

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 152/2000

Wednesday the 16th day of February, 2000.

CORAM

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

V.K.Kannan.

Retired Telephone Revenue Inspector
Arakkal House, L.F.C.Road
Cochin-17.

...Applicant

(By advocate Mr T.M.Abdul Latiff)

Versys

1. Union of India represented by
Secretary to Government
Department of Telecom
New Delhi.

2. Chief General Manager
Telecom, Thiruvananthapuram.

3. Principal General Manager
Telecom, Ernakulam.

...Respondents.

(By advocate Ms.Rajeswari A., ACGSC)

The application having been heard on 16th day of February, 2000, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

Since the applications for condonation of delay are dismissed this OA is liable to be dismissed. Apart from that, in the OA in page 3 it is stated thus:

"But he was actually confirmed on a time-scale clerk only on 5.4.1962 and the applicant having grievance regarding the same approached the Hon'ble High Court of Kerala. The Hon'ble High Court of Madras considered the issue regarding the retrospective effect and held that the circular in question has no retrospective effect."

It is not known from the OA how the Madras High Court considered the issue when the applicant approached the Kerala High Court for redressal of his grievance.

2. It is stated in the OA that the applicant was given an amount of Rs. 34,000/- by way of arrears of pension/salary etc.

When was it paid is not stated. Counsel for the applicant submitted that only a part payment was made and thereby there is no compliance of the directions of this Tribunal in full. If there is no compliance or full compliance of the directions of the Tribunal, the remedy is not to file a second OA.

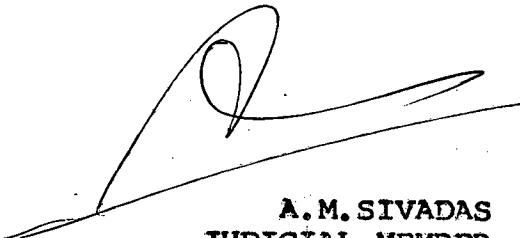
3. As per rule 4 of Central Administrative Tribunals (Procedure) Rules, application should be in Form No.I. Form No.I says that a declaration is necessary and how the declaration should be. There is no declaration as contemplated as per Form No.I in this OA.

Accordingly the Original Application is dismissed.

Dated 16th February, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A. M. SIVADAS
JUDICIAL MEMBER

aa.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 152/2000

Monday this the 4th day of March, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

V.K.Kannan
Retired Telephone Revenue Inspector
Arakkal House, L.F.C.Road
Cochin - 17.Applicant.

(By advocate Mr.T.M.Abdul Lattif)

Versus

1. Union of India, represented by
The Secretary to Government
Telecom Department
New Delhi.
2. Chief General Manager
Telecom
Thiruvananthapuram.
3. Principal General Manager
Telecom, Ernakulam.Respondents

(By advocate Mrs.Rajeswari A, ACGSC)

The application having been heard on 4th March, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

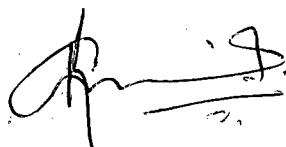
Applicant through this OA has challenged the alleged inaction on the part of the respondents in correctly fixing the seniority of the applicant on the basis of length of service and also in granting notional promotion in L.S.G and H.S.G. cadre and in fixing his pension and giving him the arrears of salary and pension.

2. Applicant averred in the OA that he entered service as a Time Scale Clerk on 23.11.1953 and as per the service conditions he seniority was to be reckoned on the basis of continuous officiation. There was a later circular which provided that



seniority depended on confirmation examination. On the basis of the service condition, he would have been confirmed on 23.11.1958. He was promoted in the LSG cadre only in the year 1974. According to him he was entitled for the same on completion of 10 years service in 1964. According to him, his junior was given promotion in the year 1968 and HSG cadre was given to the said junior on 27.12.1970. Ultimately, he approached this Tribunal through OA No.454/89 which was disposed of by this Tribunal by A-1 order. Pursuant to the said order, the applicant was given an amount of about Rs.34,000/- by way of arrears of pension and salary etc. He received the said amount but found that the payment was not correct. The applicant submitted that he filed a number of representations the last one being on 12.12.98 for refixation of his pension. Third respondent gave him A-7 reply dated 22.2.99. He further represented to Principal General Manager, Telecom, Trivandrum on 20.3.99 with a copy to the Minister of Home Affairs (A-8). A-9 is the copy of the statement showing the arrears of pay and allowances due to him. According to the applicant he was not given any communication regarding the fixation nor was his seniority refixed and in such a situation the statement in A-7 was not valid and was illogical and illegal. According to him, he was entitled for obtaining the entire arrears payable to him. Through this OA he sought the following reliefs:

- i) To direct the respondents to fix the arrears of salary and pension by refixing the seniority of the applicant in the LSG and HSG cadre as directed by this Hon'ble Tribunal in A-1 and to pay the said amounts with 18% interest.
- ii) To cancel A-7 and to direct the respondents to pay the amounts stated in A-9 with all future benefits.
- iii) To direct the 2nd respondent to consider and pass orders in A-8.

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3. Respondents filed reply statement resisting the claim of the applicant. They submitted that the second respondent had fully complied with the orders of this Tribunal in OA 454/89. The seniority of the applicant was refixed. His date of promotion to the cadre of LSG had been preponed and HSG promotion ordered and all the arrears due to him on this account were paid to him. His original date of promotion as LSG Clerk was 1.7.1974 which was revised as 19.1.1968 whereas the date of promotion as LSG of his immediate junior was 19.12.1970. He was notionally promoted to HSG cadre with effect from 26.12.1978 whereas the date of promotion of his immediate junior was 31.3.1984. Pay fixation arrears of Rs. 30,154/- for the period from 19.1.68 to 30.11.86 had been paid to the applicant vide supplementary bill dated 5.8.91. Pensionary benefits already authorized had been revised to Rs. 1100/- from Rs. 955/- and commuted value to Rs. 45,941 from 39,916 and also increase in retirement gratuity of Rs. 4125/- had been paid to the applicant. It was submitted that the said fixation had been done in execution of the judgement of CAT, Principal Bench, New Delhi on transferred application No.T-783/85. On the basis of revised seniority order received from CGMT, Kerala Circle, Trivandrum refixation of pay, pension and pensionary benefits was done and arrears paid. The claim of the applicant for promotion to LSG grade and HSG grade in 1958 and 1968 respectively had no substance and hence not admitted. LSG/HSG promotions were not time bound and promotions were ordered based on seniority/selection and subject to availability of sanctioned posts.

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4. Heard the learned counsel for the parties. Learned counsel for the applicant mainly relied on the operative portion of the order in OA 454/89 in support of his claim. He also drew our attention to the A-8 representation and A-9 statement and submitted that his claim in A-9 statement was due to him. Learned counsel for the respondents took us through the reply statement and submitted that whatever was due to the applicant had been paid in terms of the orders of this Tribunal in OA 454/89.

5. We have given careful consideration to the submissions made by the learned counsel for the parties, the rival pleadings and perused the documents brought on record. When the applicant approached this Tribunal earlier on the same issue, this Tribunal by A-1 order dated 31.12.1990 allowing the OA directed as follows:

"In the conspectus of the facts and circumstances, we allow the application and direct the respondents to refix the seniority of the applicant on the basis of his length of continuous service, to promote the applicant notionally to the cadre of LSG adopting the principles of continuous service and to promote him to the post of HSG on the date on which he would have become eligible for such promotion on the basis of his seniority reckoned taking into account the length of his continuous officiation or at least from a date on which is immediate junior Shri K.D.Antony was promoted to the LSG and HSG, to fix his pension in accordance with the pay he would have drawn in the HSG had he been thus promoted and to pay him the arrears of salary, pension and allowances within a period of three months from the date of communication of this order. There is no order as to costs."

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6. It is clear from the above operative portion as well as from a reading of the entire judgement that the the applicant had approached this Tribunal through the said OA for granting the benefit with reference to his immediate junior on the basis of continuous length of service or at least with reference to his immediate junior K.D.Antony. From the reply statement we find that his immediate junior K.D.Antony had been promoted to LSG cadre with effect from 19.12.1970 whereas the applicant had been given the benefit from 19.1.68. Similarly K.D.Antony had been promoted to HSG cadre with effect from 31.3.84 whereas the applicant had been promoted to the said cadre with effect from 26.12.78. These averment have not been contradicted by the applicant by filing any rejoinder. A reading of these averments as well as the averment that the order of the Tribunal had been fully complied with by the respondents would indicate that it is not with reference to K.D.Antony, his immediate junior that the applicant's notional promotion had been effected, but on the dates due to him. The respondents say that the applicant's seniority was refixed and had been promoted in accordance with the principles laid down by this Tribunal.

7. With reference to the statement produced by the applicant as A-9, we asked the learned counsel for the applicant as to why the date 22.11.58 had been shown for the arrears claimed. It was submitted by the learned counsel for the applicant that this is the date on which he should have been confirmed. On the specific query as to whether there was any change in the salary on confirmation, the applicant's counsel submitted that there was no change. At the same time, the said date had been shown in the statement as the basis for all claims. Moreover the same has not been properly explained in the statement.

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8. In the facts and circumstances of the case, we do not find any merit in this Original Application. Accordingly we dismiss this OA with no order as to costs.

Dated 4th March, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



GRAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

Applicant's Annexures:

1. A-1 : True copy of judgment in OA No.454 of 1989 dated 31.12.1990 of the Central Administrative Tribunal Ernakulam.
2. A-2 : True copy of the certificate dated 18.1.99 issued by Dr. Stephen Peyoli, Peyoli House, to the petitioner.
3. A-3 : True copy of certificate dated 20.5.98 issued by Dr. Stephen Peyoli, Peyoli House to the Petitioner's wife.
4. A-4 : True copy of Lisie Hospital Department-Medicine-Discharge Summary to the petitioner.
5. A-5 : True copy of Laboratory Investigation report dated 22.9.97 to the petitioner.
6. A-6 : True copy of Inpatient Bill issued by Lisie Hospital dated 23.2.96 to the petitioner.
7. A-7 : True copy of letter dated 22.2.99 of the 3rd respondent to the Petitioner.
8. A-8 : True copy of representation submitted by the applicant to the principal General Manager, Telecom, Trivandrum dt.20.3.99.
9. A-9 : True copy of Arrears of Pay & Allowances due to Sri. V.K.Kannan, T.S.Asst. Telecommunications, Ernakulam.

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