

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA**

DATE OF HEARING : 26.02.2024
DATE OF JUDGMENT : 06.03.2024

Coram: Hon'ble Mr. Jayesh V. Bhairavia, Judicial Member

Hon'ble Mr. Suchitto Kumar Das, Administrative Member

In the matter of :

O.A. 350/01354/2020

All India Telecom Executive & Engineers Association represented by All India President, AITEEA, **Prasanta Kumar Nag**, son of Swadesh Ranjan Nag, Resident of Village-Bhagabanbasan, PO- Dhamtora, Police Station- Debra, District-Paschim Medinipur, Pin- 721126.

O.A. 350/01355/2020

Subhankar Mandal, Son of Sanatan Mandal, working as Junior Telecom Officer at JTO External at Office of the Sub Divisional Engineer, Ashoknagar, Barrackpore, Resident of Radhanagar Goalpara Bye Lane, PO- Ghurni, District- Nadia, Pin- 741103.

O.A. 350/01356/2020

Subhankar Rana, Son of Adyaita Kumar Rana, working as Junior Telecom Officer JTO AT CTD at the office of the Divisional Engineer Telecom, Acceptance Testing QA & Inspection Circle, 148, C.R. Avenue, Kolkata-700007. Resident of Village & PO-Gujarpur, Police Station- Shyampur, District- Howrah, Pin- 711314.

.....Applicants

Vs.

1. Union of India, service through the Secretary, Department of Telecommunications, Ministry of Communications, Sanchar Bhawan, 20, Ashoka Road, New Delhi-110001.

2. Department of Public Enterprises, service through the Secretary, Ministry of Heavy Industries & Public Enterprises, Udyog Bhawan, New Delhi-110107.

3. Bharat Sanchar Nigam Limited, service through the Chairman & Managing Director, having office at Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi-110001.

4. Bharat Sanchar Nigam Limited, service through the Chief General Manager, West Bengal Telecom Circle, 1, Council House Street, Kolkata-700001.

5. Bharat Sanchar Nigam Limited, Calcutta Telephones District, Through the Chief General Manager, 2nd Floor, Telephone Bhawan, 34, BBD Bag (South), Kolkata-700001.

.....Respondents

For The Applicant(s): Mr. D. Chakraborty, Counsel

For The Respondent(s): Mr. R. Mukherjee, Counsel

Ms. S. Bhaduri, Counsel

Ms. P. Goswami, Counsel

ORDER

Per: Hon'ble Suchitto Kumar Das, Administrative Member

Due to parity in the nature of grievance and facts pleaded, **OA/350/01354/2020, OA/350/1355/2020** and **OA/350/01356/2020** are being heard out analogously, upon due notice, to be disposed of by this common order, with consent of all the sides.

2. The applicants have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following common relief:

“a) Leave may be granted allowing the applicant to move this application jointly with other similar applications;

b) An order directing quashing and/or set aside the Order issued by the Department of Telecommunications dated 10th December, 2019 communicated to the Applicant vide Office Memorandum being No. F.78-138-SU-IV dated 10.12.2019;

c) An order directing quashing and/or set aside the order issued by the Department of Telecommunications vide Office Memorandum being No. 61-2/2016-SU dated 28.03.2017;

d) An order directing the Respondent authorities to act in terms of Office Memorandum of the Department of Public Enterprises being No. 2 (70)/08-DPE (WC) dated 26th November, 2008 and recommendations of Internal Committee of the Respondent no. 3 dated 9th July, 2015 in upgrading the pay scales of some of the members of the Applicant's society from an Intermediate Pay Scale to the immediately higher pay scale being E2;

e) An order directing the respondent authorities to certify and transmit all the relevant records of the instant case to this Hon'ble Court, so that after perusing the same conscionable justice may be done in favour of the petitioners;

f) And to pass any other order or orders, direction or directions as Your Lordships may deem fit and proper ."

3. For the sake of brevity, the facts of **OA/350/01354/2020 (Prasanta Kumar Nag)** is being delineated and discussed hereunder :

3.1 All India Telecom Executive & Engineers Association, on behalf of some of its members who were absorbed/recruited by BSNL as Junior Telecom Officers (JTO) in Pay Scale E-1A (9850-250-14600) has filed this application aggrieved by the authority's decision not to grant them E-2 scale from the date from which 2nd PRC recommendations were implemented. On formation of BSNL, the JTOs were absorbed from their erstwhile posts in Department of Telecom and were granted E1A scale. Subsequently BSNL recruited JTOs directly in E1A scale as per the employment notification for JTOs.

3.2 Department of Public Enterprises (DPE) following the 2nd PRC in its recommendations, stipulated that all CPSEs will have only Grades from E0 to E9 for below Board level Executives. While notifying the pay scales for various grades of executives, BSNL informed that revised pay scales for E1A, E2A

and E9A grades would be notified later. BSNL referred the issue of revision of pay scales for grades E1A, E2A and E9A to DoT for decision with the recommendation that E1A should be merged with E2 grade and E2A with E3 grade. These recommendations were not accepted by DoT. However, the issue remained unresolved for the next few years. In the interim, BSNL fixed the grades of erstwhile E1A Officers in E1 grade giving them five additional increments.

3.3 Some of the JTOs, aggrieved by the respondents' refusal to consider granting E2 grade to them, filed an OA no. 1337 of 2017 which was disposed of by this Tribunal by directing the applicants to file a comprehensive representation, on receipt of which the respondents were directed to consider the representation within two weeks and pass a speaking order. BSNL authorities passed a speaking order on 10.08.2018 explaining the circumstances and informing the applicants that the matter was pending with the Department of Telecommunications (DoT). DoT passed a speaking order on 10.12.2019 denying the claim of the applicants. On 28.03.2017, DoT, in pursuance of the direction of the Coordinate Bench at Chandigarh, issued a memorandum granting the scale of Rs. 18,850-40,500/- to erstwhile E1A Officers. These scales were made personal to the executives absorbed/recruited by BSNL in E1A grade.

3.4 Aggrieved by the speaking order dated 10.12.2019 and DoT's memorandum dated 28.03.2017, the applicants have filed this OA.

4. Learned Counsel for the applicants submits that pursuant to DPE's OM dated 26.11.2008, the Executives in E1A and E2A grades should have been given next higher grade, i.e., E2 and E3 respectively as by this OM, all

intermediate grades in all CPSEs were abolished. Learned Counsel submits that erstwhile E1A and E2A grades were distinct and separate grades. DoT's notification dated 08.03.2017 granting the intermediate scales of pay within E1 and E2 grades respectively amounted to downgrading the grades of the affected Executives from E1A to E1 and E2A to E2 grades. Learned Counsel for the applicants submits that the BSNL authorities have themselves recommended to DoT to grant E2 and E3 grades to erstwhile E1A and E2A grades respectively. These recommendations should have been considered by DoT which cannot discriminate against one set of employees on the ground that granting them E2 and E3 grades would adversely affect the organization financially. Learned Counsel for the applicants further submits that in some other CPSEs like the FC1 Executives in E1A grade were granted E2 grade to conform to the DPE directions. Putting the erstwhile E1A in E1 grade adversely affects the rights of such employees without any fault on their part.

5. Per contra, Learned Counsel for BSNL submits that the respondents have followed the DPE directions in abolishing the intermediate grades like E1A and E2A. These grades essentially owed their existence to the Government's efforts to protect the pay of the DoT Officials who were absorbed by BSNL upon its formation. Once the DPE notified the revised pay scales as per the recommendations of the 2nd PRC on 26.11.2018, the respondents could not have continued with the intermediate grades like E1A, E2A, etc. All Executives were fitted in one of the 10 notified grades of pay from E0 to E9. Learned Counsel submits that the BSNL's recommendation to DoT to grant E2 and E3 grades to E1A and E2A Executives was not accepted by the DoT which vide its memorandum dated 08.03.2017 granted an intermediated

scale of Rs. 18,850-40,500/- to the Officials who were in E1A grades purely on personal basis.

5.1 Learned Counsel for DoT, adding to the submissions made by the BSNL, submitted that as per the DPE's memorandum of 26.11.2008, the controlling Ministry of the CPSE concerned has to take a final decision on pay revision of the employees of the CPSE keeping in view the financial condition of the CPSE and its ability to pay the revised remuneration. DoT had taken a conscious decision, keeping in view the financially stressed condition of BSNL, to strike a balance between the claims of the employees and the organization's ability to bear the additional expenditure. Learned Counsel submits that conceding the demand of the applicants to grant them E2 and E3 grades would create a cascading effect among all grades, financial implications of which will be severe for the organization. Learned Counsel for the respondents points out that CPSEs by definition are independent of each other and a decision by the Food Corporation of India has no bearing on the decision making process for BSNL.

6. Heard the parties. Perused material on record.

6.1 The dispute in this case has admittedly arisen after the implementation of the pay revision following the recommendations of the 2nd PRC. This pay revision for CPSEs was notified by DPE's memorandum no. 2(70)/08-DPE (WC) dated 26.11.2008. Further clarifications were issued by DPE vide OM dated 24.12.2012.

Relevant extracts from the said memorandum dated 24.12.2012 are quoted below :-

(emphasis added)

“.....

2. It is clarified that below board level executives of CPSEs have necessarily to be in the specified grades of E0 to E9 in a CPSE depending upon the schedule of their CPSE. CPSEs are free to recruit executives for each grade as per their functional requirement, and as per the rules framed therefor. However, each CPSE can only adopt and recruit executives to the 10 grades (E0 to E9) provided in the DPE guidelines. For example, in case if it is 'E0 Grade', the corresponding pay scale must be Rs. 12,600-32,500 and in case it is 'E6 Grade', it has to be Rs. 36,600-62,000/-. The grade and corresponding scale of pay cannot be altered by the CPSEs. Appropriate nomenclature for these Grades as per the standard practice of the CPSEs may be followed.

3. Further, no intermediary scales have been permitted under DPE OMs dated 26.11.2008 and 02.04.2009. Generally, promotion has to be from one 'Grade' to next higher 'Grade' with its corresponding scale as per the promotion policy of respective CPSEs. A CPSE cannot have more than one pay scale in a grade (say DGM & GM in E8 pay scale) to promote its executives within the same grade.

.....”

By the said memorandum, it has been unambiguously stated that all CPSEs must have only grades from E0 to E9 for below Board level Executives and that all existing intermediate grades should be done away with.

6.2 Para 17 of DPE's OM dated 26.11.2008 is quoted below :-

“17. Issue of Presidential Directive, effective date of implementation and payment of allowances etc. : The revised pay scales would be implemented by issue of Presidential Directive in respect of each CPSE separately by the concerned Administrative Ministry/ Department. The revised pay scales will be effective from 1.1.2007. The payment of HRA, perks and allowances based on the revised scales will, however, be from the date of issue of Presidential Directive. The Board of Directors of each CPSE would be required to consider the proposal of pay revision based on their affordability to pay and submit the same to the Administrative Ministry/ Department for approval. The concerned Administrative Ministry with the concurrence of its Financial Advisor will issue the Presidential Directive. A copy of the Presidential Directive issued to the CPSEs concerned may be endorsed to the Department of Public Enterprises.”

The above quoted memorandum enjoins upon the Board of Directors and the respective Ministries controlling the CPSEs under them to take a decision on implementation of the revised pay scales considering the financial status of the CPSE and its ability to pay the revised salaries. In the instant case, the decision lay with the DoT, Ministry of Communication which is the controlling Ministry for BSNL. Financial condition of BSNL being not good,

DoT took a conscious decision not to grant higher grades to the employees in erstwhile intermediate grade. On abolition of the intermediate grade, it had to be merged with one of the existing grades. The applicants have no vested right to be absorbed in the next higher grade. By their notification dated 28.03.2017, the respondents have granted the scale of Rs. 18,850- 40,500/- to E1A Executives and Rs. 22,800-46,500/- to E2A Executives. These scales are decidedly higher than the revised scales in E1 and E2 grades respectively and adequately protect the individual financial interests of the Executives in E1A and E2A grades. We do not agree with the contention of the applicants that their fitment in the scale of Rs. 18,850-40,500/- for E1A and Rs. 22,800-46,500/- for E2A Executives amounts to downward revision of their grades.

6.3 We accept the averment of the respondents that merging E1A and E2A grades with E2 and E3 grades would result in a bigger and recurring liability for BSNL which is in a poor financial state. The respondents are well within their rights to fix the pay scale of the applicants at an intermediate stage in E1 grade and the applicants have no vested right to be fitted in the next higher grade.

We, thus, find no legal infirmity in the decision of the respondents conveyed through the order impugned in the OAs.

7. OAs lack merit and are dismissed. No costs.

(Suchitto Kumar Das)
Administrative Member

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(Jayesh V. Bhairavia)
Judicial Member

