

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 27307 of 2019

And

W.P.(C) No.436 of 2020

In the matter of applications under Articles 226 and 227
of the Constitution of India.

AFR **W.P.(C) No. 27307 of 2019**

Samir Dip Petitioner

-Versus-

Union of India and Others Opp. Parties

For Petitioner : M/s D.P.Dhalsamanta, Advocate
along with Mr.C.Mohanta,Mr.S.Dhal,
Advocates

For Opp. Parties : Mr. S.K.Pattanaik, Sr. Counsel,
[O.P. Nos. 4 to 8]

Mr. P.K.Parhi, D.S.G.I.
[O.P. Nos. 2 & 3]

W.P.(C) No. 436 of 2020

Chief General Manager, Telecom Petitioners
Orissa Circle & another

-Versus-

Samir Dip & others Opp. Parties

For Petitioners : M/s S.K.Pattanaik, Sr. Counsel

For Opp. Parties : Mr. D.P.Dhalasamanta, Advocate

Mr. P.K.Parhi, D.S.G.I.
[O.P. Nos. 2 & 3]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE G. SATAPATHY**

Date of hearing: 10.10.2022: Date of judgment: 18.10.2022

G.SATAPATHY, J.

Since the above two writ petitions are filed against the same judgment and order passed on 27.08.2019 by Central Administrative Tribunal, Cuttack Bench in O.A. No. 595 of 2017, they were heard together and are disposed of by this common judgment.

2. The petitioner-Samir Dip has filed the writ petition in W.P.(C) No. 27307 of 2019 seeking to quash partially the judgment and order passed on 27.08.2019 by Central Administrative Tribunal, Cuttack Bench in O.A. No. 595 of 2017 to the extent its disallowed the financial benefit

as claimed by the petitioner in the Original Application till the date of grant of such benefit i.e. for the period from 01.04.1995 to 30.09.2014 and further directing opposite party Nos. 4 to 8 to grant pay scale of regular Group-D with effect from 01.04.1995 or in the alternative to grant minimum wages of ED employee for Postal Department for the aforesaid period, whereas the petitioners Chief General Manager (**CGM**), Telecom, Orissa Circle, B.S.N.L and the General Manager (**GM**), Sambalpur Telecom District, B.S.N.L have filed the writ petition in W.P.(C) No. 436 of 2020 seeking to quash the aforesaid order of Central Administrative Tribunal, Cuttack Bench to the extent of grant of payment of minimum scale of pay of Group-D staff for B.S.N.L. to the applicant-Samir Dip as opposite party No.1 in this writ petition.

3. For the sake of convenience, the writ petition i.e. W.P.(C) No. 27307 of 2019 (Samir Dip Vrs. Union of India and others) may be taken as leading case out of these two writ petitions, the petitioner "**Samir Dip**" in W.P.(C) No. 27307 of 2019 may hereinafter be referred to as "applicant"

whereas “**CGM**, Telecom, Orissa Circle and **GM** Sambalpur Telecom District” may hereinafter be referred to as “B.S.N.L. Department” respectively. Since common facts are involved in both the writ petitions, for better appreciation and in order to avoid confusion, the facts available in leading case in W.P.(C) No. 27307 of 2019 are referred to in this judgment.

3.1. The facts as projected are that the applicant Samir Dip was provisionally selected and appointed to the post of ED Telegram Messenger Bargarh HO in the erstwhile Department of Post India and the applicant joined as such on 01.01.1991 and the Department of Telegraph was initially functioning under the control of Department of Post but the Department of Telegraph was separated from postal wing and the applicant was directed by the Post Master Baragarh HO to work in the newly converted District Telegraph Office and accordingly, the applicant joined on deputation in the newly converted District Telegraph Office on 01.04.1995 and has been continuing as such till 07.12.2019. The Post Master, Bargarh H.O. vide Memo

dated 09.05.1995 intimated T.M.(O) Telegraph Office, Bargarh that the working hours of E.D. Messengers are five hours per day and if they are engaged for eight hours duty, they are entitled to pay and allowances at the rate of minimum Telegraph Messenger post. While working as such, the applicant made a representation to Telecom District Engineer (TDE), Sambalpur for enhancement of pay in consonance with working hours of eight hours per day w.e.f 01.04.1995 like a departmental Telegraph Messenger and the applicant again submitted representation ventilating his grievances for non-consideration of his working hours i.e. eight hours per day which was forwarded by Telegraph Master in-charge to S.D.O.T., Bargarh recommending the case of the petitioner for higher remuneration on the ground that the applicant is performing eight hours duty per day. After considering the representation of the application, S.D.O.T., Bargarh vide letter dated 09.09.1996 forwarded the grievance of the applicant to the T.D.M., Sambalpur recommending for extra remuneration on the ground that the applicant services has

been utilized as a full time worker. It is also stated by the applicant in his writ that the T.D.M., Sambalpur vide memo dated 12.03.1997 fixed the working hours of the applicant as seven hours per day w.e.f. 01.03.1997 and directed to pay pro-basis until further order without any prejudice to their absorption in the department, but the applicant again submitted a representation on 23.05.1997 to Telecom District Manager, Sambalpur claiming pay for eight hours per day as messenger w.e.f. 01.04.1995 and such representation was forwarded by T.M.(O), Bargarh on 03.06.1997 and the T.M.(O), Bargarh modified the order dated 12.03.1997 fixing working hours of the applicant for seven hours per day w.e.f. 01.04.1995. The applicant further averred in the writ petition that the Telegraph Master in-charge vide memo dated 04.04.2000 requested the General Manager, Telecom District for consideration of absorption of the applicant and fixation of pay and allowances as per P & T manual. The applicant by another representation dated 22.05.2000 to General Manager, Telecom District, Sambalpur prayed for regularization of

service and payment for eight hours per day w.e.f. 01.04.1995 but the Superintendent of Post Office, Sambalpur Division intimated T.M.(O), Bargarh vide letter dated 26.07.2002 that the applicant was not absorbed in Telegraph Department which was subsequently converted to BSNL. The S.D.O., Bargarh vide letter dated 05.07.2013 requested the Senior General Manager, Telecom District, Sambalpur for supply of guidelines for engagement of ED Staffs including the applicant working for Telegram Service as the Telegram Service was going to be discontinued from 15.07.2013 and the G.M.T.D., Sambalpur vide letter dated 03.08.2013 directed that the ED Messenger working at Bargarh Telegraph Office be engaged for mobile/LL/Misc. works under S.D.O. Phones, Bargarh as per prevailing terms and conditions. Finding no alternative, the applicant again submitted representation on 16.02.2017 to G.M.T.D., Sambalpur praying therein to enhance his salary at par with the then ED Messenger (re-designated as GDS MD/MC) of Postal Department. According to the applicant he was entitled to get salary of Group-D employee w.e.f. 01.04.1995

but he was getting Rs.4,200/- per month which is less than the minimum TRCA of ED MD/MC of Postal Department. The applicant had also submitted representation to BSNL Authorities for his absorption to the post Gr-D/MTS in the department with salary of Group-D employee but in vain and finding no alternative, he made representation to Chief Post Master General and Superintendent of Post praying to cancel his deputation to Telecom Department (BSNL).

3.2 In order to redress his grievance, the applicant approached the Central Administrative Tribunal, Cuttack Bench (hereinafter may be called as 'Tribunal') in O.A. No.595/2017 in which the BSNL filed their counter disputing the absorption and grant of Group-D scale to the applicant.

3.3 In addition to the counter to the writ of the applicant refuting his claim, the BSNL Department has assailed the aforesaid finding of the learned Tribunal by filing separate writ petition in W.P.(C) No.436 of 2020 wherein the Department without disputing the status of the employment of applicant as ED Messenger on deputation

basis asserts that the Post and Telecom Department was bifurcated into two separate Departments in Telegraph and Postal wing with effect from the year 1985 and BSNL was established as a Corporate body of Government of India with effect from 01.10.2000 and the applicant was receiving wages as admissible to him before his deputation and he had raised certain grievances about his working hours as Messenger, but his wages was fixed at the rate applicable to seven hours duty per day. Further, the applicant made representation on 16.03.2001 for permanent absorption in BSNL but he was not considered eligible for absorption in BSNL and he continued on deputation in the status of as extra Departmental Telegraph Messenger as before and after closure of Telegraph Services on Pan India w.e.f. 15.07.2013, the applicant was engaged as mobile/landline miscellaneous works as per order dated 03.08.2013 issued by G.M.T.D., Sambalpur, but the applicant submitted representation on 16.02.2017 for enhancement of his pay at par with payment received by extra Departmental Staff of

Postal Department and the applicant thereafter approached the learned Tribunal.

3.4 After considering the relevant materials and hearing the parties, the Tribunal by an order passed on 27.08.2019 allowed the O.A. in part granting relief to the applicant for arrear wages in the minimum scale of pay as applicable to regular Group-D employee with effect from three years prior to filing of the O.A. till his repatriation to the Department of Posts. Learned Tribunal also directed the Department of Posts to take back the applicant and suitably deploy him as ED/GDS in an office as permissible under the existing rules and extend consequential benefits as per provisions of the rules.

3.5 Being aggrieved, the BSNL Department in the writ petition in W.P.(C) No.436 of 2020 has assailed the finding of learned Tribunal passed in O.A. No.595 of 2017 on the ground that the learned Tribunal has erroneously applied the law laid down by the apex Court in **State of Punjab & Others vs. Jagjit Singh & Others; (2017) 1 SCC (L&S) 1** while granting relief to the applicant for arrear

wages in the minimum pay scale as applicable to regular Group-D employee for a period with effect from October, 2014 till his services with the BSNL Department.

Feeling aggrieved, the applicant-Samir Dip in W.P.(C) No.27307 of 2019 has partly challenged the findings of the Tribunal to the extent as it disallowed the financial benefits to him with effect from 01.04.1995 till 30.09.2014.

4. Mr.D.P.Dhalasamanta, learned counsel appearing for the petitioner-applicant in W.P.(C) No.27307 of 2019 –cum- O.P. No.1 in W.P.(C) No.436 of 2020 submitted that the applicant was working as ED Messenger on deputation in the Department of Telecom which was subsequently separated from the Department of Posts as BSNL and although number of representations were made by the applicant to the BSNL authorities for absorption but the same were not having been considered, the applicant approached the learned Tribunal for the relief of absorption with consequential financial benefits and the Tribunal having taking into consideration the relevant facts and the law laid down in **Jagjit Singh(Supra)** came to hold that the

principle of equal pay for equal work is applicable to the case of the applicant and accordingly directed for grant of financial relief to the applicant as applicable to regular Group-D employee for the period from October, 2014 to till his engagement in the BSNL Department, but such finding of the learned Tribunal limited for a small period is erroneous one as the applicant was working in the BSNL Department on deputation since 01.04.1995. It is further contended that the learned Tribunal has erroneously come to hold that since the applicant has approached the learned Tribunal in 2017, the Tribunal cannot allow such financial benefit from the date as claimed by him in the O.A. It is also submitted that the Post Master, Bargarh by way of Annexure-5 has intimated the T.M.(O) in-charge Telegraph Office, Bargarh that the working hours of ED Messengers are five hours per day and if they are engaged for eight hours duty on daily wages basis, they are entitled to get pay and allowances at the rate of minimum scale of Telegraph Messenger Post and after conversion of Telegraph Office, the Messengers who were working eight hours per day are

thereby, entitled to get the pay and allowances at the rate of minimum scale of Telegraph Messenger Post. It is also submitted that the authority concerned after taking into consideration the representation of the applicant had recommended to higher authority vide Annexures-6 and 7 for grant of pay and allowances as admissible to ED Telegram Messengers. It is also vociferously contended by Mr. Dhalasamanta, learned counsel for the petitioner-applicant that the applicant was duly discharging the duty of a regular Extra Departmental Telegraph Messenger for eight hours and more on daily basis, which is clearly discernable from the letter under Annexures-7 and 10 and, therefore, the applicant was entitled to the pay and allowances of Group-D or ED Telegram Messengers on the principle of equal pay for equal work and his service desired to be regularized in BSNL but the learned Tribunal has erroneously refused to grant the relief on regularization of service to the applicant and disallowed the financial benefit w.e.f. 01.01.1995 till October, 2014 as Group-D employee. It is further contended that the Tribunal has neither

committed any error in applying the principle of equal pay for equal work to the petitioner-applicant nor misapplied the law laid down in **Jagjit Singh(Supra)**, but the learned Tribunal has fallen an error while extending the relief to the applicant for a limited period despite the fact that the applicant had performed the duty of ED Telegram Messenger. While summing of his argument, Mr. Dhalasamanta, learned counsel for the petitioner-applicant submitted that since the learned Tribunal's order so far as it relates to grant of financial benefit for a limited period only instead of whole period of deputation to the applicant needs interference of this Court by way of this writ petition directing the concerned authorities to pay the financial benefits for the entire period or in the alternative to grant minimum wages of ED employee of Postal Department w.e.f. 01.04.1995 to 30.09.2014 by suitably modifying the order of the learned Tribunal.

5. Mr. S.K. Pattanaik, learned Senior Counsel for the opposite party nos. 4 to 8 in W.P.(C) No.27307 of 2019 and for the BSNL Department-petitioners in W.P.(C) No.436

of 2020 specifically contended that the applicant being an employee of Department of Posts is not entitled to any financial benefit in the minimum scale of pay of Group-D employee of Telecom Department but the learned Tribunal has erroneously applied the law to grant such relief to the applicant. Mr. S.K. Pattanaik, learned Senior Counsel by placing heavy reliance on Annexure-5 to W.P.(C) No.436 of 2020 submitted that after closure of Telegram Services w.e.f. 15.07.2013 the GMTD, Sambalpur vide its order dated 03.08.2013 directed the applicant who was working as E.D. Messenger at Bargarh Telegraph Office to be engaged as Mobile/LL/Misc. works under SDO Phones, Bargarh which itself goes a long way to say that the applicant was never employed as Group-D nor was his post attached with duty and responsibility of Group-D employee of Telecom Department. It is also contended that the applicant was admittedly working as ED Telegram Messenger on deputation basis in Telegraph Office, Bargarh and after formation of BSNL, he being directed to be engaged for Mobile/LL/Misc. works can never be said to have

discharged the duty of Group-D employee and he, thereby, is not entitled to any financial benefit of Group-D employee but the learned Tribunal has committed error in directing payment of arrear financial benefit to the applicant in the minimum scale of pay of Group-D employee by misapplying the law laid down in **Jagjit Singh(Supra)** wherein at Paragraph-42, the apex Court has observed that the claim raised by such employee was premised on the ground that the duties and responsibilities rendered by them were against the same post for which a higher pay scale was being allowed in other Departments, but in the present case, the applicant had neither discharged the Group-D employee nor was he holding any Group-D post in his original Department, rather the employee was discharging the duty as a ED Messenger in the Postal Department and he is thereby not entitled to any higher financial benefits as attached to his original post.

In support of his contention, Mr. S.K. Pattanaik, learned Senior Counsel has relied upon the decisions in **Ratilal B. Soni & Others vs. State of Gujarat & Others;**

1990 STPL 1045 SC, Kunal Nanda vs. Union of India & Another; 2000 STPL 5556 SC and Orissa University of Agriculture and Technology vs. Manoj Kumar Mohanty; 2003 STPL 7546 SC. In relying upon the aforesaid decisions and on the basis of his submissions, Mr. S.K. Pattanaik, learned Senior Counsel submitted that the learned Tribunal has not only committed error in appreciating the fact but also has misapplied the law and it thereby, fallen in error in holding that the applicant is entitled to financial benefits of a Group-D employee for the period with effect from October, 2014 till his repatriation to the original Department of Posts and learned Senior Counsel, accordingly, prayed for interference of this Court by way of invoking the jurisdiction under Articles 226 and 227 of the Constitution of India in W.P.(C) No.436 of 2020 to quash the impugned order passed on 27.08.2019 by learned Tribunal in O.A. No.595 of 2017 and consequently, thereby to allow the writ petition in W.P.(C) No.436 of 2020.

This Court carefully considered the submissions advanced by Mr. Dhalasamanta, learned counsel for the

petitioner-applicant in W.P.(C) No.27307 of 2019-cum-opposite party no.1 in W.P.(C) No.436 of 2020 and Mr. S.K. Pattanaik, learned Senior Counsel for the opposite party nos.4 to 8 in W.P.(C) No.27307 of 2019 and petitioners-BSNL Department in W.P.(C) No.436 of 2020 and perused the record. Pleadings having been exchanged between the parties and with the consent of the parties, these writ petitions are being disposed of finally at the stage of admission.

6. After bestowing an anxious and careful consideration to the rival submissions upon reference to the facts involved in these writ petitions, the undisputed facts as emerged are that the applicant was initially provisionally selected as well as appointed to the post of ED Telegram Messenger, Bargarh Head Office under Postal Department and consequently he was directed to work in Telegraph Office, Bargarh on deputation basis with effect from 01.04.1995 and at the time of appointment of applicant, the Post and Telecom Department was functioning as a single Department under Central Government and the Telegraph

Department was subsequently converted into BSNL and the Telegram Services was closed on Pan India basis with effect from 15.07.2013. It is stated here that the applicant has also claimed for regularization of his service on account of his long spell of work in BSNL. In this regard, the Tribunal by its order has refused to grant any relief to the applicant but such findings of the Tribunal does not require any interference inasmuch as the applicant was working as ED Telegram Messenger purely on deputation basis and he was appointed as such by the Postal Department. Further, neither there was any pleading nor was any document produced before the Tribunal as well as before this Court indicating about absorption of any other employee of Postal Department deputed to BSNL on regular basis. Learned Tribunal has rightly distinguished the judgment relied on by the applicant in the case of **Rajendra Kumar Nayak Vrs. OMC Limited and others; (2017) (II) ILR 912** while negating the claim of the applicant for regularization of service in BSNL. The undisputed fact is that the applicant was working in BSNL on deputation basis and thereby, he

does not get any right to be absorbed on the deputation post. In **Ratilal (supra)** which is relied on by the BSNL Department, the Apex Court has concluded that the appellants being on deputation could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post. It is, therefore, clear that the claim for regularization of service by the applicant in BSNL has rightly been negated by the Tribunal.

7. Reverting back to the relief granted to the applicant by the learned Tribunal, it appears that the learned Tribunal has applied the principle of equal pay for equal work and relied upon the judgment of **Jagjit Singh(supra)** in granting the relief of financial benefit to the applicant in the pay scale which is applicable to regular Group-D employee. In this regard, there appears no doubt while granting financial relief to the applicant, the Tribunal has applied the principle of equal pay for equal work which is not always easy to apply. The applicant was neither employed as Group-D post in BSNL nor was there any pleadings or averment made by him to have discharged the

duty of Group-D employee in BSNL. The applicant had also not made it clear the duties and responsibility attached to any Group-D employee either in the Original Application or in the present writ petition. No matter the applicant has claimed for financial benefits at the rate in minimum scale of pay of Telegram Messenger as Group-D post but the duties and responsibilities attached to any Group-D post in BSNL has never been spelt out by the applicant nor was it established that he was discharging the duties and responsibilities of a Group-D employee in BSNL Department. Learned Tribunal had taken Annexure-7 and 10 into consideration while granting relief to the applicant but, by Annexure-7 the Telegraph Master in-charge had recommended to the S.D.O.T, Bargarh Telecom to consider the case of the applicant for higher remuneration and by Annexure-10, the Telecom District Manager, Sambalpur had fixed the duty hours of the applicant in the Telegraph Office, Bargarh @ seven hours per day with effect from 01.04.1995. It cannot be disputed that Annexure-7 being purely recommendatory in nature, it cannot be said that the

decision was taken by the authorities to enhance the remuneration of the applicant. Further, Annexure-5 to W.P.(C) No. 436 of 2020 discloses that ED Messengers working at Bargarh Telegraph Office were proposed to be engaged for Mobile/LL/Misc. works under SDO Phones, Bargarh as per the prevailing terms and conditions and the aforesaid letter was issued at the time of closure of Telegram services with effect from 15.07.2013 and the applicant being a ED Messenger working at Bargarh Telegraph Office had never challenged the same till filing of the Original Application in the year 2017 for grant of pay and allowances akin to Group-D employee. While granting relief of financial benefit of Group-D employee to the applicant, the judgment passed by the Apex Court in **Jagjit Singh(supra)** was relied on by the Tribunal, but the Apex Court in Paragraph-60 has stated that for application of principle of equal pay for equal work in relation to temporary employees (daily-wage employees, ad-hoc employees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires determination is whether the concerned

employees (before the Court) were rendering similar duties and responsibilities as were being discharged by **regular employees, holding the same/corresponding posts**. In this case, the applicant was neither the regular employee of the BSNL Department nor was holding the same Group-D post or any corresponding post nor was it averred in the writ petition or O.A. that the applicant was rendering similar duties and responsibilities of Group-D employee. Further, in **Jagjit Singh(supra)**, the Apex Court had proceeded to summarize in Paragraph-42 the parameters under which the principle of equal pay for equal work can be applied. For better appreciation, Paragraph-42(i) of **Jagjit Singh(supra)** is extracted below:-

“The ‘onus of proof’, of parity in the duties and responsibilities of the subject post with the reference post, under the principle of ‘equal pay for equal work’, lies on the person who claims it. He who approaches the Court has to establish, that the subject post occupied by him, requires him to discharge equal work of equal value, as the reference post)see-the Orissa University of Agriculture and Technology case 10, Union Territory Administration, Chandigarh V. Manju Mathur 15, the Steel Authority of India Limited case 16, and the National Aluminum Company Limited case 18).”

It is clear beyond doubt that it was the duty of the applicant in this case to establish that the post occupied by him requires him to discharge equal work for equal value as the reference post of Group-D employee in BSNL. At the cost of repetition, it is reiterated that the duties and responsibilities attached to Group-D post in BSNL were never been disclosed by the applicant in this case nor had the applicant established that he was discharging the duties and responsibilities of Group-D post either in his parent Department or in the deputation Department.

8. Further, in **Orissa University of Agriculture and Technology(supra)**, the Apex Court at paragraph-14 has held as under:-

“In the absence of necessary averments and materials placed on record, there was no scope to give direction as is done by the High Court in the impugned order. The burden was on the respondent to establish that he has a right to equal pay on the principle of ‘equal pay for equal work’ relying on Article 14 of the Constitution that having not been done, the respondent was not entitled for the direction to get regular pay scale w.e.f. September, 1997.

9. A careful consideration of the facts and law discussed hereinabove, it emerges that the applicant was initially recruited by the Department of Post which is his parent department and he was directed to work as ED Telegram Messenger in Telegraph Department which was subsequently converted to BSNL, but it was never established by him that he was discharging the duties and responsibilities attached to Group-D post in the BSNL but in absence of any necessary averments and materials on record, the Tribunal has fallen in error in granting relief to the applicant by its order passed on 27.08.2019 holding the applicant to be entitled for arrear wages in the minimum pay scale which is applicable to regular Group-D employee from October, 2014 till he works under BSNL Department by applying the principle set out by the Apex Court in **Jagjit Singh(supra)** which was not applicable to the case of the applicant and the entitlement of the applicant is only on the basis of Annexure-5 to W.P.(C) No. 436 of 2020. The above exposition of facts and discussion herein makes it clear that the order passed on 27.08.2019 by the Tribunal in O.A. No.

595 of 2017 is unsustainable in the eye of law and is hereby quashed.

10. In the result, while dismissing W.P.(C) No. 27307 of 2019 this Court allows the writ petition in W.P.(C) No. 436 of 2020 but in the circumstances, there is no order as to costs.

DR. B.R.SARANGI, J.

I agree.

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**G.SATAPATHY,
JUDGE**

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**DR. B.R.SARANGI,
JUDGE**



**Orissa High Court, Cuttack
The 18th October, 2022, Kishore**

