

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 16/2002

Tuesday, this the 20th day of May, 2003

C O R A M

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

1. K.G. Samuel, Sub Divisional Engineer (Lecturer), CTTC, Trivandrum-1, residing at Konnayil, T.C 24/2588, East Cliff Lane, Trivandrum - 695 003.
2. Unnikrishnan V, SDE (Lecturer) RTTC, Trivandrum - 1, residing at Quarter D2/12, RTTC Colony, Trivandrum-40.
3. R. Rajaram, SDE (Lecturer), RTTC, Trivandrum-40, residing at Athira No.6, Lal Lane, Industrial Estate, Trivandrum-19.
4. M.Sethumadhavan, SDE (Administration), O/o. the General Manager, Transmission Project, Chittoor Road, Kochi-11, residing at House No. 24, Maithri Nagar, Vaduthala, Kochi-23.
5. K.K. Narayanan, SDO (Retd.), Telecom, Vaikom, residing at Marottickal, Thekkeneda, Vaikom - 696 142.

..Applicants.

[By Advocate Mr. M.R. Hariraj.]

v e r s u s

1. The Union of India represented by its Secretary to Government of India, Ministry of Personnel and Training, New Delhi.
2. The Director, Department of Telecommunications, 20, Asoka Road, Sanchar Bhavan, New Delhi - 110 001.
3. The Chairman, Telecom Commission, New Delhi.
4. Bharath Sanchar Nigam Limited, represented by its Chief General Manager, Telecommunications, Kerala Circle, Trivandrum.

Respondents

[By Advocate Mr. M. Rajeev, ACGSC.]

O R D E R
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

The case of the applicants is that they started their service as Junior Telecom Officers. There exists a lateral promotion scheme in the cadre of JTO and SDE which is its

immediate higher post. The revised pay scale of JTO is Rs. 6500-2000-10500. The lateral promotion scale is Rs. 7500-250-12000. Lateral promotion is granted on completion of 15 years of service as JTO. The scale of Sub Divisional Engineer is also Rs. 7500-250-12000. The lateral promotion does not involve any change in duties. The Scheme was introduced on account of acute stagnation and functional promotion which is subject to availability of vacancy. Once lateral promotion was granted from the cadre of JTO, no further benefit is granted on regular promotion as SDE. The regular promotion on the post of SDE depends upon the availability of vacancy, meeting of DPC etc. It is stated by the applicants that there is one more lateral promotion in the cadre of SDE. But the minimum residency period for the second lateral promotion is calculated from the date of regular (functional) promotion as SDE which is granted subject to availability of regular vacancy. It is submitted by the applicants that though the second lateral promotion is a time bound promotion, the same is also granted on the availability of vacancy on regular basis in the cadre of SDE and in most cases, the second lateral promotion cannot be enjoyed because before completing the required length of service as regular SDE, the incumbent will superannuate. Therefore, it is clear that none of them will ever get the second lateral promotion for want of vacancy. It is stated that ACP Scheme is a Governmental recognition and according to the said Scheme, atleast two opportunities for upgradation are necessary to be provided in the entire career of an employee. The clause giving an option to the Ministries is to be viewed in that context. In fact, there is no Time Bound Promotion for SDEs. It is further averred that the second respondent do not have jurisdiction to clarify the Scheme of ACP and pointing out all these facts, the applicants made representations to the concerned authorities. Seeing no

response, the applicants approached the Tribunal through O.A. No. 684/2001, which was disposed of by order dated 10.08.2001 with a direction to consider their joint representation and dispose of the same within a period of three months. As directed, the applicants submitted a detailed representation pointing out the lack of jurisdiction of the second respondent to make any clarification on Annexure A/3 and also saying that the lateral promotion being opted in place of ACP Scheme, would render the benefit intended to be conferred by the ACP Scheme practically illusory. The representation dated 22.08.2001 submitted by the applicants to the first respondent stands rejected by Annexure A/1 and aggrieved by the said order, they again approached this Tribunal, seeking following reliefs:-

- "(i) Quash Annexure A/1.
- (ii) Quash Annexure A/2 to the extent it effects the applicants.
- (iii) Declare that the applicants are entitled to be considered for placement to the higher pay scales under Assured Career Progression Scheme and direct the respondents to consider the applicants for placement under Assured Progression Scheme in accordance with law and grant the applicants all consequential benefits including arrears of pay.
- (iv) Grant such other relief as may be prayed for and the Tribunal may deem fit to grant, and,
- (v) Grant the costs of this Original Application."

2. The respondents have filed a detailed reply statement stating that the contention of the applicants that the lateral promotion in the cadre of Junior Telecom Officer (JTO, for short) is granted on completion of 15 years of service as JTO and after granting the said lateral promotion, no further benefit is granted on regular promotion as Sub Divisional Engineer (SDE, for short), is baseless. The said promotion is granted on completion of 12 years of service as JTO. The first applicant was appointed as Junior Telecom Officer in 1973 and was granted lateral

promotion on 1.1.90, i.e., from the date on which the lateral promotion was introduced by DOT in the cadre of JTO. The applicant aforesaid was promoted as regular SDE in 1998. He passed the qualifying examination, which was absolutely necessary for regular promotion as SDE, very late in 1990 only. If the applicant could pass the examination earlier, he could have got his promotion as SDE much earlier, i.e. before 1998 and subsequently, he could have got his lateral promotion in the SDE cadre also (i.e., after completion of 12 years of service as Sub Divisional Engineer). It is stated that the claim of the applicants cannot be granted since it has been decided by DOT vide letter No. 4-1/99-PAT dated 24.11.99 that in respect of JTO/SDE Telecom, which is covered by a Time Bound Promotion Scheme wherein the eligible officer is placed in the next higher grade after 12 years of service, the existing Scheme shall continue and, therefore, the ACP Scheme shall not be made applicable to them as stated in Annexure A/2 of the OA (Annexure R/1 in the reply). Annexure R/2 (Annexure A/1 of the OA) is the reply sent by the DOT on the representation of the applicant dated 22.08.2001. Respondents contended that the department is fully competent to decide whether the then existing Time Bound Promotion is to be detained or the ACP Scheme may be introduced as per the terms and conditions mentioned in the O.M. dated 9.8.99. The Schemes of TBP and ACP cannot, however, run concurrently. The department decided Time Bound Promotion Scheme for JTO/SDE etc. and if the Scheme is negated to a handful of officers, it should normally be attributed to their own lapses to become eligible for promotion in the stream. The basic direction in the OM dated 9.8.99 was for the department to choose between the two Schemes under question and both cannot run concurrently. The department did not choose ACP Scheme for JTOs under this provision. When the present TBOP Schemes are beneficial to

thousands of employees, there can be some stray cases, viz. the applicants, who may derive more benefits from the ACP Scheme owing to various reasons. Some of them could not get promotion due to their own lapse of not getting qualified in the examination which was mandatory at that time for promotion to TES Group 'B'. Therefore, these stray cases cannot be a bar in a general issue.

3. Applicant filed a rejoinder contending that they are entitled to the benefits as claimed in the OA. They submitted that the first lateral promotion is granted in 12 years, but as far as pre 1978 recruits of JTOs are concerned, they get it only after 13 years or more of service. No further benefits are granted to them when they were regularly promoted as Sub Divisional Engineers.

4. The respondents have filed additional reply statement denying the contention of the applicants raised in the rejoinder. It is further stated that the JTOs had to pass a qualifying examination for promotion as SDE, prior to 1999. Since the applicant No. 5 could not pass the examination, he was not promoted as SDE, as per the then existing rules. Had he qualified earlier, he could have got his first as well as second promotions earlier. The other applicants have since got their second promotion as SDE on local officiating basis, there is no scope for arguments in respect of them.

5. We have heard Shri Hariraj, learned counsel for the applicant and Shri M. Rajeev, ACGSC, learned counsel for the respondents.

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6. Learned counsel for the applicant submitted that the very purpose of the ACP Scheme, which is intended to avoid stagnation in service due to lack of promotional avenues, has been defeated by the impugned orders. On the other hand, learned counsel for the respondents submitted that it is because of the lapse on the part of the applicants in not qualifying the examination at the appropriate time, they could not get the promotion earlier in the stream. The claim of the applicant has been rightly rejected and it is only stray cases like the applicants, who may derive more benefits from the ACP Scheme, but at the same time, majority of the employees are benefitted by the TBOP Scheme. The respondents cannot accept different Schemes for the same set of employees, which will cause great confusion and managerial problems as also adversely affect the benevolence of the employees interest. The respondents, therefore, contended that they are not faulted and the impugned orders are passed in conformity with the Scheme and taking into account the larger interest of the employee.

7. We have given thoughtful consideration to arguments advance by both sides, perused the pleadings and material placed on record.

8. The ACP Scheme was evolved with the laudable objective of mitigating the hardship of employees who stagnated at the entry level of a post for a long time. In order words, the objective of this Scheme is in order to minimize the problem of stagnation and hardship faced by the employees due to lack of adequate promotional avenues. On going through Annexure A/1 to Annexure A/3 and Annexures R/1 and R/2, it is very clear that the Scheme is meant to minimize the stagnation and hardship faced by the employees. The Fifth Central Pay Commission in its report has made certain recommendations relating to the ACP Scheme for the



Central Government Civilian employees in all Ministries/Departments. The ACP Scheme needs to be viewed as a "Safety Net" to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of promotional avenues. Therefore, after careful consideration of the report of Fifth Central Pay Commission, it has been decided by the Government to introduce the ACP Scheme recommended by the Commission with certain modifications. With regard to the employees like the applicants, it is a normal rule that the promotion shall continue to be duly earned. But the ACP Scheme has been adopted in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Accordingly, it was decided by Annexure A/1 (3) to grant two financial upgradations (as recommended by the Fifth Central Pay Commission as also in accordance with the Agreed Settlement dated September 11, 1997, entered into with the JCM) under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years of service respectively, subject to certain conditions. The relevant and important conditions stipulated in the O.M. [Annexure A-1(6) to (8)] is reproduced as below for better elucidation:

"1. The ACP Scheme envisages merely placement in the higher pay scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose;

2. XXXXXXXX XXXXXXXX XXXXXXXX

4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental

proceedings, etc. this would have consequential effect on the second upgradation which would also get deferred accordingly.

5.1. Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him.

5.2. xxxxxxxx xxxxxxx xxxxxx

6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme.

7. to 12 xxxxxxx xxxxxxx xxxxxxx

13. Existing time-bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these Schemes shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department - not the employees - shall have the option in the matter to choose between the two schemes, i.e. existing time bound promotion scheme or the ACP Scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion Scheme to the ACP Scheme, all stipulations (viz. for promotion, redistribution of posts, upgradation involving higher functional duties, etc.) made under the former (existing) Scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality.

14. xxxxxxx xxxxxxx xxxxxx

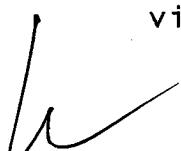
15. Subject to Condition No.4 above, in cases where the employees have already completed 24 years of regular service, with or without a promotion, the second financial upgradation under the Scheme shall be granted

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directly. Further, in order to rationalise unequal level of stagnation, benefit of surplus regular service (not taken into account for the first upgradation under the Scheme) shall be given at the subsequent stage (second) of financial upgradation under the ACP Scheme as a one time measure. In other words, in respect of employees who have already rendered more than 12 years but less than 24 years of regular service, while the first financial upgradation shall be granted immediately, the surplus regular service beyond the first 12 years shall also be counted towards the next 12 years of regular service required for grant of the second financial upgradation and, consequently, they shall be considered for the second financial upgradation also as and when they complete 24 years of regular service without waiting for completion of 12 more years of regular service after the first financial upgradation already granted under the Scheme."

9. From the above, it is clear that the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of first financial upgradation subject to fulfillment of prescribed conditions, i.e., if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc. this would have consequential effect on the second upgradation which would also get debarred accordingly. Thus, it would be seen that the fitness is the one of the conditions precedent for consideration under ACP Scheme and the departmental proceedings etc. would have consequential effect on the second upgradation. In para 5.1 of the ACP Scheme, it has been mentioned that if an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotion on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him. Therefore, fitness, qualification, departmental enquiry etc. are the matters to be considered for the second upgradation. This fact is also reiterated in Annexure A/2. In these circumstances, the mere fact that the persons who completed 12 or 24 years of regular service are not automatically entitled to get the benefit of upgradation, but the same is

granted subject to certain terms and conditions. The contention of the respondents that this is a policy matter and benevolence of large section of the employees were taken into consideration while implementing the Scheme, has considerable force. The formal operation of this Scheme, i.e., the first upgradation after 12 years of regular service is almost automatic and based on length of service. On going through the Scheme, we find that the lateral promotion is not similar as an element of selection is seen to the lateral promotion scheme. On close analysis of the Scheme, we find that the implementation of ACP Scheme in respect of eligible Group 'B' cadres/posts which includes constitution of the Screening Committee and conducting the meetings thereof, shall be dealt by the respective Section in the Directorate handling the promotions for the Group 'B' cadres/posts. Therefore, consideration by the Committee and evaluation of the fitness of the employees is a condition precedent in granting the benefit of the Scheme. The element of selection do not base on merit and ACRs, but atleast the question of fitness is a matter to be considered by the Committee. This process cannot be said to be faulted since the consideration of fitness of an employee is one of the criterion for higher post under ACP Scheme, who may have to shoulder (some times) the higher responsibilities. In this case, lateral promotion is granted on completion of 12 years of service as JTO. The first applicant was appointed as JTO in 1973 and was granted lateral promotion on 1.1.1990, i.e. from the date from which lateral promotion was introduced by DOT in the cadre of JTO. He was promoted as regular SDE in 1998. He passed the qualifying examination in 1990 only, which was absolutely necessary for regular promotion as SDE. Had he passed the examination earlier, he would have got the promotion much before 1998 as SDE. The Department of Telecommunication Services vide Annexure A/2 dated 24.11.99 has made it clear that in



respect of the cadre of JTO/SDE Telecom, which is covered by a time-bound promotion scheme wherein the eligible officer is placed in the next higher grade after 12 years of service, the existing Scheme shall continue and therefore, ACP Scheme shall not be made applicable to them. The Department is fully competent to decide whether the then existing Time Bound Promotion is to be retained or the ACP Scheme may be introduced as per the instructions in OM dated 9.8.99. However, the Scheme of TBP and ACP cannot run concurrently and we are of the view that if the Scheme is negated to the handful of officers, it should normally be attributed to their own lapses to become eligible to be promoted in the stream. Except this strange incidence like that of the applicants, who could not get promotion due to their own lapse to become eligible for promotion, large number of employees had enjoyed benefit under the Time Bound Promotion Schemes. Therefore, the inconvenience caused to the applicants by not getting entitled themselves has no ground to fault with the Scheme. The paramount consideration in implementing the said Scheme (TBP) is the benevolence of the employees at large. Considering that aspect, we are of the view that the Scheme in question and the terms and conditions thereon cannot be found fault with and that may be the rationality of the Government and accordingly, the department accepted and introduced the said Scheme in respondent's institution. This is clearly a question of policy matter and in such cases, the judicial review by the Courts/Tribunals, as observed by Hon'ble Supreme Court, is not justified. It was laid down by Hon'ble Supreme Court in the case of The Director Lift Irrigation Corp. Limited & Ors. vs. P.K. Mohanty & Ors. reported in 1991 (1) SCALE 399 (SC) that the policy decision is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle.

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10. This being the policy decision taken by the Government and the Scheme being benevolent and beneficial to large number of employees as also it is based on seniority cum fitness and an element of scrutiny by a Committee is contemplated and all the more, since the applicants being not diligent of passing the tests at the given time and for other reasons as discussed above, we are of the view that the impugned orders Annexures A/1 and A/2 are not faulted and therefore, no interference by the Court is warranted. In the result, the O.A. is devoid of any merit and deserves to be dismissed. We accordingly dismiss the O.A. with no order as to costs.

 (Dated, 20th May, 2003) 

K.V. SACHIDANANDAN
JUDICIAL MEMBER

T.N.T. NAYAR
ADMINISTRATIVE MEMBER

cvr.