

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.531/95

Tuesday, this the 29th day of October, 1996.

CORAM:

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

1. Vasantha Moorthy,
Section Supervisor,
Office of the Sub Divisional
Engineer(Phones),
East-I, Thiruvananthapuram.
2. L Sivanandan,
Section Supervisor,
Office of the General Manager,
Telecommunications, Fort,
Thiruvananthapuram-23.

- Applicants

By Advocate Mr G Sasidharan Champazhanthiyil

Vs

1. Chief General Manager,
Telecommunications,
Kerala Circle,
Thiruvananthapuram.
2. Telecom Commission represented
by its Chairman,
New Delhi.
3. P Krishnan Nair,
Senior Section Supervisor
(Biennial Cadre Review),
Chief General Manager,
Telecommunications Office,
Thiruvananthapuram.
4. K Kunhammed,
Senior Section Supervisor
(Biennial Cadre Review)
Office of the General Manager,
Telecom, Calicut.

- Respondents

By Advocate Mr Mary Help John David J, Additional Central
Government Standing Counsel(for R.1&2)

The application having been heard on 23.10.96 the Tribunal on 29.10.96 delivered the following:

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants were Time Scale Clerks till 1976 when they were promoted to the Lower Selection Grade (LSG for short). According to them, by A-1 order dated 10.5.74, the posts of LSG were categorised to the extent of 20% of the number of time scale posts by conversion of the existing time scale posts. A-1 also provided that in respect of posts to be converted immediately and vacancies arising upto 31.12.74, the vacancies would be filled on the basis of 90% by seniority-cum-fitness and 10% by selection on merit. The newly converted LSG posts would in future be filled by selection on merit on circle basis to the extent of one third of all LSG vacancies. A-1 also stated that the rules with regard to selection on merit for the one third quota were being framed and would be separately issued. According to applicants, the posts which were converted immediately and which arose upto 31.12.74 should have been filled up to the extent of 10% by selection on merit. Instead, only 90% component of vacancies to be filled by seniority-cum-fitness was filled up by A-2 order dated 24.10.74. Examinations were held for selection on merit against the one third quota in 1975 and 1976, and applicants were promoted after having qualified in those examinations, ¹xxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxx in 1976 by A3 order dated 7.12.76. The grievance of the applicants is that the 10% of vacancies which were available as on 31.12.74 was not filled up by selection on merit, and that their promotions which were effected in 1976 should have been against the vacancies which existed as on 31.12.74 and that their promotions should have been with effect

from 1.6.74 on which date by A-2 order the promotions to the 90% seniority-cum-fitness quota were effected. The party respondent, respondent-4 in his reply statement has supported the contention of the applicants.

2. The respondents 1&2 have stated in their reply that the examination against the merit quota for 1974 could not be conducted due to administrative reasons, such as finalisation of the gradation list, syllabus etc. though action had been initiated to fill up the merit quota vacancies also. The examination for the merit quota vacancies of 1975 was held on 30.11.75 and the results were announced on 11.3.76 and the first applicant who had qualified was promoted. The second applicant qualified in the one third merit quota examination held on 13.6.76. According to respondents, applicants had not been selected against the 10% quota of vacancies that arose upto 31.12.74, and that the 10% vacancies upto 31.12.74 were not filled up due to delay in conducting the examination and since the rules relating to filling up of merit quota were yet to be finalised. Respondents also state that the question of unfilled vacancies on 31.12.74 did not arise since the selection grade posts were created by upgradation of the existing lower post and no new posts were created. They contend that applicants were promoted only against one third quota of vacancies for the years 1975 and 1976 respectively. Respondents also state that the promotion under the merit quota need not be and cannot be on the same date as the promotion under seniority-cum-fitness quota. The rules stipulate that for consideration against one third quota, officials have to put in ten years of service as on first July of the year for which merit quota is being considered. Further, the number of candidates was restricted to ten times the number of vacancies in each cadre

in the order of seniority. For the examination conducted in 1975 and 1976, these conditions were implemented on the basis that the examinations were for the year 1975 and 1976. Had the examinations been for vacancies of 1974, then the eligibility conditions would have been different.

3. Respondents 1&2 submitted that the application was barred by limitation since applicants did not raise their grievances in 1974 and on the other hand they actually participated in the examinations held in 1975 and 1976. Applicants would however, submit that A-1 was not circulated and that they came to know of it only in 1991 when A-4 letter dated 19.7.91 was circulated which contained A-1 as an enclosure. Respondents 1&2 further state that A-1 was issued as a result of discussion in the National Council of the Joint Consultative Machinery and that the agreement was given wide publicity in the media and in the trade union journals, besides circulation of A-1 to all subordinate units and among the staff by letter dated 20.6.74. The Tribunal on 6.8.96 directed respondents 1&2 to produce proof of circulation or notification of A-1. Respondents have produced R-2 and R-3 to show that A-1 has been sent to various subordinate offices and has also been received by the Departmental Telegraph Office, Ernakulam on 25.6.74. They also produced R-4 to show that the Divisional Office of the Senior Superintendent of Telegraph Traffic, Ernakulam directed his subordinate units to furnish details required by A-1. Respondents 1&2 also submit that at this distance of time, it is not possible to produce any other proof of circulation of A-1 made in 1974.

4. It is seen that though the grievances relate to the year 1974, applicants had approached the Tribunal in 1992 in

O.A.1364/92. The order of the Tribunal A-7 in that O.A. does not indicate that the question of limitation was raised at that time by the respondents. Be that as it may, the Tribunal directed the respondents therein to consider the grant of promotion to the applicants as Section Supervisor and respondents 1&2 have in pursuance of that direction, passed the impugned order A-8 dated 20.5.94. It is the impugned order A-8 that is being challenged in this application. Therefore, we do not consider that the application is barred by limitation.

5. The order A-1 states that 10% of the posts to be converted immediately and vacancies arising upto 31.12.74 are to be filled by selection on merit. That order according to para.7 of A-1 is to take effect from 1.6.74. Therefore the vacancies which arise from 1.6.74 to 31.12.74 are to be filled on the basis of the rules that were being framed and were to be separately intimated as stated in A-1. Since the date of A-1 itself is only 10.5.74 and the vacancies that would arise as a result of A-1 could only arise after 1.6.74 on which date A-1 came into force, there cannot be a set of vacancies created as a result of A-1 order but which have to be filled up according to the rules in force prior to A-1. That would automatically mean that the vacancies which resulted as a consequence of A-1 order can only be filled in terms of A-1 order and whether these vacancies arose prior to 31.12.74 or thereafter, they will have to be filled up only in terms of A-1 order. A-1 order itself specifies that the selection on merit would have to be done according to rules to be framed and such rules which were framed required the passing of an examination for being promoted against the selection on merit quota. It is seen from A-1 that the only distinction made between the period prior to 31.12.74 and the


period thereafter is that the selection by merit quota would be 10% in respect of all vacancies upto 31.12.74 and thereafter, it would be one third of the vacancies. A-1 does not make any distinction in the process of selection as between the vacancies which arose before 31.12.74 and those which arose after 31.12.74. Only the ratio is different and it is 10% in respect of vacancies upto 31.12.74 and one third thereafter. It is therefore not possible to accept the argument of the learned counsel for applicants that the vacancies which arose upto 31.12.74 have to be filled up not on the basis of the examination which was laid down only for the one third quota which came into existence after 31.12.74.

6. It is also to be noticed that applicants appeared for the examinations which were held for vacancies for those years. R-1 filed by respondents 1&2 clearly indicates that the examination held for the one third quota of vacancies on 13.6.76 was for the 1976 vacancies. That being so and since the applicants qualified for the quota for selection by merit only in 1975 and 1976, it would not be possible to accept their contention that they were eligible for promotion against the quota for selection by merit even in 1974. It might be that there were vacancies which arose upto 31.12.74 against the 10% quota for selection by merit and it might be that those vacancies were not filled up. It might also be that the corresponding 90% vacancies meant for promotion by seniority-cum-fitness were filled up. That does not give the applicants a right to be promoted against the selection by merit quota without passing an examination, since as we have pointed out earlier the vacancies which arose upto 31.12.74 including vacancies by immediate conversion are to be filled up only in terms of A-1 order which came into force on 1.6.74 and which

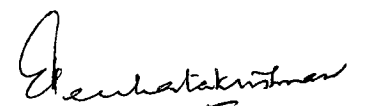
stipulate that promotion to the selection by merit quota would be only on the basis of rules to be framed. Such rules when framed required a passing of an examination. Applicants passed the examination only in 1975 and 1976 and only then they became eligible for promotion against vacancies in the selection by merit quota. That being so, irrespective of the availability of vacancies or otherwise as on 31.12.74 their claim for promotion will arise only after their passing the examination. It is not in dispute that following their passing in the examination they have been promoted against the selection by merit quota. The selection by merit quota is obviously a method by which meritorious persons though junior can get promoted even though their turn of promotion according to their seniority has not arisen. Under such circumstances, it would not be appropriate for such juniors to say that their date of promotion should be the same as the date of promotion of persons who are senior and who have been promoted only on the basis of their seniority.

7. We see no merit in the application and we dismiss the same. No costs.

Dated, the 29th October, 1996.



AM SIVADAS
JUDICIAL MEMBER



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

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