

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No.  
~~XXXXXX~~

264

1990

DATE OF DECISION 30.8.1990

V. Ramankutty Applicant (s)

M/s K Ramakumar & Advocate for the Applicant (s)  
VR Ramachandran Nair  
Versus

Union of India rep. by the Respondent (s)  
Secy., M/o Commns., New Delhi & 3 others

Mr. P. K. Sureshkumar, 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? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Y*
4. To be circulated to all Benches of the Tribunal? *Y*

JUDGEMENT

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

In this application the applicant has prayed that the order dated 25th October, 1989 of the Government of India, Ministry of Communications, rejecting his claim for retrospective promotion to the cadre to TES Group-B from 1973 and the consequential benefits made in his representation dated 31.3.1987 may be quashed and set aside and the respondents may be directed to promote him to the post of Assistant Engineer, Group-B and the Divisional Engineer from the respective dates on which his juniors were promoted to the posts and to grant him all consequential benefits applying the ratio of the decision rendered in Writ Petition No. 2739/81 by the Hon'ble High Court of Allahabad.

...2/-


The facts of the case as averred in the application can be briefly stated as follows.

2. The applicant who joined the Department of Post and Telegraph in the year, 1951 as a Telephone Operator, consequent on passing of a competitive examination, got promotion as Engineering Supervisor. He was promoted to the cadre of Junior Engineer (then known as Engineering Supervisor) against the vacancies of the year 1960. Thereafter, on passing the graduate examination of the Institution of Telecommunications Engineers (India), New Delhi in 1969, he got three <sup>advance</sup> increments. The next grade in the normal course of promotion is Telegraphs Engineering Service, Class-II (Group B). As per paragraph 206 of the Posts and Telegraph Manual, Volume IV, Engineering Supervisors recruited after 1st January, 1929, after serving for five years with good service records were permitted to appear for a Departmental Qualifying Examination intended to test the general ability of the Engineering Supervisors and a pass in this examination is essential for promotion to the Engineering Class-II. It is provided for in this rule that Engineering Supervisors who pass the qualifying examination would rank as group seniors to those who pass the examination on subsequent occasions. The Government of India has also framed Recruitment Rules consistent with the above said paragraph of the Post and Telegraph Manual. The applicant had passed the Departmental Qualifying Examination in 1971. The department had prepared an All India eligibility (seniority)

list of qualified Junior Engineers for consideration by the Departmental Promotion Committee for promotion to TES Class-II. This list was revised after hearing objections and in the revised list the applicant's rank was 185 while the ranks of Shri V.Subramanian, Shri S.Rajagopal and Shri C.G. Johny were 186, 211 and 877 respectively. In the year 1973 some of the Junior Engineers who were junior in service to the applicant were promoted as TES Class-II while the applicant was not promoted. In 1974 also Junior Engineers who had passed the Departmental Qualifying Examination later than the applicant were promoted to TES Class-II while the applicant was not promoted. To the representations made by the applicant on these two occasions he was informed by Annexure-C and E respectively that he would be considered for promotion in due turn. The applicant was promoted on a regular basis to TES Class-II only in the year 1977. In the meanwhile Shri V.Subramanian, Shri Rajagopal and Shri C.G.Johny were promoted as Divisional Engineer in 1984, while the applicant continued as TES Class-II. If the applicant had been promoted in 1973 from the cadre of Junior Engineer to TES Class-II, he would have been promoted to the cadre of Divisional Engineer in Sept., 1984. The nonconsideration of the applicant for ~~the~~ promotion to TES Class-II was illegal based on a wrong interpretation of the Rules. The Recruitment Rules <sup>were</sup> modified in the year 1981. But even according to the amended Recruitment Rules, the Engineering Supervisors who passed the Departmental Qualifying Examination were to be considered as

seniors to those who passed later. As the department was going on promoting Junior Engineers to TES Class-II without regard to the year of their passing of the Departmental Qualifying Examination, this procedure was challenged before the Allahabad High Court in the Writ Petition No. 2739/81 (Paramanand Lal Vs. Union of India.). The Hon'ble High Court relying on paragraph 206 of the Post and Telegraph Manual held that Junior Engineers who had passed the qualifying test/and included in the eligibility list cannot be passed over and deprived of their right for promotion. Though SLP was filed against the decision of the Allahabad High Court, the same was dismissed by the Supreme Court confirming the judgement of the High Court. In view of the decision of the Allahabad High Court, which is confirmed by the Hon'ble Supreme Court, the denial of promotion to the applicant in 1973 was illegal. Having earned the rank No.185 in the eligibility list of 1973, having passed the Departmental Qualifying Examination earlier, the applicant was entitled to be promoted in the year, 1973 before his juniors were promoted. About more than 986 persons juniors to the applicant in the eligibility list had come above him in TES Class-II cadre and about 150 of them have been promoted to the cadre of Divisional Engineers. Pointing out the decision of the Allahabad High Court in the Writ Petition, the applicant made a representation on 31.3.1987 to the second respondent requesting to rectify the mistake and to redress his grievances. Finding no response, the applicant

...5/-



filed OA K-9/88 before this Tribunal in December, 1989, seeking appropriate relief. This application was finally disposed of by this Tribunal directing the respondents to dispose of the representation of the applicant dated 31.3.1987 in the light of the decision of the Allahabad High Court and also as in the case of OA K-493/88 and OAK 494/88. Pursuant to the directions, the Assistant Director General (SGT) has now issued the impugned order at Annexure-J to Shri U.V.Nayak, Chief General Manager, Kerala Circle, Trivandrum stating that the judgement of the Allahabad High Court in Writ Petition No.2739 of 1981 related to two individuals officers only, that it was not possible to revise the seniority of the officers in the grade of TES Group at this stage. Aggrieved by the above order, the applicant has filed this application. It has been averred in the application that the decision contained in the Annexure-J order is arbitrary, discriminatory and illegal, since the legal position explained in the Writ Petition No.2739/81 has not been considered and applied in the case of the applicant. It is further averred that, as the applicant in the Writ Petition No.2739/81 filed before the Hon'ble High Court of Allahabad was a person far junior to the applicant, the respondents have gone wrong in not extending to him the benefits given to the applicant in that case <sup>by</sup> applying the same principle. According to the applicant, this decision is opposed to principles of natural justice and violative of Articles 14, 16 and 21 of the Constitution of India.

3. We have heard the arguments of the learned counsel appearing for the applicant. As the applicant was to retire from service in July, 1990, the respondents were directed to file reply affidavit within 5 weeks and the case was posted before the Division Bench for hearing on 12.7.1990. The respondents did not file the reply statement on that date. On a request made on behalf of the respondents on 12.7.1990 further time was given for filing the reply statement and the case was again posted for hearing on 23.7.1990. But when the case came up for hearing on 23.7.1990, Shri PK Sureshkumar, ACGSC submitted that he was not aware as to who gave an undertaking that counter<sup>affidavit</sup> would be filed within 10 days of 12.7.1990, and that he was not ready to get on with the case. Anyway, on the basis of the above statement by the learned ACGSC, the case was adjourned and a specific direction was given that the counter affidavit, if any, should be filed within 3 weeks with a copy to the applicant, and that the case would finally be heard on 20.8.1990. It was also made clear that there would not be further adjournment in the matter. On 20.8.1990, when the case came up for hearing, it was noticed that the counter affidavit on behalf of the respondents had not yet been filed. Shri Sureshkumar, ACGSC was also absent. Anyway, on his behalf Mr. Muhammed proxy counsel appeared. As no reply statement was filed, we heard the argument of the learned counsel for the applicant and also of Shri Mohammed, proxy counsel for Shri Sureshkumar, ACGSC. Shri Ramachandran Nair, the

learned counsel for the applicant argued that in terms of paragraph 206 of the Post and Telegraph Manual, the Engineering Supervisors who had passed the Departmental Qualifying Examination earlier should rank senior to those who passed the Departmental Qualifying Examination subsequently and that as the applicant passed the Departmental Qualifying Examination and had been placed at Sl.No.185 in the seniority list, the respondents had gone wrong in overlooking his case for promotion and promoting persons who were far juniors to him. The learned counsel invited our attention to Annexure-F, a copy of the judgement in the Writ Petition No.2739/81 on the file of the Hon'ble High Court of Allahabad wherein the claim of the Engineering Supervisors who had passed the Departmental Examination earlier than those promoted to TES Class-II against the principle laid down in paragraph 206 of the Post and Telegraph Manual has been allowed and submitted that the respondents have gone wrong in not extending this benefit to the applicant. The learned counsel also invited our attention to the decision of this Bench of the Tribunal in OA K-112/88 and OA K-603/88 and OA K-605/88 to which both of us were parties where when identical question came up for consideration we held that those who had passed the Departmental Qualifying Examination earlier should be considered first for promotion to the post of TES Class-II. The decision of the Allahabad High Court that in considering the Engineering Supervisors for promotion to TES Class II, those who had passed the Departmental Qualifying

Examination earlier should rank enblock senior to those who passed subsequently and the consideration for promotion should be according to this seniority has been upheld by the Supreme Court and the Special Leave Petition (SLP) filed by the Union of India has been dismissed. Annexure-G is a copy of the order of the Supreme Court dismissing the SLP. In this case, the case of the applicant that the persons who passed the Departmental Qualifying Examination latter than him and who were included in the seniority list lower down had been promoted to TES Class-II in the year 1973 and 1974 overlooking his superior claim for promotion has not been controverted since the respondents did not file any reply statement. If the applicant had been considered for promotion in 1973 alongwith persons junior to him who were promoted to TES Class-II, he would have been promoted long before 1977 and should have been further promoted to the post of Divisional Engineer at least when persons junior to him were promoted to that post in 1984. Consistent with the ruling of the Allahabad High Court in the Writ Petition No.2739/81 which was upheld by the Hon'ble Supreme Court, we had in Original Application No.K-112/88 and K-603/88 and K-605/88 held that the department was bound to promote Junior Engineers who had passed the Departmental Qualifying Examination on an earlier date than those who had passed the examination later, though the latter were seniors in the cadre of Junior Engineers. As a result in OA K-112/88 and 603/88 and 605/88 we directed the respondents



to promote the applicants in those cases with effect from the date prior to the date of promotion of any Junior Engineer to Telecom Engineer Group-8 service who passed in the Departmental Promotion Examination subsequent to passing Departmental Qualifying Examination by the applicants to adjust their seniority accordingly and to pay them the pay and allowances with effect from retrospective dates. We do not find any reason to deviate from this decision. It is obvious that in the Annexure-J order, the authority concerned has not considered the question on merits on the basis of the ruling of the Allahabad High Court which is confirmed by the Supreme Court. It is also incorrect to say that the benefit would be available only to the two individuals who were parties to the Writ Petitions because the benefit was conferred to them on legal principles. The same principles should be applied to persons placed in similar circumstances and therefore, there is no reason why the applicant should be discriminated.

4. Shri Muhammed, proxy counsel for ACGSC submitted that even if the applicant was entitled to be considered for promotion to TES Class-II in 1973, since it was not done and since several years have elapsed since then, to consider him for promotion with retrospective effect to TES Class-II and also to the post of Divisional Engineer would affect the seniority of several persons, and that, therefore, such a relief cannot be granted to him. We are not in a position to agree with this argument. The Supreme Court did not find any reason to interfere with

the ruling of the Allahabad High Court in the OP 2739/81 though that unsettled the seniority list. Further in this case as the applicant has already retired from service now nobody will be prejudiced by revising his seniority and giving him the consequential monetary benefits.

5. In the result, the application is allowed. The Annexure-J order dated 25.10.1989 of the Ministry of Communications is quashed and the respondents are directed to consider the applicant for promotion:

i) to TES Group B on the date on which any Junior Engineer who had passed the Department Qualifying Examination subsequent to the passing of the examination by the applicant have been promoted.

ii) to the post of Divisional Engineer with effect from the date on which any person junior to him (who has passed the Departmental Qualifying Examination subsequent to him and shown below him in the seniority list of Junior Engineers) had been promoted to the post of Divisional Engineer

if selected

and to promote him to the respective post with effect from the respective dates and to pay him pay and allowances and to refix his retirement benefits accordingly. Action in the above lines should be completed within a period of three months from the date of communication of this order.

There is no order as to costs.

  
(A.V. HARIDASAN)  
JUDICIAL MEMBER

  
(S.P. MUKERJI)  
VICE CHAIRMAN

30.8.1990

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

CP(C)No.169/92 in O.A.264/90

DATE OF DECISION: 5th October, 1993.

V.Ramankutty

.. Petitioner

Mr. V.R.Ramachandran Nair

.. Advocate for petitioner

Versus

1. B.R.Nair, Director General,  
Telecom Department,  
New Delhi.

.. Respondent

Mr.Ajith Prakash rep.Sr.CGSC..Advocate for respondent.

CORAM

The Hon'ble Mr.Justice Chettur Sankaran Nair, Vice Chairman

The Hon'ble Mr.R.Rangarajan, Administrative Member

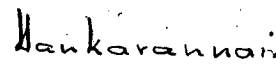
JUDGMENT

Chettur Sankaran Nair(J), Vice Chairman.

Part of the directions have been complied with.  
However, it is said that arrears have not been paid due to  
the pendency of a Civil Appeal in the Supreme Court. If after  
the disposal of the Civil Appeal, petitioner has any further  
grievance, he is free to approach this Tribunal. Reserving  
freedom to do so, the Contempt Petition is dismissed. No costs.

Dated the 5th October, 1993.

  
R.RANGARAJAN  
Administrative Member

  
CHETTUR SANKARAN NAIR(J)  
Vice Chairman

ks5X.

Сер. 43/91

8.7.91

7.8.91

16-8-91

*W. S. S.*

20-9-91

Copy sent on 2/29/91

A  
ang  
no more  
Adj to 21-91  
by n. r. e.

SPM & ND

Mr A A Abul Hassan AGSC for respondents.

(3)

Neither the petitioner nor his counsel is present. The learned counsel for respondents indicated that as directed by this Tribunal the applicant was considered for promotion to TES Group-B but was not selected. Accordingly the C.C.P. is closed and the notice on contempt is discharged.

*Stall*

11/11/91

NVK & ND

Mr. K. Ramakumar by proxy  
Mr. A A Abul Hassan, AGSC by proxy

We have heard M.P. 1555/91 filed by the applicant in CCP 43/91 in O.A. 264/90. On 11.11.91 when neither the petitioner nor <sup>his</sup> the counsel was present, the CCP was heard when the learned counsel for the respondents indicated that the orders of the Tribunal have been complied with and the applicant was considered for promotion to Group-B but was not selected. That being the case, the CCP was closed and the notice on contempt was discharged.

2. In the present M.P. the applicant prays that in the interest of justice the ex parte order may be set aside and the CCP may be heard again.

3. We have heard the parties and perused the records. We notice that on the last occasion the respondents satisfied the Court that the order of the Tribunal has been complied with and therefore ~~there is~~ nothing survives for adjudication in the Tribunal. In the circumstances the

F.O.

13/11/91  
mm


(18)

~~MP~~ was dismissed.

of implementation

4. If the applicant has any grievance against the order, it is for him to <sup>take</sup> such further action as <sup>is</sup> deemed fit or advised.

5. In this circumstances, we dismiss the M.P. No. 1555/91.

  
2.12.91

MP in CEX 43/31  
in O.P. 264/90  
R 3/12

mr CS  
I.O. - 1555/91  
on 5/12/91