

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.167/98

Friday, this the 12th day of January, 2001.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

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

1. Asok Kumar.C.S.
Chief Accounts Officer,
Telecom Accounts,
O/o the General Manager,
Telecom, Trichur.
2. P.K.Madhavan,
Chief Accounts Officer,
O/o the General Manager,
Telecom, Kannur-2. - Applicants

By Advocate Mr MR Rajendran Nair

Vs

1. Union of India represented by
Secretary to Government of India,
Department of Telecommunications,
New Delhi.
2. Chairman,
Telecom Commission,
Sanchar Bhavan,
20, Asoka Road,
New Delhi.
3. Director(SEA),
Department of Telecom,
Sanchar Bhavan,
20, Asoka Road,
New Delhi. - Respondents

By Advocate Mr Govindh K Bharathan, SCGSC

The application having been heard on 20.12.2000, the Tribunal
12.1.2001 delivered the following:

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O R D E R

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

The applicants in this case, Shri C.S.Asok Kumar and Shri P.K.Madhavan, have been working as Chief Accounts Officers in the offices of the General Manager, Telecom, Trichur and Kannur respectively. They seek redress of the grievance arising out of A-2 order dated 22.1.98 issued by the third respondent, whereby the promotion granted to them to the Senior Time Scale(STS for short) on purely temporary and ad hoc basis by earlier orders, was terminated and they were ordered to be reverted with immediate effect.

2. The applicants are permanent Senior Accounts Officers of the Post & Telegraph Accounts and Finance Service Group B. They were originally appointed as Accounts Officers Group B on regular basis in November, 1983. Therefore, at the material time they had the required length of service in Group B in order to be considered for promotion to the Junior Time Scale(JTS for short) Group A Service. It is averred in the application that the appointment to the JTS Group A Service in the Post & Telegraph Accounts and Finance Wing is to be made by direct recruitment as well as by promotion. Fifty percent of the substantive vacancies and all temporary vacancies in the JTS Group A service were liable to be filled up by promotion of Group B Officers. According to the applicants, since vacancies used to occur every year, it is mandatory as per the rules and guidelines issued by the Government of India to hold Departmental Promotion Committee(DPC for short)

meeting every year for effecting promotions to the JTS Group A Service. It is alleged in the application that the respondents designedly omitted to hold such promotions from Group B Officers to JTS Group A thereby leading to a deficiency in the number of officers in the JTS for being promoted to the STS on a regular basis. It is pointed out that in the meantime, however, recruitment to the cadre of JTS Group A, was made on a regular basis. The applicants submit that the fact that DPCs were held in 1989 and then in 1994 and thereafter, only in 1997 would show that the required regularity was not maintained in the matter of promoting Group B Officers to the JTS Group A rank. The applicants have clarified the sequence of A-2, A-3 and A-1 orders issued by the respondents in order to prove their point that A-3 order dated 20.1.98 was calculated to cause delay and if possible, to avoid the promotion of promotee officers to Junior Administrative Grade(JAG for short) on officiating basis. The applicants maintain that as per A-4 order dated 30.5.96, all regular Group A officers were eligible to be promoted to JAG on officiating basis. Explaining the facts and circumstances regarding the availability of substantial number of vacancies in the STS, the applicants have urged that there was no compelling circumstance for effecting reversion as attempted in A-2. The effect of the departmental orders, according to the applicants, is that they are denied the benefit of having 4 years continuous service in Group A including ad hoc service without any break which would have ensured their possible promotion to the JTS and consequent placement in STS and further promotion on officiating basis to JAG.

3. Counsel for the respondents have taken us through the statement filed by the 3rd respondent. The convening of annual DPC was mandatory only if vacancies existed, according to counsel. Recruitment rules were strictly adhered to in this regard and there was no direct recruitment in violation of the existing rules and procedures, it is urged. It is further explained that in 1989, chain vacancies were taken into account for computing the vacancies in the JTS. But owing to the UPSC's direction that the basis of the DPC for JTS should be the clear vacancies and not the anticipated chain vacancies, actual vacancy position had to be ascertained afresh. It was found that because of the anticipated chain vacancies having been considered already, there was excess recruitment of 82 promotee officers in JTS as in 1989-90. This excessive induction had to be offset in the subsequent years by means of direct recruitment. In 1994, however, 108 vacancies arose and these were filled up after going through the due processes of recruitment procedure. It is pointed out that it was by downgrading 86 posts from STS that a corresponding number of JTS posts were created in 1996-97 for which the DPC was held in January 1998 leading to the issue of the impugned order A-2. Counsel for respondents submits that the reversion of the applicants who were occupying the STS posts on purely ad hoc basis was justified since there were adequate number of senior and better graded officers to fill the available 86 vacancies. Learned counsel for the respondents maintains that no prejudice has been caused to the applicants, and that their seniority has not been ignored

either. Thus, no right having been violated, the applicants' prayer is unsustainable, according to counsel for the respondents.

4. In the course of the hearing, counsel on either side agreed that certain issues germane to the matter on hand have been considered already by this Tribunal in O.A.224/96 wherein some of the officers who, at the relevant point of time were serving as Chief Accounts Officers in the P&T Accounts and Finance Service, had sought redressal of their grievance mainly on grounds of alleged failure of the department to convene the DPC for promotion to JTS Group A and consequent denial of further career advancement. The issue before this Tribunal in that O.A. involved determination of the actual vacancies in JTS Group A and at the still higher grades in order that promotion to those levels from the promotee category of officers might be ensured as per the recruitment rules.

5. We have perused the case records and have carefully considered the material produced before us as well as the rival contentions.

6. The crux of the matter involved in this case also is the assessment of vacancy position during the various years and the consequent possibility of promoting officers from Group B to JTS Group A and from JTS to STS and further. A finding regarding this aspect, to our perception, would

resolve the issue raised by the applicants before us and we notice that this matter has received extensive and careful consideration by this Tribunal in an earlier related case in O.A.224/96. The relevant observations of this Tribunal as per order dated 13.7.98 are extracted below:

"...Fifty percent of the permanent vacancies are available to be filled up by substantive appointment of temporary officers of JTS who are approved for substantive appointment to that grade. Temporary vacancies in the JTS are to be filled by promotion in accordance with Part IV of the Rules. Respondents are also given the freedom to determine the method of recruitment for any vacancy or vacancies and the number of persons to be recruited by each method. According to Rule 17 in Part IV of the Rules, appointment by promotion to the JTS shall be made by selection on merit from amongst officers of the Posts and Telegraph Accounts and Finance Service Group 'B' from the Postal and Telecommunication wings in accordance with an inter se ratio prescribed and who have not less than 3 years of approved service in the grade on the recommendation of a duly constituted DPC in consultation with the Union Public Service Commission. It is also provided that officers in Group 'B' who are on the approved list for promotion to the JTS after being recommended by the DPC may be allowed to officiate in the STS in an officiating capacity as a purely temporary measure if they have

rendered 8 years total regular service in Group 'B' and above, till such time as the officers of JTS are available for regular promotion to the STS. It is therefore clear that for regular appointment to the JTS in a permanent vacancy, a Group 'B' official has to pass through the DPC after which he is appointed in a temporary vacancy and persons who are holding temporary vacancies would be appointed in the order of seniority to the permanent vacancies available to the promotees. Besides this normal channel, Rule 17 also provides that after approval by the DPC a Group 'B' official may be appointed to officiate on purely temporary basis in the STS. When permanent vacancies arise in the JTS, 50% of such vacancies are available to the promotees and temporary officers of the JTS would be appointed to the permanent vacancies in the order of seniority. A Group 'B' official is not eligible to be appointed to a permanent vacancy unless he has been recommended by a DPC for appointment to the JTS and he has been appointed to a temporary vacancy. It is therefore seen that at any given time there will be Group 'B' officials recommended by the DPC holding temporary vacancies in the JTS as well as officiating in STS posts till such time as JTS officers are available for regular promotion to STS. In view of this peculiar feature, at any given time a large number of Group 'B' officials who have been recommended by the DPC are available for filling up

permanent vacancies which arise from time to time. Respondents have furnished a statement R2(a) according to which as on 1.4.89, there were 164 promotee officers working in the JTS who were yet to be substantively appointed to the JTS. In addition, 82 promotee officers were appointed to the JTS on the basis of a DPC held in 1989. Thus there were 246 promotee officers who were waiting to be substantively appointed in 1989 to the JTS. Since the number of permanent vacancies which arose in the years following 1989 were quite small, in comparison to the number waiting for appointment, the number of promotee officer waiting to be substantively appointed could not be exhausted till 1.4.94. For all the years from 1989 till 1.4.94, the vacancies which arose therefore merely resulted in temporary officers being appointed substantively to the JTS. Such an appointment would not release any vacancy for fresh recruitment by promotion, since there were only 40 temporary posts and since only an officer who is already in position is being confirmed in the JTS. Applicants have been producing a huge volume of statistics to show that vacancies were available in JTS in the years following 1989. Some of this calculation is only to be rejected since it is based on the figure of "81" direct recruits allotted in the year 1989, a figure which, admitted at the Bar by the respondents as a mistake for "18" and which is also stated to be incorrect, in

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their additional reply statement by the respondents. No doubt vacancies were available due to retirement, creation of posts etc. as seen from R2(a), but then they did not result in fresh recruitment through a DPC to the JTS because there were already 246 promotee officers appointed to the JTS who were yet to be substantively appointed to the JTS. It was only in 1994 that the waiting list of officers was exhausted and 108 promotee officers were appointed to the JTS through a DPC in 1994. Rule 6(3) of the Recruitment Rules permits the Government to determine the method or methods of recruitment to be adopted for the purpose of filling any particular vacancy or vacancies in the service as may be required to be filled during any particular period of recruitment and the number of persons to be recruited by each method. The action of the respondents therefore cannot be said to be a violation of the Recruitment Rules. As stated earlier, the prayers (i), (ii) and (v) of the applicants actually amount only to a direction to the respondents to follow the Recruitment Rules. No such direction is called for since the respondents are duty bound to follow the Recruitment Rules. What was really sought by the applicants was a determination that the vacancy position was not correctly assessed by the respondents. Though a large body of statistics has been filed on both sides, it is not possible for us to determine from the figures furnished that the assessment of vacancies in the JTS by the respondents

is in error. Respondents have stated in R.1 that the total cadre strength of the JTS is 104 of which 64 are permanent posts and 40 are temporary posts. A recruitment though the DPC will arise only when the vacancies occurring in the temporary posts are to be filled up. When vacancies occur in the permanent posts, 50% of such vacancies would be filled up only from officers who are occupying the temporary vacancies having already been cleared by DPC. So the necessity for holding the DPC would arise only when the vacancies in the 40 temporary posts are to be filled up. But since the Department has to fill up some of the STS vacancies also under Proviso to Rule 17(ii), depending on need, by Group B officers who are approved for promotion to JTS, and such STS vacancies cannot be estimated accurately in advance, the Department has been empanelling many more Group B officers for JTS in each DPC than the temporary vacancies in the JTS would require. Thus there is always a large number of Group B officers already cleared by the DPC who are awaiting a posting to a temporary vacancy in the JTS. Therefore in a particular year, there may be temporary vacancies in the JTS but there may be no need to hold a DPC meeting since there are officers already cleared by an earlier DPC available to fill up those vacancies. This position is also reflected in para 20 of the judgement of the Tribunal in O.A.1225/91, which relates to a different service but governed by similar Recruitment

Q/a

Rules. The number of promotee officers appointed to the JTS on the basis of DPC was 246 in the year 1989 as seen in Annexure R2(a) and since this is far in excess of the vacancies likely to arise in the temporary posts, a situation has arisen that no DPCs were held for several years. We are not persuaded that the respondents have deliberately flouted the Recruitment Rules and by not holding the DPCs denied the applicants their legitimate claim for promotion to JTS.."

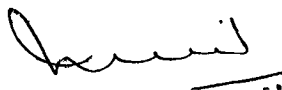
7. We are in respectful agreement with the above findings of this Tribunal which, according to us, are of vital relevance to the factual context of this case. Respondents' statement before us regarding the excessive induction of Group B officers in the higher posts and the resultant requirement **to** offset the same by direct recruitment of a matching number of officers weakens the grounds raised by the applicants in the present O.A. We, therefore, find no substance in the argument that there were large number of vacancies in the STS category for filling up from among the promotee officers. Consequently, after promoting 86 officers as per A-2 order, those officers referred to in para 7 of the same order had to be necessarily reverted since at the material time, there were no further vacancies to absorb them. The applicants have not proved the existence of any such vacancy and therefore we decline to interfere with the termination of the ad hoc arrangement and the consequent reversion of the applicants to Senior AOs/AOs communicated by way of the impugned order. We

find no merit in the ground that it was in order to avoid promotion of promotee officers to JAG that the new guidelines were introduced. The question is whether the respondents have the authority to frame guidelines. We find that they have the legitimate powers to do so. The next enquiry would be whether they have violated any of the established guidelines. Our finding is that they are not shown to have violated any of the guidelines. The imputation of partisan attitude on the part of the superior authority, we are afraid, is unfounded.

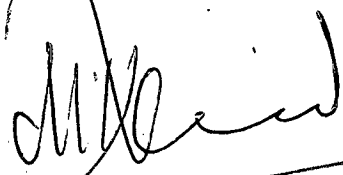
8. In view of the facts and circumstances discussed above, we decline to grant any of the reliefs sought in the O.A. The interim order is accordingly vacated.

9. In the result, the application is dismissed. There will be no order as to costs.

Dated, the 12th of January, 2001.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-1: True copy of the Notification No.F-9/16/86 dated 1.3.87 issued by Assistant General Manager, for General Manager, Telecom, Trivandrum.
2. A-2: True copy of the order No.34-90/96-SEA dated 22.1.98 issued by the 3rd respondent.
3. A-3: True copy of the order No.2-3/93-SEA dated 20.1.98 issued by the Assistant Director General(SEQ), O/o the 2nd respondent.
4. A-4: True copy of the order dated 30.5.96 No.2-3/93-SEA issued by the Assistant Director General, O/o the 2nd respondent.