHAPPADAM  
PALAKKAD-678 634.





3. M. SANKARAN,  
S/O. M. C. NEELAKANDHAN NAMBOODIRI  
DIVISIONAL ENGINEER, TELECOM, KONGAD  
RESIDING AT ABHISREE, EDATHARA P.O.,  
PALAKKAD-678 611
4. T. M. LAKSHMANA RAO,  
S/O. LATE MADHAVA NAIK  
DIVISIONAL ENGINEER (NSS) MOBILE SERVICES  
TELEPHONE EXCHANGE, VATTAPALLY  
CHANGANACHERRY-686 101  
RESIDING AT THRIKOVIL HOUSE  
ARPOOKARA EAST (P.O.), KOTTAYAM-686 008.
5. R. SUKUMARA PILLAI,  
NANDAVANAM, ASSISTANT GENERAL MANAGER  
OFFICE OF THE GENERAL MANAGER (BSNL) ALAPPUZHA  
RESIDING AT CHIRAKKADAVAM, KAYAMKULAM P.O.  
PIN-690 502
6. K. C. JOSEPH  
S/O. LATE A. V. CHACKO, ASSISTANT GENERAL MANAGER  
OFFICE OF THE GENERAL MANAGER (BSNL) ALAPPUZHA  
RESIDING AT KOCHUPURACKAL, CMC-XV,  
CHERTHALA, P.O.- 688 524.
7. M. SEETHA  
W/O. K. S. KRISHNA KUMAR  
DIVISIONAL ENGINEER (PROJECT MANAGER) PROJECT UDAAN  
OFFICE OF PGMT, BSNL BHAVAN, COCHIN-682 016  
RESIDING AT SURYAPRABHA, G-4, FACT NAGAR  
THRIPUNITHURA-682 301, ERNAKULAM DISTRICT.
8. REMA MOHANDAS  
W/O. K. C. MOHANDAS, KOLLARA HOUSE, 30/1125 A  
COSMOS ROAD, VYTTILA, COCHIN-682 019  
ASSISTANT GENERAL MANAGER, (UP, OFFICE OF THE PGMT)  
BSNL BHAVAN, ERNAKULAM, COCHIN -682 016.
9. T. V. MONZI, S/O. T. M. VARKEY,  
PANCHAMI HOUSE, AGASITANMUZHI, MUKKOM P.O.  
CALICUT, RETIRED DIVISIONAL ENGINEER  
TRANSMISSIONS (EQPTS), VELLAYIL, CALICUT-673 001.
10. K. K. KUTTIKRISHNAN  
S/O. G. KESAVAN PILLAI, ASSISTANT GENERAL MANAGER



(SALES), OFFICE OF THE DEPUTY GENERAL MANAGER, (EB),  
BSNL BHAVAN, ERNAKULAM, COCHIN-682 016  
RESIDING AT HOUSE NO.34/2242A, DEEPAM LANE  
THAMBRATTIPARAMBIL ROAD, MAMANGALAM  
COCHIN-682 025.

11. C.M.PURUSHOTHAMAN,  
S/O.C.K.MADHAVAN, 1707 A, CHARAMKAANDATHIL VYTTILA  
KOCHI-682 019, DIVISIONAL ENGINEERS  
SALES HEAD PROJECT VIJAY, OFFICE OF THE PGMT  
BSNL BHAVAN, KALATHIPARAMBIL ROAD, COCHIN-682 016.

BY ADV. SRI.P.CHANDRASEKHAR

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 10-  
07-2012, ALONG WITH OPCAT. 1560/2012, OPCAT. 1592/2012,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



Manjula Chellur, Ag. CJ.,  
&  
A.M. Shaffique, J.

.....  
O.P. (CAT) No. 1576, 1560 & 1592 of 2012  
.....

Dated: 10-07-2012

JUDGMENT

Manjula Chellur, Ag. CJ.,

Petitioners in these petitions were the common respondents before the Central Administrative Tribunal ("CAT" for short). They approached CAT seeking a direction to the present petitioners to grant time bound upgradation in the scale of pay in the substantive cadre of Sub Divisional Engineer, to fix their pay accordingly and re-fix their pay consequently in the scale of pay of post cadre of Divisional Engineer which was extended to their juniors.

2. Contention of the applicants before the Tribunal was that though they were seniors by way of longer length of service than their juniors, without any justification, there were two pay fixations to the juniors within a short span of nine months. One was on 1-10-2009 and another was on 30-6-2010.

3. It is not in dispute that the juniors of the applicants before the Tribunal were getting more pay than the



applicants. They made several representations for stepping up their pay. According to the applicants, one pay fixation was on account of time bound financial upgradation and another one was on account of adhoc regular promotion. Therefore, within a span of nine months the juniors got twice the benefit of pay fixation resulting in the applicants getting lesser pay than their juniors. According to learned counsel representing the petitioners before CAT, several defences were taken including F.R. 22 sub Rule 23 (Ext.P6). They also took up a contention that, so far as the applicants before the Tribunal, their upgradation of pay would come in 2013 whereas the juniors will be in 2014. The Department tried to convince the Tribunal that there would be one year difference so far as upgradation of pay scales with effect from 2013 resulting in seniors getting upgradation first. While canvassing this defence, they totally ignored the fact that from 2009 onwards juniors of the applicants are getting more pay than the seniors and what happens in 2013 would not compensate the loss sustained by the applicants on account of some policy decision of the Department. Therefore, the Tribunal was justified in rejecting the defence of the Department.

4. Then coming to F.R. 22 sub Rule 23, it reads as



follows:-

(23) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior. -- (a) As a result of application of FR 22-C [Now FR 22 (1) (a) (1)]: - In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

- a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay”.



5. One has to see whether the case of the applicants would attract one of the conditions referred to above so as to deny the benefit of stepping up of pay. This is argued for the first time by the department and even otherwise it is not open to them to say that the applicants have to establish that none of the conditions apply to them. It is for the department to establish that the applicants are not entitled for the benefit as their cases would attract one or the other conditions referred to at Sub Rule 23 or Rule FR 22.

6. When the petitioners herein took up the contention of proposed upgradation of pay of applicants before the Tribunal, they totally ignored the fact of several other seniors like the applicants retiring before they even reach 2013.

7. In that view of the matter, the Tribunal was justified in saying, there was no reasonableness or justification in the discrimination shown to the seniors so far as the pay of them. In the absence of any rule which would support the defence of the petitioners herein, we are afraid, we have to confirm the order of the Tribunal by rejecting these petitions.

Accordingly, these petitions are dismissed. So far as the implementation of the directions given by the Tribunal, we direct the Department to implement the same by stepping up

✓

O.P. (CAT) No. 1576 , 1560 & 1592 of 2012 --5:-

the pay of the respondents/applicants within three months  
from the date of receipt of a copy of this judgment.

Dated this the 10<sup>th</sup> day of July, 2012.

Sd/-Manjula Chellur,  
Acting Chief Justice.

Sd/- A.M. Shaffique,  
Judge.

ani.

/truecopy/

P.S.toJudge

✓



APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1. TRUE COPY OF THE OA NO.109/2011 ON THE FILES OF CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

ANNEXURE A1. TRUE COPY OF OFFICE MEMORANDUM NO.400-61/2004-PERS I DATED 18/1/2007.

ANNEXURE A2. TRUE COPY OF THE ORDER DATED 5/7/2008 OF THE DIVISIONAL ENGINEER ADMN. OFFICE OF CGM, STP, BSNL, CHENNAI.

ANNEXURE A3. TRUE COPY OF ORDER DATED 21/8/2010 OF THE ASSISTANT GENERAL MANAGER (PERS.I), OFFICE OF THE 1ST RESPONDENT.

ANNEXURE A4. TRUE COPY OF ORDER DATED 21/8/2010 OF THE DEPUTY GENERAL MANAGER (HR) OFFICE OF THE 2ND RESPONDENT.

ANNEXURE A5. TRUE COPY OF ORDER DATED 21/7/2010 OF THE ASSISTANT MANAGER (HR) OFFICE OF THE 2ND RESPONDENT.

ANNEXURE A6. TRUE COPY OF REPRESENTATION OF THE 1ST APPLICANT DATED 25/10/2010 TO THE DIRECTOR (HR), BSNL, HEAD OFFICE, NEW DELHI.

ANNEXURE A7. TRUE COPY OF THE REPRESENTATION DATED 10/1/2011 OF THE 8TH APPLICANT TO THE 2ND RESPONDENT.

ANNEXURE A8. TRUE COPY OF REPRESENTATION DATED 15/1/2011 OF THE 10TH APPLICANT TO THE 2ND RESPONDENT.

EXHIBIT P2. TRUE COPY OF THE REPLY STATEMENT DATED 12/5/2011 FILED BNY THE PETITIONERS.

EXHIBIT P2. TRUE COPY OF THE REJOINDER FILED BY THE RESPONDENTS.

ANNEXURE A9.TRUE COPY OF MEMO NO.DPC/57-2/2008-2009/C.O. DATED 7/1/2010 OF THE ASSISTANT GENERAL MANGER, (STAFF) CGM, BSNL, TN CIRLCE.

ANNEXURE A10.TRUE COPY OF LETTER NO.400-175/2007-PERL. DATED 13/4/2010 ASSISTANT GENERAL MANGER, (PERSONAL-i0, BSNL, CORPORATE OFFICE, NEW DELHI.

✓

ANNEXURE A11.TRUE COPY OF REPRESENTATION DATED 30/7/2010 OF N.SEETHA TO THE CHIEF GENERAL MANAGER, TELECOME, TRIVANDRUM.

ANNEXURE A12.TRUE COPY OF LETTER DATED 27/8/2010 OF THE GENERAL MANAGER,(ADMN) & CPIO, OFFICE OF THE CHIEF GENERAL MANAGER, BSNL, TRIVANDRUM, TO P.K.DANAPRIYAN.

EXHIBIT P4. TRUE COPY OF THE ADDITIONAL REPLY STATEMENT DATED 15/10/2011 FILED BY THE PETITIONERS.

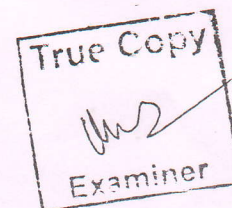
ANNEXURE R2 (A).TRUE COPY OF THE PAY FIXATION MEMO DATED 27/5/2009.

EXHIBIT P5. TRUE COPY OF THE ORDER DATED 7/12/2011 IN OS NO.109/2011.

EXHIBIT P6. TRUE COPY OF THE FUNDAMENTAL RULES NO.22.

/TRUECOPY/

P.S. to Judge





HIGH COURT OF KERALA  
AT ERNAKULAM



Year and Number of Suit : OPCA 1/1576/2012  
or other proceedings

Name of Applicant / :  
Advocate P. CHANDRASEKHAR

Application Number : 38181/2012

Date of Application : 11-JUL-12

Date of Calling for Stamp : 21-JUL-12

Date of Production of Stamp : 21-JUL-12

Date When Copy was Ready : 21-JUL-12

Date Notified for appearance  
to receive the copy : 28-JUL-12

Date When copy was delivered : 23/7/12

Examiner

True Copy  
Examiner