

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.83/92.

Thursday, this the 13th day of January, 1994.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

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1. IA Rajan,
PI Angamaly.
2. N Kesavan, Phone Inspector,
Kizhakkambalam.
3. CM Varghese,
Phone Inspector, Alwaye.
4. KP John, Phone Inspector,
Telecom Workshop, Aluva.
5. MN Gopinathan Nair,
Transmission Assistant,
Carrier Station, Alwaye.
6. KA Meethian Pillai,
Transmission Assistant, Alwaye.
7. PG Raman,
TA, Parur.
8. N Chandrasekharan Nair,
Phone Inspector, Perumbavoor.
9. PV Jacob,
Phone Inspector, Angamaly.

....Applicants

By Advocate Shri MR Rajendran Nair.

Vs.

1. Union of India, represented by
Secretary, Ministry of Communications,
New Delhi.
2. The Chairman,
Telecom Commission,
New Delhi.

....Respondents

By Shri TPM Ibrahim Khan, Addl Central Govt Standing Counsel.

O R D E R

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN.

Applicants, who are Phone Inspectors, and Transmission Assistants, belonging to a category which consists of Auto Exchange Assistants, and Wireless Operators also, seek a declaration that they

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are entitled to be given appropriate higher scales of pay, and placements in a higher category. Earlier, they approached this Tribunal, and the Tribunal ordered consideration of their claims. This led to the passing of Annexure-I order. According to applicants, Annexure I order did not comply with the directions, and there are other aspects not raised or considered in the earlier judgement, that merit consideration in this application.

2. Applicants, who are Phone Inspectors and Transmission Assistants, are in the scale of Rs.1320-2040. The next higher post, namely, that of Junior Telecom Officer, is in the scale of Rs.1640-2900. 65% of the posts are to be filled by direct recruitment, 15% by promotion from among Group C candidates in general, 10% by promotion from the category to which applicants belong by seniority, and another 10% from the same category by means of a competitive examination. Government took a decision pursuant to the recommendation of the Aggarwal Commission to phase out the cadre to which applicants belong, treating it as a 'wasting cadre'. However, 35% of the posts in the category of Junior Telecom Officer were reserved for them for a duration of five years. According to applicants, the decision aforesaid, leads to diminution of promotional prospects available to them.

3. Applicants would submit that promotional prospects, which are part of their legitimate expectations, are considerably depressed. They rely on the decision in Raghunath Prasad Singh vs. Secretary, Home (Police) Department, Government of Bihar and others (AIR 1988 SC 1033), Council of Scientific & Industrial Research Vs. KGS Bhatt (AIR 1989 SC 1972) and OZ Hussain vs. Union of India & others (AIR 1990 SC 311) to contend that such course is bad in law. Counsel submitted that opportunities for career advancement is a recognised principle in areas of public administration, and that promotional prospects operate as motivation leading to areas of excellence in public service. In the decisions cited, the Apex Court pointed out that legitimate promotional avenues should be available to sustain the morale of public service. In one of the cases cited, the Apex Court

ordered the Government to provide for two promotions (AIR 1988 SC 1033). Counsel would submit that the directions of the Supreme Court have not been followed by limiting promotional prospects and confining the same in a time frame of five years.

4. In answer, learned Additional Standing Counsel would say that the matter of promotion involves a matter of policy in which several components of administrative character enter, and that the Court should not interfere with a matter of policy. The law in this regard is well settled, and it is too late in the day to entertain doubts in this regard. Government is the final judge to decide on the policy of promotions. It knows best its requirements, objectives and constraints.

5. However, even a matter of policy is open to judicial review, if there is arbitrariness or colourable exercise of power involved in evolving or implementing the policy. That is what the Supreme Court observed in Secretary, Finance Department vs. West Bengal Registration Service Association and others (AIR 1992 SC 1203). Whether there is arbitrariness in the policy will depend on the facts of each case. Having heard counsel on both sides at length, we do not think that arbitrariness of a degree calling for interference is made out. But, a case is made out for taking a fresh look at the ground realities. We are not stating this on our own. We are stating this on the basis of the statement contained in the reply statement filed by the respondents themselves. Respondents have acknowledged the need for providing promotional avenues to the categories in question. They intended to grant such opportunities. It is said:

".....all the existing incumbents will get chances to improve their position."

(Para 14 of reply statement)

Thus, it is a recognition of the claims of applicants. It has then to be considered whether the scheme proposed by respondents fulfils

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this objective. It is clear that the prospects of promotions have been restricted by reduction in posts. Para 7 of the reply statement reads:

"In order to provide promotional avenues to JTOs (not applicants) matching savings to the tune of six posts for every five upgraded posts have been abolished as per the instructions vide DOT New Delhi No.4-93/89-IE.I dated 16.5.1990 and 13.8.1990."

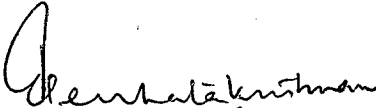
(Emphasis supplied)

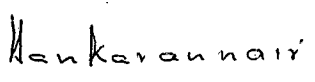
6. The sum and substance of the matter is that, respondents themselves have acknowledged the need to provide adequate promotional prospects, and adequate promotional prospects is understood as an opportunity to grant promotion to every incumbent (para 14). The vacancy position, and the time frame may not lead to the achievement of this purpose.

7. We would, therefore, direct respondents to consider whether opportunity to every one of the incumbents should not be granted (as they themselves suggested in para 14) either by extending the time limit or evolving a scheme so as to provide opportunities to the existing incumbents in a time bound manner. We direct respondents to take appropriate action on these lines, at least by October, 1994, well before the five year limit stipulated comes to an end.

8. Original Application is allowed. No costs.

Dated the 13th January, 1994.


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN