

# BSNL EMPLOYEES UNION

**Recognised Union in BSNL**

(Registered Under Indian Trade Union Act 1926. Regn.No.4896)

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BSNLEU / 526 (JTO)

26.09.2011

To

Shri R.K. Goyal,  
GM (Estt.), BSNL CO,  
Bharat Sanchar Bhawan,  
New Delhi- 110 001

Sir,


Sub: - Judgment dated 05.09.2011 in R.A. No.125/2011 and M.A. No.3082 of 2010 in O.A. No. 1282/2010 issued by CAT Principal Bench, New Delhi – Request for implementation - req.

Kindly refer the above cited judgment where in it was directed to implement the order dated 26.08.2010 issued by the Principal CAT, New Delhi, on the issue of fixation of pay under FR 22 (i) (a) (i) in the JTO pay scale for the officiating JTOs.

We shall be thankful for implementing this judgment without further propagation of the litigation.

Thanking you,

Yours Sincerely,



**(P. Abhimanyu)**  
**General Secretary**

Encl: As above.

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

Review Application No.125 of 2011  
Misc. Application No.3082 of 2010  
in  
Original Application No.1282 of 2010

This the 5th day of September, 2011

HON<sup>BLE</sup> SHRI JUSTICE V. K. BALI, CHAIRMAN

HON<sup>BLE</sup> DR. RAMESH CHANDRA PANDA, MEMBER (A)

Bharat Sanchar Nigam Ltd. & others

Applicants

( By Shri Sameer Aggarwal, Advocate )

Versus

BSNL Officers Association Regd.) & Anr.

Respondents

( By Mrs. Rani Chhabra, Advocate )

O R D E R

Justice V. K. Bali, Chairman:

The positive case as set up by the applicants in the Original Application was that the relief asked for by them would be covered by the judgment of this Tribunal in Ernakulam Bench in the matter of M. V. Salilkumar & others v Chairman & Managing Director & others (TA No.84/2008 and connected matters, decided on 15.7.2009). During the course of hearing, no dispute was raised that the relief asked for by the applicants would be different from the one that was accorded by the Bench at Ernakulam, or that the facts of the present case would be in any way different from the one subject matter of decision in TA No.84/2008 and connected matters decided by the Ernakulam Bench. The only dispute raised was that once, a writ against the order of the Tribunal in Ernakulam had been filed in the Kerala High Court, the matter be kept pending. Paras 2 and 3 of the order passed by us on 26.8.2010 read as follows:

2. Inasmuch as, present matter is covered in favour of the applicants by the decision of Ernakulam Bench of this Tribunal in the matter of M.V. Salilakumar & Ors. V/s. The Chairman & Managing Director & Ors., (TA No.84/2008 and other connected TAs decided on 15.07.2009), there will be no need to give facts in detail.

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<sup>ble</sup> 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.

The order is oral passed in the presence of counsel representing the parties. Against our orders a writ petition bearing WP(C) No.1339/2011 came to be filed before the Delhi High Court by the respondents in the OA, which has been disposed of vide orders dated 28.2.2011. The order passed by the High Court reads as follows:

☐ Heard Mr. Sameer Aggarwal, learned counsel for the petitioner.

It is submitted by him that the tribunal has erroneously placed reliance on the decision rendered by the Ernakulam Bench in the matter of M. V. Salilkumar & Ors. v. The Chairman & Managing Director & Ors., whereas the factual matrix is absolutely different and the said decision is not applicable to the case at hand.

On a perusal of the order passed by the tribunal, we do not perceive that this stand has been taken before the tribunal. Learned counsel for the petitioner submitted that the stand was taken but the same has not been adverted to in the order.

Regard being had to the aforesaid submission, we are inclined to grant liberty to the petitioner to file an application for review under Section 22(F) of the Administrative Tribunals Act, 1985.

We may hasten to add that we have not dwelled upon the merits of the contentions as we have granted liberty to file an application for review.

With the aforesaid direction, the writ petition as well as the application stand disposed of.☐

Perusal of the order passed by the High Court would clearly manifest that from perusal of the order passed by us it could not be perceived that the stand as taken in the High Court that no reliance could be placed upon the decision of the Ernakulam Bench, as the factual matrix of the case in hand and that of one before the Ernakulam Bench were entirely different, was taken before the Tribunal in the OA. Learned counsel for the petitioners before the High Court would, however, submit that such a stand was taken, but the same was not even adverted to by the Tribunal. It is in consideration of the plea raised by the counsel for petitioners before the High Court that such stand had been taken but not adverted to by the Tribunal, that the petitioners were granted liberty to file review before the Tribunal. Hence, present application seeking review of our order.

2. We have gone through the contents of the review application. It is unfortunate that for some time past a tendency is growing in the litigants that instead of contesting the matter on legal and factual issues, which is their right, by often twisting the facts before the Hon<sup>ble</sup> High Court, they are able to secure favourable orders, even though for limited duration. The facts of the present case would demonstrate that the review applicants have indeed indulged in misadventure by being totally indiscriminate and by twisting facts, bordering on falsehood. In para 2(a) to (c) of the review application, facts leading to filing of the OA have been mentioned. Sub-paras (d) to (i) of para 2 read as follows:

☐d) Inadvertently and by mistake, Kerala Circle of the Respondents' Corporation granted benefit of pay applicable to JTO (Group-B, Gazetted) to the Officiating Local JTOs, who had been promoted on adhoc basis from TTA (Group-C Cadre) post, which excess pay was later attempted to be recovered by way of an office order against which some of officiating local JTOs in Kerala Circle filed Writ Petition No.28349/2005 and other Writ Petitions before the Hon<sup>ble</sup> Kerala High Court wherein they claimed fixation of pay under Fundamental Rule 22(1)(a)(i) in the scale of pay applicable to the post of JTO (Group-B Gazetted) and objected to the recovery which Writ Petitions were decided in their favour by a Hon<sup>ble</sup> Single Judge of the Hon<sup>ble</sup> Kerala High Court. The Respondent Corporation appealed against the above decision of the Hon<sup>ble</sup> Single Judge to the Hon<sup>ble</sup> Division Bench of Kerala High Court by way of Writ Appeal No.1735/2006 and others in which the Hon<sup>ble</sup> Division Bench while setting aside the decision of the Hon<sup>ble</sup> Single Judge directed the Respondent Corporation to give an opportunity of being heard to the Writ Respondents regarding fixation of pay. Accordingly, the Respondent Corporation granted opportunity of hearing and the Orders dated 20.11.2007 and 04.12.2007 rejected the claim of the Officiating Local JTOs regarding fixation of their pay as applicable to JTO.

e) Some of the Officiating Local JTOs again filed writ petitions against Orders dated 20.11.2007 and 04.12.2007 before the Hon<sup>ble</sup> single Judge of the Hon<sup>ble</sup> Kerala High Court, which writ petitions were later transferred to the Ernakulam Bench of the Hon<sup>ble</sup> Tribunal and the transferred petitions came to be decided in favour of the applicants by the Hon<sup>ble</sup> Ernakulam Bench of the Tribunal vide decision dated 15.07.2009 in the case of M.V. Salilkumar & Ors. Vs. The Chairman & Managing Director & Ors. It is pertinent to submit here that the Hon<sup>ble</sup> Ernakulam Bench of the Tribunal has simply followed the decision of the Hon<sup>ble</sup> Single Judge passed earlier which decision was set aside by the Hon<sup>ble</sup> Division Bench of the Hon<sup>ble</sup> Kerala High Court but did not independently apply its mind to the facts and law as is evident from para 10 of the judgment dated 15.07.2009.

f) Aggrieved by the judgment dated 15.07.2009 of the Ernakulam Bench of the Hon<sup>ble</sup> Tribunal the Respondent Corporation filed Writ Petition Nos.8077/2010 and 7723/2010 before the Hon<sup>ble</sup> Kerala High Court which Writ Petitions have been admitted by the Hon<sup>ble</sup> High Court. However, no stay of the decision appealed against was granted by the Hon<sup>ble</sup> Kerala High Court.

g) Claiming parity and seeking extension of benefit granted vide Judgment dated 15.07.2009 by the Ernakulam Bench of the Hon<sup>ble</sup> Tribunal, the Applicants herein, filed Original Application No.3213 of 2009 before the Hon<sup>ble</sup> Tribunal which Original Application No.3213 of 2009 was disposed of at the admission stage itself, vide Order dated 11.11.2009 by the Hon<sup>ble</sup> Tribunal directing the Respondent Corporation to examine whether the cases of the Applicants are covered by the aforesaid decision of the Ernakulam Bench and pass appropriate orders accordingly, and if it is found otherwise to pass a reasoned, and speaking order in the matter, under intimation to the Applicants.

h) Pursuant to the directions issued by the Hon<sup>ble</sup> Tribunal in its Order dated 11.11.2009 the Respondent Corporation examined the matter and passed reasoned and speaking order dated 05.01.2010 inter alia, on the ground that the officiating officers are not fulfilling the eligibility condition vis-à-vis the prescribed pre-appointed training as per Rule 5(2) of the JTO Recruitment Rules, 1996 they are entitled for pay fixation under FR-35 as per the provisions of GOI Order 3 below FR 35, DOPT OM No.1/10/89-Estt.(Pay-I) dated 22.10.1990; that the Respondent Corporation has not accepted the judgment of the Hon<sup>ble</sup> Ernakulam Bench of the Tribunal and challenged the same by way of Writ Petitions before the Hon<sup>ble</sup> Kerala High Court and expressed its regret that it will not be possible for the Respondent to concede the request of the Applicants for fixing the pay of officiating JTOs without restriction under FR 35.

i) Aggrieved by the Order dated 05.01.2010 passed by the Respondent, the Applicants filed Original Application No.1282 of 2010 before the Hon<sup>ble</sup> Tribunal. The Respondent Corporation filed its counter to the original application claiming that the fixation of pay is to be done under Fundamental Rule 35 but not under Fundamental Rule 22(1)(a)(i) as claimed by the Applicants. It was specifically prayed in the counter that the matter may be kept in abeyance in view of the Respondent Corporation filing Writ Petitions before the Hon<sup>ble</sup> Kerala High Court which have been admitted and are pending for adjudication to which the Hon<sup>ble</sup> Tribunal did not agree but simply followed the decision dated 15.07.2009 of the Ernakulam Bench of the Hon<sup>ble</sup> Tribunal without appreciating that the facts in the present O.A. are different from the facts of the O.A. decided by the Ernakulam Bench of the Hon<sup>ble</sup> Tribunal.

As stated earlier the pay of the applicants before the Ernakulam Bench of the Hon<sup>ble</sup> Tribunal was initially fixed on their promotion, applying FR 22(1)(a)(1) and their carry home pay was increased by Rs.1,500/- per month. On the mistake being realized the BSNL directed the refixation of the applicants before the Ernakulam bench of the Hon<sup>ble</sup> Tribunal pay under FR 35 by which maximum amount of Rs,1000/- was to be given above the basic pay and not in the scale of pay of the post of JTO. The amount wrongly paid was ordered to be recovered. Being aggrieved of this action the applicants before the Ernakulam Bench of the Hon<sup>ble</sup> Tribunal had approached the Hon<sup>ble</sup> High Court of Kerala and were granted interim stay.

As against this in the case of the Applicants before the Delhi Bench of the Hon<sup>ble</sup> Tribunal, since the applicants were not satisfying the requirements stipulated under the JTO Recruitment Rules of 1996, their pay was rightly fixed under FR 35. Thus, the applicants before the Delhi Bench of the Hon<sup>ble</sup> Tribunal are on a completely different pedestal with no similarity whatsoever with the applicants before the Ernakulam Bench of the Hon<sup>ble</sup> Tribunal.

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 OA No.3213/2009 it has been clearly mentioned in clause (v) that "BSNL has not accepted the judgment dated 15.07.2009 of Hon<sup>ble</sup> CAT, Ernakulam and has initiated necessary action for challenging the said judgment before the Hon<sup>ble</sup> 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.

3. Why we have observed that of late a tendency is growing amongst the litigants to secure orders by hook or by crook is that this is not the only case where the respondents have sought and have been permitted to file review on mis-stating the facts before the Hon<sup>ble</sup> High Court. We have found from our experience that in some of the writs filed against our orders also a plea is raised that certain points were urged before the Tribunal, but it did not deal with the same. More often than not, on such statement, permission is sought and granted to move application for review. With a view to obviate such situation, we would hereafter specifically state in our orders that no points other than mentioned therein were raised by the learned counsel representing the parties.

4. The review application is dismissed.

M.A. No.3082/2010

This is an application seeking execution of the order dated 26.8.2010 passed in the OA. It was kept pending as against our order aforesaid, as permitted by the Hon<sup>ble</sup> High Court in the writ petition filed against the same, the respondents were allowed to make application for review, which has been dismissed by us today. That being so, we order the respondents to implement our order dated 26.8.2010 within a period of six weeks from today.

( Dr. Ramesh Chandra Panda )  
Member (A)

( V. K. Bali )  
Chairman