

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA No. 96 of 1999

Tuesday, this the 21st day of August, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER  
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. G. Mohankumar,  
S/o M. Gopinatha Kurup,  
Watchman, E10-B Exchange, Office of the  
Sub Divisional Engineer, Telecom,  
Changanachery (residing at  
Chempakaparambil, Vazhappally,  
Changanacherry). ....Applicant

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

Versus

1. Sub Divisional Engineer (Commercial),  
Department of Telecom, Changanachery.

2. General Manager, Telecom, Kottayam.

3. Union of India, represented by the  
Secretary to Government of India,  
Ministry of Communications, New Delhi.

4. Bharath Sanchar Nigam Limited, represented by  
the Chief General Manager, Telecom,  
Kerala Circle, Trivandrum. ....Respondents

[By Advocate Ms. P. Vani, ACGSC]

The application having been heard on 21-8-2001, the  
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to declare that the stipulation in A1 to the effect that "the officials should not be relieved for training in case they are under currency of punishment or disciplinary actions against them are in progress/contemplated" is illegal and to set aside the same, to declare that he is entitled to be deputed for 8 weeks' training as Telecom Mechanic at the training session scheduled to commence from

25-1-1999 and to direct the respondents to depute him for 8 weeks' training as Telecom Mechanic at the training session scheduled to commence from 25-1-1999.

2. The applicant is a Watchman. He was successful in the screening test for absorption as Phone Mechanic in the year 1994. Prior to the absorption every eligible candidate has to undergo training for a period of 8 weeks. As per A1 issued by the 2nd respondent, 32 candidates including the applicant were directed to report at the training centres concerned on 25-1-1999. A1 contains a clause to the effect that "the officials should not be relieved for training in case they are under currency of punishment or any disciplinary actions against them are in progress/contemplated". Rule 14 enquiry against him is in progress. The delay in sending him for training would affect him prejudicially. There is no rule stipulating that an official facing disciplinary proceedings should not be deputed for training or promoted to higher post. When law does not debar a particular action, an administrative action cannot debar the same.

3. Respondents resist the OA contending that as per existing instructions the applicant was not considered for training. The practice of not deputing such officials for training is in force in the Department of Telecom throughout the country and not restricted to the applicant or Kottayam SSA alone.

4. Originally, there were only two respondents. Subsequently, supplemental respondents 3 and 4 were impleaded. The supplemental respondents 3 and 4 are Union of India represented by the Secretary to Government of India, Ministry of Communications, New Delhi and Bharath Sanchar Nigam Limited

represented by the Chief General Manager, Telecom, Kerala Circle, Trivandrum respectively. The learned counsel appearing for respondents 1 and 2 submitted on 6-8-2001 that she is appearing for the supplemental respondents 3 and 4 also and the supplemental respondents 3 and 4 do not have a separate reply statement. Across the bar it was submitted by the learned counsel for respondents that the supplemental respondents are adopting the reply statement filed by respondents 1 and 2.

5. A1 shows the name of officials selected as Telecom Mechanics. The applicant is Serial No.12 in A1. It also says that:

"The Officials should not be relieved for training in case they are under currency of punishment or any disciplinary actions against them are in progress/contemplated."

6. The applicant has taken a specific stand that there is no rule which stipulates that an official facing disciplinary proceedings should not be deputed for training and when law does not debar such a particular action, an administrative action cannot debar such action. What the respondents say is that as per existing instructions the applicant was not considered for training. Respondents did not specify who has issued the instruction and when it was issued. They have also not cared to produce a copy of the "existing instructions" mentioned in the reply statement.

7. It is also the stand of the respondents that the practice of not deputing such officials for training is in force in the Department of Telecom throughout the country. We asked the learned counsel for respondents regarding the particulars of the "existing instructions". It was submitted that it is the practice all over India not to depute officials

under cloud for training. The position here as borne out from respondents' pleadings and the submission made by the learned counsel for respondents is that the particular clause incorporated in A1 is without any legal basis. A practice cannot be a substitute for a rule. That being the position, in the facts and circumstances of the case, the clause contained in A1 as far as the applicant is concerned cannot be held to be good in law.

8. Accordingly, it is declared that the stipulation in A1 to the effect that "officials should not be relieved for training in case they are under currency of punishment or disciplinary actions against them are in progress/contemplated" is illegal as far as the applicant is concerned. It is also declared that the applicant is entitled to be deputed for the training as Telecom Mechanic at the training session scheduled to commence from 25-1-1999. As far as the third relief is concerned, it has become infructuous now since the applicant has already undergone the training by virtue of the interim order dated 25-1-1999.

9. The Original Application is disposed of as above. No costs.

Tuesday, this the 21st day of August, 2001



G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER



A.M. SIVADAS  
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A1 True copy of the letter dated 18-1-99 No. E1/321/VI/55 issued by the Assistant General Manager, Office of the 2nd respondent.