

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.443/2002

Monday, this the 28th day of February, 2005.

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

**N.Rajendran Nair,
Deputy General Manager Telecom
(Finance & Accounts),
O/o the General Manager, Telecom,
BSNL, Pathanamthitta SSA,
Thiruvalla.**

- Applicant

By Advocate Mr Shafik M.A.

Vs

- 1. Union of India represented by
The Secretary,
Department of Telecommunications,
Ministry of Communications,
Sanchar Bhavan,
Ashoka Road,
New Delhi – 110 001.**
- 2. The Chairman cum Managing Director,
Bharat Sanchar Nigam Limited,
Sanchar Bhavan,
New Delhi.**
- 3. The Memembr(Finance),
Department of Telecommunications,
Sanchar Bhavan,
Ashoka Road,
New Delhi.**
- 4. The Chief General Manager Telecom,
Kerala Circle,
Trivandrum – 33.**

- Respondents

By Advocate Mr C.Rajendran, SCGSC

ORDER

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

The applicant N.Rajendran Nair, presently working as Deputy General Manager, Telecom at Thiruvalla, borne on the Junior Time Scale of the Indian P&T Finance & Accounts Service, is aggrieved by his non-promotion to the Senior Time Scale of that service on the basis of adverse entries recorded in the part ACR (1.4.99 to 13.9.99) for the year 1999-2000, and by the refusal of the respondents to expunge the adverse entries as well as non-disposal of his appeal. The applicant has stated that the fact of adverse entries having been made in the part ACR was communicated to him by the General Manager of Kerala Circle on 22.9.2000 (A-1). The applicant represented against it by A-2. The 4th respondent toned down two entries and retained one adverse entry in full by A-3 order. The applicant submitted an appeal to the 3rd respondent on 3.9.2001 by A-4. While the appeal remained undisposed, more than a hundred officers of the batch, excluding the applicant at Sl.No.61 in the order of seniority, were promoted to the Senior Time Scale of Indian P&T Finance & Accounts Service by the Department of Telecom order dated 17.6.2002. The applicant has averred that the adverse entries were made by the reporting officer, as she was on inimical terms with the applicant.

2. The respondents have contended in their reply statement that only one representation against adverse entries in ACR is allowed and the applicant's representation dated 25.10.2000 was duly considered by the Appellate Authority resulting in the toning down of two entries and retention of one entry. It is for this reason that a second appeal addressed to the Member(Finance) could not be entertained and this fact was communicated to the applicant on 10.7.2002. The applicant was considered along with others by a DPC during May 2002 and as the officer's grading did not meet the bench mark he could not be promoted to

the Senior Time Scale of the service.

3. The learned counsel for the applicant stated that the applicant continued to maintain an unblemished record of 37 years in service and no adverse remark was ever communicated to him, but for the one under challenge. He argue that part ACR of a year, covering a period of barely 5 months, written by a superior who had all along thought very highly of him, must be seen in context to appreciate how a sudden fall could have occurred. He refused to go into the details of the supervisor's sudden loss of confidence during a five month stretch, but pleaded emphatically that seen in the light of past and future recordings, the isolated entry, would show what he means. Referring to the disposal of the applicant's representation he states that there was an apparent inconsistency in the manner in which the immediate appellate authority handled the representation. While the appellate authority had found that there were no recorded warnings, and had on that basis toned down two entries, allowed the third entry to stand solely on the basis of the reporting officer's version that oral warnings were issued. On the face of such unfairness and inconsistency, the applicant approached the next in line of appeal, who took too technical a view in the matter to shut out natural justice.

4. The learned counsel for the respondents stated that the applicant worked under the reporting officer who recorded the adverse remarks for a period of 18 months involving one full ACR and a part ACR for 5 months. It is quite possible, he argued, that the applicant's performance deteriorated suddenly due to reasons best known to him, and the reporting officer recorded what was her fair supervisory opinion. He also stated that the applicant is not right in assuming that his subsequent ACR was free of blemish. As a matter of fact, his

latest ACR at the time of consideration by DPC was also below bench mark.

5. The learned counsel for the applicant objected to this stand of the respondents vehemently stating that adverse entries not communicated, would not constitute a basis for declaring him unfit. He pleaded that the Tribunal order the ACR file to be produced for inspection by the Tribunal for taking a fair view of the matter.

6. The respondents, very gracefully, produced the ACR file of the applicant, including the DPC proceedings. We have gone through these records very carefully.

7. We found from the records that apart from the part ACR under scrutiny, there is yet another ACR from which an adverse assessment has been incorrectly inferred by the DPC. We tabulate below in juxtaposition our reading with that of the DPC for clarity:

<i>Period</i>	<i>DPC's record</i>	<i>Our observation</i>
1.4.96 to 5.1.97	Very Good	Very Good
6.1.97 to 31.3.97	Very Good	Very Good
1.4.97 to 30.11.97	Very Good	Very Good
1.12.97 to 31.3.98	Very Good	Very Good
1.4.98 to 31.3.99	Very Good	Very Good
1.4.99 to 13.9.99	Average	Average
14.9.99 to 9.12.99	CR not written as period is less than three months	
10.12.99 to 26.3.2000	Average	Average

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<i>Period</i>	<i>DPC's record</i>	<i>Our observation</i>
27.3.2000 to 31.3.2000	CR not written as period is only 5 days	
24.4.2000 to 31.3.2001	Average	Very Good

8. It would be seen from the above that the matter rests on the ACRs of 1999-2000 and 2000-2001. The DPC has erred in categorising the entire 1999-2000 as Average, while it was Average for five months, there was no CR written for a period of about two and half months, and it was very good for a period of three and half months. More importantly, the DPC erred in categorising the performance of 2000-2001 as 'Average', while the reporting officer has graded him as 'Very good'. Presumably the DPC chose to mislead itself by the reviewing officer's remark in col.4 by way of general remarks. Having stated in Col.2 that the reporting officer wrote the report with due care and in Col.3 that he agreed with the assessment of the officer given by the reporting officer, the reviewing officer could only reflect upon the general assessment recorded by the reporting officer in Col.3 of the reporting segment. That would in no case alter the grading. If the reviewing officer wished, he could use his discretion in col.3 of the review segment. The DPC erred in taking the observation of the reviewing officer in Col.4 as downgrading from 'Very Good' to 'Average'..

9. An interesting aspect of the performance record of the applicant is that, the same officer who recorded the adverse CR for the period, had found him very good from 1.12.97 to 31.3.99. Not only in overall grading, but in components of assessment relating to technical knowledge, administrative ability, initiative, attitude, communication and coordination, the reporting officer left no one in doubt until the dark 'five months' that the applicant indeed was one

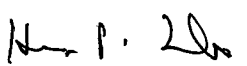
of the abler officers. Having assessed thus for a spell of sixteen months, how could the officer lose all his faculties suddenly? In such a situation, she was under obligation to issue written warnings so that an otherwise very good officer, who had for some reason failed to retain the grade, could take note and improve. Sudden systematic demolition of the quality of performance in virtually all columns, would definitely beg an explanation.

10. We do not wish to go into further details pertaining to the entries, as we do not wish to substitute the DPC, but we are convinced that the DPC erred in misreading the ACR of 2000-2001 and the appellate authority did not look at the ACR for 1999-2000 in totality, and the ACR for 2000-2001 carefully.

11. We therefore, direct that a review DPC be convened to consider the applicant for promotion to the Senior Time Scale of the Indian P&T Finance & Accounts Service keeping in view the observations made in paragraph 7 to 10 above and if found fit be promoted to the scale from the date of promotion of his junior in the order of seniority, with all consequential benefits. We also direct that the exercise be completed within a period of three months from the date of receipt of this order and consequential dues if any, discharged within a period of one month thereafter.

The application is disposed of as above. No order as to costs.

Dated, the 28th February, 2005.


H.P.DAS
ADMINISTRATIVE MEMBER


A.V.HARIDASAN
VICE CHAIRMAN