

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 101 of 2006

Friday, this the 27th day of July, 2007

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

N. Rajendran Nair,
S/o. Narayana Pillay,
Retired Deputy General Manager,
Telecom (Finance & Accounts),
Office of the General Manager Telecom, BSNL,
Pathanamthitta SSA, Thiruvalla,
Permanently residing at TC 1/179,
Medical College P.O., Trivandrum : 11 ... Applicant.

(By Advocate Mr. Shafik M.A.)

v e r s u s

1. Union of India represented by
The Secretary, Department of
Telecommunications, Ministry of
Communications, Sanchar Bhavan,
Ashoka Road, New Delhi : 110 001.
2. The Chairman cum Managing Director,
Bharat Sanchar Nigam Limited,
Sanchar Bhavan, New Delhi.
3. The Member (Finance),
Department of Telecommunications,
Sanchar Bhavan, Ashoka Road, New Delhi.
4. The Chief General Manager,
Kerala Circle, Trivandrum : 33 ... Respondents.

(By Advocate Mr. N. Nagresh)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

This is the second round of litigation. In the earlier round, the applicant filed OA No. 443/2002 and while the facts of the case as succinctly brought out in para 1, 2 and 7 of the order dated 28-02-2005 would serve

the purpose of having a hang of the entire case, the decision as in para 11 thereof would provide the end of the thread from where the case is to be considered. The same is as under:-

"1. The applicant N. Rajendran Nair, presently working as Deputy General Manager, Telecom at Thiruvalla, borne on the Junior Time Scale of the Indian P&T Finance & Accounts Service, is aggrieved by his non-promotion to the Senior Time Scale of that service on the basis of adverse entries recorded in the Part ACR (1.4.99 to 13.9.99) for the year 1999-2000 and by the refusal of the respondents to expunge the adverse entries as well as non-disposal of his appeal. The applicant has stated that the fact of adverse entries having been made in the part ACR was communicated to him by the General Manager of Kerala Circle on 22.09.2000 (A-1). The applicant represented against it by A-2. The 4th respondent toned down two entries and retained one adverse entry in full by A-3 order. The applicant submitted an appeal to the 3rd respondent on 3.9.2001 by A-4. While the appeal remained undisposed, more than a hundred officers of the batch, excluding the applicant at Sl. No. 61 in the order of seniority, were promoted to Senior Time Scale of Indian P&T Finance & Accounts Service by the Department of Telecom order dated 17.6.2002. The applicant has averred that the adverse entries were made by the reporting officer, as she was on inimical terms with the applicant.

2. The respondents have contended in their reply statement that only one representation against adverse entries in ACR is allowed and the applicant's representation dated 25.10.2000 was duly considered by the Appellate Authority resulting in the toning down of two entries and retention of one entry. It is for this reason that a second appeal addressed to the Member (Finance) could not be entertained and this fact was communicated to the applicant on 10.7.2002. The applicant was considered alongwith others by a DPC during May 2002 and as the officer's grading did not meet the bench mark he could not be promoted to the Senior Time Scale of the service.

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7. We found from the records that apart from the part ACR under scrutiny, there is yet another ACR from which an adverse assessment has been incorrectly inferred by the DPC. We tabulate below in juxtaposition our reading with that of DPC for clarity:

| <u>Period</u> | <u>DPC's record</u> | <u>Our observation</u> |
|--------------------|---------------------|------------------------|
| 1.4.96 to 05.1.97 | Very Good | Very Good |
| 6.1.97 to 31.3.97 | Very Good | Very Good |
| 1.4.97 to 30.11.97 | Very Good | Very Good |



| | | |
|------------------------|--|------------|
| 1.12.97 to 31.3.98 | Very Good | Very Good |
| 1.4.98 to 31.3.99 | Very Good | Very Good |
| 1.4.99 to 13.9.99 | Very Good | Very Good |
| 14.9.99 to. 9.12.99 | CR not written.as period is less than three months. | - |
| 10.12.99 to 26.3.2000 | Average | Average |
| 27.3.2000 to 31.3.2000 | CR not written as period is only 5 days. | - |
| 24.4.2000 to 31.3.2001 | Average | Very Good" |

2. Vide impugned order dated 2nd September, 2005 at Annexure A-1, the respondents have stated as under:-

"No. LC-II/14/OA.443/2002

Dated: 2nd September, 2005.

Sub: Promotion to STS of IP&T AFS Group A - reg.

Ref: Order dated 28.2.2005 in O.A. No. 443/2002 of the Hon'ble Central Administrative Tribunal, Ernakulam Bench.

I am directed to inform you that review DPC was convened on 31.5.2005 to consider the applicant for promotion to the grade of STS for the vacancy pertaining to the year 2002-2003 as per the procedure prescribed. The Character rolls of the applicant were considered in detail and were reassessed by the DPC in view of the Hon'ble Tribunal's order dated 28.2.2005 and the Committee assessed him "unfit" in view of the adverse entries made in his ACR for the period 1999-2000 and the fact that the adverse entry was duly conveyed to the applicant at the appropriate time."

3. The applicant has again assailed the adverse remarks and attendant orders as well as the latest Annexure A-1 order and prayed for the following reliefs:-

(I) To call for the records relating to Annexure A-1 to A-8 and to quash Annexures A1, A2, A3 and A5 to the extent it is considered as adverse to the applicant.



(II) To declare that the applicant is entitled to be promoted to Senior Time Scale of Indian P&T Accounts and Finance Services, with effect from the date on which his juniors are promoted on the basis of his seniority and eligibility.

(III) To direct the respondents to promote the applicant to Senior Time Scale of Indian P&T Accounts and Finance Services, with effect from the date on which his juniors are promoted on the basis of his seniority and eligibility with all consequential benefits including arrears of pay with 18% interest.

4. Respondents have contested the OA and according to them, the DPC had reviewed the case of the applicant and came to the conclusion that the applicant cannot be recommended for promotion because of the adverse remarks for the year 1999-2000.

5. Counsel for the applicant argued that the direction by the Tribunal in its earlier order was specific and any one who would have correctly understood the intent and spirit of the order would have recommended the case of the applicant for promotion to the Senior Time Scale.

6. For the purpose of verifying the records, original as well as photocopies thereof were called for and the same were produced by the respondents. On perusal of the same it is revealed that the following are the remarks for the relevant column (Column B-6) for which adverse entries recorded for five months in 1999-2000 have been retained by the appellate authority and thus, for the said year the DPC had held the report as adverse:-

 **B.6: Please comment on the quality of relationship with Superiors, Colleagues and sub-ordinates and on the ability to**

appreciate others point of view and take advice in the proper spirit. Please also comment on his capacity to work as a member of a team and to promote team spirit and optimize the output of the team

| Year | Period | Grading and Name of Reporting Officer | Remarks made |
|-------------|------------------------|--|--|
| 1996-1997 | 6-1-97 to 31-3-97 | Very Good (K.Shekharan) | The Relationship with Superiors, fellow employees and subordinates are cordial and the officer is not hesitant to appreciate the initiative taken by the sub ordinates. To include the officer as a member of a team for a specific work will strengthen the capacity to optimize the out put by the team. |
| 1997-1998 | 1-4-97 to 30-11-97 | Very Good (P.R. Unnikrishnan Nair) | Maintains a good relationship with his superiors, colleagues and subordinates. |
| 1997-1998 | 1-12-97 to 31-3-98 | Very Good (Sumam Pillai) | Very efficient as a team leader. Very cordial with everybody. |
| 1998-1999 | 1-4-98 to 31-3-99 | Very Good. (Sumam Pillai) | His relationship with the others is very cordial and friendly. He has capacity to work as a team member with spirit which was evident in the computerization of GPF of the SSA. |
| 1999-2000 | 1-4-99 to 13-9-99 | Average (Sumam Pillai) | Despite instant warnings, the officer had showed unwillingness to discuss many important official matters with the undersigned. Hence, it is evident he could not take advice in the proper spirit with sub-ordinate, he maintains a normal relationship. |
| 1999-2000 | 10-12-99 to 26.03.2000 | Very Good. P.S.R. Krishna | The officer maintained good relations with superiors, subordinates and colleagues. |
| 2000-2001 | 24-4-2000 to 31.3.2001 | Very Good. (John Thomas) | Cordial and pleasant with all. Is extremely polite in his interpersonal dealings with all seniors/subordinates |



7. The above would reflect that in five years, the report of four reporting officers is consistently the same and even the ones given by the very same reporting officer who had made adverse entries for five months had given comfortable report about the applicant. The question that arises for consideration is whether the adverse report could carry any sting with it when all other reports are better. For this purpose, reference has to be made to the decision of the Apex Court in the case of **S. Ramachandra Raju v. State of Orissa, 1994 Supp (3) SCC 424**, where the Apex Court has held as under:-

11. The facts are eloquent. From 1973-74 the appellant started with a commendation of his performance to be satisfactory to fair in the year 1990-91. Would it be comprehensible that in the year 1987-88 whether he would suddenly drop down and become an average or below average teacher? When he was a responsible teacher and he had cordial relations with the student community, and was taking pains to impart lessons to the students, would it be believable that he avoids to take classes and drops down if not watched? When anterior to or subsequent to 1987-88 he was a man of ability and of integrity, the same would become below average only for the academic year 1987-88 without discernible reasons. It would speak volumes on the objectivity of assessment by the reporting officer i.e. the Principal. This conduct is much to be desired. This case would establish as a stark reality that writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices or proclivity or predilections and to make objective assessment. It is needless to emphasise that the career prospects of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive commends/comments in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy. The reporting officer is bound to lose his credibility in the eyes of his subordinates and fail to command respect and work from them. The constitutional and statutory safeguards given to the government employees



largely became responsible to display callousness and disregard of the discharge of their duties and make it impossible to the superior or controlling officers to extract legitimate work from them. The writing of the confidentials is contributing to make the subordinates work at least to some extent. Therefore, writing the confidential reports objectively and constructively and communication thereof at the earliest would pave way for amends by erring subordinate officer or to improve the efficiency in service. At the same time, the subordinate-employee/officer should dedicate to do hard work and duty; assiduity in the discharge of the duty, honesty with integrity in performance thereof which alone would earn his usefulness in retention of his service. Both would contribute to improve excellence in service.

8. The above dictum of the Apex Court should be the scale to be utilized by the DPC in giving their own grading as per the DOPT order dated 10.03.1989. The DOPT instructions in this regard are as under:-

"(e) The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs because it has been noticed that sometimes the overall grading in a CR may be inconsistent with the grading under various parameters or attributes."

9. In a very recent case of ***Union of India and Another vs A.K. Narula***, (CA No. 2717/2007) decided on 18-05-2007, the Apex Court has held that "the Guidelines give a certain amount of play in the joints to the DPC by providing that it need not be guided by the overall grading recorded in the CRs, but may make its own assessment on the basis of the entries in the CRs. The DPC is required to make an overall assessment of the performance of each candidate separately, but by adopting the same standards, yardsticks and norms. It is only when the process of assessment is vitiated either on the ground of bias, malafides or arbitrariness, the selection calls for interference." Thus, the power vested with the DPC is



rather to remove any arbitrariness or malafide on the part of administration in writing the ACR and in such an event, the DPC has its own norms to fix to arrive at the grading. The case of the applicant falls under such category, where the DPC ought to have made its assessment on the basis of the overall performance and given their own grading arrived at dispassionately taking into account the overall performance of the applicant. The DPC does not appear to have as such dealt with deeply into the facts of the case, especially when certain observations were recorded by the Tribunal in its earlier order dated 28-02-2005 and directed the respondents that the review should be in the light of the observations made by the Tribunal. Despite, the DPC recommendations are only to the following extent:-

"2. The character rolls of 115 officers were assessed by the DPC held on 30th and 31st May, 2002 at 10.30 a.m. each day in the chamber of Adviser (Finance), Telecom Commission. The character rolls of Shri N. Rajendran Nair, were assessed by the DPC and he was assessed 'UNFIT'. The character rolls of Shri N. Rajendran Nair have now been reassessed in view of the CAT order dated 28.02.2005 in O.A. No. 443/2002.

3. Having re-examined the character rolls of Shri N. Rajendran Nair, the Committee assess him 'Unfit' against the vacancy for 2002-03 for regular promotion to the Senior Time Scale of the service in the pay scale of Rs. 10000-325-15200 on Indian P&T Accounts and Finance Service Group 'A', in view of the adverse entries made in the ACR for the period 1999-2000 and the fact that the same was duly conveyed."

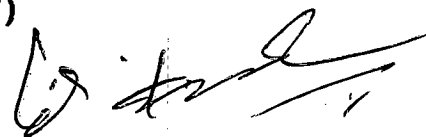
10. It appears that the respondents in holding the review DPC has conducted only a lip service without due application of mind. It is not even explained that the decision by the appellate authority vide order dated 3-7-2001 (Annexure A-5) whereby two out of three adverse entries have been diluted has been taken into account. Hence, the decision by the DPC as communicated by the respondents vide Annexure A-1 is legally not tenable



and as such Annexure A-1 order is quashed and set aside. The respondents are directed to conduct another Review DPC, contrast the reports in respect of the relevant column "Inter-personal relationship" for the period from 06-01-1997 to 31-03-1999 and 10-12-1999 to 31-03-2001 on the one hand and that for the period from 01-04-1999 to 13-0-1999 on the other and keeping in view the law laid down by the Apex Court as in the case of **S. Ramachandra Raju** (Supra) and arrive at a just conclusion. The decision may reflect the views of each of the members of the DPC.

11. This drill be conducted within a period of 3 months from the date of communication of this order. OA is thus **allowed** as above. No costs.

(Dated, the 27th July, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.