

HON'BLE

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 300 of 2002

Thursday, this the 14th day of November, 2002

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. S. Krishnakumar,
S/o Sankaran Nair,
Telecom Technical Assistant/Installation Wing,
Thiruvalla, residing at Chalackappalli Thundiyil,
Peringara,
Thiruvalla.Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of Communications,
(Department of Telecommunications), New Delhi.

2. The Director General (Telecommunications),
Bharat Sanchar Nigam Ltd., New Delhi.

3. The Chief General Manager Telecommunications,
Bharat Sanchar Nigam Ltd., Trivandrum.

4. The General Manager (Telecommunications),
Bharat Sanchar Nigam Ltd., Thiruvalla.

5. O.I. Philip, Telecom Technical Assistant,
Pathanamthitta Secondary Switching Area,
Bharat Sanchar Nigam Ltd., Thiruvalla.Respondents

[By Advocate Mr. P. Vijayakumar, ACGSC (R1 to R4)]
[By Advocate Mr. Shafik M.A. (R5)]

The application having been heard on 14-11-2002, 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 is a Diploma holder in Electrical
Engineering was initially appointed as a Technician in the
Telecom Department on 15-6-1981. The cadre of Technician was a
circle cadre at that time. He was working at Ernakulam and
opted for Pathanamthitta Division on bifurcation and making the

cadre divisional cadre. Immediately on joining Pathanamthitta Division at Thiruvalla the applicant opted to work in the Installation Wing of the department on deputation and he was posted at Ernakulam on 11-10-1985. In 1995, the Installation Wing was also divisionalised and was made a separate cadre. The applicant was thereafter sent back to his parent division Pathanamthitta. He came to know that Shri O.I.Philip, the 5th respondent who was junior to the applicant in the Technician cadre in Pathanamthitta Division, who was also a Diploma holder in Engineering, was sent for training and was appointed as Telecom Technical Assistant (TTA). The applicant, therefore, submitted a representation seeking absorption in the TTA cadre with effect from the due date. He subsequently submitted an option on 27-9-1995. Accepting the option, the applicant was sent for training and was appointed as TTA with effect from 9-11-1996. Finding that the applicant was given placement in the seniority of TTAs much lower than his juniors and his pay had, therefore, been fixed lower, the applicant submitted Annexure A1 representation seeking appropriate placement in the seniority of TTAs as also for re-fixation of his pay. On a consideration of his representation, by Annexure A2 order dated 17-4-1998 the applicant's grievance was redressed and his pay was fixed as TTA with effect from 6-2-1994 on par with his junior Shri P.S.Basheer Khan. Subsequently the applicant participated in the screening test for promotion to the post of Junior Telecom Officer (JTO) and was placed at Sl.No.6 in the merit list Annexure A3 in the year 2000. Finding that persons junior to the applicant had been sent for training preparatory to the appointment as JTO, the applicant submitted Annexure A4 representation to the General Manager Telecom, Pathanamthitta on 28-11-2001. Finding no response, the applicant filed OA No.98/2000 seeking to quash orders sending the 5th respondent for training for promotion to the post of JTO in preference to

him, for a declaration that he was entitled to be sent for training for promotion to the post of JTO and to be considered for consequential promotion in preference to the 5th respondent and for directions accordingly. The OA was disposed of directing the 4th respondent to consider the representation of the applicant. In obedience to the above direction contained in the order of the Tribunal in the OA, Annexure A6 order was issued by the 4th respondent informing the applicant that his pay had been fixed notionally with effect from 6-2-1994 i.e. the date of appointment of Shri P.S.Basheer Khan, TTA his junior in the Technician cadre, that as the 5th respondent Shri O.I.Philip had qualified in the screening test which was held on 29-1-1995, the applicant was not entitled to be sent for training on par with him, that recognizing his notional fixation with effect from 6-2-1994 the applicant has been treated as first in the merit list Annexure A3, that he would be sent for training in due course and that the seniority would be fixed on the basis of the post-training marks obtained for the particular recruitment year. Aggrieved by this, the applicant has filed this Original Application seeking to have the order sending the 5th respondent for training in preference to him set aside, for a declaration that he is entitled to be sent for training and considered for promotion to the post of JTO in preference to the 5th respondent or at least on par with him and for a direction to the respondents to grant him consequential benefits of the said declaration and to quash Annexure A6 to the extent it denies consideration to the applicant for promotion to the post of JTO in preference to the 5th respondent.

2. When the Original Application came up for hearing today, learned counsel of the applicant stated that the applicant is claiming a direction for sending him for training

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and for appointment to the post of JTO on par with the 5th respondent and does not claim any relief against the 5th respondent.

3. Respondents 1 to 4 in their reply statement contend that the 5th respondent was appointed as TTA with effect from 24-9-1994 as he exercised option in the year 1993 itself, that the applicant exercised his option only in the year 1995 and that when the 5th respondent was screened in 1995 the applicant was not there in the cadre of TTAs and therefore, the applicant is not entitled to be sent for training along with the 5th respondent. It has also been contended that this Bench of the Tribunal had in the judgement in OA No.496/2002 and OA No.524/2002 held that those who have been successful in the first screening test have to be sent for training first and the applicants in those cases could be sent for training only in their turn and that the position of the applicant in this case being identical, he is not entitled to the relief sought.

4. The 5th respondent did not file any reply statement.

5. We have gone through the entire pleadings and the materials placed on record and have heard Shri O.V. Radhakrishnan, learned counsel of the applicant, Shri P. Vijaya Kumar, learned ACGSC appearing for respondents 1 to 4 and Shri Shafik M.A, learned counsel appearing for the 5th respondent.

6. The applicant on the basis of the notional appointment and fixation of pay as TTA with effect from 6-2-1994 by Annexure A2 order claims that he should be treated on par with the 5th respondent, although he was screened only in the year 2000, because by Annexure A2 order his seniority has been restored. According to the applicant, he could not exercise

option to come to the restructured cadre of TTA at the appropriate time for want of information of the opportunity to opt as in the office where he was working, viz. Installation Wing at Ernakulam, the notice of option was not exhibited. Learned counsel of the applicant argued that from what transpired after the applicant's representation regarding his willingness to come to the restructured cadre of TTA and his request for appropriate placement in the seniority list and the action of the competent authority in recognizing the real facts and granting him appointment and fixation of pay with effect from the date on which his junior Shri Basheer Khan was appointed as TTA, the applicant has to be deemed to have come into the TTA cadre with effect from 6-2-1994 and he is, therefore, entitled to all consequential benefits including the consideration for promotion to the post of JTO on par with the 5th respondent. Learned counsel of the applicant stated that Shri Basheer Khan having not qualified in the first screening test was not sent for the first batch of training, whereas the 5th respondent who was junior even to Shri Basheer Khan because he qualified in the first screening test has been sent for JTO training in 2001 and the applicant also, therefore, is entitled to equal treatment as the 5th respondent. Shri P.Vijaya Kumar, learned ACGSC appearing for respondents 1 to 4, on the other hand argued that the case of the applicant that he was prevented from exercising his option cannot be accepted, that by Annexure A2 order what was granted to the applicant was only a notional fixation of pay and not seniority and, therefore, his claim for equal treatment with the 5th respondent is not tenable. He referred to us to the judgement of this Bench of the Tribunal in OA No.496/2002 and OA No.524/2002, wherein it was held that persons who qualified in the second screening test could be sent for training in their turn and not along with those who passed in the first screening test.

7. The argument of the learned counsel of the respondents 1 to 4 that by Annexure A2 the applicant has been given only a notional fixation of pay and that it does not confer on him any seniority with effect from 6-2-1994 in the cadre of TTA cannot hold water. Fixation of pay is a recognition of the seniority position. It is a well accepted principle that the pay of the senior is to be stepped up on par with the junior and not vice versa. It is recognizing the fact that the applicant was senior to Shri Basheer Khan who was appointed as TTA with effect from 6-2-1994 and that the applicant's pay was revised in the TTA cadre with effect from that date on par with Shri Basheer Khan. From Annexure A6 order also it is seen that seniority of the applicant above Shri Basheer Khan has been recognized and that was why it was stated that the applicant's name deemed to be at Sl.No.1 in the merit list Annexure A3. Therefore, the contention that the applicant cannot claim seniority as TTA with effect from 6-2-1994 is only to be rejected.

8. The next question is whether the applicant having been screened only on the subsequent occasion is entitled to be sent for training and considered for appointment on par with the 5th respondent who had been screened in the year 1995 itself. On this point, the learned counsel for respondents 1 to 4 relied on the judgement of this Bench of the Tribunal in OA No.496/2002 and OA No.524/2002. In paragraph 5 of the said judgement, it was observed as follows:-

"... We have heard the learned counsel appearing on either side and have gone through the pleadings and materials on record. We do not find any reason to interfere with the impugned orders in these cases. Since the applicants were not TTAs as on 3.1.95 in terms of Annexure R.1 they could not have been sent for the first screening test and as a matter of fact they have not been sent for the first screening test also.

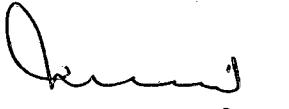
Their claim for appearing in the first screening test was rejected by order dated 11.1.95 (A2 in OA 524/02 and A3 in OA 496/02). The applicants did not challenge these orders at the appropriate time. Under these circumstances, those who have been successful in the first screening test have got to be sent for training first and the applicants can be sent for training only in their turn. ..."

9. The facts of this case are entirely different from the facts of the cases under citation. In those cases, the first screening test was held for those who were TTAs as on 3-1-1995 and applicants in those cases even on retrospective appointment as TTAs were appointed as TTAs only with effect from 19-1-1995. It is taking note of that situation it was held that the applicants in those cases were not entitled to be sent for training along with the first batch. In the instant case, by reason of Annexure A2 order the applicant has become TTA with effect from 6-2-1994. The applicant could not be sent for screening test on 29-1-1995 because at that time he had not been actually appointed as TTA. By reason of the retrospective appointment and restoration of seniority the applicant had become eligible to be sent for training on 29-1-1995. Since his not being sent for the screening on that date was for reasons beyond his control, we are of the considered view that he should not be placed at a detriment. Since the applicant is senior in the cadre of TTA even to the 5th respondent, we are of the considered view that the applicant is entitled to be considered for appointment as JTO on par with the 5th respondent. Since the applicant has been sent for training on the basis of the interim order of the Tribunal, we are of the considered view that now the Original Application can be disposed of with appropriate directions.

10. In the light of what is stated above, the Original Application is allowed in part, declaring that the applicant on the basis of his seniority as TTA with effect from 6-2-1994 is

entitled to be considered for promotion to the post of JTO on par with the 5th respondent. We direct the respondents to consider the applicant for promotion as JTO on successful completion of the training on par with the 5th respondent with consequential benefits. No order as to costs.

Thursday, this the 14th day of November, 2002


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

Ak.

APPENDIX

Applicant's Annexures:

1. A-1: A true copy of the representation dt.18.11.97 submitted by the applicant to the 4th respondent.
2. A-2: A true copy of the Memo bearing No.G.220/TLA/44 dt.17.4.98, issued from the office of the 4th respondent.
3. A-3: A true copy of the list of qualified officials for Junior Telecom Officer Screening Test-2000 (Kerala Telecom Circle) published from the office of the 3rd respondent.
4. A-4: A true copy of the representation dated 28.11.2001 submitted by the applicant to the 4th respondent.
5. A-5: A true copy of the order dated 4.2.2002 in O.A.No.98/2002 of this Hon'ble Tribunal.
6. A-6: A true copy of the letter NO.E.15/TTA Rectt/97-02/66 OF 3.4.2002 issued by the 4th respondent.

Respondents' Annexures:

1. R-1: True copy of the letter dated 6.12.93 calling options from the eligible staff to get into the TTA Cadre.
2. R-2: True copy of the option in response to R-1, submitted by 5th respondent.
3. R-3: True copy of the letter dated 18.9.95 calling option from the Technicians for a 2nd time to induction into the TTA Cadre.
4. R-4: True copy of the option submitted by the applicant on 27.9.95.
5. R-5: True copy of the results in JTO Test on 29.1.95, where the 5th respondent got qualified.

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28.11.02