

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 481 OF 2012

..... Thursday this the day of 1st August, 2013

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

P.Saseendran
Presently working as Junior Superintendent
Office of the Deputy Director of Panchayats
Civil Station, Kodappanakkunnu P.O
Trivandrum – 695 33
Residing at Sree Vilas, Kodungannur P.O
Trivandrum – 695 013

... **Applicant**

(By Advocate Mr. TCG Swamy)

versus

1. Union of India represented by the Secretary
To the Government of India
Ministry of Communications & Information Technology
Department of Telecommunications
New Delhi – 110 001
2. The Under Secretary (SEA)
Department of Telecommunications
Sanchar Bhavan, 20 Ashoka Road
New Delhi – 110 001
3. The Controller of Communication Accounts
Department of Telecommunications
Door Sanchar Bhavan, Kerala
Thiruvananthapuram - 695 033
4. The Deputy Controller of Communication Accounts (Admn)
Department of Telecommunications
Door Sanchar Bhavan, Kerala
Thiruvananthapuram - 695 033

... **Respondents**

(By Advocate Mr. George Joseph, ACGSC)

The application having been heard on 26.07.2013, the Tribunal
on 1st 8.20.3 delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant presently working as Junior Superintendent in the
State Government of Kerala had initially joined the State Government as

LDC in 1987; promoted as UDC in 1991 and later on as Head Clerk during 2003. He applied for the post of Senior Accountant on deputation basis in the Office of the 3rd respondent and was accordingly taken on deputation in August, 2005. Since in the parent cadre he was further promoted as Junior Superintendent with retrospective effect from 30.10.2007, the applicant was relieved on 31.07.2008 from the deputation post.

2. The respondents have decided to fill up the post of Senior Accountant on absorption basis for which notification dated 12.08.2009 was issued vide Annexure A-1. Such absorption is to be made from among officials holding analogous post on regular basis in various Ministries / Departments of Central and State Government or UDCs / Junior Accountants/ Auditors who have rendered not less than 3 years of regular service in the grade. Since the applicant felt that he fulfilled the qualification, he had applied for the same. Annexure A-2 list contains among the names of those who applied for the post, the name of the applicant as well.

3. The applicant later on could understand that some of those who had applied had already been appointed. He made Annexure A-3 representation. Through Right to Information Act he got certain details one of which relates to the reason for his being not selected for absorption which was indicated as "**post, duties / responsibilities not comparable**". The applicant submitted an appeal to the Controller of Communication Accounts, vide Annexure A-5 (which was responded to by Annexure A-6) followed by Annexure A-7 & 8. Annexure A-6 refers to the name of one Shri Sukumaran Nair (which has been indicated by the applicant in Annexure A-5) who had been absorbed by the respondents and it was intimated that he was covered

by the guidelines by the Department of Telecommunications letter dated 24.08.2010. As the applicant was not satisfied with the decision of the respondents in not selecting him for absorption he has filed this OA. His main ground of attack was that the reasons given by the respondents are arbitrary, discriminatory and unconstitutional. According to the applicant, the post of Junior Superintendent is an analogous post and in any event he has fulfilled three years as UDC. The applicant has, thereof, prayed for the following reliefs:-

- (i) *Call for the records leading to the issue of Annexures A-4 and A-6 and quash the same to the extent they deny the applicant consideration for absorption as a Senior Accountant under the respondents;*
- (ii) *Declare that the respondents are bound to consider the applicant for regular absorption as a senior Accountant and to grant him the benefit of absorption with effect from which the applicant would have become so eligible vis-à-vis his counterparts who were appointed in response to A-1 and direct the respondents to grant all consequential benefits emanating there from;*

4. The respondents have contested the OA. They have stated that certain guidelines have been passed in respect of priorities given for absorption. According to the same those who had already been serving on deputation basis and fulfilling the requisite conditions could be absorbed on such priority basis. In so far as eligibility condition is concerned even though the initial notification included the post of UDCs with three years of regular service is eligible for applying for the post, vide Annexure R-3 corrigendum dated 16.09.2009 the post of UDC had been deleted and it was only Junior Accountants / Auditors who had rendered not less than three years service in the grade that are eligible for consideration for absorption. The respondents have also stated that the post held by the in the parent department does not have the same functional responsibilities comparable to that of Senior Accountants.

5. The applicant has filed his rejoinder wherein he had annexed Annexure A-9 to emphasize the point that though the corrigendum excluded the post of UDC. The respondents have themselves considered and absorbed as Senior Accountants, those who were working as UDCs in the parent organization, for example, one Shri K.Haridas. In their 2nd additional reply the respondents have stated that the absorption of Shri K.Haridas was not on account of he holding the post of UDC on the basis of the fact that he was working as Senior Accountant on deputation during the stipulated period.

6. Counsel for applicant argued that he had referred to one Haridas who was working as UDC in the parent Department but taken on deputation as Senior Accountant and considered for absorption. The decision to absorb such deputationists was taken after notification. The applicant was also on deputation as Senior Accountant but had repatriated to his parent department on account of the fact that he was promoted to the post of Junior Superintendent. The post of Junior Superintendent is two steps higher than that of UDC and the functional responsibilities are also comparable with that of Senior Accountant. Thus from the point of view of analogous post the applicant fulfills the requirement and from the point of view of three years service as UDC, he fulfills the requirement. Discrimination has been meted to him when the respondents have not offered him the post of Senior Accountant on absorption basis though he fulfills the qualification and stood at par with others who had been taken on absorption. Counsel for applicant further submitted that even now vacancies do exist and the respondents may consider the applicant for absorption on the basis of the fact that the applicant fulfills the requisite conditions.

7. Counsel for respondents submitted that all those UDCs who were absorbed were serving in the Respondents' Organization on deputation basis on the date of guidelines dated 24.08.2010. Their entry on permanent basis in the Respondents' Organization was based on the fact that of their continuing on deputation basis. The applicant who was also on deputation had chosen to go back to his parent department as he was promoted as Junior Superintendent in the parent Department. His functional responsibilities as Junior Superintendent are not in any way comparable to that of Senior Accountant of Respondents' Organization. As the notification after the amendment restricted the scope of application confining Junior Accountant and Accountant only, the application not holding such posts, notwithstanding the fact that he had held the post of Head Clerk / UDC, now Junior Superintendent, he does not fill the bill. Hence no judicial intervention is called for in the decision taken by the respondents.

8. Arguments were heard and documents perused. Admittedly, the applicant got repatriated in 2008 when similarly situated persons who went on deputation continued in the Respondents' Organization. The rich experience of those persons on deputation seems to have weighed and justified the respondents in considering their cases for absorption. Had the applicant also been continuing on deputation, he too have been considered by now for absorption. Finding a better pasture in the parent department the applicant switched over to the parent department. The applicant has not reflected anywhere the functional responsibilities could be comparable to the functions responsibilities of a Senior Accountant. When the Department wants analogous post, may be the scale of pay be comparable but in addition the nature of work should also be related as otherwise taking anybody on

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absorption basis with not much experience in that field, would not be advantageous and also would not serve any purpose. Of course, the applicant's experience as Senior Accountant for a period of nearly three years would have been of some consideration but here again since notification reflected functions on comparable basis and the applicant having not reflected much about the functional responsibilities as Junior Accountant, the rejection of the application by the respondents cannot be faulted with.

9. In view of the above, we do not find any discrimination meted out to the applicant comparable to the cases referred to in the OA and the rejoinder nor do we feel that the respondents have not considered the case of the applicant in proper perspective. As such, the OA lacks any merit and therefore **dismissed**. No costs.

Dated, the 1st August, 2013.


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

vs