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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.144/10

Friday this the 8th day of October 2010

C O R A M :

**HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Mr.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

1. A.O.Peter,
JTO (Officiating), Office of JTO Outdoor,
R.L.U.Exchange, Alappuzha.
S/o.Mathai Joseph, Attukadavil,
Iron Bridge P.O., Alleppey.
2. N.Venugopalan,
JTO (Officiating), BSNL,
Pathiyoor, Kayamkulam.
S/o.Narayana Pillai, Narayaneeyam,
Karoor, Ambalappuzha.
3. John Mathew,
JTO (Officiating),
BSNL Kaloor Group, Thodupuzha.
S/o.Mathai, Kuzhuppillil House,
Paingottoor P.O., Pothanikkad, Muvattupuzha.
4. Mathews Paul,
JTO (Officiating),
BSNL Telephone Exchange,
Odakkaly, Perumbavoor.
S/o.A.V.Poulose, Adukalil House,
Pulluvazhi, Perumbavoor.
5. T.G.Sasidharan Nair,
JTO (Officiating), AXE-Exge,
Telephone Exchange, Aluva.
S/o.Govindan Nair, Sobhanam,
Mana Lane, Thottakkattukara, Aluva.
6. Benny P.Varghese,
JTO (Officiating),
Telephone Exchange, Maneed.
S/o.P.P.Varghese, Peringattu House,
Malamthuruthy, Ernakulam.

...Applicants

(By Advocate Mr.K.S.Madhusoodhanan)



V e r s u s

1. Union of India represented by the Secretary, Ministry of Communications, New Delhi.
2. Director General, Telecommunication, Sanchar Bhavan, Asoka Road, New Delhi.
3. Chief General Manager (Telecommunication), Kerala Circle, Thiruvananthapuram.
4. G.S.Prasanth Kumar,
Junior Telecom Officer,
Remote Line Unit Exchange,
BSNL, Chirayinkeezhu, Thiruvananthapuram.
5. Abdul Aziz A.P.,
JTO, Vandoor Telephone Exchange,
Malappuram.
6. Samuel Issac,
S/o.Rev.Fr.E.J.Issac,
JTO (Sales), BSNL Bhavan, Ernakulam.
Residing at Edappallymattom, Lane No.30,
Janatha Road, Vytila, Cochin – 19.
7. M.K.Anwar Babu,
S/o.M.S.Kochunni,
JTO (O), O/o.SDE Marketing,
BSNL Bhavan, Ernakulam South.
Residing at 33/3071, Madathiparambil,
Payyattil Road, Vennala, Cochin – 682 028.
8. K.C.Biju,
S/o.Chekooty,
JTO (BSS), Mobile Services,
Kozhikode – 673 032,
Telephone Bhavan, Vellayil.
Residing at Sreeniliyam, Punnassery,
Narrikkuni, Kozhikode.
9. Mohamed Abdulrahiman N,
S/o.Mohamed N,
JTO, Telephone Exchange,
Keezhuparamba PO, Malappuram District.
Residing at Nalakath House, Opp. to BSNL,
Areacode P.O. Malappuram District.Respondents

(By Advocates Mr.Sunil Jacob Jose,SCGSC [R1],
Mr.N.Nagaresh [R2-3] & Mr.V.Sajith Kumar [R6-9])



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This application having been heard on 8th October 2010 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

The applicants filed this Original Application challenging Annexure A-2, Annexure A-6 and Annexure A-7 orders passed by the Department on the ground that in the light of the judgment of the Apex Court pronounced in Civil Appeal No.1533/05 in S.L.P.(C) No.19991/03 only the party respondents, namely, respondents No.4-10 can be treated as seniors to other Junior Telecom Officers and all other candidates should be considered as juniors to the applicants in the feeder category as per the list published in that cadre. Further, it is prayed in the Original Application that respondents No.1-3 may be directed to appoint the applicants to the post of Junior Telecom Officers on the date on which their immediate juniors have been promoted and disbursed consequential benefits.

2. The facts of the case as it revealed from the Original Application are that all the applicants entered in the service initially as Technicians in the erstwhile Department of Telecom on various dates from 1976 to 1987. They were promoted to the post of Telecom Technical Assistants and the next promotion from that cadre is Junior Telecom Officer. For that purpose the Department as per the Recruitment Rules introduced a screening test and interview and it is fixed that qualifying percentage of marks for next promotion to the post of Junior Telecom Officer is 40% for General candidates and 33% for reserved candidates. When the test has been conducted the applicants have not secured the pass mark. However, they

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were given grace marks in order to give a pass in the test. The petitioners in the Civil Appeal went to the Hon'ble Supreme Court against an order passed by the Hon'ble High Court quashing the grant of grace marks as allowed by this Tribunal. In the above judgment on hearing the parties the Apex Court held that candidates who passed without any grace marks shall be treated as seniors to the other candidates who have passed with grace marks. Especially in last paragraph the Apex Court held that the respondents No.4-10 be treated as seniors to the appellants (petitioners in the Supreme Court in JTO cadre). These are the backgrounds for filing the present Original Application. After the judgment of the Apex Court the Department passed the impugned orders treating the candidates who have passed with grace marks enbloc as juniors to the candidates who have passed the test without any grace marks. On the above reasons the present Original Application has been filed by the applicants claiming that only respondents No.4-10 in the Civil Appeal alone be treated as seniors to the applicants or similarly placed persons who are treated as passed without any grace marks.

3. The Original Application has been admitted by this Tribunal and notice has been ordered to the respondents. In pursuance to the notice received from this Tribunal the counsel appearing for the official respondents filed their reply statement taking the stand that in order to comply with the directions of the Hon'ble Supreme Court that the respondents No.4-10 in Civil Appeal No.1533/05 be treated as seniors to the appellants in the cadre of JTOs, it was decided to treat all the



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candidates declared as qualified with the aid of grace marks as juniors to the candidates originally qualified without grace marks and passed the impugned orders. The party respondents, namely, respondents No.6-9 also filed their respective reply statement supporting the view taken by the Department. On receipt of the reply statements, a rejoinder has been also filed for and on behalf of the applicants reiterating their averments in the Original Application. Further, it is stated that in the case of qualified candidates, with or without grace marks, their seniority shall be considered only on the basis of the length of service in the basic grade as per Annexure A-3 by which it is decided by the Assistant General Manager for CGMT, Trivandrum, the basis for sending the candidates for training shall be with or without the grace marks but only on the basis of length of service and this too is of the year 2002, namely, 10.12.2002.

4. We have heard the counsel appearing for the parties and perused the documents produced before us. In the light of the contentions now raised, this Tribunal has to take a decision as to whether the judgment of the Apex Court could be treated only as a inter-party judgment or not and whether the benefits given to the respondents No.4-10 by the Apex Court to treat them as seniors to the candidates who were treated as passed with grace marks or can be applied to all candidates who passed with grace marks as ordered by the Annexure A-2, Annexure A-6 and Annexure A-7 orders. The counsel appearing for the applicants Shri.K.S.Madhusoodhanan contends mainly that as per the judgment of the Apex Court only the respondents there in the Civil Appeal can only gain the

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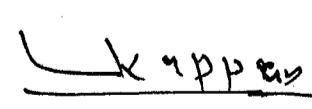
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benefits given by the Apex Court and no other candidates. Those who have passed without grace marks cannot claim the benefits of seniority as assigned by the Supreme Court. It is a matter of fact that the Apex Court considered this issue and taken a view that those who have passed the screening test and interview with grace marks can be treated as juniors to those officers who have passed the screening test and interview without grace marks and obtaining the pass mark fixed by the Department. If so, we are not in a position to accept the contention now taken by the counsel appearing for the applicant that the judgment of the Apex Court can only be treated as inter-party and we are of the view that the intention of the Apex Court while issuing the Annexure A-1 judgment is that a pass with the required percentage of marks is a must for promotion to the higher cadre without considering the seniority alone. If so, the principle involved in the judgment has to be applied uniformly and it cannot be treated as inter party judgment. In the light of that reasoning, we are of the view that the orders impugned are on legal stand and they require no interference by this Tribunal. If the judgment of the Apex Court is not considered in this way, it will be in violation of Article 14 of the Constitution.

5. In the above circumstances, orders impugned are upheld and the Original Application stand dismissed as merit less. No order as to costs.

(Dated this the 8th day of October 2010)


K.NOORJEHAN
ADMINISTRATIVE MEMBER
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JUSTICE K.THANKAPPAN
JUDICIAL MEMBER