

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 300/99

Tuesday, this the 11th day of September, 2001.

CORAM

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P.K.Jayaprakash Narayan
S/o Raghavan Nair
Junior Telecom Officer(PCM)
Telephone Exchange
Palakkad-14.
(Residing at 'Athira', Kadavath,
Parali, Palakkad.

Applicant.

[By advocate Mr.M.R.Rajendran Nair]

Versus

1. The General Manager,
Telecom, Palakkad.
2. The Chief General Manager, Telecom
Kerala Circle,
Trivandrum.
3. The Union of India represented
by its Secretary to Government of India
Ministry of Communications
New Delhi.
4. Bharath Sanchar Nigam Limited
represented by the Chief General Manager, Telecom
Kerala Circle, Trivandrum. Respondents.


[By advocate Mr.T.A.Unnikrishnan, ACGSC]

The application having been heard on 11th September,
2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A-1, to declare that he is
entitled to get notional promotion as Technician (Higher Grade)
with effect from 15.4.76 and to direct the respondents to
restore his notional promotion with effect from 15.4.76 with
consequential benefits.



2. Applicant is working as Junior Telecom Officer. He commenced service as a Technician on 15.4.66. He was promoted as Phone Inspector with effect from 14.3.77. He was confirmed in that cadre with effect from 1.3.80. On completion of 10 years in that cadre he was liable to be promoted as higher grade technician subject to his being in the zone of consideration and subject to availability of vacancy. He submitted a representation to the department and when the department failed to respond positively he approached this bench of the Tribunal by filing OA 71/95. During the pendency of the OA respondents on their own granted him notional promotion as Higher Grade Technician with effect from 15.4.76 and filed a statement to that effect. In the light of the statement the OA was disposed of. Subsequently certain others filed OA 1475/95 and OA 1226/95 claiming notional promotion as Higher Grade Technicians with effect from 15.4.76. The department submitted in that OA that the applicant's notional promotion as Higher Grade Technician with effect from 15./4.76 was a mistake and they are intending to rectify the same. Since nothing happened thereafter some of the applicants in the said OAs filed OA 49/97. In the meantime the Divisional Engineer issued a show cause memo dated 29.11.96/2.12.96 to the applicant proposing to revise his date of notional promotion as 27.12.77 as per A-3. He submitted a representation A-4 against A-3. As per A-1 his explanation has been rejected.



3. The respondents resist the OA contending that A-1 does not suffer from any legal infirmity. Eligibility for promotion to higher grade after 10 years of service is not automatic. The applicant filed OA 71/95 before this bench of the Tribunal and then he was notionally promoted to higher grade technician with effect from 15.4.76 with all consequential benefits as per letter dated 19/25-1-95. It was actually an error which was detected only later when many applications came for consideration before this bench of the Tribunal. Applicant is entitled to promoted only with effect from 27.12.77. The reason as to why the erroneous fixations is changed is clearly mentioned in A-1.


4. A-2 is the copy of the statement filed by the respondent in OA 71/95 filed by the very same applicant before this bench of the Tribunal. The applicant therein sought the relief to declare that he is entitled to be promoted as higher grade technician with effect from 1.4.76. Respondents as per A-2 clearly admitted that the applicant was granted promotion as higher grade technician with effect from 15.4.76 the date on which he completed 10 years of qualifying service and he was granted all consequential benefits including fixation of pay and payment of arrears. That OA was disposed of on the basis of A-2 statement.



5. Now the stand taken by the respondent is that because of a mistake it was so stated as per A-2 that the applicant was promoted with effect from 15.4.76 and he is eligible for promotion with effect from 27.12.77. What is the legal position in such a situation is clearly laid down in Balbir Singh Vs. State of H.P. and others [2000 SCC (L&S) 372] wherein it has been held thus:

"It is surprising to note that prior to the disposal of the writ petition filed by Shri Walia, the appellant herein was reverted vide order dated 2.7.88 allegedly on the ground that he had been promoted erroneously under a mistaken belief. The record reveals that the respondent State had taken a conscious decision to promote the appellant and was, therefore, not justified in reverting him allegedly on the ground of non-availability of reservation as per instructions of the Government. The respondents cannot be permitted to blow hot and cold in the same breath inasmuch as in the petition filed by Mr. Walia they justified the promotion of the appellant by stating that he was deprived of his promotion erroneously and when the question of his promotion came, it took the same plea of erroneously promoting him under a mistaken belief. It is on record that till the promotion of the appellant as Junior Engineer seven such posts had been filled up by promotion meant for various categories including Electrician Grade I from 10% promotion quota. He had been promoted upon his representation which was duly considered and appropriate orders passed in his favour. It is conceded before us that after his promotion the appellant has continuously been holding the post of Junior Engineer. The Tribunal appears to have misdirected itself by not taking note of the relevant facts of the case and the stand of the Government justifying the promotion of the appellant which was upheld by the High Court in the writ petition filed against him.

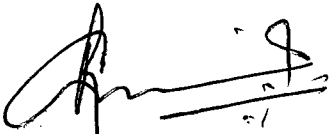
Under the peculiar circumstances of this case, as noticed hereinabove, the appeal is allowed by setting aside the orders of the Tribunal dated 11.8.89 and the orders of the respondents State dated 2.7.88 by which the appellant was reverted to the post of Electrician Grade.I. No order as to costs."



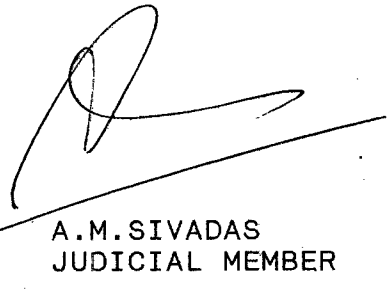
6. In the light of the said ruling, A-1 cannot be sustained. Accordingly A-1 is quashed.

7. The OA is disposed of as above. No costs.

Dated 11th September, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

aa.

APPENDIX

1. Annexure A1: Copy of the Memo No.STA/42/Genl/91-97 dt. 4.12.98 issued by the AGM for the 1st respondent.
2. Annexure A2: Copy of the statement dated 31.3.95 in the OA-71/95 filed by the respondents.
3. Annexure A3: Copy of the show cause memo dt. 29.11.96/2/12 No.Q-3859/157 issued by the Telecom District Manager, Palakkad.
4. Annexure A4: Copy of the representation dt.24.4.97 submitted by the applicant to the 1st respondent.
5. Annexure A5: Copy of the Pay Fixation Statement dt.24.8.95 No.Q-3859/140 issued by the Accounts Officer(Cash), O/o the Telecom District Manager, Palakkad.
6. Annexure A6: Copy of the Pay Fixation Statment dt.31.1.96 issued by the A.O.(Cash), O/o the Telecom District Manager, Palakkad.