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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL CHANDIGARH BENCH,
CHANDIGARH.

O.A. NO. 060/00361/2015

OP

Surinder Singh & Anr.

....Applicants

Versus

BSNL & Others

.....Respondents

INDEX

Sr.No.	Particulars	Dates	Page No.	Court fee
1.	Written statement on behalf of the respondents No. 1 & 2	15.10.2015	1-7	
2.	Annexure R-1 copy of letter	13.12.2013	8-9	

Place: Chandigarh

Dated: 16 .10.2015

(D.R. Sharma)

Advocate (P/956/90)

Counsel for the Respondents No. 1 & 2.

Surinder-Mahar @ gmail . com

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH

O.A. NO. 060/00361/2015

Surinder Singh & Anr. ... Applicants

Versus

BSNL & others ... Respondents

Written statement on behalf of
Respondents No. 1 and 2 to the Original
Application filed by the applicants.

I, Anita Nijhawan, working as AGM (HR/Legal) in the office of Chief General Manager Telecom, BSNL Ambala, am well conversant with the facts of the case and have been authorized/competent to file the present written statement on behalf of respondents No. 1 to 2.

RESPECTFULLY SHOWETH

PRELIMINARY SUBMISSIONS

1. That the applicants in the present case are seeking direction to the answering respondents that they should take a final decision on the revised standard pay scales corresponding to existing non-standard pay scales as stated in letter dated 5.3.2009 w.e.f. 1.1.2007. It is submitted that approval for revised E1A and E2A pay was taken up by the respondent no. 3 with the DPE in May, 2014. The DPE vide letter dated 9.7.2014 has rejected the proposal of the respondent no. 3 by stating that vide O.M. dated 2.4.2009 it has been clarified that there is no justification for introducing intermediary pay scales and if there have been any aberrations, they shall need to be corrected. It was also clarified that every officer has to be fitted into the corresponding new scales.

In view of above, DPE order is silent whether the officers in old E1A (appointed after 1.1.2007) have to be fitted in revised standard pay scale E1. However, the said aberration of pay has been rectified by granting five advance additional increments by BSNL.

More importantly, the aforesaid letter dated 9.7.2014(A-20) is not under challenge. Thus the O.A. filed by the applicant is liable to be dismissed on this ground alone.

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- 93
2. That even otherwise the applicants have not impugned any order as envisaged in Section 19 of the A.T. Act, 1985, therefore present O.A. is not maintainable and is therefore liable to be dismissed.

PARA WISE REPLY

1. That the applicants in the present case are seeking direction to the answering respondents to take a final decision on the revised standard pay scales corresponding to existing non-standard pay scales as stated in letter dated 5.3.2009 w.e.f. 1.1.2007. It is submitted that the issue relating to revised E1A and E2A pay was taken up by the respondent no. 3 with the DPE in May, 2014. The DPE vide letter dated 9.7.2014 has rejected the proposal of the respondent no. 3 by stating that vide O.M. dated 2.4.2009 it has already been clarified that there is no justification for introducing intermediary pay scales and if there have been any aberrations, they shall need to be corrected. It was also clarified that every officer has to be fitted into the corresponding new scales."

DPE order is silent on whether the officers in old E1A (appointed eater 1.1.2007) have to be fitted in revised standard pay scale E1. In view of it, BSNL has settled the said pay aberration by granting 5 additional increments.

The aforesaid letter dated 9.7.2014 is not under challenge. Thus the O.A. filed by the applicant is liable to be dismissed on this ground alone.

2. That contents of this para of the original application needs no reply.
3. That the contents of this para of the original application needs no reply.
- 4(1). That contents of Para 4(1) of the OA needs no reply being matter of record.
- 4(2) That contents of Para 4(2) of the OA denied for want of knowledge.
- 4(3). That contents of Para 4(3) of the OA needs no reply being matter of record
- 4(4-7) That contents of these paras of the OA needs no reply being matter of record.
- 4(8-10) That in reply to these paras of the O.A. it is submitted that the BSNL was incorporated under the provisions of Companies Act, 1956 from the erstwhile Department of Telecom, Operations (DTO) and Department of Telecom Services (DTS) under Ministry of

94

Telecommunications, w.e.f. 1.10.2000. The employees of these two departments were transferred to BSNL on deemed deputation basis, on as is where is basis, until their absorption is finalized by BSNL. For the absorption of Group 'B' officers in BSNL, the following IDA Pay scales were approved corresponding to the prevailing CDA pay scales w.e.f. 1.10.2000.

S.No.	CDA Scales as on 01.10.2000	IDA pay scales w.e.f. 1.10.2000
1.	6500-200-10500	9850-250-14600 (E1A)
2.	7500-250-12000	11875-300-17275 (E2A)
3.	8000-275-13500	13000-350-18250 (E3)
4.	10000-325-15200	14500-350-18700 (E4)
5.	12000-375-16500	16000-400-20800 (E5)
6.	14300-400-18300	17500-400-22300 (E6)

The IDA pay scales of E1A and E2A were approved by DPE/DOT especially for BSNL to facilitate absorption.

Normally, different pay scales have different minimum and maximum, but in case of E-1A approved by the DPE/DOT in 2002, the maximum of E1 & E1A was kept same as detailed below:

E-1 - 8600-250-14600, E-1A-9850-250-14600

The following revised pay scales corresponding to old E1 and E2 were notified by DPE vide its OM dated 26.11.2008.

Grade	Existing	Revised
E1	8600-250-14600	16400-40500
E2	10750-300-16750	20600-46500

However, the revised pay scale corresponding to old pay scale of Rs. 9850-250-14600 and 11875-300-17275 were not notified by DPE. Since these old pay scales were specially approved by DPE/DOT for BSNL only at the time of absorption, the following revised IDA pay scales corresponding to these old pay scales were recommended by BSNL Board for onward approval of DOT/DPE:

Old Pay Scales	Grade	Revised pay scale approved by DPE	Revised pay scales recommended by BSNL Board
Rs.9850-250-14600	E-1A	Rs.16400-40500 (E1)	Rs. 18850-40500
Rs.11875-300-17250	E-2A	Rs.20600-46500 (E2)	Rs. 22800-46500

It may be noted that proposed revised E-1A and E2A pay scales recommended by BSNL Board are similar to revised E-1 and E2 pay scales except that the minimum of both the pay scales are different. It is also submitted that in the absence of E1A pay scale and in order to compensate the resultant pay loss, the initial pay of the officers recruited in old E-1A pay scale [(recruited in 2007/2008/(internal officers promoted to JAO through Limited Internal Competitive Exam (LICE))] have been fixed at Rs. 19020/- by granting five advance increments on the minimum of the revised E1 (E1+5) scale of Rs. 16400-40500/- with the approval of BSNL Board. This arrangement is similar to the situation prevailing in pre-revised E1A scale, minimum of which is 5 stages higher than the minimum of pre-revised E1 scale, whereas maximum of both scales are equal. It is also submitted that normally an officer who joins after a cut-off date gets less salary compared to the officers who join prior to the cut-off date e.g. the officer who joins prior to 1.1.2007, gets more salary because of fitment benefit under 2nd PRC as compared to the officers who joined after 1.1.2007 and gets fixed at minimum of corresponding pay scale.

4(11). That in reply to para 4(11) of the O.A. it is submitted that the pay of the applicant no. 1 who was appointed as Junior Accounts Officer in 2004, has drawn the benefit of 2nd PRC, and accordingly his pay has been fixed at Rs 22720/- in the revised E1 scale w.e.f. 1.1.2007, which is higher than the minimum of the revised E2 pay scale i.e. Rs. 20600-46500/-. Hence, the alleged pay loss is mistaken. There is absolutely no loss of pay and allowances due to fixation in the E1 pay scale. Even if, the proposed revised E1A pay scale would have been approved by DOT/DPE there will be no change in pay fixation of the applicant No. 1.

4(12) That in reply to this para of the O.A. it is submitted that in view of the non-approval of the revised E9A pay scale by DOT/DPE, necessary instructions have been issued for non-operation of the E9A pay scale vide BSNL OM No. 1-50/2008-PAT(BSNL) dated 29.12.2011. In relation to this OM, another

5

96

letter has been issued for notifying the table for fixation of pay in the revised E9 scale in respect of the Executives in pre-revised E9A, vide letter No. 1-50/2008-PAT(BSNL) dated 01.10.2013.

4(13) That in reply to para 4(13) it is submitted that the matter was examined by a Committee of Senior Officers in BSNL. Based on the recommendation of this committee, a DO letter has been written by CMD BSNL to Secretary (T), DOT on 13.12.2013 (A copy of the letter dated 13.12.2013 is enclosed as **Annexure R-1**) for taking up the issue with DPE for approval of revised E1A/E2A pay scales. It is to be noted that such a request made earlier stands rejected by DOT as well as DPE.

4(14) That in reply to para 4(14) it is submitted that in response to the issue regarding approval of revised E1A and E2A pay (as recommended by BSNL Board) was taken up by the DoT with DPE in May, 2014. DPE vide letter No. W-08/0002/2014-DPE (WC) dated 9th July, 2014, while rejecting DOT's proposal, has stated that-

"...DPE vide OM dated 2.4.2009 has clarified that there is no justification for introducing intermediary pay scales and if there have been any aberrations, they need to be corrected. It was also clarified that every officer has to be fitted into the corresponding new scales. It has been observed that Dot itself has not agreed to the proposal of introduction of intermediary pay scales by BSNL for the reasons indicate in their communication to DPE."

As DPE order is silent on whether the officers in old E1A (appointed after 1.1.2007) have to be fitted in revised standard pay scale E1, the issue of pay loss / aberration has been settled by granting additional 5 advance increments.

It is to be noted that the letter dated 9.7.2014 of DPE, whereby the proposal has been rejected is not under challenge in the present O.A. Thus on this ground the OA filed by the applicant is liable to be dismissed.

4.(15-17) That the contents of these paras of the O.A. are wrong and hence denied. It is submitted that in a recent decision in the OA No.3208/2011 filed by directly recruited JTOs of 2007 & 2008 batches for the grant of equal pay with JTOs of their senior batch (i.e. of recruitment year 2005 who have been allowed fitment benefit under 2nd PRC), the Hon'ble CAT Principle bench has upheld the pay fixation of JTOs of 2005 batch and dismissed the OA vide its order dated 23.4.2013. In the concluding para, the Hon'ble Court also observed -"We also do not feel that there is any discrimination against them".

97

It is normal that an officer who joins after a cut-off date gets less salary compared to the officers who join prior to this cut-off date e.g. the officer who joins prior to 1.1.2007, gets more salary because of fitment benefit under 2nd PRC as compared to the officers who joined after 1.1.2007 and gets fixed at minimum of corresponding pay scale.

Hence, the contention of the applicant that the arrangements in BSNL are treating equally placed employees unequally is improper and false. The existing employees who are in service prior to 1.1.2007 have been benefitted under 2nd PRC and as such they are no facing any loss of pay. Further, the Executives appointed after 1.1.2007 have been placed at initial pay of Rs. 19020/- in the revised E1 scale of Rs. 16400-40500/- in order to compensate the pay loss. Also, a proposal for grant of initial pay of Rs. 19020/- in the pay scale of Rs. 16400-40500/- (E1) for other similarly placed employees/cadre is under active consideration of the Management.

5. That the contents these paras of the reply are wrong and hence denied in view of the submission made in Para 4 as to reply to OA. Therefore same is liable to be dismissed being devoid of any merits. Firstly, there is no challenge to any impugned order and secondly, the applicants have failed to make out a case for interference of this Hon'ble Court as determination of Pay Scale is within the powers of executives and experts and is not meant for interference of the Hon'ble Courts unless there is a case of discrimination or arbitrariness.

6 & 7. That the contents of these para need no reply.

8-9. In view of what has been stated above, the OA being devoid of any merit is liable to be dismissed with costs.

10-12. That the contents of these Paras needs no reply.

Place: Ambala

Dated: 16/10/15

For Respondent Nos. 1 to 2

(ANITA NIJHAWAN)
A.G.M. HR/Legal Through
O/o Chief G.M.T. BSNL
Hr Circle, Ambala-133001

(D.R. Sharma)

Advocate

Counsel for Resp. No. 1 to 2

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98

Verification

I, Anita Nijhawan, working as AGM (HR/Legal) in the office of Chief General Manager Telecom, BSNL Ambala, do hereby verify that the contents of para 1, 4 and 6 to 12 of the written statement are true and correct to my knowledge based on official record and para 2, 3 and 5 of para wise reply are believed to be true on legal advice and that I have not suppressed any material fact.

Place: *Ambala*

Dated: *18-10-15*

Anita
Respondent Nos. 1 to 2

(ANITA NIJHAWAN)
A.G.M. HR/Legal
O/o Chief G.M.T., B.S.N.L.
Hr Circle, Ambala-133001

Annexure R-1

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99

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भारत संचार निगम लिमिटेड
(भारत सरकार का उद्यम)
BHARAT SANCHAR NIGAM LIMITED
(A Government of India Enterprise)

राकेश कुमार उपाध्याय
अध्यक्ष एवं प्रबन्ध निदेशक
RAKESH K. UPADHYAY
Chairman & Managing Director

D.O. No. 1-02/2012-PAT(BSNL)
Dated, the 13 Dec., 2013.

Respected Sir,

Please refer to my DO letters No.1-50/2008-PAT(BSNL) dated 05.05.2011, 24.2.2012, 9.11.2012 and 25.07.2013 requesting DOT to reconsider its decision on replacement pay scales E1A, E2A and E9A corresponding to old pay scales in BSNL. In this regard, I would like to state that the Associations of Executives in BSNL have taken up the demand for grant of E2 / E3 pay scales to JTOs / SDEs and equivalent cadres in case of non-approval of revised E1A and E2A pay scale by the Government.

2. I would like to inform you that E-1A (pre-revised IDA pay scale of Rs. 9850-250-14600) and E-2A (pre-revised IDA pay scale Rs. 11875-300-17275) were granted to JTOs and SDEs by DoT at the time of absorption of officers in BSNL. However, under 2nd PRC the replacement/ revised pay scale for E1A and E-2A have not been notified w.e.f. 01.01.2007 by DPE vide OM dated 26.11.2008. Subsequently, with the approval of BSNL Board, a proposal for the revised E1A DA pay scale of Rs. 18650-40500/- & E-2A pay scale of Rs. Rs. 22500-46500/- corresponding to the pre-revised scale of Rs. 9850-250-14600/- and Rs. 11875-300-17275 respectively for JTOs / SDEs & equivalent cadres was sent to DOT for the approval of the Govt. However, the approval for revised E1A & E2A pay scales was not given by DOT vide DoT letter No. 61-02/2011-SU dated 14.7.2011 (copy enclosed as Annexure-A).

3. In order to mitigate the financial loss on fixation of pay in revised pay scale (E1 i.e. Rs. 18400-40500), the initial pay of JTOs / JAOs who joined after 1.1.2007 has been fixed by giving five advance increments in E1 pay scale i.e. their pay has been fixed initially at the stage of Rs. 19020/- in revised E1 pay scale with the approval of BSNL Board. But, the Associations of Executives in BSNL have raised demand for grant of E2 / E3 pay scales in place of pre-revised E1A and E2A.

4. BSNL has analyzed that in case the revised E2 / E3 IDA pay scale are extended to JTO / SDE & equivalent executives as demanded by the Associations, this will set off a cascading process of grant of one step higher pay scales to the executives belonging to E3 / E4 / E5 / E6 pay scales. This shall result in huge financial implications on account of higher pension contribution w.e.f. 01.01.2007 (i.e. atleast Rs 230 Crores (approx.) for the period from Jan-2007 to Mar-2013 and recurring additional burden of Rs. 40 Crores annually), which is to be paid to DOT at the rates based upon the maximum of the pay scale. This additional burden will not, however, make any difference to the pension payable to the employee after his retirement.

Contd.....

o/c
Date 13/12/13
Time 5:15pm

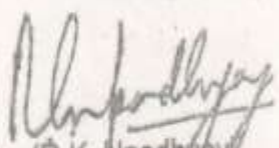
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5. Since, as provided in para 2 *ibid*, the approval for revised E1A & E2A pay scales was not given by DOT vide DoT letter No. 61-02/2011-SU dated 14.7.2011, I would request you to instruct the concerned officers to take up the issue with DPE for approval of revised E1A / E2A pay scales. For the convenience of DoT, a detailed brief in the matter is enclosed at Annexure-B.

With profound regards,

Yours sincerely,

Encl: As above.


(R.K. Upadhyay)
13/12/2012

Shri M.F. Farooqui, IAS
Secretary (Telecom.)
Government of India
Sanchar Bhawan,
New Delhi-110 001.