

CENTRAL ADMINISTRATIVE TRIBUNAL : ERNAKULAM BENCH

Date of decision: 24.10.89

Present

Hon'ble Shri NV Krishnan, Administrative Member
and

Hon'ble Shri N Dharmadan, Judicial Member

OA No.172/89

1 PB Revamma
2 Ranidevi

: Applicants

Vs.

1 The Telcom District Manager
Ernakulam, Cochin-11

2 Union of India rep. by the
Secretary to Govt. of India
Dept. of Personnel & ARs
Cabinet Secretariat, New Delhi. : Respondents

M/s MR Rajendran Nair & PV Asha

: Counsel of Applicants

Mr KP Thangakoya Thangal, ACGSC

: Counsel of Respondents

O R D E R

Shri NV Krishnan, Administrative Member.

The two applicants in this case are female employees under the Telcom District Manager, Ernakulam (Respondent-1). They were selected as Telcom Office Assistants. They underwent the necessary course of theoretical training by the order dated 6.1.89 (Annexure-IX). They alongwith others who had completed the theoretical training were relieved on 6th January, 89 with the instructions to report for practical training for one month under the Telcom District Manager, Ernakulam and for eventual absorption there.

2. Respondent-1 issued a direction on 1st February, 89 (Annexure X) to the two applicants as well as two other

female Telcome Office Assistant Trainees to produce a medical certificate from a registered Lady Medical Practitioner to the effect that they were not in a state of pregnancy of a period of 12 weeks standing or more.

3 The two applicants could not produce such certificate as they were in a state of pregnancy for more than 12 weeks. Therefore, they were not given regular appointment while other female employees who gave such certificates were given regular employment.

4 The applicants represented in the matter and they were informed by Annexure I and Annexure II letters dated 8.2.89 that this action has been taken as per the rules governing the subject. These rules are in O.M. No.14034/5/75-Estt.(D) dated 19th July, 1976 of the Department of Personnel and Administrative Reforms (Annexure-III). This O.M. states that a woman candidate who is found to be pregnant of 12 weeks standing or over shall be declared 'temporarily unfit' and her appointment held in abeyance until the confinement is over. It is also stated therein that such women candidates should be re-examined for medical fitness 6 weeks after the date of confinement and if found fit, may be appointed on the post kept vacant and allowed the benefit of seniority in accordance with para-2 of the Annexure to the Ministry of Home Affairs O.M. No. 9/11/55 PRPS dated

22.12.59.

5 The applicants have challenged the validity of the action taken and directions given in pursuance of the instruction in Annexure III i.e., Annexure III, X, I & II in that order.

6 The Respondents have filed a reply in which it is stated that the impugned action taken was in pursuance of the Annexure-III instructions dated 19th July, 1976. It is admitted that these instructions have been modified by the Department of Personnel and Training OM No.14034/4/84-Estt (D) dated 13.2.85 (Annexure R1(A). Copies of this OM were forwarded by the Chief General Manager Kerala Telecommunications, Trivandrum to the Telcom District Managers and others in the State as late as on 6.3.89 i.e., after treating the applicants as temporarily unfit for duty and issuing the impugned letters dated 8.2.89 (Annexure-I & II). The revised instructions state that it was now necessary to declare a woman candidate as 'temporarily unfit' if she is found to be pregnant, only in respect of an appointment to a post carrying duties of a hazardous nature or if she has to complete a course of training, as a pre-condition to an appointment. In other cases, they can be given the appointment straight away. It is stated that as the post of Telcom Office Assistant is not hazardous, the two applicants were, therefore, directed to report for duty as Telcom Office Assistants and they have already reported on 14th March, 89.

7 We have heard the learned counsel on either side. In the circumstances mentioned above, the learned counsel for the applicants seeks a direction that the appointment of the applicants be regularised in the same manner as it would have been done, if they have not been declared 'temporarily unfit' on account of their pregnancy.

8 We are of the view that the request made by the counsel of applicant is reasonable and it cannot be refused. We also notice that Respondent-1 is not at fault, for, the revised instructions dated 13.2.85 were conveyed to him only in March, 89. The impugned documents have been issued before getting a proper appreciation of the exact nature of the latest instructions on the subject. Therefore, the directions given in Annexure-X order dated 1.2.89 and the letters dated 8.2.89 to the applicants (Annexure I and Annexure II) are quashed. Annexure III need not be quashed as its operation has been modified by the Ext.R1(A) order dated 31.2.85.

9 Therefore, the Respondent-1 is directed to appoint the two applicants as Telcom Office Assistants with effect from the date on which their immediate juniors in this cadre, who were trained alongwith them, were appointed regularly as Telcom Office Assistants. As the applicants have been wrongly kept out of employment despite the general instructions R1(a), they will be entitled to all

consequential benefits, including back wages
from the revised date of appointment.

10 The application is thus allowed with these
directions which have to be complied within three
months from the date of receipt of this order.

11 There will be no order as to costs.

N Dharmadan

(N Dharmadan)
Judicial Member
24.10.89

NV Krishnan

(NV Krishnan)
Administrative Member
24.10.89