

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON  
&  
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

OP (CAT).No. 15 of 2015 (Z)  
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PETITIONERS/APPLICANTS 2, 3, 5, 10, 12 AND 14:  
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1. S.JAYAKUMAR,  
S/O. N. SREEDHARAN, AGED 50 YEARS,  
JTO (OFFICIATING) TELEPHONE EXCHANGE, MENAMKULAM  
KARIAVATTOM SUB DIVISION, TRIVANDRUM SSA, BSNL  
RESIDING AT AISWARYA, HOUSE NO. B9, NILA NAGAR  
AMBALATHIKARA, KAZHAKOOTAM P.O., TRIVANDRUM - 695 582.
2. J.M. SREEKUMAR, AGED 48 YEARS,  
S/O. K. MADHAVAN PILAI, JTO, TRANSMISION MAINTENANCE  
BSNL EXCHANGE, NEYYATINKARA - 695 121, BSNL  
RESIDING AT "SOUPARNIKA", PATHAMKALLU, ATHIYANNOOR  
ARALUMOODU P.O., TRIVANDRUM - 695 123.
3. SADEESAN NAIR N.  
S/O.N. NARAYANAN NAIR, AGED 52 YEARS,  
JTO (OFFICIATING) TELEPHONE EXCHANGE  
UDIYANKULANGARA, BSNL, TRIVANDRUM - 695 122  
RESIDING AT NARAYANEEYAM, KADAKULAM, PLAMOOTUKADA  
TRIVANDRUM - 695 122.
4. SAJEESH R. SUNDAR  
S/O. K. SUNDARESAN  
JTO (OFFICIATING), FTTH CORE GROUP, O/O. AGM(EB), BSNL,  
CTO BUILDINGS, STATUE, TRIVANDRUM- 695 001  
RESIDING AT 3A1,  
NIKUNJAM HERITAGE PETTA- KANNAMMOOLA ROAD  
PETTAH P.O., TRIVANDRUM.
5. S.JAYAPRASAD, AGED 50 YEARS,  
S/O. S. PURUSHOTHAMAN, JTO (RRC), O/O. AGM RRC  
REGIONAL REPAIR CENTRE, TELECOM BHAVAN  
MEDICAL COLLEGE P.O., TRIVANDRUM -695 011  
RESIDING AT REVATHI, ARUVIYDE, VATAPPARA P.O.  
TRIVANDRUM - 695 028.

6. RENUKA K.R, AGED 46 YEARS,  
W/O.C.C.SATHEESCHANDRA KUMAR, TELEPHONE EXCHANGE  
JTO (OFFICIATING), BSNL, PONGUMOODU  
KOOVALSSERY, TRIVANDRUM, RESIDING AT CHANDRANAND  
PERUMPAZHUTHOOR, NEYYATINKARA  
TRIVANDRUM - 695126 (JTO, PONGUMOODU, KOOVALSSERY  
TRIVANDRUM).

BY ADVS. DR.K.P SATHESAN (SENIOR ADVOCATE)  
SRI.SAJITH KUMAR V.  
SRI.P.K.ANTONY  
SMT.C.R.SMITHA

RESPONDENT/RESPONDENTS:

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1. THE BHARAT SANCHAR NIGAM LIMITED  
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR  
NEW DELHI - 110 001.
  2. THE CHIEF GENERAL MANAGER,  
(TELECOM), BHARAT SANCHAR NIGAM LIMITED, KERALA CIRCLE  
TRIVANDRUM - 695 033.
  3. THE GENERAL MANAGER,  
BHARAT SANCHER NIGAM LIMITED, TRIVANDRUM - 695 033.

R1-R3 BY ADV. SRI.P.J.PHILIP,SC,BSNL

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 05-08-2015, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS  
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EXHIBIT-P1-TRUE COPY OF THE ORDER IN M.A 180/01092/2014 IN R.A 180/00028/2014 IN O.A 619/2009 OF THE C.A.T, ERNAKULAM BENCH.

EXHIBIT-P2-TRUE COPY OF THE O.A 619/2009 FILED BEOFORE THE C.A.T.

EXHIBIT-P3-TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS DATED 05/12/2009 IN O.A 619/2009.

EXHIBIT-P4-A TRUE COPY OF THE ADDITIONAL REPLY STATEMENT FILED BY THE RESPONDENTS DATED 06/01/2009 IN O.A 619/2009.

EXHIBIT-P5-TRUE COPY OF THE AGREEMENT DATED 15/01/2010 BETWEEN THE BSNL AND TRADE UNION.

EXHIBIT-P6-TRUE COPY OF THE ORDER DATED 19/01/2010 IN O.A 619/2009 OF THE C.A.T ERNAKULAM BENCH.

EXHIBIT-P7-TRUE COPY OF THE LETTER NO. HR III/2-3/JTO (O)/PAY FIXATION/2012/PT/6 DATED 11/02/2012 ISSUED ON BEHALF OF THE 2ND RESPONDENT.

EXHIBIT-P8-TRUE COPY OF THE ORDER DATED 21/08/2013 IN O.A 1022/2012 OFTHE C.A.T, ERNAKULAM BENCH.

EXHIBIT-P9-TRUE COPY OF THE VIGILANCE REPORT DATED 20/03/2014.

EXHIBIT-P10-TRUE COPY OF THE ORDER IN O.A 3082/2010 DATED 26/08/2010 OF THE C.A.T, PRINICIPAL BENCH.

EXHIBIT-P11-TRUE COPY OF THE ORDER DATED 05/09/2011 IN R.A 125/2011IN O.A 1282/2010 BY THE PRINCIPAL BENCH.

EXHIBIT-P12-TRUE COPY OF THE JUDGMENT DATED 13/01/2012 IN W.P(C) 234/2012 OF THE HONOURABLE DELHI HIGH COURT.

EXHIBIT-P13-TRUE COPY OF THE REVIEW APPLICATION NO. 28/2014.

EXHIBIT-P14-TRUE COPY OF THE M.A IN R.A 28/104 IN O.A 61/2009 WITH AFFIDAVIT.

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**P. R. RAMACHANDRA MENON  
&  
BABU MATHEW P. JOSEPH, JJ.**

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O. P. (CAT) No.15 of 2015  
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Dated this the 5<sup>th</sup> day of August, 2015

**JUDGMENT**

**P. R. Ramachandra Menon, J.**

Correctness and sustainability of Ext.P1 order passed by the Tribunal in M.A. No.180/01092/2014 in R.A. No.180/00028/2014 in O.A. No.619 of 2009, virtually allowing the review application filed by the BSNL for causing the O.A. to be considered on merits, after condoning the delay in filing the review application, is under challenge at the instance of the applicants in the above O.A.

2. Heard Dr.K.P.Satheesan, the learned senior counsel appearing for the petitioners as well as Sri.P.J.Philip, the learned Standing Counsel appearing for the BSNL.

3. The prayers raised by the applicants in the O.A. are in the following terms:

- “(i) To quash Annexure-A13 to the extent it restrict revised scale of pay to applicants drawing fixation under FR 22-1(a)(1).
- (ii) To declare that the applicants are entitled to fixation of Pay under FR 22-1(a)(1) in revised scale of pay in the JTO category.
- (iii) To direct the respondents to sanction and disburse FR 22-1(a)(1) fixation to the applicants in the revised scale of pay applicable to JTO's with effect from 1/1/2007 and as ordered in Annexure-A11.
- (iv) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
- (v) Grant the cost of this Original Application.”

4. When the matter came up for consideration before the Tribunal on 19/01/2010, a submission was made from the part of the learned Standing Counsel for the respondents (recorded in paragraph 2 of Ext.P6 order as submission made by the “learned counsel for the parties”) that, the disputed Clause (Clause-7 of Annexure-A13) had already been removed and in the said circumstances, the matter could be disposed of accordingly. This was recorded and the O.A. was closed then and there. Years thereafter, a review

application was filed with a petition to condone the delay of '1668 days' in filing the review application. The factual sequence was sought to be substantiated before the Tribunal. After hearing both the sides, the delay was condoned and the O.A. was restored to file, holding that the submission made by the learned Standing Counsel appearing for the respondents that the issue was settled, was not correct and that no instruction was actually given to the learned Standing Counsel for having made such submission. This, according to the applicants, is liable to be intercepted by this Court and hence the original petition.

5. Learned senior counsel appearing for the petitioners submits that the dispute with regard to Clause-7 of Annexure-A13 proceedings dated 31/03/2009 pertains to the revision of scale of pay as applicable to the concerned employees below the Board level Executives. The BSNL issued a clarification in respect of the query at Serial No.7 in Annexure-A13. The query and the clarification are in the

following terms:

|   |                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7 | The manner of pay fixation of the official, holding substantive grade of Non-executive but working in the Executive grade on local officiating basis and drawing pay in the Executive grade with or without restriction of FR 35. | The officials holding substantive grade of non-executives but working in the executive grade on local officiating basis are to continue to draw the same pre-revised pay till the non-executives' pay scales are revised.<br><br>However, if the Non-executives, besides officiating in executive grade, also hold the pay scale of Executive due to grant of ACP, their pay may be fixed in the replacement revised pay scale corresponding to the pay scale drawn by him/her under ACP Scheme on Government pattern as clarified at Sl. No.4 above. |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Learned counsel submits that the clarification given as per Annexure-A13 was not in conformity with the actual facts and figures and since the same was detrimental to the rights and interest of the applicants, it was sought to be challenged by filing the O.A. It was in the meanwhile, that the issue was settled between the management and workers as per Ext.P5. Reference is made to Clause-2.1 dealing with

the terms of settlement, which reads as follows:

“2. TERMS OF SETTLEMENT

- 2.1 This settlement will be applicable to non-executives who were on the rolls of BSNL as on 1.1.2007 including those non-executives who are presently drawing executive pay scales due to grant of ACP. It will also be applicable to non-executives who have subsequently joined the Company. The non-executives drawing executive pay scales on adhoc/officiating basis, according to post based promotion, will be eligible for perks and allowances as per the rates given to executives for the period of such adhoc/officiating arrangement.
- 2.2

Wage under this settlement shall be effective from 1<sup>st</sup> January 2007. The staff side had demanded five years periodicity of wage revision whereas the management side offered periodicity of ten years. After detailed discussion it was finally agreed that duration of wage revision of non-executives will be con-terminus with that of executive employees of BSNL.”

It was presumably based on the settlement as above, that the matter was reported before the Tribunal, leading to closure of the O.A. as per Ext.P6 order dated 19/01/2010. The relevant portion, i.e. paragraph 2 of the order, is

extracted below:

“2. In the instant cases, according to the counsel for the parties, a settlement has already been arrived at between the Union on the one hand and the Management on the other. The main impediment viz., Annexure A-13 Clause (7) has been removed. With the above removal of the impediment, it is fairly expected that the applicants grievances would be fully redressed by the Department by taking further action in pursuance of the settlement arrived at.”

6. The stand of the BSNL was that, no instruction was ever given to the Standing Counsel to have made any submission as to the settlement between the management and the workers and in fact, no such settlement was there. The Tribunal was also alerted as to the Vigilance Enquiry going on in respect of the events which was subject matter of O.A. No.1022 of 2012. The learned counsel submits that, the Vigilance Enquiry cannot lead to the inference drawn by the Tribunal and the same came to be produced for the first time along with the review application.

7. After hearing both the sides, this Court finds that no

merit adjudication is required to be made by this Court, nor is it necessary to go through the sequence of events or as to the correctness of the finding entered by the Tribunal. There is a specific case for the petitioners that the finding made by the Tribunal with reference to the vigilance report is not correct and that the vigilance report does not insinuate anybody in this regard. We find that the issue is stated as settled as contended by the petitioners with reference to Ext.P5, whereas the BSNL contends the other way round. The fact remains that copy of Ext.P5 was never produced before the Tribunal, as contended by the learned Standing Counsel appearing for the BSNL. Whether the issue is finally covered by Ext.P5 is a matter which is to be looked into by the Tribunal with reference to the relevant records, proceedings and the provisions of law.

8. The only point to be considered by this Court is

whether any prejudice has been caused to the petitioners because of the order passed by the Tribunal in causing the O.A. restored, to be considered on merits. It is seen that no merit adjudication was done by the Tribunal while finalising the matter and the case was disposed of based on the submission stated as made by the learned Standing Counsel for the BSNL. It is contended by the BSNL that no such instruction was ever given to the Standing Counsel, to have made the submission that the matter was settled and that the disputed Clause was already withdrawn. The factual position requires to be ascertained with reference to Ext.P5, if any such valid settlement was there and such other relevant materials. If at all any mistake is committed by the lawyer, the party/litigant cannot be penalised for such mistakes. That apart, if the petitioners are entitled to have the benefit of Ext.P5, it is always open for them to rely upon

Ext.P5 (if it is a valid settlement) and proceed before the Tribunal with regard to the reliefs sought for. This Court does not want to express anything on merits with regard to the rival contentions. It is open for the Tribunal to consider the matter in accordance with law. The original petition stands closed. All issues are left open.

Sd/-  
**P. R. RAMACHANDRA MENON**  
**JUDGE**

Sd/-  
**BABU MATHEW P. JOSEPH**  
**JUDGE**

kns/-

//TRUE COPY//

P.A. TO JUDGE

