

**CENTRAL ADMINISTRATIVE TRIBUNAL  
MADRAS BENCH**

**OA 310/00440/2014**

**Dated Tuesday the 12<sup>th</sup> day of July Two Thousand Sixteen**

**P R E S E N T**

**HON'BLE MR. JUSTICE G. RAJASURIA, Member (J)**

1. P. K. Sethuraman
2. Mala Chandrasekaran
3. V. Rajeswari
4. Uma Rajaram
5. T. Hema
6. S. Senthamarai
7. V. Vasantha
8. C. Alli
9. C. B. Amutha
10. V. R. Sarasuwathi

... Applicants

By Advocate **M/s. R. Rajesh Kumar**

**Vs.**

1. Union of India  
Rep. by its Secretary, DOT  
Ministry of Communication and  
Information and Technology  
New Delhi – 1.
2. The Chiarmen cum Managing Director  
BSNL Corporate Office  
Bharath Sanchar Bhavan  
Harish Chandra Mathu Lane  
Janpath, New Delhi – 110 001.
3. General Manager (Personnel)  
BSNL Corporate Office  
R. No. 221, 2<sup>nd</sup> Floor, Eastern Court  
Janpath, New Delhi – 110 001.



4. Chief General Manager  
BSNL, Chennai Telephones  
No. 78, Purasawalkam High Road  
Chennai - 10.

... Respondents

By Advocate **Mrs. Shakila Anand (R1)**  
**Mr. A. S. Chakravarthy (R2-4)**



No.



## ORDER

(Pronounced by Hon'ble Mr. Justice G. Rajasuria, Member(J))

Heard both.

2. This OA has been filed seeking the following reliefs:

- "1. To quash the impugned order of respondent bearing Ref No. BSNL/CHTD/CA II/2-9/Court Case/OA 220 2014/2013-14/7 dated at Ch-01 the 07.03.2014 and consequently restrain the respondent from recovering the purported over pay granted to the applicants.
2. Direct the respondent to restore the pay scale fixed on 1.4.2003 by the respondent for the applicants and consequently direct the respondent to reimburse the amount reduced by the respondent after carrying out reduction of pay from 1<sup>st</sup> July 2013 onwards.
3. Pay all Consequential benefits of arrears of the pay and allowances arising there from and to pass such or other order as this Court may deem fit and proper in the circumstances of the case"

3. Shorn and bereft of unnecessary details the germane facts absolutely necessary for the disposal of this OA would run thus:

The applicants earlier joined the service under the Department of Telecom. Thereafter on the emergence of BSNL on 01.10.2000, they were transferred and absorbed as JAOs. During the year 2001, they were promoted to officiate as Assistant Accounts Officers. Whileso such promotion was followed by regular promotion w.e.f. 01.04.2003 and their pay was fixed at Rs. 12475/- taking into account the increments which they earned as Officiating Assistant Accounts Officers from 2001 to 2003. Subsequently during the year 2007, promotion policy for Group B employees vide OM No. 400-61/2004-pers.I/308 dated 18.01.2007 was formulated and it contemplated "Time Bound Promotion Policy". As such, the



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error committed by the respondent BSNL was to the effect that retrospectively their pay fixed at Rs. 12475/- was re-fixed to the detriment of the applicants at Rs. 11875/- as per the new policy ignoring the increments which they gained during their service as officiating AAOs and they also ordered recovery of the alleged excess payment as per Annexure A12 dated 07.03.2014. As per the decision of the Hon'ble Apex Court in the case of State of Punjab and Ors Vs Rafiq Masih (White Washer), no such recovery is possible. Over and above that such reduction in their pay fixation is also untenable as per the well settled proposition of law. Accordingly, he would pray for allowing this OA.

4. Per contra, the learned counsel or the respondent No. 1 placing reliance on the reply would submit that DOT is not at all a necessary party because the matter in issue is exclusively pertaining to the BSNL. Accordingly she would pray for dismissing the OA against the first respondent.

5. The learned counsel for remaining respondents would pyramid his arguments in a bid to torpedo and pulverise the argument as putforth on the side of the applicant, the warf and woof of the same would run thus:

The applicant cannot approbate and reprobate and cannot try to get double benefit. The new policy of BSNL as contained in Annexure A3 the Time Bound upgradations are contemplated and actually the facilities accorded to Group 'B' officials are higher than the facilities accorded to the central government employees. Placing reliance on Annexure A4 dated 19.02.2010, which contains the clarification on various points,



	Issue raised	Clarification
4	Seeks protection of pay drawn by some executives in local officiating arrangement before grant of time bound pay scale upgradation	Pay drawn in local officiating arrangement will not be protected under time bound promotion policy
9	Whether the IDA scale already drawn in higher post under local officiating arrangement can be protected	Para (1.1.d.3) of EPP vide OM dtd 18.1.07 is self explanatory. Pay drawn by virtue of any local officiating arrangement will not be allowed to be protected.

would develop his arguments that the issue involved in this case was already dealt with in the said Annexure A4 and the BSNL took a conscious decision that such benefit of increment which the applicants got in their officiating capacity cannot be ushered in while fixing the pay in Time Bound Pay Scale. Absolutely there is nothing wrong in the order found incorporated in Annexure A12. Accordingly he would pray for the dismissal of the OA.

6. The point for consideration is as to (i) Whether the Time Bound upgradation Policy contemplated in Annexure A3 dated 18.1.2007 can be made applicable retrospectively so as to reduce the pay fixed already. (ii) Whether recovery of the alleged excess amount is tenable.

7. At the outset itself, I would like to fumigate my mind with the decision of the Hon'ble Apex Court in (2003) 10 SCC 297 in the case of Grid Corporation of Orissa and Ors Vs Rasananda Das cited by the learned counsel for the applicant and an excerpt from it would run thus:





"9. We may add that there was protection of service conditions of such employees but there was no prohibition from improving them or giving better pay scales. The appellants having given better pay scales, as early in 1969, cannot reduce the pay scales when it comes to granting pensionary/retiral benefits for the period between the age of 58 to 60 years. The argument advanced in this regard that although the employees are entitled to continue in service up to the age of 60 years but during the period of 58 to 60 years they should not be governed by the pay scale applicable to regular employees of the Board cannot be accepted. When the employees continue to work up to the retirement age of 60 years their pay scales cannot be reduced for the period between 58 to 60 years. There is no question of taking any double advantage as sought to be contended on behalf of the appellants in the light of the undisputed facts. Better pay scales were given without any reservation and even at the time of giving these pay scales it was not mentioned that after the age of 58 years they should be governed by the regular pay scales applicable to the employees of the Board. There cannot be two types of pay scales one for the purpose of continuing in service up to the age of retirement and the other for the period between 58 to 60 years. It must be kept in mind that pension is not a bounty but it is hard-earned benefit for long service, which cannot be taken away.

10. Looking to the facts found and the reasons recorded by the High Court in the impugned orders we cannot find fault with them. These appeals do not have any merit. Consequently they are dismissed with no order as to costs.

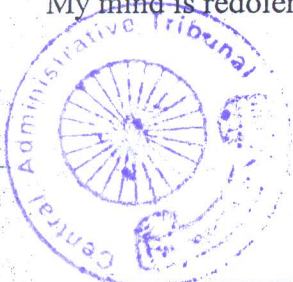
IA. Nos. 15-16 and 19-20 in C.A. Nos. 348-349/1974

11. In these I.As. applicants have sought for certain directions relating to fixing of time limit for filing applications by the employees for identification before the Labour Court pursuant to the judgment dated 13.8.1985 in Civil Appeal Nos. 348 and 349 of 1974, with regard to payment of interest @ 10% per annum from the particular date and to pay arrears of rent as to the quarters occupied by the employees at the market rate/penal rent in accordance with the Rules for the period after the employees attained the age of 60 years with interest. It is needless to state that those employees, who have overstayed after attaining the age of 60 years and who have not vacated the quarters after attaining the age of 60 years, shall pay arrears of rent/penal rent in accordance with the Rules for the period of their occupation and they shall have to vacate the quarters occupied by them. They cannot continue occupying the quarters after their retirement even at the age of 60 years. As regards the belated claims for identification of the workmen and the payment of interest on their arrears due, appropriate orders are to be passed in the light of the earlier orders of this Court and the order passed in the aforementioned appeals. The I.As. are disposed of accordingly.

Special Leave Petition (C) Nos. 14650/2001, 14653/2001, 14755/2001 and 14756/2001.

12. We do not find any merit in these petitions. Plain reading of the impugned orders shows that the appellants did not dispute the claims made by the respondents. In a way they conceded. In this view no further exercise is to be made in dealing with these petitions. Hence, they are dismissed."

My mind is redolent of the following decisions:





UOI & Ors Vs. CAT & Anr in W.P.No.25371 of 2013 dated 25.09.2013 by Hon'ble

Madras High Court and an excerpt from it would run thus:

"Thus, it is evident that if a government servant is given higher post, if he discharged the duties of the higher post otherwise than incharge basis, salary to the higher post shall be paid for the period he served in the higher post.

The learned counsel for the petitioners also produced the CCS Pension Rules and Rule 49 states that the amount of pension shall be calculated at 50% of average emoluments. The promotion order granted for one year by the Ministry of Communications & IT (Department of Posts) dated 20.11.2006 reads as follows:

"I am directed to say that the matter regarding filling up of the number of posts in the Higher Selection Grade-I lying vacant in various postal circles was under consideration of this Department. Due to up-gradation of pay scale of HSG-I, the existing Recruitment Rules are under revision. Pending the same, it was proposed to the Department of Personnel & Training (DOP&T) to allow the Department to fill up the vacant HSG-I posts from amongst officers holding the HSG-II norm-based posts on regular basis in relaxation of the existing Recruitment Rules. The DOP&T have, however, agreed as a special case to allow to fill-up the existing vacancies by promotion of the officers holding HSG-II norm-based posts on regular basis for a period of one year or till the Recruitment Rules are notified and appointments are made according to the revised Recruitment Rules, whichever is earlier.

It is requested that you may take necessary action to fill up the post of HSG-I lying vacant on adhoc basis in the manner stated above. It may, however, be ensured that you have already taken necessary action to fill up the posts as ordered from time to time as per the Check-list enclosed herewith.

This issues with the approval of the Secretary(Posts)."

In the said order, it is not stated that the promoted persons will not get salary to promoted post and the promotion is not by way of giving in charge or additional charge. Thus, the second respondent served/discharged the functions of regular Higher Selection Grade-I. The Tribunal also relied on the earlier order made in OA No.309 of 2010, which was



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confirmed by this Court in WP No.28689 of 2012. The said order of this Court also become final.

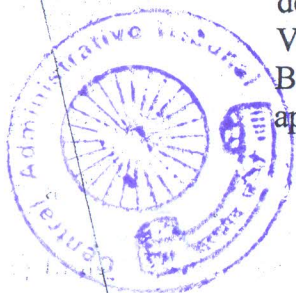
Considering the said Judgment as well as the undisputed fact that the second respondent served in the higher post and retired while serving in the higher post, the order of the Tribunal to pay pension on that basis is just and proper. We are unable to find any reason to interfere with the same. Hence, this writ petition is dismissed. Consequently, MP No.1 of 2013 is dismissed. No costs."

UOI & Ors Vs. Bhagyalakshmi & Anr in W.P.No.7163 of 2012 dated 10.11.201 by Hon'ble Madras High Court and an excerpt from it would run thus:

8. It is also not the case of the first respondent that she had completed three years of service as HSG II. The next promotion to the post of LSG on which she was working was HSG-II. There is no dispute that the petitioner was asked to officiate HSG-I during different periods as aforestated.

12. The contention of the petitioners that under the Circular dated 27.4.2009, the first respondent was not entitled to any right for continuance in HSG I cadre for regular promotion does not negate the mandate of the Official Memorandum dated 11.12.2008 and also the subsequent contention that the said memorandum is violative of rules, which provides for promotion to HSG I, is also not sustainable in law. The 1976 Rules provides for method of appointment by way of promotion or transfer, wherein the requirement is for HSG-II is three years experience and LSG is not the feeder category for promotion to the post of HSG-I. However, the said rules do not provide for computation of pension. The relevant Office Memorandum dated 2.9.2008 and the clarificatory Office Memorandum dated 11.12.2008 clearly provide that pension of the employee shall be calculated on the basis of the last pay and allowances drawn or average of the emoluments received during the last 10 months whichever is more beneficial.

15. Further reliance of the learned counsel on the decision dated 13.08.2014 of this court in R.Kuppuswamy Vs. The Registrar, Central Administrative Tribunal, Chennai Bench and others (W.P.No.15512 of 2013) is also not applicable to the facts of this case as in the said case, the



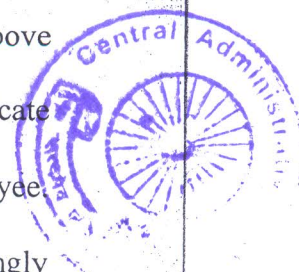
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petitioner therein sought for a direction to pay fixation as well as pension thereon. The facts of the case on hand is distinguishable.

16. In view of the foregoing, the impugned order passed by the Tribunal cannot be flawed and as such, no interference is warranted."

As such, a cumulative reading of the cited supra decisions would leave no doubt in the mind of this Court that an employer cannot deny the benefit of the emoluments attached to a particular post. As such in this case earlier appropriately and appositely, correctly and legally, the BSNL w.e.f. 01.04.2003 fixed the applicants pay taking into consideration the increments which they earned earlier while officiating as AAO. It is not a case where of the applicants made were to the incharge of a post for a short spell of time and thereafter reverted back to their parent cadre. This is a case where even in the year 2001 the applicants were promoted as officiating AAOs and that was followed by regular promotion in the year 2003 and w.e.f. 01.04.2003 their pay was fixed at Rs. 12475/- taking into account the increments earned by them as officiating AAO. As such the excerpts extracted supra from Annexure A4 cannot be pressed into service. Over and above that the decision of the Hon'ble Apex Court first cited supra would clearly indicate and high light that there can be no pay revision to the detriment of the employee. Infact in Annexure A1 appropriately BSNL referred to FR 22 Ia(1) and accordingly fixed their pay at Rs.12475/- and absolutely there was nothing wrong in the fixation. The contention putforth on the side of the BSNL is that the policy as contained in Annexure A3 itself is conferring <sup>a</sup> lot of benefits <sup>on</sup> to the employees as Time Bound upgradations are contemplated. In such a case while retrospectively



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applying the policy the increments already given to them in their officiating capacity as AAO was taken into account and there was nothing wrong in that. In my considered opinion what is settled should not be unsettled and that too in financial matters an employee cannot be made to lose any benefit by the unilateral act of the employer under the pretext of implementing certain new policies with retrospective effect. As such, fixation of the pay as contained in Annexure A1 is perfectly in order and that should be continued and accordingly protecting their earlier pay, the pay has to be fixed and accordingly the matter has to be processed.

8. I would like to recollect the decision of the Hon'ble Apex Court in the case of State Of Punjab & Ors vs Rafiq Masih (White Washer) in Civil Appeal No. 11527 of 2014. Here it is a case where as per Annexure A12 dated 07.03.2014 the alleged excess is sought to be recovered from 2003 onwards which is against the law found embodied in the decision of the White Washer case.

9. Accordingly, the OA is disposed of by directing that the respondents shall give protection of the applicants' pay already fixed at Rs 12475/- while fixing their pay and that there shall be no recovery of any amount from the applicants and accordingly the matter has to be processed and if any amount is due payable to them the same shall be paid to them. Respondent no. 1 is unnecessary party in the OA.

10. Accordingly the OA is disposed of.

"Free Copy U/R 22 of  
CAT (Procedure) Rules"

/ TRUE COPY  
K. Kishore  
SECTION OFFICER 9/8/16.

