

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.80/2003

Thursday this the 17th day of April, 2003.

C O R A M

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

S.Purushothaman Nair
S/o Late K.Sreedharan Nair
Sub Divisional Officer, Telecom,
Ranni, Pathanamthitta SSA.

Applicant

(By advocate Mr.Shafik M.A.)

Versus

1. Union of India represented by
The Secretary
Department of Telecommunications
Ministry of Communications
Sanchar Bhavan
New Delhi.
2. The Chief General Manager Telecom
BSNL, Kerala Circle, Trivandrum.
3. The General Manager Telecom
Pathanamthitta SSA
Thiruvalla.

Respondents

(By advocate Mr.C.Rajendran, SCGSC)

The application having been heard on 17th April, 2003, 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 Sub Divisional Officer, Telecom, Ranni, holding the post on officiating basis, has filed this application challenging A-1 order dated 31.1.2003 by which he stands reverted as Junior Telecom Officer and has been relieved to report before General Manager Telecom District (GMTD), Trivandrum for further posting. The applicant was promoted from the post of JTO as Sub Divisional Engineer purely on officiating basis for a period of 179 days by A-2 order dated 30.5.2002. By A-3 order dated 4.6.2002 he was posted as SDE, Ranni. The grievance of the applicant is that without assigning any reason, before completion of the period of the officiating promotion, the applicant has

been illegally reverted. Therefore, the applicant has filed this application seeking to set aside A-1 order, for a declaration that he is entitled to continue as SDOT Ranni till his tenure on the basis of his posting as evidenced by A-2 & A-3 and that any proposal to terminate his services in the cadre of SDE without any valid reasons and without giving him an opportunity of being heard is illegal and arbitrary and for a direction to the 2nd respondent to continue him in his present post till he is regularized.

2. Respondents in their reply statement and additional reply statement contend that the applicant who is the 5th accused in a criminal case which involved embezzlement of public money to the tune of Rs.16 lakhs should not have been promoted, that his promotion was inadvertently given effect to without vigilance clearance and the mistake having come to light he is being reverted as a person facing criminal prosecution for grave offence could not be promoted during the pendency of the prosecution.

3. We have heard the learned counsel on either side and have perused the material placed on record. A-2 order by which the applicant was promoted on officiating basis stipulates the following conditions:

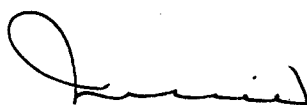
"Before relieving the officers it should be ensured that no disciplinary/vigilance cases are pending against them and no punishment is current".

4. From Annexure R-8 it is seen that the applicant is the 5th accused in criminal case No.143/CR/97. It is also evident from the pleadings and the material brought on record that sanction

for prosecution has been sought and the same is pending. It is thus obvious that the promotion in the case of the applicant was given effect to contrary to the stipulation in the order of promotion by inadvertent omission.

5. Learned counsel of the applicant, with considerable tenacity, argued that Annexure R-8 has been pending from 1997 onwards and inspite of that the applicant was promoted in the year 2001 and there is no justification for reverting the applicant now, for, the department was aware of the pendency of the case. We do not find any force in this contention. It is seen that the condition precedent before relieving the applicant for giving effect to promotion was making sure that no disciplinary/vigilance case was pending against him and no punishment was current. Obviously the promotion of the applicant by A-2 order was made without adverting to the fact that he was facing criminal prosecution for a serious offence. Having noticed this, the impugned order has been issued reverting him. Since the applicant's promotion was given effect to without complying with the stipulation in the order that it should be ensured that no vigilance case was pending against him, undoubtedly, by a mistake he did not get a ~~right~~ to hold the post. The reversion of the applicant, though without notice, therefore, cannot be faulted. Finding no reason for intervention, we dismiss this application without any order as to costs.

Dated 17th April. 2003.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER
aa.



A.V.HARIDASAN
VICE CHAIRMAN