

CENTRAL ADMINISTRATIVE TRIBUNAL, ERIAKULAM BENCH

O.A.416 and 417 of 1992

Friday, this the 19th day of November, 1993.

SHRI N DHARMADAN, JUDICIAL MEMBER
AND
SHRI S KASIPANDIAN, ADMINISTRATIVE MEMBER

O.A.-416/92

1. KV Jose, S/o Varghese KP,
Aged 32 years, Group 'D'
Telephone Exchange,
Kolencherry, residing at
Kudilil House, Kunnachel.

2. G Gopinathan,
S/o Gopala Jamakan,
Aged 32 years, Group 'D'
Telephone Exchange,
Thodupuzha, residing at
Vadakkemundackal,
Mumdamudy P.O.

- Applicants

By Advocate Shri Raju K Mathews

Vs.

1. Union of India, represented by
its Secretary, Ministry of
Communications, New Delhi.

2. The General Manager, Telephones,
Ernakulam.

3. TP Balachandran, Lineman,
SOOT, Idukki.

4. PK Gopalakrishnan Nair,
Lineman, AK(Group) Munnar. . Respondents

By Advocate Shri TPM Ibrahimkhan, ACGSC (For R.1&2)

By Advocate M/s A Balasubramanian & H Subhalakshmi

O.A.417/92

MM Mathai, S/o Chacko Mathai,
Aged 32 years, Group 'D'
Telephone Exchange, Thodupuzha,
residing at Manadapathil House,
Kadavoor PO 686 671. - Applicant

By Advocate Shri Raju K Mathews

Vs.

1. Union of India represented by its
Secretary, Ministry of Communications,
New Delhi. - Respondents

2. The General Manager,
Telephones, Ernakulam.
3. TP Balachandran,
Lineman, SDOT, Idukki.
4. PK Gopalakrishnan Nair,
Lineman, ABGroup) Munnar. - Respondents

By Advocate Shri George CP Tharakan, SCGSC(for R-1&2)

By Advocate M/s A Balasubramanian & H Subhalakshmi(for R-3&4)

O_R_D_E_R

N DHARMADAN, JUDICIAL MEMBER

Both these applications are heard together in view of the fact that issue arising in these cases are same and that the learned counsel appearing for the parties have agreed that the cases can be disposed of by a common judgement.

2. The applicants in both the cases are working as Group 'D' employees in the Telegraph Department and they were originally appointed with effect from 20.1.1986 in Thodupuzha Telegraph Engineering Division. They are claiming seniority over respondents 3&4, who were similarly appointed as Group 'D' employees with effect from 19.4.1986 in the Ernakulam Engineering Division. When a notification Annexure-3 in OA-416/92 was issued on 14.8.1990 in connection with the recruitment of Lineman, the applicant in OA-416/92 were not called for the test on 14.10.1990. But the applicant in OA-417/92 was called for the test and he was selected. However, he was denied seniority above respondents 3&4 taking into account the original date of appointment as Group 'D' employee.

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Aggrieved by the denial of seniority, the applicants have filed these two cases for setting aside the list of Lineman prepared after the selection and for a direction to respondents to fix their seniority taking into consideration their original appointment. The applicants rely on Rule 32(E) of the P&T Manual which reads as follows:

"Subject to any special rules prescribed for any particular service, the seniority of an official in the cadre to which he belongs should be fixed according to the date of his permanent appointment to that cadre."

3. According to the applicants, if seniority of the applicants was fixed on the basis of original date of appointment in terms of Rule 32(E) namely, the date of permanent appointment, the applicants in OA-416/92 would have also been called for the test and appointed as Lineman above respondents 3&4. The respondents, after amalgamation of Thodupuzha and Ernakulam Telegraph Engineering Division, issued with effect from 1.4.1987, a combined gradation list of temporary Group 'D' employees as on 31.3.1987, in which the applicants were ranked below respondents 3&4. According to the applicants, since the said seniority list was not circulated in the Thodupuzha Division, they became aware of their lower rank and position in the seniority list only when the reply statement was filed producing the seniority list. Hence they have challenged the said seniority list in both the O.As by filing amendment applications. The amendments were allowed after hearing learned counsel on both sides. Hence in both these cases, the applicants are challenging the panel prepared for appointment of Lineman after selection

held on 14.10.1990 and issue of the combined seniority list of Temporary Group 'D' as on 31.3.1987.

4. In answer to the challenge of seniority list, the respondents have stated that the O.As are belated. According to them, since the seniority list was already circulated in all the Divisions after its decision in 1987 and that the applicants have not filed any objection, the original application is belated and liable to be rejected on that ground.

5. This contention is denied by the applicants and it is only after hearing the learned counsel on both sides that we have allowed the amendment incorporating the grounds attacking the seniority list. The further contention of the respondents, that all the persons who are affected by allowing the contentions of the applicants are not made parties and hence the O.A. is to be dismissed is also denied by the applicants.

6. There is no substance in this plea of the respondents. The applicants do not want to disturb the seniority of all the persons included in the seniority list. According to them, when a declaration of law pertaining to the date of fixation of seniority in the light of Rule 32(E) of the P&T Manual, Vol.IV is made, it can be implemented by giving notice to all the affected parties. Notice need only be given when it is found that the implementation of the direction applying law that would/affects parties who were

given seniority and the benefit of inclusion in the list. It has been laid down by the Supreme Court in a *catena* of decisions that when the Court or Tribunal only makes a declaration of the law for the fixation of seniority, it is not necessary to bring all the affected parties in the party array. Only when such law is applied for actual fixation of the seniority and the same affects others adversely, that issue of ⁴ the requirement of/notice to the affected parties and hearing and the application of the principles of natural justice arise for consideration.

7. In the light of this settled position, we are not inclined to accept the preliminary objection raised by the learned counsel for respondents. As indicated above, we are not inclined to reject the application accepting the plea of bar of limitation.

8. Now coming to the merits of the case, we have to examine the recruitment rules/ ^{which} are produced as Annexure-2 in both cases. Column 5 of the rule specifically mentions that the 5% of the post, is to be filled up by direct recruitment and 95% is to be filled by transfer from among Group 'D' employees who have put in a minimum regular service of three years in an Engineering Division/Telecom District and who qualify the Entrance and Aptitude Test as prescribed for direct recruitment. Column 7 prescribes the educational and other qualifications for direct recruitment. This is

not relevant for we are concerned with direct recruitment in this case. According to the applicants, they are fully qualified for promotion as Lineman within 95% quota having completed three years of regular service from 20.1.1986. Applicants in OA-416/92 have not been called for the test held on 14.10.1990.

According to them, if the respondents had prepared a seniority list as stated in this case, in terms of Rule 32(E) taking into consideration the date of their permanent appointment, the applicants would have been called for the test and included in the list prepared for appointment as Lineman.

6. The respondents have stated that the date of permanent appointment, i.e. their confirmation in service is to be determined for granting promotion and alerting them for the departmental tests. All the applicants were confirmed on 1.4.1988; but the respondents 3&4 were given confirmation on 25.4.1986 considering the fact that they worked in Ernakulam Telegraph Engineering Division. They further submitted that on 1.4.1987, these two divisions were amalgamated and a consolidated seniority list of officers in both the divisions after merger of two Unions with effect from 31.3.1987 was issued.

7. We are unable to understand why the respondents have decided to make the appointment to Group 'D' after promotion with reference to vacancies as pointed out in their reply. They submitted that respondents 3&4 were considered for 1982

vacancies whereas the applicant was considered only for the 1984 vacancies. Admittedly the date of appointment of the respondents 3&4 is subsequent to the date of appointment of the applicant. It is well settled that the seniority of officials in a particular cadre or posts is to be determined on the basis of the date of first appointment in that cadre or post. The respondents have not produced any executive order or rule giving them the freedom to make the appointment; as Group 'D' employees with reference to vacancies and fix their seniority following that principle as stated by them in the reply. The normal principle of fixation of seniority as indicated above, is the date of original appointment in the cadre or post unless the department is governed by separate rules for fixation of seniority. In the instant case, Rule 32(E) of the P&T Manual applies and seniority ought to have been fixed with reference to the provisions in that rule. Since the respondents have not considered the relevant rule for fixation of the seniority in the instant case, we are satisfied that the applicants have made out a case particularly in the light of the provisions of Rule 32(E) of the Manual.

8. Having regard to the facts and circumstances of the case, we are satisfied that the fixation of seniority of the applicants vis-a-vis respondents 3&4 cannot be upheld. A fresh consideration of the applicants seniority vis-a-vis respondents 3&4 with reference to relevant rules is to be

made on the basis of the date of their original appointment as indicated above.

9. Accordingly, we direct the second respondent to reconsider the seniority of the applicants vis-a-vis respondents 3&4 in the light of the provision of Rule 32(E) bearing in mind the above observations after issuing notice to all the affected parties and include the applicants in the appropriate place in the existing combined seniority list of the temporary Group 'D' employees on 3.1.1983 in both these cases, in case it is found after consideration that they are denied the benefit as indicated above. Such inclusion/ This shall be done within a period of six months from the date of receipt of a copy of this order. It goes without saying that the applicants are entitled consequential benefits in case their seniority is altered and fixed above respondents 3&4. We make it clear that applicants in OA-417/92 is also entitled the benefit of promotion above respondents 3&4 in case it is found by the first respondent after complying the direction that he is eligible to be included in the seniority list of Group 'D' above respondents 3&4, following the above observations.

10. Both the cases are allowed to the extent as indicated above. No costs.


S. Kasipandian

(S KASIPANDIAN)
ADMINISTRATIVE MEMBER


N. Dharmadan

(N DHARMDAN)
JUDICIAL MEMBER

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