

AGM/Admin/South-BA  
O/o the DGM/BA- (South),  
82 Ballygung Place  
Kolkata-700019  
Tel No. 033-24600644  
Email: agm.admn.bas@gmail.com

BHARAT SANCHAR NIGAM LIMITED  
(A Govt. of India Enterprise)  
Calcutta Telephones

No. SDE/Admn/BA-South/Misc./20-21/01

Dated at Kolkata-700019, the 05/02/2021

To  
The General Secretary,  
AIBSNLREA,  
New Delhi-10075

Sub-: Wrong Fixation Apurba Kumar Jana, Ex. JTO, HR-199207376.

Ref-: CPG Case No. DOPPW/E/2020/24019.

In pursuance to your letter No. AIBSNLREA/CHQ/2020/126 dt. 20/10/2020, the parawise reply & relevant order is furnished below -:

- 2.1 - The official opted for pay fixation normal IDA scale next date after 01/01/2007 as per Para-3.6 of BSNL Co. letter dt. 07/05/2010.
- 2.2 - The earlier pay fixation memo referred in the para 2.2 by the applicant was cancelled due to wrong fixation by the staff/Alipore,CTD,BSNL.
- 2.3 Reply at 2.2 may be referred.

3a-The revised fixation of Sri. Apurba Kumar Jana,ex. JTO is done as per BSNL Co. letter no. 3-32/2013/Estt-IV dt. 22/12/2015 (Copy Enclosed.).

b- Sri. Apurba Kumar Jana,Ex. JTO (Offlg.) was reverted back to his parent substantive cadre TTA as per BSNL CO. intimation vide order reference (a) above. The copy of the order issued by the AGM/Staff-I,CTD vide SMT-6025/XXV/2001-2002 dt. 11/01/2008 is enclosed. The name of the officer is at Sl. No. 38.

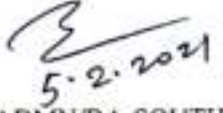
c) - The fixation memo of Sri. Apurba Kumar Jana, Ex. JTO (Offlg.) issued vide letter no. SDE/BA-SOUTH/PAY FIXATION dt. 11/11/2020 is enclosed for ready reference.

4- The following orders were followed while fixation of the officer Sri. Apurba Kumar Jana,Ex. JTO and similarly placed officers.

- (i)SMT-6025/XXV/2001-2002 dt. 11/01/2008 issued byAGM/Staff-I/CTD
- (ii) Corporate office ND lr. No. 3-32/2013/Estt-IV dt. 22/12/2015
- (iii)BSNLCO-A/16(27)/12/2020-ESTAB DTD.28.10.2020
- (iv) SDE/BA-SOUTH/PAY FIXATION DATED 11.11.2020Admn/BA-South/Misc

The case may be disposed off considering the above facts.

Copy to :1. DGM/NWO/BA-SOUTH  
2. SDE/TECH/BA-SOUTH

  
5.2.2021  
SDE/ADMN/BA-SOUTH  
BSNL, CALCUTTA TELEPHONES

SDE/Admn/South-BA  
Calcutta Telephones/BSNL  
82, Ballygunge Place  
Kolkata-700019

**BHARAT SANCHAR NIGAM LIMITED**  
(A GOVT OF INDIA ENTERPRISE)  
OFFICE OF THE DGM/NOW/BA-SOUTH  
CALCUTTA TELEPHONES  
82, BALLYGUNGE PLACE, KOLKATA-700019

NO. SDE/BA-SOUTH/PAY FIXATION  
11.11.2020

DATED AT KOLKATA

11.11.2020

In pursuance of DOT enforcement vide no. Pr.CCA/KOL/SBV/DSR/19-20/Part-III dated 17.12.2019 read with BSNL CO ND Letter No. 3-32/2013/Estt-IV dated 22.12.2015 and No. BSNLCO-A/16(27)/12/2020-ESTB dated 28.10.2020, the pay of APURBA KUMAR JANA, (Ex-JTO), (HRMS No.199207376) has been regulated as mentioned below.

Date	Scale of pay 7100-200-10100 (13600-25420)	Scale of Pay 9850-250-14600 (16400-40500)	Scale of pay 20600-46500	Scale of pay 24900-50500	Remarks
01.05.2004	8300/-	-----	-----	-----	TTA
16.11.2004	-----	9850/-	-----	-----	JTO(offtg)
01.05.2005	(8500/-)	9850/-	-----	-----	Inc. TTA
14.05.2005	8500/-	-----	-----	-----	Reversion as TTA
17.05.2005	(8500/-)	9850/-	-----	-----	JTO(offtg)
01.11.2005	(8500/-)	10100/-	-----	-----	Inc. on Jto (fftg.)
10.11.2005	8500/-	-----	-----	-----	Reversion
11.11.2005	(8500/-)	10100/-	-----	-----	JTO(offtg)
01.05.2006	(8700/-)	10100/-	-----	-----	Inc. as TTA
09.05.2006	8700/-	-----	-----	-----	Reversion
10.05.2006	(8700/-)	10100/-	-----	-----	JTO(offtg)
01.11.2006	(8700/-)	10350/-	-----	-----	Inc. as JTO(offtg)
03.11.2006	8700/-	-----	-----	-----	Reversion
04.11.2006	(8700/-)	10350/-	-----	-----	JTO(offtg)
01.01.2007	68.8% (8700/-)	78.2% ----- 10350/-	68.8% -----	78.2% -----	Fixation made vide CO ND Lr no. 3-32/2013/Estt-IV dated 22.12.2015 read with No. BSNL CO-A/16(27)/12/2020-ESTB dated 28.10.2020
01.05.2007	(8900/-)	10350/-	-----	-----	Inc. as TTA
02.05.2007	8900/-	-----	-----	-----	Reversion
04.05.2007	(8900/-)	10350/-	-----	-----	JTO(offtg)
30.10.2007	8900/-	-----	-----	-----	Reversion

								JTO(offtg)
31.10.2007	(8900/-)		10350/-					Inc. JTO(offtg)
01.11.2007	(8900/-)		10600/-					Reversion
12.01.2008	8900/-							JTO Promotion
12.02.2008			20130/-	(21240/-)				INC. (JTO offtg. Period added 2months 12 days
01.12.2008			20740/-	(21880/-)				
					Increment granted vide CO ND Lr. No. BSNL CO-A/16(27)/12/2020-ESTB dated 28.10.2020 FR26@i)			
01.12.2009			21370/-	(22540/-)				Inc.
01.12.2010			22020/-	(23220/-)				Inc.
01.12.2011			22680/-	(23920/-)				Inc.
12.02.2012					22680/-	(23920/-)		1 <sup>st</sup> EPP (deferred option)
01.12.2012					24060/-	(25380/-)		Pay fixed.
10.06.2013					24060/-	25380/-		Actual monetary benefit on 78.2%
01.12.2013					24790/-	26150/-		Inc.
01.12.2014					25540/-	26940/-		Inc.
01.12.2015					26310/-	27750/-		Inc.
01.12.2016					27100/-	28590/-		Inc.
12.02.2017						27100/-	28590/-	2 <sup>nd</sup> EPP (deferred option)
01.12.2017						28760/-	30340/-	Pay fixed
01.12.2018						29630/-	31250/-	Inc.
01.12.2019						30520/-	32190/-	Inc.
					Date of Retirement under VRS 2019- 31.01.2020			

*3*  
*7.12.2020*  
SDE/ADMN/ BA-SOUTH  
BSNL, CALCUTTA TELEPHONES

SDE/Admn/South-BA  
Calcutta Telephones/BSNL  
82, Ballygunge Place  
Kolkata-700019

Copy to for information & necessary action:-

1. The Accounts Officer Claim (BA-SOUTH)
2. Accounts Officer, Dot Cell, 8, Hare Street, Kolkata
3. Officer Concerned
4. P/F of the Officer.



**Bharat Sanchar Nigam Limited**

**[A Government of India Enterprises]**

**Corporate Office**

**5<sup>th</sup> floor, Bharat Sanchar Bhawan, Janpath, New Delhi-110001.**

**[Establishment – IV Section]**

**No.5-32/2013/Estt-IV**

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Letter no.3-32/2013/Estt-IV

dated 22 December, 2015

To,

All Heads of Telecom Circles,  
All Heads of Administrative Units,  
Bharat Sanchar Nigam Limited


**Subject: Fixation of pay of officiating JTO's under FR 22 1(a) (i) and reversion before sending them for Phase I training.**

1. Various references are being received from circles asking for method of pay fixation of officiating JTO's under FR 22 1(a) (i) before and after 1.12.2007. References are also being received from circles whether to revert officiating JTO's before they are sent for JTO Phase I training under new scheme and syllabus.
2. The matter has been examined and it has been decided to revert the officiating JTO's before they are sent for Phase-I training. If they have been already sent for phase I training without reversion, they may be reverted from the post of officiating JTO from retrospective date.
3. As regards pay fixation of JTO's under FR 22 1(a) (i), it is clarified that pay of officiating JTOs for whom orders have been issued from this office for fixation of pay under FR 22 1(a) (i), may be fixed under FR 22 1 (a)(i) from the date they started to officiate in the grade of JTO. This is as per the earlier instructions' from this office. At the time of revision of pay w.e.f. 1.1.2007, their pay may be fixed in the substantive grade (i.e.TTA) and be refixed in the capacity of officiating JTO as per existing provision of pay fixation by grant of 3% of basic pay in the substantive grade. An example of pay fixation is enumerated below;

Substantive pay as on 31.12.2006 in the TTA pay scale of Rs.7100-200-10100	Rs.8300/-
Officiating pay fixed in 1.12007 in JTO pay scale of Rs 9850-2500-14600	Rs. 10100/-
Basic pay fixed on 1.1.2007 in TTA cadre in the scale of pay of Rs 13600-25420	$8300 * 1.688 * 1.3 = 18220/-$ (Actual) $8300 * \checkmark 1.782 * 1.3 = 19230/-$ (Notional) $\checkmark$ Note :Instructions of letter no.1-16/2010-PAT(BSNL) dated 10.6.2013 may be seen
Officiating pay fixed on 1.1.2007 in the JTO cadre in the scale of pay of Rs.16400-40500	$18220 + 546.60(3\% \text{ of } 18220) = 18770$ (Actual) $19230 + 576.90(3\% \text{ of } 19230) = 19810$ (Notional) Note :Instructions of letter no.1-16/2010-PAT(BSNL) dated 10.6.2013 may be seen

4. This clarification for fixation of pay and reversion of officiating JTO's before they are sent for Phase-I training super cedes all earlier instructions issued (including instruction issued vide letter no.5-20/2015/Estt-IV/RR2014 dated Nov.20,2015) on these subjects.

This issues with the approval of competent authority.

  
22/12/15  
(A.K. Singh)  
Asstt. General Manager (Estt-IV)  
Phone No.23734152,  
Fax No: 23734051



**BHARAT SANCHAR NIGAM LIMITED**  
(A GOVT. OF INDIA ENTERPRISE)

OFFICE OF THE CHIEF GENERAL MANAGER, CALCUTTA TELEPHONES,  
8 BENTINCK STREET, TAHER MANSION( 3<sup>RD</sup> FLOOR), KOLKATA-700001.

No:- SMT-6025/XXV/2001-2002

Dated at Cal-1, 11-01-2008.

Subject:- 4(four) weeks Field training of the TTAs for Regular Appointment as JTO(35%)-Diverted Quota as per BSNL Co. order No. 5-4/2007/Pers.IV/I dated 25-12-2007(Recd. Year 2006) & BSNL Co. Order No. 5-4/2007/Pers.IV/II dated 26-12-2007(Recd. Year 2007).

Ref:- SDE/Recd.-II memo No. SAA-3003/X dt. 11.01-2008.

In accordance with the order of the competent authority of CTD the following 41(Forty one) Offlg. JTOs are hereby reverted to their parent cadre i.e. TTA with effect from 11.01.2008(A/N). On reversion they are to report as TTA in the same unit where they are presently posted.

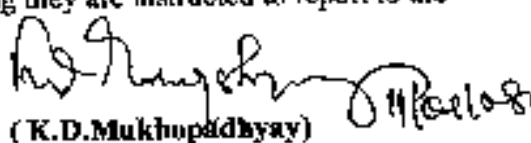
In Pursuance of the order No. SAA-3003/X dated 11.01.08 of SDE(Recd-II) the under mentioned 41(Forty one) officials are selected for undergoing 4(four) weeks field training for J.T.O.

Accordingly concerned controlling officers are requested to release the following candidates on 14-01-08(A/N) with instruction to report to the SDE/Staff as mentioned against their names for undergoing the field training of J.T.O cadre with effect from 15-01-08(F/N) to 11-02-08(A/N).

Sl No	Name of the officials & Staff Code.	Previous Cadre & Sec. attached	Name of the Unit/Area where to report	Remarks
1	2	3	4	5
01	Shri Debjit Mukherjee, 102003	TTA,SDI/VCSC/TBz	SDI/Staff/City	2weeks Intl. & 2weeks Intl.
02	Smt. Dipanwita Roy Choudhury, 102306	TTA, SDE/2210/Intl	SDE/Staff/City	Do
03	Shri Gobinda Ch. Sadrakhan, 102540	TTA, SDE/113/Extl/Z-V	SDI/Staff/City	Do
04	Shri Dinesh Ch. Ghosh, 102241	TTA, SDI/Colonaymura/Extl	SDE/Sr/BKP	Do
05	Shri Partha Sarathi Chakraborty, 105077	TTA, DB/Extl/BKP/11agarh	SDE/Sr/BKP	Do
06	Shri Bijoy Guha, 101376	TTA, SDE/PW/SI/STH	SDE/Staff/City	Do
07	Shri Susanta Kr. Paul, 107869	TTA, DGM/Broadband	SDI/Staff/City	Do
08	Shri Biswanath Das, 101647	TTA, SDI/TM/SLI	SDI/Staff/BDN	Do
09	Shri Sourya Dasak, 107321	TTA, DB/TL/South-I	SDE/Staff/City	Do
10	Shri Kalyan Sharma, 103381	TTA, SDE/TM/IB	SDI/Staff/City	Do
11	Shri Debjit Ghosh, 101938	TTA, SDI/Intl-I/655	SDI/Sr/How	Do
12	Shri Suman Sircar, 107700	TTA, SDE/Paharpur/Intl	SDE/Sr/ALP	Do
13	Shri Swapan Kr. Saha, 108055	TTA, SDE/CSC/City	SDE/Staff/City	Do
14	Shri Krishnendu Bose, 103692	TTA, DE/10/North	SDI/Staff/BDN	Do
15	Shri Debasish Singha Roy, 101967	TTA, SDI/CSP/Intl/CSC	SDE/Staff/North	-do-
16	Shri Amrita Kr. Mitra, 100376	TTA, SDE/CSC/City	SDE/Staff/City	-do-
17	Smt. Gita Das, 102517	TTA, CO/LD-II	SDE/Sr/City	-do-
18	Shri Binayak Gupta, 101501	TTA, DE/OP-II	SDI/Sr/City	-do-
19	Shri Sanjit Sekhar Mondal, 106645	TTA, SDI/TM/BKP	SDE/Sr/BKP	-do-
20	Shri Sukumar Naskar, 107679	TTA, SDE/ENJ/Intl/Z-1	SDE/Sr/Central	-do-
21	Shri Siddhartha Sircar, 107205	TTA, SDE/DuHo/Extl	SDE/Sr/ALP	-do-
22	Shri Krishnendu Das, 103693	TTA, SDI/FIS/KGI-I	SDI/Sr/South	-do-
23	Shri Nikhilesh Karmakar, 104720	TTA, SDE/KE/RSU	SDE/Sr/South	-do-

Sl No	Name of the officials & Staff Code.	Previous Cadre & Sec. attached	Name of the Unit/Area where to report	Remarks
24	Shri Debasis Chattopadhyay, 101963	TTA, SDE/CND	SDE/Staff/SMP	2 weeks Ext & 2 weeks Int
25	Shri Nilanjan Sinha, 104723	TTA, SDE/Ichhapur/Intl	SDE/Staff/Howrah	-do-
26	Shri Ashok Ghosh, 100802	TTA, DE/TP-I	SDE/Staff/North	-do-
27	Shri Ajoy Kr. Bhargal, 100205	TTA, SDE/Dakghar (DE/B1-II)	SDE/Staff/ALP	-do-
28	Shri Ranajit Chattopadhyay, 106052	TTA, SDE/EC/SIB-I	SDE/St/How	-do-
29	Shri Bishrupada Mondal, 101585	TTA, SDE/Plg./ALP	SDE/Staff/ALP	-do-
30	Shri Minal Kanti Roy, 104361	TTA, SDE/NT/Ext/Z-42&53	SDE/St/Central	-do-
31	Shri Suresh Roy, 107847	TTA, SDE/ENT/Intl.	SDE/Staff/Central	-do-
32	Shri Shyama Prasad Roy, 107093	TTA, SDE/Ext./Z-34/SNP	SDE/St/JDP	-do-
33	Shri Subrata Kr. Naskar, 107497	TTA, SDE/LC/LD-II	SDE/St/City	-do-
34	Shri Sanjib Dolui, 106628	TTA, SDE/MC/Shibpur	SDE/St/Howrah	-do-
35	Shri Suroj Kanti Roy, 106873	TTA, Sr. SDE/Bldg/Plg./South	SDE/St/South	-do-
36	Shri Anup Kr. Naskar, 100528	TTA, SDE/Mktg./How	SDE/St/Howrah	-do-
37	Shri Dinabandhu Mondal, 102233	TTA, SDE/350/Intl	SDE/St/North	-do-
38	Shri Aparna Kr. Jana, 100549	TTA, SDE/Paharpur/Intl	SDE/St/ALP	-do-
39	Shri Biswajit Das, 101649	TTA, SDE/Belghoria/Ext-II	SDE/St/BKP	-do-
40	Shri Dibyendu Das, 102093	TTA, DE/NT/North	SDE/St/BDN	-do-
41	Shri Dhruv Biswas, 102053	TTA, SDE/CR-B/Mktg./JDP	SDE/St/JDP	-do-

After successful completion of 4(four) weeks field training they are instructed to report to the AGM/Staff-I/HQ. Calcutta Telephones for further posting.



(K.D. Mukhopadhyay)  
Asstt. General Manager/Staff-I  
Calcutta Telephones

No:- SMT-6025/XXV/2001-2002

Dated at Kolkata, the 11-01-08

Copy to:- 1-41) Candidates 42-82) SDE/Recit-II- for P/files of the candidates.

83-91) SDE/St/City/BDN/Cent/JDP/ALP/North/SMP/South/BKP- They are requested to send the joining report of the candidates to the undersigned immediately for issue of appointment order. Release order on completion of field training should be sent in due course. They are also requested to instruct the candidates to report to AGM/Staff-I/CTD after completion of field training.

92-103) AO(W&B)/HQ/City/BDN/Cent/JDV/ALP/North/SMP/PLG/South/BKP/Estt(TB)

104-115) AAO(SR)/HQ/City/BDN/SMP/Cent/JDV/ALP/North/PLG/BKP/Estt(TB)

116) AGM(R&F) 117) SDE/Recit-II 118) DA/G.list 119) DA/CR Cell/TO

120) DA/SC&ST Cell 121) SDE/St-III 122) SDE/St-II/HQ

123) SDE/Comp/HQ under AGM/S-I 124) SDE/OSD under DGM/A

125) SDE/CSC/TBz 126) SDE/2210/Intl 127) SDE/TBz/Ext/Z-V 128) SDE/Coloneymore/Extl

129) DE/Extl/BKP 130) DGM/Broadband - For kind information 131) SDE/IM/SLT

132) DE/TT/South-I 133) SDE/Intl-I/655 134) SDE/TM/TB 135) SDE/PHP/Intl

136) SDE/CSC/City 137) CO/LD-II 138) DE/OP-II 139) SDE/TM/BKP

140) SDE/ENT/Extl/Z-I 141) SDE/CSP/Intl/CSC 142) SDE/RuBu/Extl

143) SDE/EL/South/KGT-I 144) SDE/KIE/RSU 145) SDE/Plg./ALP

146) SDE/ENT/Extl/Z-42&53 147) SDE/ENT/Intl/Mtee 148) SDE/Extl./Z-34/SNP

149) SDE/CND 150) SDE/Ichhapur/Intl 151) DE/TP-I 152) SDE/Dakghar

153) SDE/EL/C/SIB-I 154) SDE/Plg./ALP 155) SDE/LC/LD-II 156) SDE/MC/Shibpur

157) SDE/BP/South 158) SDE/Mktg./How 159) SDE/350/Intl 160) SDE/Belghoria/Extl-II

161) DE/EL/North 162) SDE/CR-II/Mktg./JDP 163) Guard File 164-165) Spare

  
(A.K. Bhattacharjee)  
SDE/Staff-I/HQ  
Calcutta Telephones.

## Bharat Sanchar Nigam Limited

(A Government of India Enterprise)

**Corporate Office**

**Establishment-IV Section**

BSNLCO-A/16(21)/5/2021-ESTAB

5<sup>TH</sup> Floor,

**Bharat Sanchar Bhawan,  
Jan path, New Delhi-110001**

Website: [www.bsnl.co.in](http://www.bsnl.co.in)

Dated: 03<sup>rd</sup> February, 2021

To

All Heads of Telecoms Circles,  
Bharat Sanchar Nigam Limited

Sub: Recovery due to erroneous pay revision of officiating JTOs whose pay revision were made in JTO as substantive cadre instead of TTA at the time of implementation of 2nd PRC w.e.f 01.01.2007 - Order dated 08.01.2021 passed by Hon'ble CAT, Ernakulam in OA No.823/2019 filed by Xavier AA case.

Sir,

There are several instances which have come to the notice of this office from different circles that while implementation of 2nd PRC w.e.f 1.1.2007, the pay of the officiating JTOs (TTA) were erroneously revised as per the pay revision order applicable to Executives instead of Non-Executive pay revision order dated 07.05.2010.

On noticing the erroneous revision, Kerala Circle office issued a direction to rectify the pay of these officiating JTOs in the substantive cadre i.e TTA cadre as per the Non-Executive pay revision order dated 7.5.2010 and then to re-fix in the pay scale of higher post JTO with reference to their revised pay in the lower post (TTA) and issued instruction in this regard to recover the overpayments made accordingly.

The above said rectification was challenged in OA No.1022/2012 before CAT, Ernakulam Bench and Hon'ble Court had upheld the rectification of erroneous pay revision vide order dated 05.01.2017 in RA 30/2015 in OA No.1022/2012, of Hon'ble CAT Ernakulam and to recover the over payments made by order dated 11.10.2012 of BSNL.

Kerala circle had recovered the excess/wrongful amount as per the above orders after rectification of pay fixation / revision of Shri Xavier A A. The same was challenged by Shri Xavier A A by filing an OA No.823/2019 before Hon'ble CAT, Ernakulam branch.

Hon'ble CAT Ernakulam has rejected the plea of the applicant and ordered in favour of BSNL vide its order dated 08.01.2021(copy enclosed) and allowed the BSNL to recover the excess/wrongful payments made.

*enclosed in  
3-02-21*

*lll  
3/2/21*



-2-

In this regard, the competent authority has directed to defend the similar cases in line with the said order dated 08.01.2021 passed by the Hon'ble CAT, Ernakulam in OA No. 823/2019 and recover any such wrongful/excess payments made.

You are requested to take action accordingly.

This issues with the approval of competent authority.

Encl: As above

Yours Faithfully,

  
3/2/2021  
M.Manitombi  
Dy. General Manager (Estt.II)  
Ph. 23734152 & Fax: 23734051

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00823/2019**

**Friday, this the 8<sup>th</sup> day of January 2021**

**C O R A M :**

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER  
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

Xavier.A.A. (HR No.198808587),  
JTO (Retired),  
Attupuram House,  
Cherukunnam, Assamannor P.O.,  
Ernakulam Dist. - 683 549.

...Applicant

**(By Advocate Mr.Vinay Kumar Varma)**

**v e r s u s**

1. The BSNL (through Chairman & Managing Director),  
Corporate Office, Bharat Sanchar Bhawan,  
Harish Chander Mathur Lane,  
Janpath, New Delhi – 110 001.
2. The Chief General Manager Maintenance,  
Southern Telecom Region,  
11 Link Road, Ganapathy Colony,  
Guindy, Chennai – 695 033.
3. The Principal General Manager Maintenance STR,  
Microwave Station Building, Deshabhimani Road,  
Kaloor, Ernakulam – 682 017.
4. The Principal Controller of Communication Accounts,  
Tamil Nadu Circle, No.60, Ethiraj Salai,  
TNT Complex, Egmore, Chennai – 600 008.

...Respondents

**(By Advocates Mr.George Kuruvilla [R1-3]  
& Mr.Thomas Mathew Nelloimoottil [R4])**

This application having been heard on 23<sup>rd</sup> December 2020, the Tribunal on 8<sup>th</sup> January 2021 delivered the following :

**ORDER**

**Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

The applicant had filed this O.A on 14.11.2019 seeking certain reliefs against the impugned orders at Annexure A-1, Annexure A-2 and Annexure A-3 and praying for quashing the same. Subsequently, owing to the judgment of the Hon'ble High Court of Kerala in O.P (CAT) No.118/2019 and connected cases on 06.02.2020, the applicant at the time of final hearing has limited the reliefs sought to only the matters relating to recovery proposed in Annexures A-2 and A-3 and incidental costs etc. Relief against Annexure A-1 relating to the fixation of pay while implementing the pay revision orders with effect from 01.01.2007 was heard and decided by this Tribunal in favour of the respondents in R.A.No.30/2015 in O.A.No.1022/2012 and connected cases, vide order dated 22.08.2016 (produced by the respondents at Annexure R-3[a]). This order was later upheld by the Hon'ble High Court of Kerala in the aforementioned O.P (CAT) No.118/2019 and connected cases on 06.02.2020. The Hon'ble High Court of Kerala did not find any reason to interfere with the order of this Tribunal. The Hon'ble High Court found that : *“the question raised in the present litigation, is as to the fixation consequent to implementation of pay scale revision orders, which has to be in the scales applicable to the cadre wherein the incumbent holds substantive post or lien. The application of FR 22 (I)a(1) arises only after the fixation is carried out as per pay revision order; in so far as fixing the pay of the officiating JTOs in the higher scales.”*

2. The aforementioned orders produced by the respondents at Annexure R-3(a) (copy of the order dated 22.08.2016 in R.A.No.30/2015 in O.A.No.1022/2012 and connected cases) and Annexure R-3(b) (copy of the judgment in O.P (CAT) No.118/2019 and connected cases dated 06.02.2020) thus have settled the matter in relation to relief sought at Para 8 (i) and Para 8 (iii) of this O.A in favour of the respondents. Thus the only issue left to adjudicate is relating to Para 8 (ii), (iv) and (v) of the O.A which are as follows :

*(1) Direct the respondents to refrain from effecting any recovery proposed in Annexure A-2 and Annexure A-3 or otherwise.*

*(2) Award costs incidental thereto.*

*(3) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal.*

3. In the matter relating to recovery, the applicant submits that Hon'ble Supreme Court in **State of Punjab v. Rafiq Masih (2015) 4 SCC 334** has declared the law succinctly that, when benefits have already been paid to an employee, for no fault of theirs and without any vitiating circumstances attributable to them, the same cannot be withdrawn merely because later on such grant is found to be irregular. The operative portion of the judgment at Para 12 is extracted below :

*12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the*

*employer; in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :*

*(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*

*(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*

*(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

*(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*

*(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.*

4. The applicant submits that the facts of the case fall squarely within the parameters of this declaration of law by the Hon'ble Supreme Court. Since he has been granted the impugned benefits of pay and allowances validly and under proper acknowledgment by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, without any fraud or misrepresentation on his part, he cannot now be prejudiced by an order to his detriment, especially considering the fact that he has retired on 31.07.2019 on attaining the age of superannuation. He has thus contested Annexure A-2 ordering recovery of Rs.1217980/- (due to pay and allowance of Rs.1080080/- plus leave encashment of Rs.137900/-) against the total amount of Rs.1747439/- due to him on account of DCRG and commutation of pension.

5. The applicant has also relied on the Government of India O.M.F.No.18/03/2015-Estt.(Pay-I) dated 02.03.2016 issued by DoP&T based on the Rafiq Masih judgment cited supra which is to be followed by all Government entities. He has submitted that his case is squarely covered under the stipulations laid down in Para 12 (ii) and (iii) of the Rafiq Masih's judgment, which lays down that recovery of excess payment made from employees who are retired or due to retire within one year from the date of recovery and from employees in whose case the excess payment has been made for a period in excess of five years, before the order of recovery is issued, is bad in law. Further, he has submitted during final hearing that his case falls outside the ambit of the ratio of the decision of the Hon'ble Supreme Court in **High Court of Punjab & Haryana v. Jagdev Singh (2016) 14 SCC 267**, since no undertaking was furnished by him at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted or refunded. Therefore, the respondents are estopped from now claiming that he was put on notice of the fact that any future re-fixation or revision of pay may warrant an adjustment of the excess payment, if any, made. He has also submitted a circular issued by the BSNL Corporate Office vide No.1-06/2016 PAT(BSNL) dated 01.05.2019 relating to the implementation of Hon'ble Supreme Court judgment on recovery of excess/wrongful payment and need for ensuring 100% error free pay fixation method and post audit of pay fixation. This circular states that wherever any excess payment has been made on account of fraud, misrepresentation, collusion, favoritism, negligence, carelessness etc., roles of those responsible for overpayments in

such cases, and the employees who benefitted from such actions should be identified and disciplinary/criminal action should be considered in appropriate cases. It has also stated that while examining proposals for waiver of recovery, it has been observed that cases are reviewed on the verge of retirement of an employee or after a number of years thereby making it difficult for BSNL to recover the excess payments from them. The applicant submits that there is no circular of the BSNL for recovery from gratuity and commutation as done in Annexure A-2. In addition, the applicant has submitted copies of a series of judgments by C.A.T., Principal Bench in O.A.No.3893/2016 dated 08.05.2018 and O.A.No.3187/2015 dated 04.05.2018, Hon'ble High Court of Kerala judgment in O.P (CAT) No.10/2018 dated 17.01.2018 which have interfered in the recovery by authorities of the excess payment made to employees either in part or in whole, if no mistake was made by the employee or if there was sufficient distance of time or if respondent departments had made a faulty interpretation of circulars.

6. *Per contra*, the respondents have submitted in their reply statement that the contention of the applicant that recovery is bad as his case falls squarely within the parameters of the law declared by the Hon'ble Supreme Court in Rafiq Masih (supra) is without any merits. The respondents submit that the applicant is a Group B employee and thus does not fall within the parameters laid down in the said case, which makes recovery impermissible. Further, the wrong fixation and excess payment of salary commenced in the year 2009 and the order for rectification of the

wrong fixation and recovery of overpayments was initiated as early as in 2012 (11.10.2012) vide Annexure R-3 (f) ie., within three years. Further, all the officiating JTOs including the applicant at the time of revision of their pay had given a clear and mandatory undertaking to the effect that any payment found to have been made in excess would be liable to be adjusted or refunded. In such an event, Rafiq Masih cited supra has no application at all, as held by the Hon'ble Supreme Court in the subsequent decision in Jagdev Singh cited supra. The above position has also been considered by this Tribunal in O.A.No.306/2013 and connected cases while considering the question of recovery of excess payments in the case of similarly situated persons (produced as Annexure R-3[g]) where this Tribunal had upheld recovery of amount paid in view of the law laid down in Jagdev Singh cited supra.

7. The respondents submit that when this O.A came up for admission hearing in November 2019, since it was submitted by the respondents opposing the stay of recovery that in view of the undertaking given by the applicant Rafiq Masih case (supra) has no application, a direction was issued by this Tribunal to produce the said undertaking of the applicant by the next posting date, failing which there would be a stay of the recovery ordered in Annexure A-2 and Annexure A-3. The respondents submit that they could not trace out and produce the undertaking by the next posting date on 03.12.2019. Accordingly, an interim order not to recover the amount covered by Annexure A-2 was issued on 03.12.2019 by this Tribunal. The respondents submit that this undertaking is still missing.



Since the same could not be traced out in the case of the applicant, the BSNL constituted a three member committee consisting of DGM (TR), CAO (Planning) and CAO (C&A) to inquire into the matter of the missing undertaking and to file a report. The committee filed a report on 29.01.2020 (produced at Annexure R-3[h]) after calling for explanation from the concerned officers, who are supposed to be the custodian of such documents. As per this report, undertakings were collected in 2010 as a pre-requisite for disbursement of pay arrears of 2<sup>nd</sup> PRC from among all executives of the SSA as per a general instruction from BSNL Corporate Office, New Delhi. It is reported to have been collected by AO (P&A) and kept in bundles instead of pasting it in the service books. Even now, only one bundle has been traced out. Moreover, the undertakings were collected in the year 2010 and the officers occupying the post of AO (P&A) have since been changed many times. Unfortunately either in the handing over memo or in any other charge report the undertaking file has not been mentioned. The committee has stated that over a period of ten years, it has been neglected to be kept intact. The committee has also observed that the applicant Shri.A.A.Xavier has filed many cases in CAT/Hon'ble High Court of Kerala regarding regularization of JTO and pay fixation from TTA to JTO. These cases were directly dealt by legal/HR section of the Kerala Circle Office. The committee also considers it as a reasonable and probable assumption that the undertaking may be available in any of these court case files in which Shri.A.A.Xavier was one of the applicants.

8. In effect, in their reply statement, the respondents have submitted that the non tracing of the undertaking in the case cannot be construed as “no undertaking given by the applicant” especially when the applicant did not have a case in the O.A that he has not given any undertaking as provided in Annexure A-7 pay revision order. Further, the respondents submit that no such case has ever been pleaded at any point of time by any of the similarly situated litigant officials who are more than 300 in number, either before the Tribunal or before the Hon'ble High Court. The respondents also have produce Annexure R-3(i) which is an undertaking dated 27.05.2015 given by the applicant, at the time of fixation of pay on merger of 78.2% IDA in the old scale of pay agreeing for recovery of excess amount if any found later on. This undertaking specifically states that the applicant will have no objection for whatsoever reason in the event of recovery of arrears being paid to him consequent on the fixation of pay after merging 78.2% IDA with the old scale of Rs.9850-250-14600/- with effect from 01.01.2007 from pay and allowances in future. Thus, the respondents claimed that they are well within their rights in undertaking the recovery.

9. We have heard learned counsel for the applicant Shri.Vinay Kumar Varma and learned counsel for the Respondent Nos.1-3 Shri.George Kuruvilla. In addition, reply is filed by the Respondent No.4, the Principal Controller of Communication Accounts, Tamil Nadu Circle, which indicates that the office of the Respondent No.4, being the pension sanctioning authority, has no role regarding overpayment of pay and allowances and issue of show cause notice for recovery of payment of pay and allowances.

10. The case of the respondents is that the applicant is not covered under the stipulation laid down in Para 12 (ii) and (iii) of Rafiq Masih's case cited supra. They have submitted that the wrong fixation of pay and excess payment of salary commenced in the year 2009 while implementing the pay revision based on Annexure A-7 Executive Pay Revision order dated 05.03.2009. On noticing the erroneous fixation, Annexure R-3(f) order for rectification of the wrong fixation and recovery of overpayments was ordered in the year 2012 itself. This could not be enforced due to pending litigations till the High Court finally settling the issue by Annexure R-3(b) order in February, 2020. Thus, though the applicant retired only in July 2019 the recovery proceedings were initiated way back in 2012. Hence, Para 12 (ii) of Rafiq Masih's case cited supra has no application. Further, Para 12 (iii) too has also no application as recovery was initiated within three years of the commencement of the excess payment. After examination of the documents and circumstances we accept the contention of the respondents relating to the non-application of Rafiq Masih's case cited supra to the case of the applicant. We hold that the criteria prescribed by Paras 12 (ii) and 12 (iii) of Rafiq Masih's case do not apply to the case of the applicant in as much as the order of rectification of fixation and recovery of over payment was initiated and ordered within three years of pay revision order in 2012 and much before his retirement. Due to pending litigation in various fora the same could not be actually effected. Thus, the criteria mentioned in Para 12 (ii) and (iii) of Rafiq Masih cited supra do not apply in this matter.

11. As we have concluded that criteria as mentioned in Paras 12 (ii) and 12 (iii) of Rafiq Masih cited supra do not apply, the other issue to be adjudicated ie., relating to the question of lack of availability of the undertaking purported to have been submitted at the time of revision of pay by the applicant has to be viewed only in this context. Jagdev Singh's case cited supra has in Para 11 only held that the principle enunciated in proposition Para 12 (ii) in Rafiq Masih cannot apply to a situation such as was in the case under consideration therein, where the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. In this matter, the Hon'ble Supreme Court only observed that since the officer furnished an undertaking while opting for the revised pay scale, he is bound by the undertaking. In this O.A., however, we have already held that Para 12 (ii) does not apply at all. Further, the respondents have claimed that the applicant had submitted an undertaking which is now not traceable, whereas the applicant took a plea only at the time of hearing that he had not done so. We have already noted that though the contention of the applicant during the final hearing was that he had not furnished any undertaking at the time of revision of pay, it does not seem to have been pleaded as such by him in the O.A.

12. We note that the report of the three member committee indicates that undertakings were collected from all the officers as a prerequisite for disbursement of pay arrears and were kept in bundles instead of pasting it in the service books. The respondents have submitted that inspite of their best

efforts only one bundle could be traced out in their search though it was supposed to have been kept in the AO(P&A) Section. Their submission is that non tracing of the undertakings cannot be construed as “no undertaking given by the applicant” especially when the applicant did not have a case in the O.A that he has not given any undertaking as provided in the Annexure A-7 pay revision order. They have also pointed out that no such case has been pleaded at any point of time by any of the similarly situated litigant officials who are more than 300 in number. On the other hand, Annexure R-3(i) is the undertaking given by the applicant in 2015 at the time of fixation of pay on merger of 78.2% IDA in the old scale of pay, agreeing for recovery of excess amount if any found later on.

13. In the facts and circumstances of this case, we hold that the non tracing of the undertaking given by the applicant subsequent to Annexure A-7 pay revision order does not fatally harm the process of recovery since we have already squarely found that Para 12 (ii) of the criteria in Rafiq Masih does not apply. The applicant had also submitted a similar undertaking in 2015 at the time of fixation of pay on merger of 78.2% IDA in the old scale of pay. It seems to us that his argument that no undertaking was given was an afterthought after the query by this Tribunal at the time of admission hearing did not result in the production of a copy of the undertaking. We also find that the order for recovery was made well within the time prescribed and does not fall in the face of the relevant criteria cited in Rafiq Masih's case cited supra.

14. We, therefore, do not find merit in the reliefs sought by the applicant. The O.A is accordingly dismissed. The respondents are accordingly allowed to recover the total amount of Rs.1217980/- (due to over payment of pay and allowances of Rs.1080080/- plus leave encashment of Rs.137900/-) from the applicant as per Annexure A-2. The interim order on stay of recovery for payments effected is vacated. There shall be no order as to costs.

(Dated this the 8<sup>th</sup> day of January 2021)

**K.V.EAPEN**  
**ADMINISTRATIVE MEMBER**

**P.MADHAVAN**  
**JUDICIAL MEMBER**

**asp**

**List of Annexures in O.A.No.180/00823/2019**

- 1. Annexure A-1** – A copy of the Pay Fixation Order bearing No.PGMM STR ENK/33-S/2861/XAA/PEN/19 dated 30.09.2019 issued from the office of the 3<sup>rd</sup> respondent.
- 2. Annexure A-2** – A copy of the Order bearing No.PGMM STRENK/33/S-2861/2019-20/XAA/PEN/20-1 issued from the office of the 3<sup>rd</sup> respondent. (undated)
- 3. Annexure A-3** – A copy of the Order bearing No.PGMM STRENK/33/S-2861/XAA/PEN/21 dated 02.11.2019 issued from the office of the 3<sup>rd</sup> respondent.
- 4. Annexure A-4** – A copy of the Promotion Order bearing No.GM/STR/ENK/33/M-2211/2014-15/64 dated 08.08.2014 issued from the office of the 3<sup>rd</sup> respondent.
- 5. Annexure A-5** – A copy of the Pay Fixation Memo No.Estt/Pay Revsn-2007/2014-15 dated 21.04.2014 issued from the office of the 3<sup>rd</sup> respondent.
- 6. Annexure A-6** – A copy of the representation dated 16.08.2014 submitted by the applicant to the 2<sup>nd</sup> respondent.
- 7. Annexure A-7** – A copy of the Office Order No.1-50/2008-PAT (BSNL) dated 05.03.2009 issued by the 1<sup>st</sup> respondent.
- 8. Annexure A-8** – A copy of the Pay Fixation Memo No.33/GM STR ENK/PAY FIX dated 08.05.2015 issued from the office of the 3<sup>rd</sup> respondent.
- 9. Annexure A9** – A copy of the representation dated 29.10.2019 submitted by the applicant to the 3<sup>rd</sup> respondent.
- 10. Annexure R-3(a)** – A copy of the order dated 22.08.2016 in R.A.No.30/2015 in O.A.No.1022/2012 and connected cases.
- 11. Annexure R-3(b)** – A copy of the judgment dated 06.02.2020 of the High Court in O.P (CAT) No.118/2019 and connected cases.
- 12. Annexure R-3(c)** – A copy of the order dated 18.09.2019 of the office of the CGM Kerala Circle.
- 13. Annexure R-3(d)** – A copy of the Clarification dated 16.03.2009 of the Kerala Circle.
- 14. Annexure R-3(e)** – A copy of the Pay Revision Order for Non-Executives of BSNL dated 07.05.2010.

**15. Annexure R-3(f)** – A copy of the order dated 11.10.2012 of the CGM Kerala Circle.

**16. Annexure R-3(g)** – A copy of the order in O.A.No.306/2013 & connected cases of the CAT Ernakulam.

**17. Annexure R-3(h)** – A copy of the committee report dated 29.01.2020.

**18. Annexure R-3(i)** – A copy of the undertaking dated 27.05.2015 given by the applicant.

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Corporate Office  
Establishment-IV Section

No. BSNLCO-A/16(27)/12/2020-ESTAB

Dated: 28th October 2020

To

The Chief General Manager,  
Bharat Sanchar Nigam Limited,  
Kolkata Telephones Circle,  
Kolkata

Sub: Clarification on pay fixation on 2<sup>nd</sup> PRC against the order No 3-32/2013/Estt IV dated 22.12.2015.

Sir,

I am directed to refer to your office letter no.ABB/FA/3112/Misc./L/5/110 dated 22.06.2020 wherein it is requested to clarify some points regarding pay fixation on 2<sup>nd</sup> PRC with respect to officiating JTOs. The case has been examined and clarifications are as under:

Sl No	Queries	Reply
a)	Whether the order no. 3-32/2013/Estt-IV dated 22.12.2015 is applicable to the officiating JTOs who were regularized as JTO @ after 01.01.2007 or not.	Yes
b)	Whether option vide para 3.6 of letter no. 1-16/2010-PAT (BSNL) dated 07.05.2010 & letter no. 1-37/2010-PAT(BSNL) dated 18.05.2011 is applicable for these JTOs or not.	Applicable, if the officials were promoted during the period 01.01.2007 to 07.05.2010.
c)	Whether pay protection as per FR-26 (i) read with D.G P&T instruction vide (2) 2 of FR 26 is applicable or not.	Yes. FR 26(e)(i) deals with the provisions for counting of period of service rendered in a higher post on officiating or on a temporary basis for the purpose of grant of increment in the substantive cadre.

This issues with the approval of Competent Authority.

  
28/10/2020

(M Manitambi)

Deputy General Manager (Estt.)  
(: 011-23734152 & 7: 011-23734051)

No. BSNLCC-A/16(27)/12/2020-ESTAB

Date: 28.10.2020

Endorsement No. AGM/HR/HQ/Misc. letter/5 dated at Kolkata-1

the 19.11.2020

Endorsed for kind information and necessary action at all concerned.

Copy to:-

1. TS to CGM/CTD
2. All PGM, CTD
3. All Sr. GM/GM, CTD
4. All AGMs/Des, CTD
5. All AO(SR)HQ and AO(Staff)Claims/HQ

  
19/11/2020  
AGM(HR)HQ  
BSNL, Calcutta Telephones

Circulated through CTD Intranet (MEDHA) for information and taking n/a by all concerned.