

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 599 of 2009

Wednesday, this the 8th day of June, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

P.K. Anthrayose, aged 59 years, S/o. K.A. Kuriakose,
 Divisional Engineer (Telecommunications), Bharat
 Sanchar Nigam Ltd., (BSNL), Kothamangalam,
 Permanent Address: Chirakkal, Pambadi P.O.,
 Kottayam District.

Applicant

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. The Chairman-cum-Managing Director,
 Bharat Sanchar Nigam Ltd., New Delhi.
2. The Chief General Manager, Telecommunications,
 Bharat Sanchar Nigam Ltd., Kerala Circle.

Respondents

(By Advocate – Mr. T.C. Krishna)

This application having been heard on 08.06.2011, the Tribunal on the same day delivered the following:

O R D E R

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

The applicant while working as Divisional Engineer under the respondents attained superannuation with effect from 30.9.2009. His grievance raised in this Original Application is against the denial of due promotions to the Senior Time Scale Group-B (in short STS Gr.B) with effect from 31.7.2003 and to Junior Administrative Grade (in short JAG) with effect from 31.7.2008 on par with his juniors promoted to the

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respective scales.

2. He approached this Tribunal earlier for such relief by filing OA No. 350 of 2009 which was disposed of by order dated 4th June, 2009 by Annexure A-11 order. This Court even at the admission stage without waiting for the reply from the respondents thought it fit in the factual situation that the representation was pending consideration before the authorities, to dispose of the OA with appropriate direction to consider the said representation expeditiously and pass appropriate orders thereon. Subsequently, the representation was disposed of by Annexure A-12 order dated 11th August, 2009 rejecting his claim for promotion. Impugning Annexure A-12 and claiming promotion to the higher scales that the present OA has been filed.

3. The applicant while in service had faced some disciplinary action which led to imposition of a major penalty. He suffered the penalty whereupon he became entitled to be considered for promotion subsequently but the respondents did not consider him for such promotions and ultimately he approached the Hon'ble High Court by filing Writ Petition No. 20147 of 2004 which was disposed of by judgment dated 24th September, 2007 Annexure A-1 is produced in the case. It was held that by Exhibit P-25 judgment of the Apex Court referred to in the Writ Petition the Hon'ble Supreme Court held that though what was left open for consideration of the Department by the judgment of the Apex Court was not merely the case of respondent therein but that of all the persons who would be involved in the process for consideration for promotion and therefore notwithstanding

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Exhibit P-3 judgment of the Tribunal which related to the question of his transfer on promotion, the applicant was declared entitled to be considered for promotion. Accordingly, the Writ Petition was disposed of directing consideration of the claim of the petitioner for promotion with effect from the due date that would inure to him on account of any promotion granted overlooking his legitimate entitlements. Pursuant to Annexure A-1 judgment the respondents by Annexure A-2 order dated 30th December, 2008 promoted the applicant to the grade of SDE (Telecom) equivalent to TES Group 'B' notionally with effect from 21.10.1998 at par with his juniors promoted to TES Group-B vide DPC held in the year 1998 and actually with effect from the date of the officer assuming charge in the higher post vide order dated 30.9.2000. But in the meantime his juniors had been promoted to the senior time scale with effect from 31.7.2003. The respondents however did not extend the benefit of subsequent promotion of senior time scale on par with his juniors and confined his notional promotion only to the SDE equivalent to TES Group-B. As may be noticed the juniors have subsequently been given still higher scale in the JAG with effect from 31.7.2008 vide Annexure A-8 order dated 9.2.2009. However, by Annexure A-4 order dated 9th January, 2009 the applicant was promoted to the senior time scale prospectively purely on ad hoc basis. Even though the order says he will not be entitled to claim seniority in STS of ITS Group-A based on ad hoc promotion, his seniority will be reckoned with reference to his basic seniority in the substantive grade of Executives (TES Gr.B).

4. The issue arises for consideration is as to whether the applicant is

A handwritten signature in black ink, appearing to read 'JAG', is written over a diagonal line.

entitled to be considered for promotion on par with his junior with effect from 31.7.2003 for senior time scale and thereafter in the JAG grade with effect from 31.7.2008. Admittedly the applicant was denied promotion at par with his junior to the post of TES Gr.B and only pursuant to the judgment of the Hon'ble High Court in Writ Petition No 20147 of 2004 that he was subsequently promoted notionally with effect from 21.10.1998 at par with his junior.

5. The stand taken by the respondents is that since the applicant was promoted in the executive grade purely on temporary and ad hoc basis with effect from 9.1.2009 and as per instructions promotions were made with prospective effect namely from the date he had assumed office in the higher grade. Therefore he is not entitled to claim for promotion to the grade of STS from retrospective effect and that his seniority position in the grade of SDE (T) and STS will remain unaffected. He has not completed minimum of four years service in the lower post for claiming further promotion as JAG.

6. Undisputedly the applicant was not promoted for any of his fault. He became entitled to be promoted at par with his junior is evident from the fact that subsequently aforementioned mistake was rectified giving him notional promotion with effect from the date at par with his junior namely with effect from 21.10.1998 to the TES Group-B. Therefore, the respondents cannot take advantage of the mistake committed by them in denying him the due promotion to the higher post. He had been promoted to the TES Group-B grade as in the case of his juniors with effect from

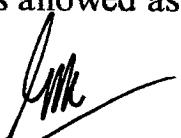
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21.10.1998 on the same date on which the junior was actually promoted, necessarily the applicant would also have been senior in the TES Group-B entitling him for further promotion to STS and thereafter as JAG. Since non-promotion of the applicant is not due to any of his fault but because of the mistake committed by the respondents in not promoting him earlier as in the case of his juniors with effect from 21.10.1998, all the consequential benefits should have been restored to him at par with his juniors. When actual promotion is denied illegally the only way to rectify the same is by giving promotion at least notionally from the date he would have been promoted to the higher scale. Accordingly, we find that the stand taken by the respondents is clearly wrong and cannot be sustained in the eye of law. We declare that the applicant is entitled to be promoted to the Senior Time Scale Group-B with effect from 31.7.2003 and thereafter to the JAG grade with effect from 31.7.2008 at par with his juniors on a notional basis. Though it is contended by the learned counsel for the respondents that his juniors were only given ad hoc promotion to the STS grade it is not his case that they were not subsequently regularized in the higher grade effective from the same date. On the other hand we find from Annexure A-8 dated 9.2.2009 that his juniors have been given promotion to the post of JAG grade effective from 31.7.2008. Therefore, at any rate he is entitled to be promoted to the higher grade of JAG with effect from 31.7.2008 at par with his junior. Hence, we direct the respondents to give him notional promotion as STS Group-B with effect from 31.7.2003 and to the JAG grade with effect from 31.7.2008 and fix his last drawn pay accordingly for the purpose of his pension and retirement benefits. He will not be entitled for any

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monetary benefits as he is given only notional promotion except for calculating his pensionary and other retirement benefits. Taking into account the fact that the applicant has already retired from service the benefit due to him be calculated and paid as expeditiously as possible at any rate within a period of four months from the date of receipt of a copy of this order.

7. OA is allowed as above. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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