

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.202/2000

Tuesday this the 20th day of November, 2001

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

- 1.. P.R.Unnikrishnan Nair
S/o late N.Ramakrishna Pillai,
Director Finance and Accounts
Office of the General Manager, Telecommunications,
Thiruvananthapuram residing at TC 20/1486(1) W 36A
Karthika, Sastrinagar W3st,
Karamana Thiruvananthapuram.2.
- 2.. K.V.Mohan Kumar, S/o N.Velayudhan Nair
(Late) Director Finance & Accounts,
Office of the Principal General Manager,
Ernakulam residing at TC. 8/1376,
Sitara, Valiyavila, Thirumala PO,
Thiruvananthapuram.6.
- 3.. K.Gopinathan Nair, S/o K.Krishna Pillai (Late)
Director Finance & accounts,
Office of the General Manager Telecom
Thiruvananthapuram residing at
TC. 2/2071(1) Pratheeksha,
Pattom, Thiruvananthapuram.
- 4.. M.Gopalakrishnan, S/o late A >anarayanan Nair,
Director Finance & Accounts (TR)
Office of the General Manager Telecom
District, Mananchira Exchange,
Mananchira, Calicut.1.
residing at Prathusha, Moothedath House,
PO. Pullazhi, Trichur.12.
- 5.. M.K.Nair, S/o late Sri G.Madhavan Pillai,
Director Finance & Accounts,
Office of the General Manager Telecom
District, Kottasyam, residing at
House No.210A, Gandhinagar,
Trivandrum.14.
- 6.. S.Rajan, S/o K.Sreedharan (Late)
Director Finance & Accoutns,
Office of the General Manager
Telecom District, Alapuzha residing at
Ushus, Manchadivila, Eram North,
Chathannur.

7. P.R.Gopalakrishnan Nair S/o late K.P.Raman Nair,
Director Finance & Accounts,
Office of the General Manager Telecom
Palakkad, residing at Sreenilayam,
37/2434, Azad Road, Kaloore, Kochi.17.
8. C.P.Varghese, S/o C.V.Pauluse (Late)
Director Finance & Accounts
Office of the General Manager, Telecom
Kannur, residing at Vasanth
31.976, JJ Road, Vytilla.Kochi.19.
9. N.Rajendran Nair, S/o Narayana Pillai (late)
Director Finance & accounts,
Office of the General Manager,
Telecom District, Kollam.1.
residing at TC 1/179, Medical College PO,
Thiruvananthapuram. ...Applicants

(By Advocate Mr.G.Sasidharan Chempazhanthiyil (rep.)

V.

1. Chief General Manager Telecom
Kerala Circle, Thiruvananthapuram.
2. Director General, Telecom Department,
Sanchar Bhavan, New Delhi.
3. Union of India rep. by its Secretary,
Ministry of Communications, New Delhi.
4. Bharat Sanchar Nigam Limited,
rep. by its Chairman,
New Delhi. ...Respondents

(By Advocate Mrs. P.Vani, ACGSC)


The application having been heard on 20.11.2001, the Tribunal on the same day delivered the following:

O R D E R

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

Applicants were by A2 and A3 orders promoted regularly to JTS and STS Group 'A' on purely officiating basis under proviso 2 Rule 17(II) of the Indian Posts and Telegraphs Accounts and Finance Service Recruitment' Rules. They were thereafter promoted to JAG again on purely local officiating basis. They were given fixation of pay under FR 22(1)(a)(1) initially with reference to STS. Their present

grievance is that the second respondent has issued Annexure.A10 order directing that in the case of all regular JTS officers promoted to STS on adhoc basis and again promoted to the JAG on local officiating basis their pay will be fixed as per the advice of DOP&T ie., with reference to their pay in the JTS under FR 22(I)(a)(1) read with FR 35 only and has directed the circle heads to comply with the above directions and that Annexure.A12 order dated December, 1999 has been issued by the Chief General Manager, Telecom directing all PMGs/GMs and lower formations to comply with the directions contained in the Annexure.A10 order, to review and refix the cases dealt with differently and recover over payments. The applicants apprehending that on the basis of Annexure.A10 and A12 orders the fixation of their pay would be reviewed to their detriment have filed this application challenging Annexure.A10 and A12 orders and for a declaration that the applicants are entitled to the benefit of fixation of pay on promotion to JAG with reference to their pay in Senior Time Scale and for a direction to the respondents to regulate their pay accordingly. The applicants have alleged in the application that Annexure.A5 order clearly states that on their adhoc promotion to STS under proviso 2 to Rule 17(II) would entitle them for the benefit of fixation of pay as regular promotees and that in the light of Annexure.A5 the impugned orders Annexure.A10 and A12 are not sustainable. It has also been alleged in the application that if Annexure.A10 and A12 are implemented, the applicants would be put to financial




loss and the applicants have given data as to how they would be affected.

2. The respondents in their reply statement seek to justify the impugned orders on the ground that on second adhoc promotion the pay is to be fixed only with reference to the lower post regularly held by the incumbent and therefore, there is no infirmity with the impugned orders.

3. We have carefully gone through the pleadings and materials placed on record and have heard Shri Vishnu S Chempazhanthiyil, learned counsel of the applicants and Smt. P.Vani, ACGSC learned counsel for the respondents at considerable length. The instruction at Annexure.A10 only says that when regular JTS officers promoted on adhoc basis to STS and again to JAG on local officiating basis, their pay should be fixed with reference to their pay in JTS and restricted under FR 35. This instructions is in consonance with the provisions contained in FR 22((a)(1) which reads as follows:

FR 22(1)(a)(1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiting capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more.(emphasis added).



4. Annexure.A12 order is only an order issued by the Chief General Manager Telecom directing the lower formations to give effect to Annexure.A10 order. We do not find any infirmity with the Annexure.A10 order and the order at Annexure.A12. The legal validity of a general order is not to be tested on the basis of what effect it would have on individual officers but on the basis of the rules under which the instructions have been issued. Since Annexure.A10 has been issued in complete agreement with FR 22(I)(a)(1) and FR 35 we are of the considered view that there is no reason for interference.

5. In the light of what is stated above, finding nothing wrong with the impugned orders, we dismiss the application leaving the parties to bear their own costs.

Dated the 20th day of November, 2001


T.N.T. NAYAR
ADMINISTRATIVE MEMBER

(s)


A.V. HARIDASAN
VICE CHAIRMAN

APPENDIX

APPLICANT'S ANNEXURE

1. Annexure A1 True copy of the Recruitment Rule Part IV dealing with appointment by promotion to the service (relevant portion).
2. Annexure A2 True copy of the order (relevant portion) No.7-1/93-SEA dtd. 25.2.94 issued by the President of India.
3. Annexure A3 True copy of the order No.34-30/96 SEA dtd. 22.1.98 (relevant portion) issued by President of India.
4. Annexure A4 True copy of the order (relevant Portion) No.4-2/98-SEA dtd. 27.10.98 by the President of India.
5. Annexure A5 True copy of the letter No.4-3/78-SEA dtd. 31.3.89 issued by the 2nd respondent.
6. Annexure A6 True copy of the Guidelines No.2-3/93/-SEA dtd.20.1.98 issued by the 2nd respondent.
7. Annexure A6(a) True copy of the order No.2-3/93.SEA dtd.30.5.96 issued by the 2nd respondent.
8. Annexure A7. True copy of the order No.2-3/93-SEA dtd.26.3.98 issued by the 2nd respondent.
9. Annexure A8 True copy of the appointment order No.ST/II/6-4/95 dtd.30.5.96 of the 1st respondent.
10. Annexure A9 True copy of the pay entitlement Memo No.TA.1-1/163/87 dtd.17.7.96 issued to the 2nd applicant.
11. Annexure A10 True copy of the order No.2-11/98-SEA dtd.16.12.1999 issued by the 2nd respondent.
12. Annexure A11 True copy of the representation submitted by the 1st applicant to the 3rd respondent.
13. Annexure A11(a) True copy of the representation submitted by the 2nd applicant to the 3rd respondent.
14. Annexure A11(b) True copy of representation submitted by the 3rd applicant to the 1st respondent.
15. Annexure A11(c) True copy of the representation submitted by the 4th applicant to the 1st respondent.
16. Annexure A11(d) True copy of the representation submitted by the 5th applicant to the 1st respondent.
17. Annexure A11(e) True copy of the representation submitted by the 6th applicant to the 1st respondent.
18. Annexure A11(f) True copy of the representation submitted by the 7th applicant to the 1st respondent.
19. Annexure A11(g) True copy of the representation submitted by the 8th applicant to the 1st respondent.

20. Annexure A11(h) True copy of the representation submitted by the 9th applicant to the 1st respondent.
21. Annexure A12 True copy of the order No.TA/1-27/97-99 dated nil 12/99 issued by the 1st respondent.
22. Annexure A13 True copy of letter No.7-1/93.SEA dated 25/2/1994 issued by the 2nd respondent
23. Annexure A14 True copy of O.M.No.1/6/97-Pay-I dated 5.7.99.
24. Annexure A15 True copy of order of appointment issued from the office of Telecom Dist.Engineer Alleppey No.B-12/Estt/34/III dated 22.7.1988.

RESPONDENT'S ANNEXURE

1. Annexure R1 True copy of the reply by the Govt. of India, Dept. of Telecommunications, New Delhi.

xxxxxx