

FINAL ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED SIXTEENTH DAY OF MARCH ONE THOUSAND
NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI G. SREEDHARAN NAIR, JUDICIAL MEMBER

&

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

O.A. No. 126/87

1. K. S. Joseph

2. P. Krishnan Nair and

3. V. Narayanan Thampi

Applicants

vs.

1. Union of India represented by
Secretary to Government, Ministry of
Communication, New Delhi

2. The Director General, Posts & Telegraphs
New Delhi

3. The General Manager, Telecommunications
Kerala Circle, Trivandrum and

4. The District Manager Telephones,
Trivandrum

Respondents

M/s. M. R. Rajendran Nair, Mary Isabella,
P.V. Asha & K.S. Ajayagosh

Counsel for
applicants

Mr. P. V. Madhavan Nambiar, SCGSC

Counsel for
respondents

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Hon'ble Shri G. Sreedharan Nair

The applicants were Technicians in the Telephone Department. While so, the first applicant appeared for the competitive Examination for promotion as Phone Inspector. He also participated in the Examination for

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promotion as Junior Engineer. He was successful in both. First he underwent the training for Phone Inspectors and after that he took the training for Junior Engineers. After that training was also over, he was appointed as Phone Inspector with effect from 13.12.1976. The applicants 2 & 3 passed the Competitive Examination for promotion as Phone Inspector and ~~were~~ deputed for training.

It is alleged by them that on completion of ten years of service as Technician, they were entitled to be promoted as Selection Grade Technicians on the basis of seniority-

According to cum-fitness. It is alleged by them that they were entitled to be promoted to the higher grade with effect from 16.11.75 when their juniors were promoted with retrospective effect.

Since the request in that respect was not agreed to, the applicants have filed this application praying to quash the order by which their request was rejected as well as to direct the respondents to promote them as higher grade Technicians with effect from the date of promotion of their juniors and grant them consequential benefits.

It is urged that as the applicants were having lien in the cadre of Technicians on the date when their juniors were promoted, they should have been promoted to the higher grade. It is also pointed out that non promotion has resulted in permanent reduction in pay compared to their juniors. It is also alleged that it is highly discriminatory and arbitrary and can be rectified only

by granting notional promotion to the applicants with effect from the date of promotion of their juniors.

2. In the reply filed by the respondents, it is stated that an essential condition for promotion to higher grade on completion of 10 years of service is that, the employee should actually be working as Technician and as such, Technicians undergoing training for promotion as Phone Inspector, etc. and those promoted to those cadres are not eligible. It is pointed out that when the vacancies arose in the higher grade of Technicians, the applicants have proceeded for the Phone Inspectors' Training Course and hence they could not be promoted to the higher grade. It is contended that from the commencement of the training, they severed their connections with the cadre of Technicians. It is further stated that the applicants themselves have furnished declarations, when they were deputed for training, relinquishing promotion in the parent cadre.

3. What is the effect of passing a Departmental Competitive Examination for promotion to a higher cadre? Does a civil servant who passes such Examination and undergoes the prescribed training lose ~~or~~ his rights in the post held by him even before he is appointed in the higher cadre? These questions of importance have ~~been~~ ^{posed} in the application.

4. A Government servant holding substantially a permanent post retains a lien on that post while performing the duties of that post. It is so provided in clause (a) of FR 13. In view of sub clause (i) of clause (b) of sub rule (6) of FR 9, a Government servant is to be treated as on duty during a course of instructions or training in India. The applicants were having their lien on the post of Technician, when in view of the passing of the Departmental Competitive Examination, they were deputed for training for appointment as Junior Engineer in the case of the first applicant, and ^{as} Phone Inspector in the case of the applicants 2 & 3. While undergoing such training, vacancies arose in the post of Higher Grade Technicians, and which had to be filled up on the basis of seniority cum fitness from amongst the Technicians, and admittedly the juniors to the applicants secured such promotion, the denial of promotion to the applicants was on the short ground that they were undergoing training for another higher post. It is not in dispute that while undergoing such training, the lien of the applicants in the post of Technician was continuing, and they were allowed only the pay in the grade of Technicians. In view of FR 12 A, the Government servant who holds substantive appointment to a permanent post, acquires a lien on that post, and only by the acquisition of

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such lien, he will cease to hold the lien ~~provisionally~~ acquired on any other post. As such, before substantive appointment to the post of Junior Engineer or Phone Inspector, the applicants continued to hold lien in the post of Technician. It is seen from the records that the applicants were confirmed as Phone Inspectors only with effect from 1.3.1979 in the case of the first applicant and 1.3.1977 in the case of the others. As such, the applicants were only holding the post of Technicians, and their lien was only against such posts, when the vacancy arose in the cadre of Higher Grade Technicians. Since they had rendered the prescribed ~~qualified~~ service of ten years, when their juniors were promoted to that post, the denial of promotion to the applicants on the mere ground that they were undergoing training for some other post, cannot be sustained.

5. The counsel for the applicants invited our attention to Ministry of Finance O.M. dated 14.3.1978, copy of which is at Annexure-11, which lays down that a Government servant while undergoing training or instructions in India and treated as on duty under clause (b) of sub rule (6) of FR 9, can be promoted to the next higher grade during such training or instruction if he is otherwise entitled to such promotion with effect from the date he would have been so promoted had he not proceeded on training, in case he has been approved for promotion to next higher

grade and of his seniors except those found unfit have been promoted to that grade. It further provides that he may also be allowed to draw such officiating pay in the next higher grade which he would have drawn from time to time had he been on duty other than duty under clause (b) of sub rule (6) of FR 9. It appears that when this O.M. was brought to the notice of the respondents the benefit under the same was not extended to the applicants on the ground that it has only prospective effect. We are unable to accept the stand taken up by the respondents. What is indicated in the O.M. is only what is the right thing to be done in such cases. Hence, merely because the claim of the applicants related to an earlier period, so long as it ~~had~~ ^{been} not adjudicated upon, the principle enunciated had to be applied and the benefit extended to the applicants.

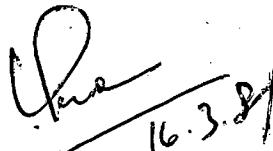
6. It was urged by counsel for the applicants that the denial of promotion to the post of Higher Grade Technician is violative of the "Equality" clause enshrined in the Constitution of India. We agree with the submission. The applicants have demonstrated with respect to the relevant figures as to how while they were undergoing training and only drawing the pay of Technician, their juniors who were promoted to the cadre of High Grade Technicians were drawing higher emoluments. The denial

of the benefit to the applicants, solely on account of their coming out successful in a Competitive Examination for another Higher post and undergoing the training for that post cannot be upheld, for, until the applicants are appointed to the other post for which they qualified themselves, they are only in the cadre of Technicians, and the denial of what is due to them in that capacity, in such circumstances, is unfair and illegal. By the mere passing of the Competitive Examination, the applicants do not sever their connections with the cadre of Technicians, and so long as that tie and involvement are there, their juniors cannot steal a march over them by the fortuitous circumstances of not participating in the Competitive Examination or not being successful therein.

7. Counsel for respondents placed reliance on the declaration stated to have been given by the applicants giving up claim for promotion in the parent cadre. We are of the view that the obtaining of such declaration *pursuing the* will not stand in the way of right that is available to the applicants in law.

8. In the result, we quash the orders dated 19.2.86 (Annexure-6) and 12.5.1986 (Annexure-7) and direct the respondents to notionally promote the applicants as Higher Grade Technicians with effect from the date of promotion of their immediate juniors and to grant them

consequential benefits including fixation of pay and payment of arrears. This order shall be complied with by the respondents within a period of two months from the date of receipt of a copy of the same.


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(N. V. Krishnan)
Administrative Member
16.3.89


16.3.1989

(G. Sreedharan Nair)
Judicial Member
16.3.89

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