

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 7 of 2001

Friday, this the 13th day of September, 2002

CORAM

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

1. P.M. Korah,
S/o P.K. Mathai,
Chief Telephone Supervisor,
Office of the Sub Divisional Engineer,
Kottayam West, residing at Pathiyakal,
Vadavathoor PO, Kottayam.
2. Joseph Sebastian,
S/o Ouseph Sebastian,
Chief Telephone Supervisor,
Office of the E10/B, Telephone Exchange,
Changanasserry,
residing at Puthuparambil House,
Thankodithanam PO, Changanasserry.Applicants

[By Advocate Mr. M.R. Rajendran Nair]

Versus

1. Union of India, represented by its
Secretary to Government of India,
Ministry of Communications, New Delhi.
2. Bharath Sanchar Nigam Ltd., represented by
the Chief General Manager, Kerala Circle,
Trivandrum.
3. The General Manager,
Telecom District, Kottayam.Respondents

[By Advocate Mr. M. Rajendrakumar, ACGSC]

The application having been heard on 13-9-2002, the
Tribunal on the same day delivered the following:

O R D E R

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

Applicants, who commenced service as Telephone
Operators with effect from 25-7-1965 and 4-12-1965
respectively, were promoted to the Lower Selection Grade
(Telephone Supervisor) being successful in the departmental
examination against the 1/3rd merit quota in January, 1982.

They had in fact superseded many of their seniors who did not qualify in the departmental examination by virtue of their merit. On the introduction of the Time Bound One Promotion scheme, those seniors to the applicants who had been superseded were also promoted to Grade-II by order dated 30-11-1992 (Annexure A3). Applicants were, thereafter, given Biennial Cadre Review promotion on completion of 26 years of service reckoning their seniority. While matters stood so, on the basis of certain directions contained in the order of the Principal Bench of the Central Administrative Tribunal, the order dated 13-12-1995 (Annexure A4) was issued by which promotions to 10% Grade-IV was made on the basis of seniority in the basic grade. On the ground that the promotion of the applicants to Grade-IV was not made on the basis of their seniority in the basic grade but on the basis of their seniority in Grade-III, by the impugned order dated 18-12-2000 (Annexure A1), they were reverted. The reversion was ordered relying on clarifications contained in order dated 17-1-1996 (Annexure R1). Therefore, the applicants have filed this Original Application jointly seeking to set aside Annexure A1 as also the clarification Annexure R1, for a declaration that they are entitled to continue in Grade-IV by virtue of the seniority attained by them due to their own merit and for a direction to the respondents not to revert the applicants. It has been alleged in the Original Application that the impugned order of reversion has been issued without notice and the seniority attained by the applicants on the basis of their merit cannot be said as not correct and the action taken is highly irrational, unjustifiable and therefore, unsustainable in law.

2. Respondents resist the claim of the applicant. They contend that the applicants' promotion was ignoring the fact

that they did not become senior for such promotion on the basis of their basic grade seniority. The promotions erroneously granted to them had to be cancelled and therefore, the impugned orders were issued, contend the respondents.

3. We have heard the learned counsel on either side and have perused the materials placed on record.

4. The claim of the applicants is that their promotions made by order dated 12-9-1997 (Annexure A5) cannot be cancelled because it was made reckoning their seniority in Grade-III which they acquired on account of their passing the departmental examination against the 1/3rd quota for promotion to Grade-II and therefore, the impugned order Annexure A1 is not sustainable. It is also argued on their behalf that since no notice has been given to the applicants before issuing the order of reversion, the order is unsustainable. Regarding the clarification contained in Annexure R1, it is argued that the point has not been properly answered in the clarification and therefore, it could not have been relied on.

5. We do not find any merit in this Original Application. Annexure A4 is an order issued by the Government of India, Ministry of Communications dated 13-12-1995. Paragraph 3 of the above order reads as follows:-

"Review of the existing procedure of promotion to Grade-IV (now designated as Chief Section Supervisor) under the BCR Scheme has been under consideration in view of the judgement of Principal Bench, New Delhi upheld by the Supreme Court. It has now been decided in supersession of earlier instructions that promotion to the said Grade-IV may be given from amongst officials in Grade-III on the basis of their seniority in the basic Grade. The promotions would be subject to fitness determined by the DPC as usual."

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6. Annexure A4 order dated 13-12-1995 is not under challenge and has not been challenged so far. Since the said order is unchallenged, the promotion to 10% Grade-IV is to be made not on the basis of seniority in Grade-III, but only on the basis of seniority in the basic grade and this has been issued in supersession of all the instructions issued earlier. Despite such a categorical instruction given in Annexure A4, the applicants have been promoted ignoring that. What the respondents have done by issuing Annexure A1 is only rectifying the mistake. No adverse civil consequence is brought to bear on the applicants because no recovery of payments made on the basis of their erroneous promotion is being made. The argument that in Annexure R1 proper clarification is not given also does not appeal to us. A careful reading of the clarification would go to show that the promotion to Grade-IV is to be made only on the basis of the seniority in the basic grade.

7. In the light of the above, finding no merit, the Original Application is dismissed leaving the parties to bear their respective costs.

Friday, this the 13th day of September, 2002


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. A-1: True copy of the Memo No.E1/336/Col.III/9 dated 18.12.2000 issued for the 3rd respondent.
2. A-2: True copy of the Memo No.AMS/44-13/79 dated 15.1.82 issued by the Assistant Director (Admn), for Director Telecom(S), Office of the Director Telecommunications (South), Trivandrum to the 1st applicant.
3. A-3: True copy of the DOT Letter No.27-4/87-TE-II(Pt.I) dated 30.11.92 issued by the Assistant Director General (TE), Office of the Telecom District Manager, Kottayam.
4. A-4: True copy of the Order No.22-6/94-TB-II dated 13.12.95 issued by the 1st respondent.
5. A-5: True copy of the Memo No.EI/336/Col.II/9 dated 12.9.97 issued by the Assistant General Manager (Admn.), Office of the General Manager, Telecom District, Kottayam.
6. A-6: True copy of the Order No.22-6/94-TE.II dated 8.9.99 issued by the Director (TE), issued by the Department of Telecom, New Delhi.

Respondents' Annexures:

1. R-1: True copy of the letter No.22-6/94-TE-II dated 17.1.96 issued by the 1st respondent.

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