

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.135/2002

Thursday this the 9th day of January, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

M.T.Joseph,
aged 45 years, S/o late Mr.ME Thomas,
Muzhangal House, Maradu PO
Ernakulam District.
presently working as Telecom Mechanic
Telephone Exchange,
Bharat Sanchar Nigam Limited,
Nettoor, Ernakulam Dist.

...Applicant

(By Advocate Mr. PM Mohammed Shiraz)

V.

1. Union of India,
represented by the Chief
General Manager, Telecom,
Bharat Sanchar Nigam Limited,
Kalathiparambil Road,
Kochi.31.
2. Bharat Sanchar Nigam Ltd.
rep. by the Principal General
Manager, Telecom Bhaat Sanchar
Nigam Limited, Kalathiparambil
Road, Kochi.31
3. The Asst.General Manager,
O/o The Principal General Manager
Telecom, Bharath Sanchar Nigam
Limited, Kalathiparambil Road,
Kochi.31.

..Respondents

(By Advocate Mr.K.Kesavankutty)

The Original Application having come up for final hearing, the Tribunal after hearing the counsel on either side, pronounced the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, working as Telecom Mechanic commenced his service as Lineman on 24.7.1981 in the Department of Telecommunications. While so on 20.1.93 he was served with a Memorandum of Charge and was after the proceedings awarded a penalty of withholding of increment for one year. On appeal the penalty was set aside and he

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was censured. In 1990 a cadre of Telecom Technical Assistant, Senior Telecom Operating Assistant and Phone Mechanics were introduced by restructuring. The juniors of the applicant were deputed for training for appointment as Phone Mechanic. However, the applicant was excluded. Aggrieved, the applicant filed OA 380-94 before this Tribunal. Pursuant to the interim orders, the applicant was also sent for training. The Original Application was disposed of directing the respondents to consider the representation of the applicant. On consideration of the representation of the applicant pursuant to the orders of the Tribunal, Annexure.A3 order was issued by the General Manager, Telecom, informing the applicant that the DPC did not consider the applicant for promotion in view of the censure which was recorded in the ACR and that his case would be further reviewed. On further review the applicant alongwith others ~~were~~ ^{was} promoted as Telecom Mechanic by Annexure.A5 order dated 14.12.01. Finding that the applicant was not given promotion with effect from the due date on which his juniors were promoted and seniority has not been granted, the applicant submitted A6 representation on 24.4.01 to the Principal General Manager as also the third respondent. Finding no response, the applicant has filed this application seeking the following reliefs:

- (1) Declare that the applicant is entitled to the benefit of promotion as Telecom Mechanic with effect from the date of promotion of his juniors in service, with all consequential benefits.
- (2) Direct respondents to grant the consequential benefits of the declaration in Para 9(1) above like fixation of pay, arrears of pay, allowance etc. with effect from the date of promotion of his juniors and;
- (3) Pass such other orders or directions as may be just and necessary in the facts and circumstances of the case.

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2. The respondents have filed as many as three reply statements. In the first reply statement, the respondents contended that the DPC did not consider the applicant for promotion on account of the entry of censure in the ACR. In the additional reply statement also it has been contended that the entry regarding censure was a matter of concern for the DPC and therefore, the DPC did not recommend the applicant for promotion at the time when his juniors were promoted. However, in the second additional reply statement, the respondents have stated that the case of the applicant was considered and it was found that the applicant was entitled to be promoted with effect from 11.7.94 to the scale of Rs.975-1540 on the date on which his juniors were promoted and therefore, Annexure.R.1(b) order dated 10.12.2002 has been issued giving the applicant notional promotion with effect from 10.7.94 and actual financial benefit only with effect from 14.2.2001 the date on which he was actually promoted.

3. We have heard the learned counsel on either side and have perused the pleadings and materials placed on record. In view of issue of Annexure.R.1(b) order and the statement in the second additional reply statement the controversy in this case has now come down to the question of grant of actual financial benefits consequent on the retrospective promotion of the applicant.

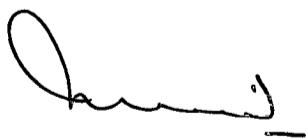
4. The applicant was not considered by the DPC when his juniors were considered and promoted for the reason that he was awarded a censure and the same was recorded in the applicant's ACR. Censure not being a penalty it should not have normally stood in the way of the applicant's promotion. Respondents are also now

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satisfied that on account of censure, the applicant should not have been left out of promotion when his juniors were promoted and that is why the applicant has ~~not~~ been promoted with retrospective effect. The non-promotion of the applicant with effect from 10.7.94 when his juniors were promoted has now turned down to be on account of a misapprehension of the legal position. The respondents have now been convinced about the position that the applicant was entitled to be promoted with effect from the due date. There is no justification in denying him the arrears of pay and allowances for the applicant's non-promotion at the appropriate time was not on account of any act or omission on his part but only owing to the reasons attributable to the department.

5. In the light of what is stated above and in view of the developments which led to the issue of Annexure.R.1(b) order, we dispose of this application directing the respondents to pay to the applicant the arrears of pay and allowances consequent on his promotion to the scale Rs. 975-1540 with effect from 11.7.94 and also assign him the due seniority in the grade. The above directions shall be complied with within a period of two months from the date of receipt of a copy of this order. Parties will suffer their costs.

Dated the 9th day of January, 2003



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

(s)



A.V. HARIDASAN
VICE CHAIRMAN

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of letter No.252-1/91-S dated 27.4.94 of Asst. Director General, Department of Telecommunication.
2. A-2: True copy of Course Certificate dated 8.7.94.
3. A-3: True copy of order dated 16.2.95 of General Manager, Telecom.
4. A-4: True copy of representation dated 11.8.2000 of the applicant.
5. A-5: True copy of order No.Admn-II/267/7/V/4 dated 14.2.2001 of 3rd respondent.
6. A-6: True copy of representation dated 24.4.2001 of the applicant.
7. A-7: True photocopy of payslip for the Month of March, 2002 of the applicant.

Respondents' Annexures:

1. R-1a: True copy of the letter NO.Admn-II/267/4/IV/20 dated 17.7.2001 issued in favour of the applicant.
2. R-1b: True copy of the order No.ADMN-II/267/4/IV/2001-03/42 dated 10.12.2002 of the 2nd respondent.

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15.1.03