

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 231 1990
XXXXXX

DATE OF DECISION 31.12.1990

S.Lekshmy & 3 others Applicant (s)

Mr.G.Sasidharan Chempazhan-thiyil Advocate for the Applicant (s)

Versus

The Chief General Manager, Telecommunications, Trivandrum & 2 others Respondent (s)

Mr.K.Prabhakaran, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

The applicants are aggrieved by the upgradation of 3 posts of Lower Division Clerks/with effect from 1.3.1989, as according to them the upgradation should have been made effective from a date prior to 1.4.1987. They have, in this application filed under section 19 of the Administrative Tribunals Act, prayed that the second respondent may be directed to upgrade 3 posts of Lower Division Clerks as Upper Division Clerks in the UDC/LDC scheme in accordance with the provisions in Annexure-III letter No.19-18/81-TEII. dated 30.8.1983 and to restructure the UDC post SA/JA under the new scheme as directed in the Government of India, Department of Telecommunications

letter No.34-41/86-SEA dated 4th August, 1988, at Annexure-II.

2. The material averments in the application can be briefly stated as follows. The applicants 1 to 3 are Lower Division Clerks in the Telecom. Accounts unit under the first respondent, and the 4th applicant is the recognised union who represents the applicants 1 to 3 and others through its circle secretary. The staffing pattern in Telecom. Accounts unit was UDC/LDC at 5:2 ratio. Posts in UDC/LDC were sanctioned on the basis of the norms prescribed by the second respondent at the ratio 5:2 vide letter No.19-18/81-TE II. dated 30.8.1983, at Annexure-III. Now the applicants are governed by "The Department of Telecommunications, Telecommunications Accounts(Lower Division Clerks, Junior Accountants and Senior Accountants) Recruitment Rules, 1988", Annexure-I which came into effect from 1.4.1987, at the time of the restructuring effective ~~from 1.4.1987~~ UDC/LDC pattern into LDC/JA/SA. Those who were holding the post of UDC on a regular or adhoc basis were deemed to have been appointed to the post of JA. According to the UDC/LDC pattern before the restructuring, a person who had completed 3 years service in LDC was eligible to be promoted as UDC. But after the restructuring and as per the Annexure-I Recruitment Rules, for promotion to the post of JA, a person ^{should} have worked for 8 years in the post of LDC. Under the UDC/LDC pattern there was a total combined strength of 109 posts for the entire

Kerala Telecom. Circle excluding Telephone Districts.

To maintain the 5:2 ratio, there should have been 78 UDCs and 31 LDCs. But by mistake the first respondent maintained the UDC/LDC posts at 75/34. This mistake was not rectified even at the time of restructuring of UDC post to JA/SA posts, with the result ^{that} 3 posts due to be upgraded remained as LDCs. Senior LDCs who were to be promoted against these 3 posts remained as LDCs due to this mistake. The 4th applicant took up the matter with the first respondent who admitted ^{the mistake} in his letter dated 12.12.1988, Annexure-VI. Thereafter by the impugned order dated 2.5.1989, Annexure-VII, the first respondent upgraded 3 posts of LDCs into JA posts with effect from 1.3.1989. In fact as the mistake arose in implementing the direction contained in the letter dated 30.8.1983 the upgradation would have been made effective from the date on which the mistake arose and not from 1.3.1989. By upgrading the 3 posts of LDCs, the UDC/LDC ~~ratio~~ ^{ratio} should have been maintained at 5:2 with effect from a date prior to the restructuring under SA/JA pattern. If the upgradation was made effective from the date on which the mistake arose, the applicants would have been promoted to the post of UDCs long prior to 1.4.1987 and on 1.4.1987 (on) the restructuring, they would have been automatically absorbed as JAs. Now because of the upgradation with effect from 1.3.1989, the applicants

would not be eligible to be promoted as JAs, since according to Annexure-I Recruitment Rules a person should have 8 years of service as LDCs to be eligible to be promoted as JAs. The failure to maintain the ratio at 5:2 was on account of Administrative lapses for which the applicant should not be made to suffer. As the duties attached to the posts of UDCs and LDCs are operative and one and the same, retrospective upgradation is demanded to retrospective promotion of eligible LDCs in the upgraded JA posts with effect from the date of restructuring is feasible and justified. In fact the first respondent had written to the second respondent recommending the case of the applicants for retrospective upgradation and promotion.

Infact the first respondent in his capacity should himself have rectified the mistake and it was not necessary to make any such reference to the second respondent. The applicants 1 to 3 who are the senior most LDCs are highly prejudiced by the non-upgradation of the LDC posts rectifying the mistake on a date prior to 1.4.1987, i.e. the date on which the cadre was restructured. resulting in their loss of promotion. The applicants therefore pray that the impugned order may be set aside and the respondents be directed to upgrade the 3 LDC posts on a date prior to the restructuring and to give the applicant consequential benefits.

3. In the reply statement, the case of the applicants is admitted that 3 more posts of UDCs had to be upgraded as UDCs. But it is contended that the upgradation was not done because of the ban on creation of new posts, and that on lifting of the ban, the posts have been upgraded with effect from 1.3.1989. Regarding the loss sustained by the applicants, it is contended that the mere fact that a person is qualified to be promoted does not clothe him with a right to be promoted, that the applicants 1 to 3 can be promoted only after the LDC posts were upgraded, and that now that the posts are upgraded the applicants did not become eligible for promotion on account of change in the Recruitment Rules which is an accident of service which does not give rise to a legitimate case of action to the applicants. The respondents therefore contend that the application is liable to be dismissed.

4. We have heard the arguments of the learned counsel on either side and have also carefully perused the records produced.

5. In paragraph 4 of the reply statement, the respondents have stated as follows:

"In pursuance of the orders contained in OGP & T ND letter No.15-4/82-TE.II dt.17.9.83 and 13.10.83 all the posts in the Telecom Accounts Unit of Circle Office were brought under 5:2 ratio vide this office Memo No. ES/4-11/82-TA dt.14.11.83. A true copy of

the said letter is produced herewith and marked as Ext.R2. The D.G.P&T ND letter No.15-4/82-TE.II dt.9.5.84 has clarified that 5:2 ratio between UDC/LDC is applicable to pre-check clerks also. Accordingly action was initiated to revise the ratio of pre-check clerks also. On a review, three more posts were found eligible for upgradation to UDC cadre. Even though it was agreed during the review conducted in April 1985 to upgrade three more posts in principle, the same could not be implemented due to the imposition of ban by the Ministry of Finance applicable to all Central Govt. departments including the department of Telecommunications, since upgradation of post would amount to creation of posts."

From the above quoted statement in the reply statement of the respondents it is evident that in the year 1985 itself it was agreed that 3 more posts of LDCs were eligible for upgradation to UDC cadre. The reason why upgradation was not effected, according to the respondents is that there was a ban on creation on posts. The contention that upgradation of the posts of LDCs to UDCs would involve the creation of posts to attract the ban does not appear to be convincing. No order prohibiting an adjustment of the existing posts, upgrading some of the posts has been brought to our notice by the respondents. Had the 3 posts of LDCs been upgraded in 1985, or at least in 1986, the applicants 1 to 3 would have been promoted to that post and as a result by the restructuring effective from 1.4.1987, the applicants would have come-over to the post of JAs. Since that in time, was not done now as the 3 posts have been upgraded, the applicants ~~xxxxxx~~ have become eligible for promotion to

those posts on account of the change in the Recruitment Rules.

The applicants 1 to 3 should not be made to suffer on account of the failure on the part of the respondents to upgrade the posts to maintain the ratio as per rules. The First respondent has in his letter dated 23.11.89, at Annexure-VII explained that some of the senior LDCs who are not eligible for promotion to JA as per new Recruitment Rules, but would have been promoted to UDCs under the 5:2 ratio if the mistake in calculation of the post had been rectified in time.

He has also stated in his letter addressed to Smt. Sadana Dixit, DGM(F&A), SEA Section, Telecom Directorate, New Delhi as follows:

"On a detailed analysis of the whole issue it is felt that Directorate's clarification dt.9.5.84 could be applied at initio. If so, there would be 3 more UDC posts under LD/UD pattern. Eventhough promotions are under FR 22(C) with assumption of higher responsibility, as the erstwhile TA Clerks/ adhoc UDCs/adhoc LSGs as well as LDCs/UDCs and even the present JAs and SAs are performing the same (clerical) operative duties (supervisory function being with JAOs/AAOs only) it is felt that actual promotions with retrospective effect are possible.

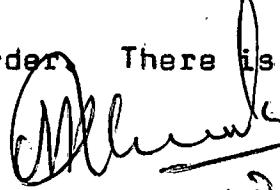
The case is therefore being referred to Directorate for decision as to whether upgradation and promotions as above can be ordered. Being a Union case an early reply is requested."

It is evident from this letter the written by the first respondent that upgradation of the LDC posts to UDC posts and promotion with retrospective effect could be made without any difficulty as the duties and responsibilities of the

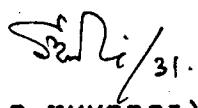
post of UDCs and LDCs are practically one at the same.

Since the upgradation of the posts of 3 LDCs ^{to UDCs grade} was not done solely on account of administrative lapses, it is unjust not to rectify the mistake and not to undo the injustice done to the applicants 1 to 3. Therefore, we are of the view that the respondents have to be directed to upgrade 3 more posts of LDCs retrospectively with effect from the dates on which the other similar posts were upgraded ^{so as} and to maintain the ratio to promote the applicants 1 to 3 when they became eligible to be so promoted retrospectively and to effect the restructuring of the UDC posts as JA/SA under the new scheme.

6. In the result, the application is allowed. The respondents are directed to issue orders upgrading the 3 posts of LDCs to UDCs so as to maintain the 5:2 ratio as provided for in Annexure-III with effect from 31.3.1987 to promote the applicants to UDC posts with effect from that date if they were otherwise found eligible and suitable, and to readjust the restructuring as on 1.4.1987 and to pay the applicants the arrears of salaries and allowances consequent on the above said upgradation and promotion within a period of 3 months from the date of communication of this order. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER

31/12/90


(S.P. MUKERJI)
VICE CHAIRMAN

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