

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.154/2002.

Friday this the 4th day of July 2003.

CORAM:

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

1. Bharat Sanchar Nigam Ltd. Personal Staff Association, Kerala Circle Unit, represented by its President A.D.Thomas, Working as PA Grade-II to Assistant General Manager, Telecommunications, Kottayam.
2. N.Ayyappan Nair,
Private Secretary to General Manager,
Telecom Transmission Project,
Ernakulam. Applicants

(By Advocate Shri G.D.Panicker)

Vs.

1. Union of India rep. by
Secretary in the Ministry of Communications,
Sanchar Bhavan, New Delhi.
2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
New Delhi.
3. The Chief General Manager, Telecommunications,
Bharat Sanchar Nigam Limited,
Trivandrum. Respondents

(By Advocate Shri KR.Rajkumar, ACGSC)

The application having been heard on 4th July, 2003,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

There are two applicants in this case. The first applicant is BSNL Personnel Staff Association, Kerala Circle Unit represented by its President Shri A.D.Thomas and the 2nd applicant is Shri N.Ayyappan Nair, working as Private Secretary to the General Manager, Telecom Transmission Project, Ernakulam. The basic facts which are required for disposal of the matter on hand are: As per A-1 circular dated 15.4.94 declaring the cadre of Sr.PAs of GES Group 'B' Gazetted to be a Circle Cadre, it

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was decided that the existing posts and the posts which were likely to fall vacant were to be filled at circle level by a properly constituted DPC for that purpose. The procedure was to be adopted for filling up the posts purely on adhoc basis till the Recruitment Rules were suitably modified. Other conditions as mentioned in the Recruitment Rules dated 8.6.88 were to be followed in respect of such adhoc promotions. Accordingly, the 2nd applicant Shri Ayyappan Nair, who was working as PA Grade I in the Kottayam SSA was promoted to the cadre of GCS Group 'B' and was posted to officiate as Sr.PA to GM, TP, Ernakulam purely on temporary and adhoc basis until further orders, against the vacancy that arose on account of the retirement of one Shri Balagopalan on 31.12.94. Later, as per notification dated 14.2.2000, the modified Recruitment Rules came into effect. Meanwhile, the applicant, by order dated 10.8.99(A6), was given regular promotion to the cadre of Stenographer Grade I in the scale of Rs.5500-9000 w.e.f. 18.12.96. As per the modified Recruitment Rules, Stenographer Grade I who have put in 3 years regular service in that grade would be eligible for consideration for promotion to the post of GCS Group 'B' (Senior PA). While so, the applicant who was continuing in his adhoc promotional post as Senior PA since 1994 without any interruption, received A-5 order dated 12.2.2001 promoting him to the cadre of Senior PA, GCS Group 'B' gazetted in the scale of Rs.6500-10500 with immediate effect. The applicant is aggrieved on account of the fact that, the promotion to the post of Sr.PA which he has been holding since 1994 takes effect only from 12.2.2001 because of the specific order contained in A-5. The applicant's case is that, had the respondents considered the vacancies pertaining to each of the years from 1991 as enjoined in A-4, the applicant would

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have at least got regular promotion effective from 17.12.99 which was the date on which he would have attained the three years eligible service in Stenographer Grade I as per A-6 order of promotion and A-7 modified Recruitment Rules. The applicant seeks the following reliefs:

- i) Direct the respondents to regularise the officers like the 2nd applicant after determining the vacancies from 1991-92 onwards and assign the actual date with reference to the above determination of vacancies.
- ii) Declare that determining vacancies from 1991-92 onwards enbloc and regularising officers like the 2nd applicant with effect from 12.2.2001 is illegal, irregular and arbitrary and is against the orders on the subject in.
- iii) direct the respondents to grant all the benefits of the consequential promotional benefits to Grade I, Grade II and Grade III/ Stenographers on account of the Senior PAs promotions mentioned above.
- iv) pass such any other order or direction which are deemed fit and fair in the circumstances of the cases.

2. The respondents have filed reply statement opposing the prayers in the O.A. stating that the 1st applicant is not a recognized association in the Department of BSNL and that therefore, the application is incompetent, that the regular DPC for promotion on the basis of the modified Recruitment Rules was held only in February, 2001 on the basis of which A-5 orders were issued by the 3rd respondent on 12.2.2001 promoting the 2nd applicant and four others, with immediate effect. According to the respondents as per the existing guidelines, promotions are always to be made with prospective effect and not with effect from the date of occurrence of the vacancies and hence the date of promotion was taken as 12.2.2001. The respondents have produced Annexure R-1 letter dated 9.9.2002 from the Department of Telecommunications to support the stand that promotions would take effect prospectively and not from the date of occurrence of

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the vacancy. A photocopy of the DPC proceedings has been produced by the respondents. The respondents have also filed an additional reply statement sticking to their stand of prospectivity of promotion orders.

3. We have gone through the records and have heard Shri GD Panicker, learned counsel appearing for the applicant and Shri KR Rajkumar, learned ACGSC appearing for the respondents. Shri Panicker has maintained that the applicant has been continuing in the post of Sr.PA, although his promotion was described as adhoc or local officiating promotion as the case may be, since 1994. The posting was done against a clear vacancy on the basis of a DPC. He was never reverted. It is true that, by reckoning his service as Stenographer Grade I with effect from 18.12.96 he would complete three years of regular service in that grade on 17.12.99 and that therefore, as per rules he would be eligible to be considered for promotion to the post of Sr.PA., with reference to the vacancies which pertains to 1999 or thereafter. Inviting our attention to A-4, the learned counsel for the applicant would state that with the declaration of the cadre of Sr.PAs as a circler cadre, it was necessary that year-wise vacancies from 1991 onwards be determined and filled up by holding DPC meetings in accordance with the modified Recruitment Rules. Therefore, the respondents' contention that the promotion should take effect prospectively, had no substance, according to the learned counsel. The applicant was carrying out the duties and higher responsibilities attached to the post of Sr.PA right from 1994. He put in the required qualifying service of 3 years in Grade I as on 17.12.99. He should have been allowed promotion with effect from 17.12.99, learned counsel would urge.

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4. Shri Rajkumar, learned ACGSC on the other hand would underscore the first objection of the respondents that the 1st applicant in the O.A. being incompetent to be a party to the O.A., the O.A. itself was not maintainable. On merits, it is pointed out by the ACGSC that on the basis of the modified Recruitment Rules, the DPC was constituted and accordingly, the DPC met in February, 2001. The applicant could not expect promotion with retrospective effect, consequent to the DPC that was held in 2001, and this was strictly in accordance with the existing instructions and orders contained in Annexure R-1, learned counsel would argue.

5. We have considered the facts and contentions. With regard to the contention of the respondents that since the first applicant is incompetent, the O.A. is invalid, cannot be accepted since according to us, recognition of the Union is not a necessary criterion for the purpose of prosecuting an otherwise maintainable O.A.

6. We find that the 2nd applicant was found fit to hold the post of Senior P.A. as early as in 1994 and has been carrying out the duties uninterruptedly even at the point of time of his attaining the 3 years qualifying service as Stenographer Grade I i.e. 17.12.1999. We notice that he was regularised as Stenographer Grade I w.e.f. 18.12.96. We have also gone through the minutes of the DPC held on 5.2.2001, as a result of which the impugned A-5 order was issued. We do not find anything to suggest that the promotion of the 2nd applicant is to take effect prospectively. What the DPC recommended is that necessary orders be issued to the promoted persons so as to allow them promotion

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from the date of assumption of charge to the post. In this case since the applicant has been uninterruptedly carrying out the duties of the promotional post from 1994 and since there is not even a technical reversion, there is no question of his holding the post prospectively. He has to be deemed to have been carrying out the duties right from the date on which he put in the necessary qualifying service.

7. As per the modified Recruitment Rules (A7), the 2nd applicant had completed three years of qualifying service in the grade on 17.12.99 and therefore, he was eligible to be considered for promotion to the post of Sr.PA. as envisaged in A-1 and A-4 and what is required was an administrative exercise to implement the action taken in the matter. We would therefore, hold that the impugned order A-5 dated 12.2.01 placing the 2nd applicant in the promotional cadre of Senior P.A. with immediate effect, meaning 12.2.2001, is erroneous in as much as the applicant was to be considered against a vacancy that arose in 1999 or any day thereafter. It is not the case of the respondents that there was no vacancy pertaining to 1999. Therefore, we have no hesitation in holding that the 2nd applicant ought to be considered for promotion to the post of Sr.PA, with effect from the date on which he, as per records, completed three years of regular service in the grade of Stenographer Grade I. This date is stated to be 17.12.99. Respondents are free to verify the records and finalise the matters on the basis of the above findings.

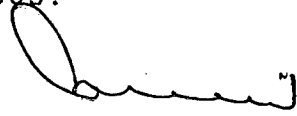
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8. In the light of the above findings, the application is allowed. Respondents are directed to allow the 2nd applicant his promotion to the grade of Sr.PA with effect from the date on which he completed three years of qualifying service in the grade of Steno Grade-I. A-5 orders shall be modified in relation to the 2nd applicant to harmonise with the findings given above. Consequential orders in that regard shall be passed within a period of two months from the date of receipt of a copy of this order. No order as to costs.

Dated the 4th July, 2003.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



T.N.T.NAYAR
ADMINISTRATIVE MEMBER