

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Dated

10-4-91

Present

Hon'ble Shri N.V. Krishnan, Administrative Member
and

Hon'ble Shri N. Dharmadan, Judicial Member

ORIGINAL APPLICATION : 497/89

M. Sankaran Kutty ..the applicant

v.

Union of India represented
by the Secretary to Govt.,
Ministry of Communications,
New Delhi and 3 others ..the respondents

ORIGINAL APPLICATION : 622/89

M.V. Rajappan Nair and
four others ..the applicants

v.

Union of India represented by
the Secretary to Govt., Mini-
stry of Communications, New
Delhi and 3 others ..the respondents

Appearances:

M/s. M.R. Rajendran Nair & P.V. Asha, Advocates appeared
for the applicants in both cases

Mr. K. Prabhakaran, ACGSC, appeared for respondents 1 to 3
in OA 497/89

Mr. K.A. Cherian, ACGSC appeared for the respondents in
OA 622/89

JUDGMENT

N. Dharmadan, JM.

Since common questions of facts, law and
relief arise in these two Original Application, they are
being heard and disposed ^{of} together by a common judgment.

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2. For convenience, we refer to the material facts involved in OA 497/89. The applicant therein commenced his service in the department on 4-7-57 as a Class-III official. On 1-6-64 he became Junior Technical Officer. He was later promoted as Assistant Engineer in the Telegraph Engineering Service Class-II (TES), Group-B post on 4-3-74. He was confirmed in that post subsequently. He has also officiated as Divisional Engineer for short periods from 2-3-88 to 31-5-88 and from 21-9-88 to 27-4-89. Thus he is fully qualified for promotion to Group-A category.

3. The Telegraph Engineering Service Class-I (Group-A) consists of two grades Junior Scale and Senior Scale. As per (TES) Class-I Recruitment Rules published as per the notification dated 14-4-1965 the appointment by promotion to the Junior Time Scale in the service shall be made by selection on merits from among permanent officers of Telegraph Engineering and wireless services, Class-II, ordinarily not less than 5 years of permanent service in class-II on the recommendation of duly constituted DPC. The aforesaid rule was amended by the notification dated 21-8-68. According to the amendment, the appointment by promotion to Junior Time Scale in the Telegraph Engineering Service Class-I shall be made by selection on merits from amongst permanent officers from (TES) Class-II ordinarily with not less than 8 years of approved service. The relevant Rules of P & T Manual read as follows:

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"...P & T Manual Volume-IV -Rule:

187. An Officer in permanent charge of a Division will be styled as Divisional Engineer Telegraphs.

188. When a long vacancy occurs in a Divisional charge and there is no Assistant Divisional Engineer, Telegraphs qualified to hold that charge, the most suitable officer in the grade of Assistant Engineer, Telegraphs, Assistant Engineer, Telephones and Assistant Electrical will be selected to fill the vacancy.

When a short vacancy, that is one not exceeding four months, occurs in a Divisional charge, the most suitable officer available locality will be appointed to hold it. If an Assistant Engineer, Telegraphs or Assistant Engineer, Telephones or Assistant Electrical Engineer is not available, an officer in the grade of Deputy Assistant Engineer, Telephones for Deputy Assistant Electrical Engineer will be appointed to fill the vacancy.

188-A. An Assistant Divisional Engineer, Telegraphs recruited direct should not ordinarily be promoted to hold charge of a Division unless:-

- (a) he has put in five years' service (including the period of probation); and
- (b) he has passed all the tests prescribed in Rule 186.

Note:- The service referred to in condition (a) means service as an Assistant Divisional Engineer, Telegraphs..."

The fourth respondent is a directly recruited Assistant Divisional Engineer, Telegraphs. He will acquire the minimum qualification for promotion as a Divisional Engineer even on an officiating basis only after completing five years of service as Assistant Divisional Engineer, Telegraphs. In other words he will be qualified for promotion only on 21-7-91. But he was granted promotion

as per Annexure-I order dated 5-6-89 without considering the right for promotion of the applicant. It appears that the 4th respondent has been granted earlier promotion on the basis of Annexure-V letter dated 8-5-89 issued by the Assistant Director General (S.G.T.). Hence the applicant filed this application challenging both Annexure-I and V. The prayer in this application reads as follows:

"..Relief(s) sought:

- (i) Quash Annexure-I & V orders
- (ii) Issue appropriate directions to respondents No. 3 to consider the applicant for promotion on officiating basis as Divisional Engineering in ITS Group-A and to promote him with effect from the date of occurrence of vacancy and to grant him all consequential benefits.
- (iii) Direct the respondents to fill up all the existing vacancies in ITS Group-A senior time Scale and Junior Time Scale with in a time limit to be prescribed.
- (iv) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant and....."

4. In view of the subsequent promotions and further developments the applicant submitted that relief No.III alone need be considered taking into account the averments in Ground-D in the Original Application.

5. The case of the applicant in this behalf is that the respondents are not following the rules strictly and filling up the vacancies in accordance with the same. The appointments to ITS Group-A is to be made initially to Junior scale. 50% of the posts are to be filled by

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promotion from among Group-B officers. Once a Group-B officer is promoted to the Junior Scale of Group-A he will be entitled to promotion to the Senior Scale without any service restriction. The department is not filling up the vacancies in the Junior Scale to the full extent by regular promotion. Hence the chance of regular promotion to senior scale of eligible Group-B officers will be blocked despite existence of vacancies in senior scale.

6. The contention of the applicant that the deptt. is not filling up the 50% vacancies, earmarked in the Junior Time Scale for promotion to the full extent by regular promotion has not been specifically denied in the reply statement unless said promotions are first made, they cannot be regularly promoted to the Senior Time scale posts. Therefore, when regular vacancies in Junior Time Scale are existing in the Deptt. it is incumbent on them to make regular promotion rather than delaying the same and make ad hoc and provisional promotion to the vacancies. As submitted by the applicant this may lead to stagnation so far as eligible Group-B officers are concerned.

7. Considering the facts and circumstances of the case, we are of the view that the direction prayed for by the applicant in relief No. (iii) in so far as it concerns the Junior Time Scale posts should be issued

to render justice to the applicants. Hence having regard to the apprehension and the facts stated in ground-D of the application it would be appropriate to direct the respondents to fill up all existing vacancies in I.T.S. group-A by making regular posting in Junior Time Scale in accordance with the relevant rules as expeditiously as possible without any further delay. Accordingly, we dispose of both the applications, with the above directions. A copy of the judgment may be placed in case file of OA:622/89.

We make no order as to costs.



(N. Dharmadan) 10.4.91.
Member (J)



(N.V. Krishnan)
Member (A)

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