CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

ORIGINAL APPLICATION NO.170/00138/2020

DATED THIS THE 04th DAY OF MARCH, 2020

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

B.H.Thimmapur
S/o Hanumanthappa
Aged 59 years, working as
Office Superintendent (TG)
Customers' Service Centre
BSNL, Telephone Exchange
Jamkhandi, Bagalkot District-587 301.
Residing at H.No.1278
2nd Main Road, Venkatesh Colony
Hunnur-587 119
Bagalkot District. ….Applicant

(By Advocate Sri A.R.Holla)

Vs.

1. Union of India
   By Secretary
   Department of Telecommunications
   Ashoka Road
   New Delhi-110 020.

2. The Bharat Sanchar Nigam Ltd.
   Corporate Office
   4th Floor, Bharat Sanchar Bhavan
   H.C.Mathur Lane, Janpath
   New Delhi-110 001.
   By its Chairman & Managing Director.

3. The Chief General Manager, Telecom
   Karnataka Circle
   No.1, Swamy Vivekananda Road
   Halasuru, Bengaluru-560 008.

4. The Principal General Manager
   BSNL Telecom District
   Vijayapur-586 101. ….Respondents

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN)

Being aggrieved by the action of the respondents in not considering his service as 'Reserve Trained Pool'(RTP) employee for service benefits, the applicant has filed the present OA seeking the following relief:

i. *To quash the Speaking Order No.L-4/116/CAT/OA-170/18-19/13dtd @ Bijapur the 09.01.2020, issued by the respondent No.3, Annexure-A6.*

ii. *Direct the respondents to consider the service of the applicant as 'Reserve Trained Pool' employee from 18.01.1981 till 18.07.1987 as regular service for grant of service benefits including TBOP benefit, in pursuance of his representation dated 23.08.2018, Annexure-A4 and extend consequential benefits accordingly.'*

2. The applicant submits that he was appointed as Telegraphist/Time Scale Clerk/Telephone Operator against a vacancy in 'Reserve Trained Pool' in the office of Senior Superintendent, Telegraph Traffic Division, Belgaum by order dtd.18.8.1981(Annexure-A1). Thereafter he was posted to different establishments in the Dept. of Telecom, Belgaum, Bijapur, Bagalkot, Bidar etc., as and when there was work to be discharged by a Telegraphist/Time Scale Clerk/Telephone Operator in terms of orders issued from time to time. He was permanently appointed as Telecom Office Assistant and posted to the Office of DTO, Bidar by order dtd.3.8.1987(Annexure-A2). His service from 18.08.1981 to 18.07.1987 has not been considered for 'One Time Bound Promotion(OTBP) Scheme on completion of 16 years of regular service. The Ernakulam Bench of this Tribunal in OA.No133/2009 held that 'the service rendered as RTP employee should be considered for grant of OTBP from the date of appointment, if there existed a vacancy'. The said order was confirmed by the Kerala High Court. When the respondents took the matter to the Hon'ble Apex Court, the Apex Court

directed to file review petition before the Kerala High Court and the Kerala High Court had dismissed the review petition(Annexure-A3). As such the matter attained finality. Subsequent to that order, the applicant made representation dtd.23.8.2018(Annexure-A4) but there is no reply on the same. In the circumstances, he filed OA.144/2019 seeking direction to consider his service from 18.08.1981 to 18.07.1987 as regular service for the purpose of service benefits and the Tribunal vide order dtd.24.10.2019(Annexure-A5) directed the respondents to comply with the orders of the Hon'ble Apex Court & Hon'ble Kerala High Court. Without complying with said order of the Tribunal, 4th respondent passed a speaking order dtd.9.1.2020(Annexure-A6) declining to consider the service of the applicant as 'reserved trained pool' candidate from 18.08.1981 to 18.07.1987 holding that there were no regular vacancies and none of the juniors of the applicant were regularised till 17.8.1987. Applicant submits that the statement of the 4th respondent is incorrect as the order dtd.22.9.1983 issued by the 3rd respondent indicates the number of posts of Telegraphists existing in various Divisions(Annexure-A7). The order dtd.3.10.1985 issued by the 3rd respondent indicates the vacancies in the post of Telegraphists in Belgaum Division(Annexure-A8). Relying on the order of the Kerala High Court, the Tribunal in OA.No.144/2019 held that the employees are entitled to all service benefits from the date they were appointed as RTP and if there were vacancies. Therefore the applicant is also entitled to the same relief.

3. We have heard the Learned Counsel for the parties and have gone through the OA pleadings in detail. The issue relating to the service benefits flowing from the date of joining as 'Reserved Trained Pool' employee has been the subject matter of a number of litigations before various Tribunals, High Courts

and the Hon'ble Apex Court. In Civil Appeal Nos.126/96, 124-125/96, 127-130/96 & 131/96 with Civil Appeal No.5268/1997 vide order dtd.1.8.1997, the Honble Apex Court drew a distinction between RTPs and Casual Labourers and quashed the decision of the Ernakulam Bench of this Tribunal wherein the Tribunal had directed that the RTP appointees on completion of one year of service should be deemed to have been attained temporary status and half the period of 8 hours per day should be counted for the qualifying service for pension. The Tribunal in that case had also directed that all other benefits made available to the casual labourers after attaining temporary status should be extended to the applicants and that the applicants should be paid productivity linked bonus if they completed 240 days service each year for three years after their recruitment as RTP candidates. Similarly, the same order was also rendered by the Hyderabad Bench of this Tribunal. The Hon'ble Apex Court in the decisions (cited supra) dismissed the original application and set aside the impugned judgments of the Tribunal by stating very specifically that equating RTP appointees with the casual labourers was wrong since RTPs had come in employment under a different scheme and the scheme provided for their absorption as regular employees unlike casual labourers. There was a clear assurance in the scheme that they would be accommodated in future vacancies as regular employees in the manner set out in the scheme. The Hon'ble Apex Court held that the benefits which they claimed are the benefits which have been conferred on casual labourers only after 29.11.1989 and therefore the RTP appointees claiming the benefits for earlier periods cannot be accepted. In fact the decision relating to their eligible service for the purpose of appearing before the departmental examination itself was questioned since any service which was

rendered prior to regular employment was held to be not eligible to be considered. The Hon'ble Apex Court held that the Tribunal was wrong in granting RTP appointees the benefits of service rendered before their regular employment for the purpose of their eligibility to appear for the departmental examination. A detailed review of all the judgments relating to the subject was considered by the Ernakulam Bench of this Tribunal in OA.No.79, 119 & 988/2011, 31, 1150 & 1151/2012 and 1014/2010 in its order dtd.01.10.2013 wherein the Tribunal held that so far as grant of TBOP was considered, the service rendered by the RTP appointees from the date of their appointment should also be considered since that particular scheme envisaged total number of years of service and not restricted it to only regular service. The Tribunal also held that in so far as MACP is concerned, the period of service shall be reckoned only from the date of regular appointment. The Tribunal also held that there is no question of regularisation from the date of initial appointment or from the date vacancy arose much less the seniority on the basis of such regularisation as the same had been rejected by the Hon'ble High Court in WP.No.21239/2000. A similar issue was agitated before the Hon'ble High Court of Kerala at Ernakulam in RP No.880/2013(Z) in OP(CAT).158/2010 against the judgment in OP(CAT).158/2010 of High Court of Kerala dtd.1.10.2010. This RP order is dated 10.8.2017 and in para-8, the High Court held as follows:

> *8. The learned standing counsel appearing for the review petitioners points out that the grounds are mainly based on the verdict passed by the Apex Court as reported in (1997) 7 SCC 30 [cited supra]. We have gone through the said decision as well. The review petitioners have pointed out in 'Ground No.3' that the effect of the previous order passed by the Tribunal was to give appointment from the 'date of vacancy' and not from the date of initial appointment, which aspect was omitted to be considered in the judgment passed by this Court as well; at the earlier instance. On going through the observations and directions in O.A. No. 661 of 1991 [as extracted in paragraph 8 of the verdict of the Tribunal] and the*

consequential direction given in the present O.A., this Court does not have any doubt with regard to the course of action ordered to be pursued. The admitted facts reveal that the vacancy was created as early as in the year 1983 [as borne by Annexures A1 to A4] and as per Annexure A8 dated 18.06.1992 recommendation was forwarded to have service of the applicant regularised w.e.f. 1983 [though the same was not acceded to by the 'higher ups']. Existence of vacancies in the year 1983 is not disputed, which was taken note of by the Tribunal while moulding the relief. The gist of the direction in O.P (CAT) No. 661 of 1991 is to have regularization effected from the date of availability of the vacancy. At the same time, this has to be read in the light of date of initial placement given by the petitioners as 'RTP operators' and the date of initial appointment as above. If vacancies were available, whether the benefit of regularization has to be given w.e.f. that date or from the date of initial appointment; is the question. This alone requires to be clarified in the present proceedings and never beyond. This is more so, since the scope of the decision of the Supreme Court [which is now pressed before this Court] i.e. (1997) 7 SCC 30 [cited supra] has already been considered by the Tribunal and held as not applicable. This Court finds that there is no error apparent on the face of the record to invoke the power of review. The power of review can never be misunderstand or misconstrued as a substitute for appeal, in view of the law laid down by the Apex Court in Meera Bhanja Vs. Nirmala Kumari Choudhary (AIR 1995 SC 455). We also find support from the rulings of the Apex Court in M/s. Thungabhadra Industries Ltd. Vs. Government of Andra Pradesh rep. by Deputy Commissioner Commercial Taxes, Anantapur [AIR 1964 SC 1372], Parison Devi Vs. Sumitri Devi [(1997) 8 SCC 715] and N. Anantha Reddy Vs. Anshu Kathuria [(2013) 15 SCC 534]. Interference is declined and the review petition stands dismissed.

4. The net effect is that the regularisation can be effected only from the date of availability of vacancy. Therefore, the sum and substance of all the decisions so far is that for considering the service rendered by the RTP appointees from the date of their appointment can only be accepted if they could have been appointed as such RTP appointees against a regular vacancy at that point of time. The respondents would rightly claim that the applicant is claiming for the service benefits right from the date of appointment as RTP employee from 18.08.1981 to 18.07.1987. As can be seen from Annexure-A1, on successful completion of theoretical training for 8 months followed by practical training, the applicant was asked to work as Short Duty Telegraphist whenever

required until he secures vacancy for regular absorption. And finally vide Annexure-A2, the applicant is appointed on regular basis. The applicant states that the regular vacancies were in existence but the regularisation was not done against the vacancies. Apart from producing some communication relating to the number of posts sanctioned, the applicant is not able to state as to how he came to the conclusion that there was a vacancy at that point of time when he was appointed as RTP and therefore, it is not the applicant's fault that he could not be regularised from the date the vacancy arose.

5. As stated by the respondents in their reply filed in OA.No.918/2019, the applicant has not indicated or claimed with records that the regular vacancies were available on the date of appointment as Short Duty Telegraphist till the date of his regularisation. He has also not stated that any of his juniors have been regularised prior to him. The respondents would also state that the Hon'ble High Court in RP.No.8880/2013(Z) in OP(CAT) 158/2010 vide order dtd.10.8.2017 cited by the applicant would also clearly direct that the regularisation can be only from the date on which the vacancy arose and not earlier. The respondents would state that there was no regular vacancy. The respondents also cited the Hon'ble Apex Court judgment in CA.No.1783/2005 in the case of *UOI & Ors vs. A.Durairaj* dtd.1.12.2010 wherein the Hon'ble Apex Court held as follows:

> *"….. Further, where a claim is raised beyond a decade or two from the date of course of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officer who dealt with the matter and /or the relevant records relating to the matter may no longer will be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches."*

6. It is clear that the applicant is claiming for a benefit relating to his service as RTP appointee after the efflux of more than three decades from his regularisation in appointment. We therefore, deem it appropriate to consider that the service rendered by the applicant prior to his regular date of appointment can be considered only if there is adequate proof to state that the vacancies were existing at that point of time and that for one reason or the other, the respondents did not fill up such vacancies for no fault of the applicant. Unless this is proved, the services rendered by the applicant prior to his regular date of appointment cannot be considered for any benefit where such regular service is required to be considered for being eligible to such benefits.

7. The OA is disposed of with the above orders. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred by the applicant in OA.No.170/00138/2019

Annexure-A1: Order dtd.17.4.1984
Annexure-A2: Order dtd.3.8.1988
Annexure-A3: Order dtd.10.8.2017 of Kerala High Court in RP.880/2013
Annexure-A4: Representation dtd.23.8.2018
Annexure-A5: Order dtd.24.10.2019 in OA.144/2019
Annexure-A6: Speaking order dtd.9.1.2020
Annexure-A7: Order dtd.22.9.1983
Annexure-A8: Order dtd.10.10.1985

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