

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 734 of 2009

with

Original Application No. 599 of 2010

THURSDAY, this the 20th day of October, 2011

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER

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

1. Original Application No. 734 of 2009

P. Kailasam,
S/o. P. Paramashivam,
Executive Engineer,
BSNL (Civil Division) Kollam,
Having residence at 162-A, CPRA,
Punnapram, Trivandrum-24.

- Applicant

(By Advocate Mr. V. Sajith Kumar)

versus

1. The Union of India represented by
The Secretary to Government,
Department of Telecommunications,
Ministry of Communication,
Asoka Road, Sanchar Bhavan,
New Delhi.

2. The BSNL represented by its C.M.D.,
Corporate Office, New Delhi.

3. Mr. Robbin Bodder,
Superintending Civil Engineer,
BSNL Civil Circle, Bangalore.

4. V.K. Naidu,
Superintending Engineer (Civil),
BSNL Civil Circle,
Alakapuram, Salem-16.

- Respondents

[By Advocates Mr. Sunil Jacob Jose, SCGSC (R1) &
Mr. T.C. Krishna (R2)]

2. **Original Application No. 599 of 2010**

M. Rethinasamy,
S/o. D. Manimuthusamy,
Superintending Engineer,
BSNL (Civil Circle) AMAR, IInd Floor,
Chakkorathukulam, Calicut.
Residing Flat No. 1012,
East Hill Housing Board Apartments,
East Hill, Calicut.

- Applicant

(By Advocate Mr. V. Sajith Kumar)

versus

1. The BSNL represented by its C.M.D.,
Corporate Office, New Delhi.
2. Principal General Manager (BW),
BSNL Corporate Office, New Delhi.
3. The Union of India represented by
The Secretary to Government,
Department of Telecommunications 20,
Ministry of Communication,
Asoka Road, Sanchar Bhavan,
New Delhi.

4. M.K. Bhargava, Chief Engineer,
BSNL, Nagpur, Maharashtra.

- Respondents

[By Advocates Mr. Johnson Gomez (R1&2) &
Mr. Sunil Jacob Jose, SCGSC (R3)]

These applications having been heard on 10-10-11, the Tribunal on
20-10-11 delivered the following:

ORDER

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

Having identical issues, these O.As were heard together and are
disposed of by this common order.

O.A. No. 734/2009 :

2. The applicant joined the Department of Telecom as Junior Engineer (Civil) on 05.11.1976. He was directly recruited as Assistant Engineer (Class-II) on 05.04.1984. He was granted officiating promotion as Executive Engineer in Class-I/Group-A in 1994. He was absorbed in the Bharat Sanchar Nigam Limited (BSNL) as Assistant Engineer on 01.10.2000. He was granted regular promotion as Executive Engineer in 2003 and was reassigned the date of regular promotion from 01.10.1997. He made various representations seeking to consider his absorption in the BSNL as Class-I/Group-A officer on 01.10.2000. In T.A. No. 37/2008, the applicant therein similarly placed as the applicant herein was allowed absorption as Executive Engineer. Aggrieved by the inaction on the part of the respondents in considering his option application for absorption in Class-I/Group-A, he filed this O.A for a direction to the respondents to absorb him in Class-I/Group-A with all consequential benefits including promotion as Superintending Engineer with effect from the date of promotion of his immediate junior in the Annexures A-5 and A-6 seniority lists. During the pendency of the O.A, vide order dated 18.11.2009, he was granted the benefits available to Class-I officer whereupon the O.A. was dismissed as infructuous. However, the RA No. 38/2011 in OA No. 734/2009 was allowed and O.A. No. 734/2009 was reheard alongwith O.A. No. 599/2010.

O.A. No. 599/2010:

3. The applicant joined the Department of Telecom as regular Assistant Engineer (C) in 1980. He was promoted as Executive Engineer(C) in 1993

and was regularised as such on 20.03.1997. In 2001, a review DPC was held and the applicant alongwith 10 others were were deregularised and made ad hoc Executive Engineer with effect from 16.11.2001. The order of deregularisation was quashed by the Chennai Bench of the C.A.T in O.A. No. 161/2001 and the order of the C.A.T was upheld by the Hon'ble High Court of Chennai on 17.03.2006 in W.P. No. 17603/2001. Meanwhile, the Telecom Department was converted into the BSNL on 01.10.2000. As per the provisional seniority list of 13.06.2007, the applicant is at Sl. No. 180. He made several representations for promotion as Superintending Engineer and as Chief Engineer effective from the date of promotion of his immediate junior. Aggrieved by the inaction on the part of the respondents he filed this O.A for a direction to the respondents to consider him for promotions as Superintending Engineer from 1999 and Chief Engineer from 18.03.2008.

4. The contention of the applicants is that the inaction on the part of the respondents in granting consequential benefits emanating from notional appointment with retrospective effect is highly unjust and arbitrary. They relied on the decision of the Hyderabad Bench of C.A.T in O.A. No. 1176/1999 (Smt. Nasreen Quadri vs. Union of India). They also relied on the judgement of Hon'ble Supreme Court in Surya Devi Rai's case, 2003 (3) KLT 490, Pradeep Kumar Biswas's case, (2002) 5 SCC 111 and Union of India and Others vs. K.B. Rajoria, 2000 SLP (LE) 2738 SC, in support of their contention.

5. The respondents in their reply submitted that the Department of Telecom had initiated the process of holding the review meeting of the DPC in the grade of Superintending Engineer (C) in the year 2009. However, there

was a stay against further processing of the case as per the interim order dated 08.01.2010 in OA No. 10/2010 before the Patna Bench of the C.A.T. The final order in the said O.A has now been pronounced on 06.01.2011. The BSNL has initiated the process to comply with the the order of C.A.T, Patna Bench. The applicants will get necessary relief, if eligible, by way of promotion after completion of necessary pre-requisite processes in the cases.

6. We have heard the learned counsel for the parties and perused the records.

7. The applicants have been given promotion as Executive Engineer (C) with retrospective effect. The applicant in O.A. No. 734/2009 is already absorbed in Group-A/Class-I. What remains now is promotion with retrospective effect as Superintending Engineer in case of both the applicants. In the case of the applicant in O.A. No. 599/2010, further promotion as Chief Engineer also remains. The legal issue of granting consequential benefits emanating from retrospective promotion on notional basis is already a settled issue. On account of Court case, the respondents could not proceed with the DPC meeting. Now that the Patna Bench of the C.A.T has given direction in O.A. No. 10/2010, all that remains is compliance of the direction by the respondents. Accordingly, it is ordered as under.

8. The Secretary to the Government, Department of Telecommunications, Ministry of Communication, Sanchar Bhavan, New Delhi, is directed to ensure that a review meeting of the DPC is held to consider the promotion of the applicants in these O.As to the post of Superintending Engineer with effect

from the date of promotion of their immediate juniors and if found fit for promotion, issue appropriate orders granting all consequential benefits to them within a period of three months from the date of receipt of a copy of this order. Within a period of three months thereafter, the Chairman & Managing Director (CMD), BSNL, Corporate Office, New Delhi, is directed to ensure that a review meeting of the DPC to consider the promotion of the applicant in O.A. No. 599/2010 for the post of Chief Engineer with effect from the date of promotion of his immediate junior and if found fit for promotion, issue appropriate orders granting all consequential benefits to him.

9. The O.As are allowed as above with no order as to costs.

(Dated, 20th October, 2011)

K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.