

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 539 of 2001

Thursday, this the 29th day of November, 2001

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. A.L. Maniappan, S/o Lakshmanan,
Junior Telecom Officer, Telex (O/D),
Ernakulam.
Residing at 'Praveenalayam',
Thiruvankulam PO, Ernakulam.Applicant

[By Advocate Mr. P.V. Mohanan]

Versus

1. The Principal General Manager,
Telecom (BSNL), Kochi - 682 036
2. The Chief General Manager,
Telecom (BSNL), Kerala Circle,
Thiruvananthapuram.
3. Union of India, represented by its
Secretary to Government of India,
Ministry of Communications, New Delhi.
4. R. Rajan,
Sub Divisional Engineer, Administration,
Office of the General Manager (Telecom),
Kollam.Respondents

[By Advocate Mr. C. Rajendran, SCGSC (R1 to R3)]

The application having been heard on 29-11-2001, the
Tribunal on the same day delivered the following:

O R D E R

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

The applicant, a Junior Telecom Officer at Telex (Outdoor), Ernakulam, was by order dated 26-4-2000 (Annexure A1) appointed to Telecom Engineering Service (TES for short) Group 'B' and allotted to Kerala circle. However, in the order of posting dated 10-5-2000 (Annexure A2) the applicant was not included though a person placed below him in A1 was posted in Kerala circle. On 29-5-2000 the applicant made a

representation seeking a posting on promotion. Finding no response to the same, the applicant filed OA No.697/2000 which was disposed of with a direction to the respondents to consider the applicant's representation and to issue appropriate orders. In obedience to the above order of the Tribunal, the Chief General Manager, Telecom, Thiruvananthapuram issued the order dated 13-9-2000 (Annexure A3) informing the applicant that the promotion of the applicant could not be given effect to owing to the registration of a case by the CBI in the court of Special Judge-II, CBI, Ernakulam framing charges under various sections of IPC and PC Act, 1988. Alleging that no charge has really been framed against the applicant and challenging the impugned order A3, the applicant filed OA No.1036/2000 before this Bench of the Tribunal, which after consideration of the rival contentions was allowed setting aside A3 order, however making it clear that the judgement would not stand in the way of the department in proceeding as per para-1 of A2 in that case, viz. A1 in this case, which reads as under:-

"Member, Telecom Commission is pleased to appoint the Junior Telecom Officers as per the list enclosed to the Telecommunication Engineering Group 'B' from the date they take over the charge of the post and until further orders, and to post them in the circles/districts/units etc. as indicated against their names, provided no vigilance/disciplinary case is pending or any punishment is current against any of the officials mentioned in the list after the issue of these orders but before joining of the officials on promotion, the fact should be reported to this office immediately and the concerned officer should not be promoted or relieved for posting without specific orders from this office."

2. While so, the CBI which was investigating the case against the applicant filed Annexure A5 report for referring the case for want of evidence on 21-11-2000 and the Court of the Special Judge (SPE/CBI)-II, Ernakulam vide its order dated 4-1-2001 accepted the refer report and closed the case. Finding that despite the fact that the prosecution against him

has been dropped the applicant was not being posted, the applicant made a representation on 20-2-2001 (Annexure A7). The applicant did not get any reply. The applicant approached the High Court of Kerala by filing an Original Petition but the same was eventually withdrawn with liberty to seek appropriate relief before the appropriate forum. In the meanwhile, the respondents issued Annexure A8 memorandum of charges dated 20-3-2001 and initiated proceedings under Rule 14 of the CCS (CCA) Rules, 1965 against the applicant. Finding that the applicant was not given a posting pursuant to his promotion unjustifiably as there was no criminal case or departmental proceedings pending against him on the date when the person junior to him was posted by A2 order, the applicant has filed this application for a direction to the respondents to promote the applicant to the post of TES Group 'B' with effect from the date of posting of his immediate junior with all consequential benefits.

3. Official respondents in their reply statement contend that the applicant could not be posted while the person junior to him was posted because as per departmental rules when a case/disciplinary action is contemplated or pending against an official, he cannot be considered for promotion. Official respondents further contend that since the departmental action for major penalty contravening the provisions of Rule 3(I) (II) and (III) against the applicant is in progress, it is not possible to promote the applicant now.

4. We have heard the learned counsel on either side and have perused the pleadings and the documents that are placed on record. The stand of the official respondents that the applicant could not be posted on the basis of his promotion in A1 as promotion could not be considered when disciplinary

proceedings are contemplated/pending does not appear to be correct as such a course of action is not provided for in any of the service rules. Even when a disciplinary proceeding/criminal case is pending, a person if due for promotion has got to be considered for promotion but the recommendations of the Departmental Promotion Committee is to be kept in a sealed cover to be opened after culmination of departmental proceedings/criminal case. In this case, the question of sealed cover does not arise when the applicant was considered and the order of promotion (A1) was issued. The question is whether denial of posting to the applicant on the date of which a person who have placed below him in A1 was posted by A2 order dated 10-5-2000 is justified. There is no case for the respondents that on that date there was any departmental proceedings pending against the applicant. The case is that there was a CBI case pending. From A5 refer report and A6 order of the Special Judge (SPE/CBI)-II, Ernakulam it is evident that no charge has ever been framed against the applicant and the refer report having been accepted by the Special Judge (SPE/CBI)-II the case was dropped. Therefore, as the case was dropped by order dated 4-1-2001 the applicant should have been posted on promotion with effect from the due date. The fact that the memorandum of charges for a major penalty was subsequently issued on 20-3-2001 does not justify the denial of posting to the applicant after 4-1-2001 with effect from 10-5-2000.

5. In the light of what is stated above, we reject the contentions raised by the official respondents in the reply statement and allow the application directing the official respondents to promote the applicant to the post of TES Group 'B' with effect from the date on which any person junior to him was posted on promotion with all consequential benefits. The

above direction shall be complied with forthwith at any rate not later than a period of six weeks from the date of receipt of a copy of this order. No order as to costs.

Thursday, this the 29th day of November, 2001



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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A P P E N D I X

Applicant's Annexures:

1. Annexure A-1: True copy of the relevant page of the Order No.3-75/2000-STG-IV dated 26.4.2000.
2. Annexure A-2: True copy of the order No.ST.111/1-5 2000 (iii) dated 10.5.2000 issued by the 2nd respondent.
3. Annexure A-3: True copy of the Memo No.LC STA/337/2000 dated 13.9.2000.
4. Annexure A-4: True copy of the order in O.A.No.1036/2000 by this Hon'ble Tribunal.
5. Annexure A-5: True copy of the Refer Report dated 21.11.2000.
6. Annexure A-6: True copy of the order in RC 20/A/98 dated 4.1.2001(SPE/B1) II Ernakulam.
7. Annexure A-7: True copy of the representation dated 20.2.2001 by the applicant.
8. Annexure A-8: True copy of the Memorandum No.DGM(A)/ Disc/ALM/1 dated 20.3.2001.

Respondents' Annexures - N i l
