

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 585 of 2010

Thursday..., this the *06th* day of January, 2011

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

S. Venugopal, aged 45 years,
S/o. M.N. Sivaraman Nair,
Telecom Mechanic, Sales Associate,
Project Udaan, BSNL Bhavan, Ernakulam,
Residing at Meppanath House,
Kaninadu P.O., Ernakulam District ... Applicant.

(By Advocate Mr. Shafik M.A.)

v e r s u s

1. Union of India, represented by
The Chairman Cum Managing Director,
Bharat Sanchar Nigam Limited,
Sanchar Bhavan, Nw Delhi.
2. The Chief General Manager, Telecom,
BSNL, Kerala Circle, Trivandrum.
3. The Asstt. General Manager (R&E),
O/o. The PGMT, BSNL, Ernakulam. ... Respondents.

(By Advocate Mr. T.C. Krishna)

The original application having been heard on 22.12.10, this Tribunal
on *06-01-2011* delivered the following :

O R D E R

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Aggrieved by the refusal of the respondents to permit him to take
part in the Limited Departmental Competitive Examination (LDCE) for
promotion as Telecom Technical Assistant on the ground that he is not



having 5 years regular service, the applicant has filed this O.A. for the following reliefs:

- (i) To call for the records relating to Annexure A-1 to A-8 and to quash Annexure A-1;
- (ii) To declare that the applicant is eligible and entitled to be included in A-7 list in order to permit him to take part in the LDCE scheduled on 11.07.2010;
- (iii) To direct the respondents to reckon the service rendered on adhoc/ officiating basis as Telecom Mechanic as evidenced by A-2 and A-3 as regular service for all purposes with all consequential benefits;
- (iv) To issue such other appropriate orders or directions this Tribunal may deem fit, just and proper in the circumstances of the case; and
- (v) To grant the costs of this Original Application.

2. The applicant was appointed as officiating Telecom Mechanic on 23.01.2003. His appointment was regularised on 07.01.2004. The applicant contends that being a Telecom Mechanic with 10+2 qualification, he is eligible to appear in the LDCE for promotion to 40% quota of TTA for the recruitment year 2008 in terms of the Recruitment Rules without 5 years regular service. As on 07.01.2008, the cut off date for determining eligibility to appear in the LDCE, the applicant is having more than 5 years of service if the service rendered on officiating basis is reckoned as per Apex Court judgement in Rudra Kumar Sain's case. The applicant should not be penalised for the delay in regularising him. Against 51 vacancies of TTA in Ernakulam SSA, only 21 officers have permitted to appear in the examination. It is illegal not to permit the applicant to write the examination inspite of vacancies.

3. The respondents opposed the O.A. They submitted that the

b

applicant does not have five years regular service as Telecom Mechanic. The service rendered by him on ad hoc basis could not be counted for seniority as per O.M. dated 23.07.2001 (Annexure R3(A)). As per the Recruitment Rules, 5 years regular service is applicable to all cadres applying for LDCE for promotion to the post of TTA. No exemption is given to the Telecom Mechanic. The applicant was permitted to write the examination as directed by the interim order dated 08.07.2010. The O.A. should be dismissed as having no merit.

4. We have heard Mr. Shafik M.A., learned counsel for the applicant and Mr. T.C. Krishna, learned counsel for the respondents and perused the documents.

5. The relevant part of TTAs Recruitment Rules, 2001, is reproduced below:

“(B) Promotion :

- (a) i) xxxxxxxx
- ii) xxxxxxxx

(b) i) Telecom Mechanic holding 10+2 standard certificate or equivalent and

ii) Technicians, other than Technicians referred to in item 'A' relating to absorption above, with **5 years regular service** in the respective cadres.”

6. A plain reading of the above provision makes it abundantly clear that 5 years regular service in the respective cadres applies to both the Telecom Mechanic and Technician. Therefore, the applicant needs 5 years regular service to be eligible to write the LDCE for the year 2008. The applicant was officiating as Telecom Mechanic from 23.01.2003 to 07.01.2004, which

b

is less than one year. As per O.M. dated 23.07.2001 (Annexure R-3(A), "continuation of an ad hoc appointment beyond one year will, as per existing instructions, continue to require prior approval of the Department of Personnel and Training as before". Therefore, ordinarily an ad hoc appointment should not be more than one year. The decision of the Apex Court in Rudra Kumar Sain's case is as follows:

" In the service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be stop-gap or fortuitous or purely ad hoc."


The aforesaid decision applies to appointment which continued for a fairly long period and the same does not apply to the case of the applicant as he was regularised within one year of his appointment on officiating basis. The applicant was regularised in January, 2004. If he is aggrieved by the regularisation of his service without retrospective effect from 23.01.2003, he should have agitated the matter at the appropriate time.

7. In the light of the discussion above, we do not find any merit in the contentions of the applicant. Devoid of merit, the O.A. is dismissed with no order as to costs.

(Dated, the 06th January, 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.