

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 101 of 2009
with
Transfer Application No. 112 of 2008

Wednesday,, this the 17th day of August, 2011

CORAM:


HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. O.A. No. 101 of 2009

- 1 Babu V., S/o. K. Vasudevan
Junior Accountant
Office of the Principal General Manager
Telecom District, Corporate Section
BSNL Bhavan, Uppalam Road
Thiruvananthapuram – 1
Residing at 'Uthram', TC No. 8/85(1)
Cherunickal, Sreekariyam (P.O)
Thiruvananthapuram – 695 017.
- 2 K.V. Jayakumar, S/o. K. Kunjuraman
Junior Accountant
Office of the General Manager (Mobile)
IMPCS, Looks Lane, BSNL
Thiruvananthapuram – 1.
Residing at Devatharu, VSSC Road
Kulathoor (P.O), Thiruvnanthapuram – 695 583. Applicants

(By Advocate Mr. O.V. Radhakrishnan, Senior with
Mrs. K. Radhamani Amma)

Versus

- 1 Bharat Sanchar Nigam Limited
Represented by its Chairman and
Managing Director, Statesman Building
New Delhi – 110 001.
 - 2 Assistant Director General (SEA)
Bharat Sanchar Nigam Limited
Statesman Building
New Delhi – 110 001.
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- 3 Chief General Manager
BSNL, Kerala Circle
Thiruvananthapuram.
- 4 Union of India
Represented by its Secretary
Ministry of Communication and
Information Technology
Department of Telecommunications
421 Sanchar Bhavan
20 Ashoka Road, New Delhi- 110 001.

..... Respondents

(By Advocate Mr. T.C. Krishna for R1-3 and
Mr. Sunil Jacob Jose, SCGSC for R-4)

2. T.A. No. 112 of 2008

- 1 S. Manoharan
Junior Accountant
Office of CGMT, BSNL
Thiruvananthapuram.
- 2 J.S. Jayakumar
Junior Accountant
Office of the CGMT, BSNL
Thiruvananthapuram.
- 3 L. Thanka Raj
Junior Accountant, BSNL
O/o. PGMT, Oppalam Road
Thiruvananthapuram.
- 4 O.K. Vinod
Junior Accountant
Office of CGMT, BSNL
Thiruvananthapuram.
- 5 R. Vijayan Nair
Junior Accountant
Office of Executive Engineer
Electrical Division, BSNL
Thiruvananthapuram.
- 6 S. Sathish Kumar
Junior Accountant
Office of the CGMT
BSNL, Thiruvananthapuram.

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- 7 S. Rajasekharan
Junior Accountant
Office of CGMT, BSNL
Thiruvananthapuram.
 - 8 A. Rekha, Junior Accountant
Office of CGMT, BSNL
Thiruvananthapuram.
 - 9 P.K. Somasekhar
Junior Accountant
Office of PGMT, BSNL
Thiruvananthapuram.
 - 10 C. Satheesh Kumar
Junior Accountant
Office of the CGMT, BSNL
Thiruvananthapuram.
 - 11 P.T. Joshy, Junior Accountant
Accounts Section
Office of DE (S), CTSD
BSNL, Eranakulam.
 - 12 P. Haridas
Junior Accountant
Office of General Manager Telecom
BSNL, Malappuram – 676 519.
- Applicants

(By Advocate Mr. O.V. Radhakrishnan, Senior with
Mrs. K. Radhamani Amma)

Versus

- 1 Chief General Manager
BSNL, Kerala Telecom Circle
Thiruvananthapuram.
- 2 Chairman and Managing Director
BSNL, Stateman House, New Delhi.
3. Biju Raghavan,
Junior Accountant
Office of the Chief General Manager Telecom,
BSNL, Thiruvananthapuram.
- 4 H. Devadasan,
Junior Accountant
Office of the PGMTD, BSNL,
Thiruvananthapuram – 1

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- 5 C. Sundarevan,
Junior Accountant
Office of the PGMTD, BSNL,
Thiruvananthapuram - 1.
- 6 S. Krishnakumar,
Junior Accountant,
Office of the CGMT, BSNL,
Thiruvananthapuram.
7. S. Rosline Jose,
Junior Accountant
Office of the GM (Mobile),
IMPCS, BSNL,
Thiruvananthapuram - 1.

.... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil for R1-2
None for R3-7)

These applications having been heard on 27.07.2011, the Tribunal on
...17/08/2011... delivered the following.

ORDER

HON'BLE MR. K GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Writ Petition (C) No. 22203/2008 is transferred from the Hon'ble High Court of Kerala to this Tribunal and has been numbered as TA 112/2008. O.A. No. 101/2009 being identical to it, both are heard together and are disposed of by this common order. For the sake of convenience, O.A. No. 101/09 is taken up for consideration.

2. The applicants who were Junior Accountants (JA) in the Telecom Department were absorbed in the Bharat Sanchar Nigam Limited (BSNL) with effect from 03.10.2001 on existing terms and conditions of service in the Telecom Department till service rules are framed by the BSNL after discussion with the recognised union. They are eligible to be promoted as Senior Accountant as per the existing rules (Annexure A-8), i.e., Assistant

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(Accounts)/Junior Accountant/Senior Accountant Recruitment Rules, 2002 (Recruitment Rules, 2002, for short) published by the BSNL on 26.06.2002. As per Annexure A-12 order (in O.A. No. 101/2009) issued by the Assistant Director General (SEA), BSNL, New Delhi, dated 18.05.2004, the cadres of Junior/Senior Accountant in the BSNL were declared as a wasting cadres with immediate effect. No recruitment is to be made to these cadres and all the posts of Junior/Senior Accountants stood abolished as and when the same are vacated by the incumbents on account of retirement/promotions/resignation etc. As the applicants' representations did not yield any positive result, Writ Petition (C) No.31417/2004 was filed in the Hon'ble High Court of Kerala against the rejection of the applicants' request for promotion as Senior Accountant. In the counter affidavit filed by the respondents in Writ Petition No. 31417/2004, it was stated that their intention in issuing Annexure A-12 order was to merge isolated cadres with limited scope and duties with the main cadre after due restructuring. Thereafter, the said Writ Petition was transferred to this Tribunal and numbered as TA 29/2008. It was allowed to be withdrawn with liberty to file a fresh O.A, which is filed now as O.A. No. 101/2009. In this O.A., the applicants have mainly prayed for the following reliefs :

- (i) To declare Annexure A-12 order dated 18.05.2004 as ultra vires, unconstitutional and void;
- (ii) To call for the records leading to Annexure A-12 and A-15 and to quash the same;
- (iii) To direct the respondents to take immediate steps to promote the applicants one and 2 to the cadre of Senior Accountant based on their seniority and rank at serial No. 1 and 2 in Annexure A-19 gradation list as on 01.01.2006 with effect from 03.10.2004 with all consequential benefits including arrears of pay and allowances.

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3. The applicants submitted that Annexure A-12 order declaring the cadres of Junior/Senior Accountants in BSNL as wasting cadres before the merger of posts with main cadres and restructuring of cadres is unreasonable, arbitrary and violative of Articles 14 and 16 of the Constitution as no decision is taken by the BSNL. Therefore, the Corporate Office is not competent to issue Annexure A-12 order dated 18.05.2004 declaring the Junior/Senior Accountants as wasting cadres. It has no legal sanction and is ex facie arbitrary and unreasonable. Annexure A-12 order dated 18.05.2004 is not shown to be issued by the Board or the Company in General Meeting. Annexure A-12 order dated 18.05.2004 issued by the 2nd respondent is in the nature of an instruction given by the corporate office, which cannot out step, modify or amend the Annexure A-8 Recruitment Rules, 2002. To the extent it is at variance with Annexure A-8 Rules and, therefore, it is illegal, ultra vires and void. The applicants cannot be denied consideration for promotion to the cadre of Senior Accountant on the basis of Annexure A-12 order. The applicants are transferred employees from the Department of Telecom. The 1st respondent Company is legally obliged to protect the terms and conditions of service enjoyed by the applicants in the Department of Telecom. The applicants are legally eligible and entitled to be considered for promotion to the cadre of Senior Accountant in accordance with the Recruitment Rules, 2002. The action of the 2nd respondent in declaring Junior/Senior Accountants as wasting cadres deprives the applicants from promotion for over a period of 20 years which goes against the constitutional scheme and negates the fundamental right for promotion under Article 16 of the Constitution.

4. In the reply statement, it was submitted by the respondents that with



reference to blocking of all avenues of promotion, it was pointed out that the Junior/Senior Accountants are eligible to appear in two examinations for promotion to Junior Accounts Officer. One is for 40% post reserved for all Group 'C' and 'D'. 10% quota of posts reserved in case of promotion and the examination to be conducted for promotion, is open only to Junior/Senior Accountants. In addition to this, in the 10% posts reserved for promotion, one time relaxation of eligibility is also permitted, i.e., now 5 years service is required instead of ten years service and 10+2 educational qualification instead of graduation. It was further submitted that the issue raised by the applicant pertains to general administration powers of the Board which does not need the approval of the Company in general meeting. It is not permissible or open to the applicants to claim promotion to the cadre to which the recruitment is now stopped. The O.A. being devoid of merit is liable to be dismissed.

5. In the rejoinder statement, the applicant submitted that the Board is not competent to alter the service conditions of the employees to their detriment without any decision taken by the Company in general meeting. It was further submitted that the Junior Accountant is eligible for promotion after completion of 3 years in the cadre as Senior Accountant as per Annexure A-8 Recruitment Rules, 2002, and the educational qualifications and the age condition for direct recruitment are not made applicable to promotion under column 9 of Annexure A-8 Recruitment Rules, 2002. However, for promotion to the post of Junior Accounts officer by departmental competitive examination against 10% quota, degree is basic qualification and for 40% quota, Plus two is the basic qualification. Therefore, the accrued right of the



applicants for promotion to the category of Senior Accountant is taken away by issuing Annexure A-12 order.

6. In the additional reply statement, the respondents submitted that the Board of Directors is competent to issue Annexure A-12 order declaring the posts of Junior/Senior Accountant cadres as wasting cadres.

7. In the additional rejoinder, the applicants submitted that the cadre restructuring is done only in the cadre of Assistant (Accounts) to the cadre of Telecom Office Assistant (General) / Senior Telecom Office Assistant (General) and no cadre restructuring is effected in the cadre of Junior Accountant/Senior Accountant.

8. We have heard Mr. Radhakrishnan (Senior) with Mrs. K. Radhamani Amma, learned counsel for the applicant, Mr. T.C. Krishna, learned counsel for respondents 1 to 3 and Mr. Sunil Jacob Jose, learned SCGSC for respondent No.4^{*} and perused the records.

9. As per Annexure A-8 Recruitment Rules, the applicants are entitled to be considered for promotion to the cadre of Senior Accountant on completion of 3 years service in the cadre of Junior Accountant. On declaring the cadres of Junior/Senior Accountants as wasting cadres, the right of the applicants for consideration of promotion to the cadre of Senior Accountant on completion of 3 years service in the cadre of Junior Accountant is taken away. Alternative avenues of promotion as stated by the respondents, do not fully compensate the loss suffered by the applicants by the declaration of Junior/Senior

^{*}We also heard Mr. Thomas Mathew Nellimoottil the learned counsel appearing for the respondents 1&2 in TA 112/08 (incorporated as per order dated 25.8.2011 in MA 684/11)

Accountant cadres as wasting cadres as per Annexure A-12 order.

10. The question is whether Annexure A-12 order has been issued by the competent authority. Annexure A-12 order was issued by the Assistant Director General (SEA). The respondents have not produced any minuted decision of the Board of Directors/General Body to declare the Junior/Senior Accountant cadres as wasting cadres. If at all the service conditions of the applicants are to be varied or modified, the Board of Directors/General body is the competent authority to do so. The Assistant Director General (SCA) is not the competent authority. In the absence of any decision by the Board of Directors/General Body, Annexure A-12 order declaring the Junior/Senior Accountant cadres as wasting cadres by the Assistant Director General (SEA) is without competency/authority. Hence, it is clearly arbitrary and illegal.

11. In the counter affidavit filed by the respondents in Writ Petition No. 31417/2004 before Hon'ble High Court of Kerala, it was submitted that Annexure A-12 order was issued as a part of restructuring of the cadres. However, so far no restructuring of the cadres of Junior/Senior Accountants has been undertaken. Concomitant orders on declaring the cadres of Junior/Senior Accountant as wasting cadres and restructuring are to be issued. Non issuance of order restructuring the cadres of Junior/Senior Accountants takes away the *raison d'être* of Annexure A-12 order. This is another infirmity that the Annexure A-12 order suffers from.

12. Annexure A-8 Recruitment Rules, 2002, is published by the BSNL. The illegal order at Annexure A-12 cannot deprive the applicants of their right

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of consideration for promotion under the duly approved and published Recruitment Rules. The Recruitment Rules are not amended or cancelled. The Annexure A-15 letter based on Annexure A-12 order rejecting the request of the applicant for promotion is therefore, void and inoperative.

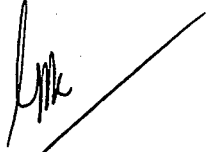
13. It is seen that the respondents have promoted Shri A. Unnikrishnan Nair to the cadre of Senior Accountant with effect from 12.07.2005 subject to the Writ Petition filed by him (which is now transferred to this Tribunal and numbered as T.A. No. 12/08) long after A-12 order dated 18.05.2004 was issued. This would show that abolition of cadre of Junior Accountant has not attained finality. It would be in the fitness of things if the respondents take care of the legitimate aspiration of the applicants' for promotion in accordance with the existing Recruitment Rules, 2002, while restructuring the cadres in the best interests of the BSNL and all stake holders with the approval of the Board.

14. In the light of the above, Annexure A-12 and Annexure A-15 orders in O.A. No. 101/2009 and the impugned orders in T.A. No. 112/2008 being illegal are liable to be set aside. Accordingly, it is ordered so. The respondents are directed to complete the process of restructuring of the cadres providing avenues of promotion to the applicants which is comparable to what they are provided with under the Recruitment Rules, 2002 within a period of three months failing which to consider the applicants in both the O.As for promotion to the cadre of Senior Accountant as per the Recruitment Rules, 2002, within a further period of one month from the date of receipt of a copy of this order.



15. The O.A and the T.A are allowed as above with no order as to costs.

(Dated, the 17th August, 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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