

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.218 of 2001.

Monday, this the 9th day of April, 2001.

CORAM:

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

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

N.V.Devassy,
Telecom Technical Assistant,
Telephone Exchange,
Vallathole Nagar,
Trichur District.

Applicant

(By Advocate Shri Shafik M.A.)

Vs.

1. Union of India, represented by the
Secretary, Ministry of
Communications.
Sanchar Bhavan, Ashoka Road,
New Delhi-110001.

2. The Chief General Manager,
Telecom, BSNL,
Kerala Circle, Trivandrum.

3. The General Manager, Telecom,
BSNL,
Trichur SSA, Trichur.

Respondents

(By Advocate Shri S. Krishnamoorthy, ACGSC)

The application having been heard on 9.4.2001, the Tribunal on the same day delivered the following:

O R D E R

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

The applicant who was a Technician in the Telecommunication Department was selected for deputation to TCIL by order 28.2.96. He joined TCIL on 1.3.96 and returned to the parent department on 26.2.99. In between finding that persons similarly situated like him including juniors have been selected and deputed for training as Telecom Technical Assistants (TTAs for short), the applicant made a representation on 25.6.96 praying that he may be recalled from deputation and deputed for training. However, his request was

not acceded to. He was sent for training and returned after three years. Reaching back to his parent organisation, the applicant made a representation on 9.7.99 to the General Manager, Telecommunications praying that he may be granted seniority as TTA with effect from the date on which his junior was appointed as TTA. The representation was replied to by A-6 order dated 19.8.99 negativing the applicant's claim on the ground that he has gone to TCIL on his volunteering and therefore, he could not be entitled to the benefit. An year thereafter, he made another representation dated 29.9.2000 to the second respondent seeking seniority as TTA above his juniors in the lower grade. This representation has not been disposed of. Under these circumstances, the applicant has filed this application for a declaration that the applicant is entitled to be appointed as TTA with effect from the date on which his junior is appointed and to count his seniority with effect from the said date and for a direction to the respondents to grant him all consequential benefits. He has also prayed for a direction to the 2nd respondent to dispose of A-7 representation.

2. On a careful scrutiny of the materials placed on record and on hearing the learned counsel on either side we find that the cause of action if any of the applicant has been barred by limitation. When the applicant's request for recalling him from TCIL and for sending him for training as TTA was not acceded to, he got a cause of action in 1996. He did not agitate that issue and preferred to continue in TCIL. He made a representation only on 19.7.99 seeking seniority above his juniors. This request was negatived by A-6 order dated 19.8.99. The applicant again left the matter to rest for one.

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year and made a representation on 29.9.2000 to the Chief General Manager, Telecommunications by which time the right to challenge A-6 had already been barred by limitation.

3. The argument of the applicant is that A-6 has not been passed by the authority to whom the representation was made and therefore, that order need not be challenged also has no merit because if he didn't get any reply to his representation within six months, he should have approached the Tribunal with an application within one year. He has not done so. After expiry of the period of 18 months, his claim has become barred by limitation. Therefore, the application is rejected under Section 19(3) of the Administrative Tribunals' Act, 1985.

Dated the 9th April 2001.


T.N.T. NAYAR ..
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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List of Annexures referred to in the order:

A-6: True copy of the letter No.DET/VRI/ESTT/117 dated 19.8.99 issued by the DET, Vadakkanchery.

A-7: True copy of the representation dated 29.9.2000 submitted before the IIInd respondent.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A NO. 218/2001

WEDNESDAY THIS THE 1st DAY OF MARCH, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

N.V. Devassy S/o Vareed
Telecom Technical Assistant
Telephone Exchange Vallathole Nagar
Trichur District
residing at Neelankavil
PO Thalore,
Trichur-680 306

Applicant

By Advocate Mr. Sreeraj

Vs.

1 Union of India represented by the
Secretary, Ministry of communications
Sanchar Bhavan, Ashoka Road
New Delhi-110 001

2 The Chief General Manager
Telecom, BSNL
Kerala Circle, Trivandrum.,

3 The General Manager Telecom
BSNL, Trichur SSA
Trichur.

Respondents

By Advocate Mr. N. Nagaresh

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This is a restored Application. The applicant has approached this Tribunal on 27.2.2001 seeking a declaration that he is entitled to be appointed as Telecom Technical Assistant (TTA) w.e.f. the date on which his junior is appointed and to count his seniority w.e.f. the said date with all consequential benefits. On consideration of the materials placed on record this Tribunal found that the applicant had not agitated the issue in time

even though the cause of action if any had occurred in 1996. He had made a representation to the higher authorities only on 19.7.1999 by which time the challenge had been barred by limitation. Even after the submission of the representation he did not approach the Tribunal within one year and therefore the Application was rejected under Section 19(3) of the Administrative Tribunals Act, 1985. The applicant then approached the Hon'ble High Court of Kerala in OP No.21066/2001 and the High Court allowed the Petition with the following observations:

"3 Counsel appearing for the respondents submits that the contention as above has no merit. He had in detail dealt with the objections highlighted in the counter affidavit filed. It is submitted that the petitioner has not made parties as respondents who might be adversely affected because of the orders that may be passed in the claim on merits.

4 It is true that the petitioner was abroad, when there was a re-categorisation whereby promotional avenues were thrown open. As a matter of fact, he has presently lost his seniority and is not likely to regain it unless the matter is subjected to a review. It does not appear to be proper to shut out the doors at his face without at least examining the contentions on merits, if the OA is otherwise in order."

2 The respondents moved for a Review of the judgment on the issue of jurisdiction as to whether the matter has to be adjudicated by the CAT or the High Court, and be kept undecided so that it may be possible for the UOI to raise the maintainability of the Application appropriately before the Tribunal since the case now stands remanded. The Hon'ble High Court ordered as follows:

"3 The learned counsel for the respondent submits that the Central Administrative Tribunal, in other proceedings has already taken a decision about their competence to adjudicate on the matter. It is however pointed out that the decision has presently been subjected to challenge before this Court and the operation of the order is stayed.

4 It will therefore be proper that the issue of jurisdiction is left open and we may not be understood as having finally pronounced on the subject."

3 In the light of the above orders, the Application stands remanded before us except on the issue of jurisdiction. The respondents have filed an additional reply statement and the applicant has filed a rejoinder to the same.

4 The facts of the case are that the applicant had joined the respondent Department in the year 1988 and was continuing as a Technician. The restructured cadre of TTA was introduced in the Department and while the applicant was waiting order of appointment as TTA, volunteers were called for deputation to TCIL a Govt. of India enterprise under the first respondent for working in their projects abroad. The applicant applied and was selected for deputation and he was relieved to join TCIL by Annexure A1 order. He joined TCIL w.e.f. 1.3.1996 and continued there till 26.2.1999. After re-joining the parent department he had found that his colleagues and juniors have already been given TTA training and some of them have already been appointed as TTA on officiating basis. He submitted a representation to the third respondent requesting he may also be deputed for training. Since nothing was given in reply and on enquiry the superiors have intimated that nobody will be deputed for training and the applicant bona fide believed the words and proceeded on deputation. After his return he was also relieved for TTA training and completed his training on 11.6.1999. He had again submitted Annexure A5 representation detailing his grievances regarding juniors being deputed for training earlier and the inaction of the respondents in intimating the date of training as TTA to the applicant. Since his representations in this regard have not resulted in any action he has approached this Tribunal for redressal of his grievances.

5 The respondents have strongly refuted the contentions of the applicant and stated that there are no bonafides in his Application at such a belated stage when he enjoyed the benefits of going abroad and completed the course on his return and he was very well aware at the time of his going on deputation that the next batch of training was going to start shortly. There was no compulsion from the respondents on the applicant to volunteer himself for deputation and even if he was really interested in the TTA training he need not have volunteered for the deputation. He cannot have both the benefits at the same time. They also stated that the applicant was never informed that there will be no training and that seats for training are done as per the turn in the eligibility list and allotment of seats from the Circle Office, Thiruvananthapuram. The Department cannot afford to keep the seats allotted unutilised for the benefit of the applicant and the available senior employee in the select list will be normally sent for such training.

6 On the maintainability of the Application the respondents have filed additional reply statement stating that the applicant is already absorbed in BSNL by letter dated 2.1.2001 w.e.f 1.10.2000 and the OA has been filed much later to the alleged cause of action and absorption in the BSNL and that even going by the common order in the OA 23/2002 etc the CAT has no jurisdiction in the matter. They have also submitted that "Next Below Rule will not apply in the case of the applicant who voluntarily obtained deputation. After enjoying the benefits of deputation he cannot now contend that he should be given the benefit of promotion in the parent cadre on a date when his junior was promoted.

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7 The applicant has filed a rejoinder stating that the OA was filed prior to his absorption in the BSNL and the subject matter in the OA relates to the period even prior to the formation of BSNL.

8 We have heard the learned counsel on both sides. It is now admitted that the applicant has been absorbed in the BSNL by Annexure A-8 order dated 2.1.2001 w.e.f. 1.10.2000. Even though the order is a retrospective one it has been issued on 2.1.2001 much later than the date of filing of this OA. The question of jurisdiction of Group(A), (B), (C) and (D) employees who have been absorbed by the respondent Department has been examined by this Tribunal earlier and in fact in O.A. 23/2002 and connected cases it was held in para 13 (iv) of the common order dated 11.4.2005 as follows:

“(iv) Those in Groups A,B,C and D who have been absorbed, would remain outside the purview of the Tribunal's jurisdiction from the date of their absorption, unless they are already before the Tribunal relating to a matter arisen in the pre-absorption period.”

This order has been challenged in the High Court and the operation of this order has been stayed.

9 In this case the applicant has approached this Tribunal before the order of absorption was passed. Therefore, according to the above judgment the applicant is well within the jurisdiction of this Tribunal. However, in the light of the order of the Hon'ble High Court in the Review Petition RP No. 727/2005 in OP NO. 21066 of 2001 extracted above directing that the issue of jurisdiction be kept open, we are not going into that issue here.

10 On merits, we find the earlier observations of this Bench dismissing the O.A. are very valid, in that the applicant has not chosen to represent his case when the cause of action arose in 1996. Though he has enclosed a copy of the representation at Annexure A-3 regarding appointment made to junior officers he was content with sending a representation and leaving it at that. For three years, he remained on deputation without making any effort to come back or submitting representation through proper channel. Only after return to the cadre he has chosen to represent to the higher authorities. After undergoing the training and two years after posting in the BSNL he has approached this Tribunal. We find considerable force in the argument of the respondents that he was well aware of the restructuring taking place in the department and that the Technicians would be sent for training for placement as TTAs and that training was a pre-condition for the placement. Knowing fully well the circumstances, he had volunteered for the deputation and remained on deputation without demur and has now preferred the Application for seniority over those who have remained in the Department and undergone training.

11 It is seen that the petitioner had made averments in the OP before the High Court that in similar circumstances, in OA. 484/01 and connected cases the Tribunal had granted reliefs to affected persons and in the case of the petitioner a technical approach has been adopted. This is not true as evident from the judgment in O.A. 484/2000 and OA. 485/2000 in which common orders have been passed by the Tribunal. The petitioner in OA 484/2000 was already promoted as a TTA and he was agitating against his non-promotion to the next higher cadre of JTO in the departmental quota. He also contended inter alia that he was not sent for training while the juniors were sent for training. The Tribunal had not found his contentions

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valid and declined to interfere with the respondents' decision. In O.A. 485/00 the applicants were already posted as TTAs and they were agitated when they had not been called for the second Screening Test for the post of JTO from eligible categories of TTAs on the ground that they did not have the required service. The Tribunal had allowed the prayer to the extent the second applicant is eligible to appear for the screening test as it was the failure of the respondents to advise him in time while he was on deputation to exercise the option to become TTA. It was also observed that the respondents should have advised him in time while he was on deputation to exercise the option for becoming a TTA and there is no direction to grant seniority and to that extent the facts are distinguishable.

12 In the instant case the prayer of the applicant is not for granting him the benefit of promotion to a higher post on par with the juniors. He is seeking seniority above that of his juniors i.e. those who underwent the required training and on that basis were appointed to the post of TTA. The Next Below Rule is not applicable in such circumstances. The rule as contained in FR 22 is extracted below:

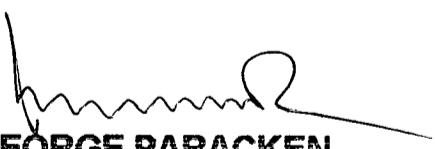
"When an officer in a post (Whether within the cadre of his service or not) is for any reason prevented from officiating in his turn in a post on higher scale or grade borne on the cadre of the service to which he belongs, he may be authorised by special order of the appropriate authority pro forma officiating promotion into such scale or grade and thereupon be granted the pay of that scale or grade, if that be more advantageous to him, on each occasion on which the officer immediately junior to him in the cadre of his service (or if that officer has been passed over by reason of inefficiency or unsuitability or because he is on leave or serving outside the ordinary line or forgoes officiating promotion of his own volition to that scale or grade, then the officer next junior to him not so passed over) draws officiating pay in that scale or grade..."

13 The scope of 'Next Below Rule' and the intention underlined in the rule is that an officer out of his regular line should not suffer by forfeiting the officiating promotion which he would otherwise have received had he

remained in the original line. The essential condition for application of this rule is that the officer should for any reason have been prevented from officiation in his cadre to being posted on a higher scale to which he would have been otherwise eligible. This condition is not fulfilled in the applicant's case as he had on his own volition proceeded on deputation. He was not prevented by virtue of such deputation from coming back to his parent department nor had he availed of any opportunity to represent his case during this period. No case has also been made out by the applicant that he had made any such effort except sending a representation in 1996 and that the respondents have rejected his representation. In our view the responsibility for the delay cannot be solely laid upon the respondents and the applicant had also willingly acquiesced in the same.

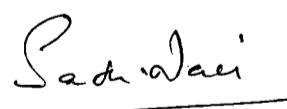
14 The applicant has also not amended the prayer in the OA by impleading any of the juniors who would be actually affected if the seniority of the applicant is restored. We are of the view that the applicant cannot invoke Next Below Rule in this belated Application to upset the settled seniority position. We also would reiterate our earlier stand that the Application is barred by limitation. In the result the OA is dismissed. No costs.

Dated 1.3.2006.



GEORGE PARACKEN
JUDICIAL MEMBER

Kmn



Smt. SATHI NAIR
VICE CHAIRMAN