

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.224/96

Monday, this the 13th day of July, 1998.

CORAM:

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

1. R.M.Subramanian,
Chief Accounts Officer,
Office of the Chief General Manager,
Telecom,
Trivandrum.
2. M Krishnankutty Nair,
Chief Accounts Officer,
Office of the Chief General Manager,
Telecom,
Trivandrum.
3. S Rajan,
Chief Accounts Officer,
Office of the General Manager,
Telecom,
Kottayam.
4. PR Gopalakrishnan Nair,
Chief Accounts Officer,
Office of the General Manager,
Telecom,
Ernakulam.
5. CP Varghese,
Chief Accounts Officer,
Office of the General Manager,
Telecom,
Ernakulam.
6. K Gopinathan Nair,
Chief Accounts Officer,
Office of the Chief General Manager,
Telecom,
Trivandrum.
7. N Rajendran Nair,
Chief Accounts Officer,
Office of the General Manager,
Telecom,
Kollam.
8. M Gopalakrishnan,
Chief Accounts Officer,
Office of the General Manager,
Telecom,
Trissur.

- Applicants

9. PK Sreedharan,
Chief Accounts Officer,
Office of the General Manager,
Telecom,
Kozhikode.
10. V Rajagopalan,
Chief Accounts Officer,
Office of the General Manager,
Telecom,
Kannur.
11. Varghese Samuel,
Chief Accounts Officer,
Office of the Telecom District Manager,
Thiruvalla.

- Applicants

By Advocate Mr MR Rajendran Nair

vs

1. Union of India represented by
its Secretary to Government of India,
Ministry of Communications,
Sanchar Bhavan,
New Delhi.
2. The Chairman,
Telecom Commission,
New Delhi.
3. The Member(Finance),
Telecom Commission,
New Delhi.

- Respondents

By Advocate Mr TPM Ibrahim Khan, SCGSC

The application having been heard on 1.7.98, the
Tribunal on 13.7.98 delivered the following:

O R D E R

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants 1&2 were appointed to the Junior Time Scale/Senior Time Scale(JTS/STS for short) of Post & Telegraph Accounts and Finance Service Group 'A' on ad hoc basis by A-1 order dated 25.9.92. By A-2 order dated 25.2.94 the ad hoc arrangement was terminated and the officers were reverted with immediate effect. A representation A-3 was made by the 1st applicant on which no action was taken. Thereafter all the

applicants were appointed to STS on a purely temporary and ad hoc basis for one year or till regularisation whichever is earlier by A-4 order dated 22.9.94. The grievance of the applicants is that a DPC was not convened from 1989 till 1994 though there were vacancies in the JTS/STS. Respondents took steps to fill up vacancies in the JTS by direct recruitment in all those years. By not holding the DPC the posting of promotee officers on a regular basis to the STS and thereafter their promotion to the higher grade of Junior Administrative Grade(JAG for short) is getting delayed. The applicants who have put in 12 to 14 years of service in Group 'B' Grade despite their eligibility for being considered for promotion to the JTS continue to wait for promotion and direct recruits in the meanwhile get promoted to higher grades. Even prior to A-4 order applicants have been officiating either in the JTS or in the STS against regular vacancies and from 22.9.94 they are continuously in the STS on ad hoc basis. Applicants submit that therefore they have got a legitimate claim to hold the post in JTS/STS on a regular basis from the time they have been officiating in JTS/STS. This would have been granted to them if the DPCs had been held at regular intervals as required by the Rules. Respondents submit that the vacancies in the JTS have not been correctly worked out and had that been done DPCs would have been convened every year and the vacancies in the JTS would have been filled up by promotees without delay. Applicants therefore pray for a declaration that:

- i) Fifty percent of the permanent vacancies in the JTS are liable to be filled up by substantive appointment of temporary officers in that cadre and for a direction to the respondents to give effect to such substantive appointments;

- ii) For a declaration that all temporary vacancies in the category of JTS are liable to be filled up by promotion of Group 'B' officers in the order of seniority and for a direction to the respondents to give effect to such promotions and consequential fixation of pay with effect from the date on which such promotion became due to the applicants;
- iii) For a declaration that a Group 'B' officer on being promoted to STS is entitled to have his pay fixed both in the JTS and in the STS and to grant such benefits to the applicants;
- iv) For a declaration that the service rendered by the applicants in STS in an officiating/ad hoc basis is regular service for the purpose of promotion in view of the large number of vacancies in STS/JAG cadres due to not holding the DPCs at regular intervals; and
- v) For a direction to the respondents to announce the cadre strength both permanent and temporary of the JTS/STS/JAG and Senior Administrative Grade and to make appointments and promotions by holding annual DPCs in accordance with the rules.

2. Respondents contend that the DPCs were not held from 1990 to 1994 since there were no temporary vacancies available in the JTS in those years.

3. When the application came up for admission, the Tribunal directed the respondents to file a statement indicating the number of permanent posts and number of temporary posts in the JTS and the number of direct recruitments and temporary promotions made year-wise between 1989 and 1995. On 16.4.96 it was directed that since the statement had not been filed, reversion of the applicants would be stayed for 5 weeks. On 3.9.96 the Tribunal directed that appointment of direct recruits who are undergoing training would be made after obtaining permission from the Tribunal. On

17.10.96 the Tribunal recorded a submission of the respondents that there is no possibility of any reversion in the near future and directed respondents to file a statement showing the vacancy position and the possible date on which the DPC would meet. On 31.3.97, the Tribunal directed the respondents to file a statement with the following details starting from 1.4.89:

1. The number of permanent vacancies in the JTS which have arisen in each year.
2. The number of permanent vacancies reserved for being filled up by direct recruitment in each year.
3. The number of vacancies actually filled up by direct recruitment in each year.
4. The number of vacancies reserved for substantive appointment of temporary officers in each year.
5. The number of temporary officers actually appointed in each year.
6. The number of temporary vacancies in the Junior Time Scale which have arisen in each year.
7. The number of temporary vacancies actually filled up by promotion in accordance with Part IV of the Rules.
8. The number of permanent posts and temporary posts in the JTS cadre yearwise."

The Tribunal also varied the interim order dated 3.9.96 and permitted appointment of 7 direct recruits subject to the condition that 7 promotees were also appointed substantively after following the procedure under the Rules. On 10.6.98 the Tribunal directed respondents to state how many of the 86 persons said to have been promoted were promoted against permanent vacancies. Again on 1.7.98 the Tribunal permitted 8 recruits to be appointed subject

to the condition that 8 promotees were also promoted substantively against permanent vacancies simultaneously in accordance with the Recruitment Rules. Respondents have filed the table R.1 in response to the Tribunal's queries dated 31.3.97.

4. It is seen that the prayers (i) & (ii) and (v) sought by the applicants are substantively only for a direction to the respondents to follow the recruitment rules. The allegation is that the recruitment rules have not been followed and DPCs have not been held annually despite there being vacancies in the JTS cadre. Respondents however, state that there were no vacancies and so no DPCs were held in those years. A DPC was held in 1994 since in that year there were vacancies available to be filled up. According to Rule 6(2) of the Indian Posts and Telegraphs Accounts and Finance Service Class I (Recruitment) Rules, 1972, recruitment to the JTS is to be made as follows:

(a) fifty percent of the permanent vacancies in the Junior Time Scale of the service shall be filled by direct recruitment in accordance with the provisions of Part III of these rules, and the remaining fifty percent permanent vacancies shall be filled by substantive appointment of temporary officers of Junior Time Scale of the Service who are approved for substantive appointment to that grade in the order of seniority.

(b) temporary vacancies in the Junior Time Scale of the service shall be filled by promotion in accordance with the provisions of Part IV of these rules.

(3) Subject to the provisions of these rules, the Government shall 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.

We are not concerned here with direct recruitment. 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 officers 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 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 1994.¹ 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 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 the JTS.

5. As regards the prayer that the service rendered by the applicants in STS in an officiating/ad hoc basis be counted as regular service for purposes of promotion to JAG, applicants rely on a decision of the Supreme Court in NSK Nayar and others Vs Union of India and others (W.P.(Civil) No.4525-33 of 1985 dated 12.12.91). The contention of the respondents is that NSK Nayar

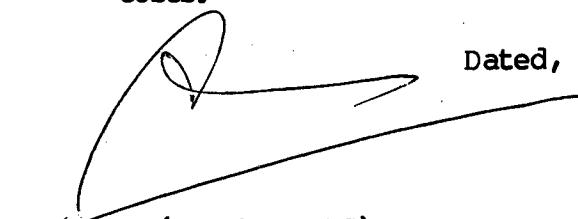
relates to a different service with its own Recruitment Rules. No doubt NSK Nayar relates to the officiating Divisional Engineers governed by the Telegraph Engineering Service (Class I) Rules 1965. But those Rules are practically the same as the Rules governing the applicants here, as far as the provisions in Rules 6 and 17 are concerned. The same "inverted pyramid" is found in the JTS/STS in the case of the applicants herein also, and there is the same provision here which permits a frog-leap from Group B to STS bypassing JTS. But there is nothing in the pleadings that would show that only the seniormost Group B officers who have been considered by a DPC for JTS and approved for appointment to JTS are appointed to officiate in STS under Rule 17(ii) Proviso. There is nothing in Rule 17(ii) Proviso which compels the Department to post Group B officers to officiate in STS in the order of their seniority. On the other hand, it is stated that Group B officers are allowed to even officiate in STS by "local officiating arrangements", outside the scope of Rule 17(ii) Proviso. Therefore if the prayer of the applicants is granted and such persons are directed to be regularised in STS on completion of five years of such officiating service then it may result in juniors holding STS posts on a regular basis when their seniors are still in JTS and may be not even holding a JTS post on a regular basis, but only on a temporary basis. That would result in gross injustice. The prayer(iv) is therefore only to be rejected.

6. As regards the prayer(iii) that applicants are entitled to be posted to the JTS and then to the STS with a fixation of pay at each stage, this will have to be decided only in terms of the Fundamental Rules in each case and no general direction can be given to the respondents in regard to such pay fixation.

7. In the light of the discussion we find that the respondents cannot be held to have violated the Recruitment Rules on the basis of the pleadings before us. The prayers being only for a declaration that the respondents are bound to follow the Recruitment Rules, we consider that there is no need to grant such a declaration as the respondents in any case are bound to follow the Recruitment Rules even without such a direction from the Tribunal. The respondents are bound to promote officers in terms of the Recruitment Rules by holding DPCs in accordance with the rules, depending on the availability of vacancies in each year.

8. Application is accordingly disposed of as aforesaid. No costs.

Dated, the 13th July, 1998.


(AM SIVADAS)
JUDICIAL MEMBER


(PV VENKATAKRISHNAN)
ADMINISTRATIVE MEMBER

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