

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.167/96

Monday, this the 3rd day of November, 1997.

C O R A M

HON'BLE SHRI PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE SHRI AM SIVADAS, JUDICIAL MEMBER

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KA Viswanathan Nair,
'Indu', Kochi—18.
Retired Area Manager,
Office of the General Manager,
Telecom, Ernakulam.

....Applicant

By Advocate Shri MR Rajendran Nair.

vs

1. The Chief General Manager,
Telecom, Trivandrum.
2. Union of India represented by
Secretary to the Government of India,
Ministry of Communications,
New Delhi.

....Respondents

By Advocate Shri TPM Ibrahim Khan, SCGSC.

The application having been heard on 28th October, 1997,
the Tribunal delivered the following on 3rd November,
1997:

O R D E R

HON'BLE SHRI PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, while working as a Group B officer in the Telecom Department, was promoted by order A.2 dated 12.6.87 to hold charge in the Senior Time Scale of Indian Telecommunication Service (ITS) Group A on a purely temporary basis until further orders. This was in terms of Rule 27(b) of the Telegraph Engineering Service Class I Rules, 1965 according to which, posts in the Senior Time scale may be filled as a purely temporary measure in an officiating capacity or to

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hold charge by the promotion of permanent members of TES Group B who are on the approved list for promotion to the Junior Time Scale. Thereafter, by A.3 order dated 21.3.90, applicant was deemed to have assumed and relinquished charge of the post in the Junior Time Scale by downgrading the post of Senior Time Scale to that of a post in the Junior Time Scale for a day. Applicant was granted fixation of pay in the Junior Time Scale with effect from 12.6.87 and then in the Senior Time Scale with effect from 13.6.87. Applicant contends that he should be deemed to have been promoted to the Senior Time Scale of ITS Group A on 13.6.87 and not with effect from 12.6.92 as contended by the respondents in the impugned order A.1. Applicant was thereafter appointed by A.4 order dated 28.4.95 to hold full charge of Area Manager in the Junior Administrative Grade with charge allowance. Applicant retired on 31.5.95. His grievance is that he should have been granted an officiating promotion to Junior Administrative Grade on 28.4.95 instead of being appointed to hold full charge of the post with charge allowance. Applicant approached the first respondent by a representation A.5 dated 2.5.95 praying for an amendment to the A.4 order granting him promotion to the Junior Administrative Grade. Finding no response, applicant approached the Tribunal in OA 1314/95, which was disposed of with a direction to pass appropriate orders on the representation. A.1 order rejecting the representation was passed in consequence. Applicant challenges A.1 and prays that it be quashed and that he be declared to have been promoted to the Junior Administrative Grade on 28.4.95 with consequential benefits.

2. Respondents submit that applicant was not promoted regularly in the Senior Time Scale of ITS Group A, but was

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promoted on 21.3.90 to hold charge in the Senior Time Scale. The Supreme Court had ordered in NSK Nayar and Others vs Union of India and Others, 1992 Supp (2) SCC 508, that promotees who have worked in STS for a continuous period of five years and hold the post to date, would be deemed to be regular members of the Group A service in STS and be entitled to count their seniority in the STS from the date of completing the period of five years and shall be entitled to be considered for further promotion to Junior Administrative Grade (JAG) and Senior Administrative Grade (SAG) on the basis of the said seniority. Since applicant had been holding charge of the STS post from 12.6.87, he was deemed to have been regularly promoted to the STS with effect from 12.6.92. The seniority list indicating this had also been communicated to the applicant. Applicant was, therefore, not having the requisite five year regular service for promotion to the JAG on 28.4.95 and, therefore, he was placed in full charge of the post in the JAG with charge allowance.

3. The short question to be decided is whether applicant is to be treated as having been regularly promoted to the STS cadre with effect from 12.6.87 or with effect from 12.6.92. According to applicant, his promotion to the JTS with effect from 12.6.87 and to the STS with effect from 13.6.87 were against existing vacancies in which he should be regularly promoted since no minimum period is fixed for promotion from Junior Time Scale to Senior Time Scale. Nevertheless, even though applicant was eligible to be promoted to the Senior Time Scale, he was actually not so promoted. He was only ordered to hold charge of the post in the Senior Time scale on a purely temporary basis until further orders. That was in terms of Rule 27 (b) which states:

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"Posts in the Senior Time Scale may, however, be filled, as a purely temporary measure, in an officiating capacity, or to hold charge, by the promotion of permanent members of TES Group B who are on the approved list for promotion to the Junior Time Scale."

Applicant would, however, argue that even when A.2 was issued, he was on the approved list for promotion to the Junior Time Scale and was, therefore, promoted to hold charge in terms of Rule 27 (b). By a subsequent order A.3, he was deemed to have been promoted to the Junior Time Scale for one day and thereafter to the Senior Time Scale. According to Rule 27 (a), appointment to the Senior Time Scale shall be made by promotion of officers in the Junior Time Scale in the order of seniority subject to the rejection of the unfit. No minimum service in the Junior Time Scale is prescribed for such promotion. But even if there is a vacancy available in the Senior Time Scale and even if the applicant was eligible for promotion to that vacancy in terms of Rule 27 (a), it is still required that his case be considered for promotion under the rules and until he is so considered and found fit, he cannot be promoted to the Senior Time Scale. Merely because there was a vacancy and applicant was eligible for the promotion, it cannot be deemed that applicant has been so promoted to a post in the Senior Time Scale. That being so, applicant can claim to be regularly promoted to the Senior Time Scale only by virtue of the orders issued by the respondents in pursuance of the directions in NSK Nayar and Others (supra). That direction was:

"...we hold that the promotee officers who have worked in STS for a continuous period

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of five years and are holding the posts to date shall be deemed to be regular members of Group A Service in STS. They shall be entitled to count their seniority in the STS from the date of completing the said period of five years and shall be entitled to be considered for further promotion to JAG and SAG on the basis of the said seniority."

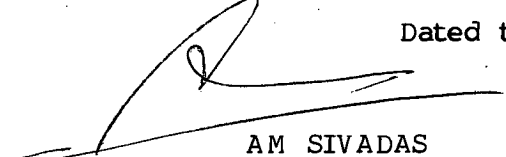
(Emphasis added)

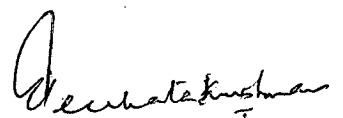
Respondents, therefore, gave a deemed date of regular promotion to the STS to the applicant counting five years from the date applicant took charge of the post in STS and showed his date of regular promotion in the seniority list of STS cadre as 12.6.92. We do not find any infirmity in the action of the respondents in fixing the date of promotion of the applicant to STS from 12.6.92 since it is in accordance with and in obedience to the directions of the Supreme Court.

4. In the view we have taken, therefore, applicant did not have the requisite five years service on 28.4.95 for promotion to the JAG. Even assuming that he was eligible to be promoted to the JAG on 28.4.95 and there was a vacancy in the JAG, there is no right in the applicant to claim promotion to the JAG with effect from the date on which the vacancy arose. We have taken the view that applicant did not have the requisite regular service for promotion to the JAG on 28.4.95. Therefore, the action of the respondents in having appointed the applicant to hold full charge of the post in the JAG with charge allowance, cannot be faulted.

5. In the light of the discussion above, we consider that the application is without merit and it is dismissed. No costs.

Dated the 3rd November, 1997.


AM SIVADAS
JUDICIAL MEMBER


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

LIST OF ANNEXURES

1. Annexure A1: Order No. STA/V-52 dated 8.12.1995 issued by 1st respondent to the applicant.
2. Annexure A2: Memorandum No.12-2/87-STG-I(Vol-II) dated 12.6.1987 issued by Assistant Director General (SGT) to applicant.
3. Annexure A-3: Order No.100-14/90-STG-I dated 21.3.1990 issued by Assistant Director General(SGT), Government of India, Department of Telecommunications, Sanchar Bhavan, New Delhi.
4. Annexure A4: Order No.ST/EK-201/4/63 dated 28.4.1995 issued by the Deputy General Manager(Planning and Administration) Office of the General Manager Telecom, Ernakulam, Kochi-31 to the applicant.
5. Annexure A5: Representation dated 2.5.1995 submitted by applicant to the 1st respondent.

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