

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 114 1992.

DATE OF DECISION 30.11.1992

Shri CS Balan and 2 ors Applicant (s)

Shri G Sasidharan Chempazan-
thiyil. Advocate for the Applicant (s)

Versus

Chairman, Telecom Commn & Respondent (s)
another.

Mr George Joseph, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. **SP Mukerji** - **Vice Chairman**

&

The Hon'ble Mr. **AV Haridasan** - **Judicial Member**

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *m*

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The grievance of the applicants who are Junior Telecom Officers in the Department of Telecommunications is that the respondents are unjustifiably denying to them the benefit of two advance increments granted to Junior Engineers/Junior Telecom Officers, Officers of TES Group B and Officers of ITS who acquires or have acquired a degree in Engineering while in service just for the reason that they acquired the Engineering degree while they were working in the cadre of Technicians. The facts are simple and can be stated thus:

.....2

2. The applicants 1 to 3 were recruited as Technicians in the year 1977, 1981 and 1984 respectively. They were promoted to the cadre of Junior Telecom Officer (JTO) against the departmental quota of vacancies that arose in the year 1989 on the basis of a competitive examination they passed in the year 1990. They passed the Engineering Degree examination while in service as Technicians. The 1st respondent issued an order dated 11.7.1990 at Annexure II granting two advance increments to those Junior Engineers/JTOs/Officers of TES Group B and officers of ITS in the junior and senior time scales who acquire or have acquired a Degree in Engineering in any one of the discipline of Electrical, Telecommunication, Electronics, Radio Engineering and Computer Science from a recognised University or its equivalent qualification while in service. But Technicians, who belong to a non-gazetted technical cadre, were excluded from the purview of the benefits under the order. Aggrieved by this discrimination, pointing out that in several Departments under the Government of India like Indian Railways, ISRO, etc. advance increments are given to technical staff who obtain a Degree in Engineering while in service without any discrimination between lower cadre and a higher cadre, the Union of Graduate Engineers Association of Telecom made a representation to the 1st respondent on 5th November, 1990 requesting for grant of advance increments to Technicians who have acquired Engineering Degrees. This representation has not so far been disposed of by the 1st respondent. In the meanwhile, the 1st respondent issued a clarificatory order dated 7.2.1991 wherein it was clarified that Technicians who had obtained Engineering Degrees would not be eligible to the benefit of advance increments granted by the order dated 11.7.90 even if they later became JTOs.

Aggrieved by the exclusion of the Technicians from the purview of the order dated 11.7.90 at Annexure II and also by the clarification made in the order dated 7.2.91 of the 1st respondent, the applicants have filed this application seeking to quash the impugned orders at Annexure II and IV to the extent they deny the benefit of advance increments to the Technicians who obtained an Engineering Degree while in service and also for a direction to the respondents to consider the claim of the applicants for grant of advance increments for having acquired an Engineering Degree while in service. It has been averred in the application that since all the applicants have been promoted as JTOs towards vacancies which arose in 1989 much before the date on which the order dated 11.7.1990 was given effect to, there is absolutely no justification in the benefit of advance increments being denied to them.

3. The respondents in their reply statement seek to justify the denial of the advance increments to the applicants on the ground that the Technicians had already been granted two advance increments for possessing a Diploma in Engineering by order dated 8.3.1990 and also that as the duties of Technicians and JTOs are different, the distinction is based on an intelligible differentia.

4. We have heard the arguments of the learned counsel for the parties and have also perused the records. The representation submitted by the Graduate Engineers Association of the Telecom Department dated 5th November, 1990 for grant of six advance increments and claiming promotion to all Engineering Graduates in the lower technical cadre of Telecom Department within a minimum specified period is yet to be disposed of by the 1st respondent. In order

to give relief to the applicants in this case, it does not appear necessary to go into the question whether the denial of the benefit of advance increments to the Technicians who have passed the Engineering Degree examination is discriminatory or not, because all the three applicants ^{had} ~~have~~ been admittedly promoted as JTOs on the date on which the order at Annexure II had taken effect. The question whether the denial of the benefit of advance increments to Technicians with Engineering Degree while granting it to the officers, is discriminatory or not need to be considered if and when an appropriate occasion arises.

(i)
5. Paragraph 1 of the order dated 11.7.1990 at Annexure II reads as follows:-

"Two advance increments in the respective grade may be granted to those Junior Engineers, Junior Telecom Officers, Officers of TES Group B and Officers of ITS in the Junior Time Scale and Senior Time Scale promoted from TES Group B who acquired or have acquired a degree in Engineering in any one of the disciplines of Mechanical, Electrical, Telecommunication, Electronics, Radio Engineering and Computer Science from a recognised university or its equivalent qualification while in service."

The applicants are JTOs. That they ^{have} ~~they~~ passed the Engineering Degree examination is not disputed and is borne out by Annexure 1(a), 1(b) and 1(c) certificates. Going by the wording of paragraph 1(i) of Annexure II order, the applicants are eligible for grant of advance increments. But in the clarificatory letter dated 7.2.1991 at Annexure IV to a query "whether those who have obtained degree in Engineering while working as Technicians etc and subsequently passed Junior Engineer examination and have become Junior Engineer/JTOs are eligible for advance increments", the answer "no" has been given. Viewed in the light of this clarification, the applicants who passed the Engineering Degree examination while they were working as Technicians

would not be entitled to the benefit of advance increments. The learned counsel for the applicants argued that there is absolutely no meaning and justification for the clarification denying the benefit of advance increments to JTOs who have acquired an Engineering Degree just for the reason that they passed the Engineering Degree examination while they were working in the lower cadre of Technicians. We find considerable force in this argument. Advance increments are granted to those officials who acquired a Degree in Engineering as an incentive for having acquired the higher technical qualification and also because the acquisition of a higher qualification would equip them to perform their duties of technical nature more competently. As JTOs, they have further chances of promotion to higher cadres and acquisition of an Engineering Degree is definitely advantageous to them as also to the Department. The denial to them of the benefit of advance increment just for the reason that they passed the Engineering examination while they were working in a lower cadre is irrational and arbitrary. The benefit granted to JTOs who acquired the Engineering Degrees while in service without specifying the degree must be acquired at which stage of service ^{the degree must be acquired} by the order dated 11.7.1990 cannot be curtailed by a simple clarification to the effect that if the Degree was acquired while they were working as Technicians they would not be entitled to the benefit. Therefore, we are of the view that Sl No.3 of the impugned order at Annexure IV dated 7.2.1991 is liable to be struck down as unreasonable and arbitrary.

6. The learned counsel for the respondents argued that as the Technicians have already been granted two advance increments by order No.12-1/88-PAT dated 8.3.1990 for possessing a diploma in engineering, they cannot claim a further benefit of advance increment for having acquired

the Engineering Degree. This argument also has only to be rejected because the order dated 8.3.1990 referred to in the reply statement happened to be issued in response to the representations submitted by the Technicians for grant of a higher pay while the entry qualification for Technicians was revised from Matriculation to Diploma in Engineering in 1983. While the Technicians whose recruitment qualification was enhanced from Matriculation to Engineering Diploma demanded a higher pay scale than Rs.975-1660 which was fixed for TOAs and Telephone Operators who were only Matriculates, instead of giving them higher pay scale, the Technicians were given two advance increments by order referred to in the reply statement with effect from 16.4.1986. Thus, grant of this advance increment was in lieu of the wage deficiency and, therefore, cannot be considered as an incentive given for acquisition of higher qualification while in service. So, just for the reason that the Technicians have been given two advance increments by the above said order, it is not just or equitable to deny to those JTOs who have acquired Engineering Degree while they were Technicians the benefit of advance increments granted by order dated 11.7.1990.

7. In the conspectus of facts and circumstances, we allow the application to the extent of striking down Sl. No.3 of the order dated 7.2.1991 at Annexure IV and directing the respondents to grant two advance increments to the applicants as they have acquired Engineering Degrees while in service. Orders granting them the benefit of advance increments from the respective dates of eligibility should be issued within a period of two months from the date of communication of a copy of this order.

8. There is no order as to costs.

(AV HARIDASAN)
JUDICIAL MEMBER

30.11.1992

(SP MUKERJI)
VICE CHAIRMAN