

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 316/2000

THURSDAY, THIS THE 2nd DAY OF MAY, 2002

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

P. Nalinakumari
Telegraphist
Office of the General Manager,
Telecom District
Trivandrum-695 023.

Applicant

By advocate Mr. Thomas Mathew

Vs.

1. Union of India represented by
its Secretary
Department of Telecom
New Delhi.
2. Chief General Manager
Telecom
Trivandrum-695 033
3. General Manager,
Telecom district
Trivandrum-695 023
4. Senior Superintendent
Telegraph Traffic Division
Trivandrum.
5. Director (ST-1)
Department of Telecommunication
Sanchar Bhavan
New Delhi.
6. Sushama Raman
Telegraphist
Office of the Sr. Superintendent
Telegraph Traffic Division
Trivandrum.
7. Chairman-cum-Managing Director
Bharat Sanchar Nigam Ltd. (BSNL)
New Delhi.

Respondents

By Advocate Mr. S.K. Balachandran, ACGSC for R1-5 & 7

The Application having been heard on 9.4.02 the Tribunal
delivered the following on 2.5.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant aggrieved by A-11 order dated 15.11.99 issued by the 5th respondent filed this Original Application seeking the following reliefs:

(i) Call for the records leading to the issue of Annexure A-11 and quash the same

(ii) Declare that the applicant is entitled to get seniority and fixation of pay with effect from 7.11.1988 or with effect from 23.12.1988, i.e. the date on which the last candidate in the same select list in which the applicant was also included was granted seniority and pay and direct the respondents accordingly.

(iii) Grant such other reliefs which this Hon'ble Tribunal may deem fit and just to grant in the circumstances of the case and

(iv) Award costs to the Original Application.

2. According to the applicant's averment in the Original Application she is a member of Scheduled Caste, working as Telegraphist in the office of the third respondent at the time of filing the Original Application. She was selected for training and appointment to the cadre of Telegraphist (RTP) for the year 1983 after passing the prescribed test along with other 12 candidates. She was selected for appointment against the vacancy earmarked for Scheduled Caste. Ten candidates were called for training in the first batch. The select list was subsequently cancelled after deputing all the unreserved candidates for training. Aggrieved by the non-feasance and malfeasance and discriminatory attitude on the part of the respondents applicant filed O.A. No. 541/1989 before this Tribunal. The said OA was disposed of by this Tribunal by order dated 26.2.90 with the direction to the respondents to depute the applicant for training and absorb her in a vacancy of Telegraphist at Trivandrum Telegraph Traffic Division.



Pursuant to the order of this Tribunal the applicant was sent for training and appointed as Telegraphist w.e.f. 16.4.91 and posted at Central Telegraph Office, Quilon as per A-3 order dated 2.5.91. Subsequently, she made representation dated 30.1.92 requesting that her seniority be fixed taking into account her position in the panel and adhering to the inter-se merit. The said representation was rejected by A-4 letter dated 9.3.92 of the 4th respondent. The applicant submitted A5 representation dated 16.6.94. The said representation was rejected by A-6 reply dated 3.8.94. Aggrieved by A-6 order the applicant made A-7 representation dated 26.5.95 to the Chief General Manager, the 2nd respondent herein. She sent further A-8 representation to the Secretary, Department of Telecom on 16.9.96. She received a letter dated 10.6.97 from the 4th respondent advising her that her representation was forwarded to the Secretary, Department of Telecom, New Delhi. Subsequently, the second respondent as per his letter dated 12.8.97 passed an order rejecting her representation. Applicant filed O.A. 1631/97 challenging the order dated 12.8.97 and praying for a declaration that she was entitled to get seniority and pay fixation w.e.f 1988. In the reply statement filed by the respondent it was stated in para 5 that one Sushama Raman was appointed on 15.10.90 against SC vacancy and applicant could not claim seniority over the said Smt. Sushama Raman, Aggrieved by this the said Sushama Raman was impleaded as addl. respondent No. 5 amending the O.A. This Tribunal by order dated 13.8.99 quashed the impugned order and permitted the applicant to submit a representation within two weeks and the first respondent was directed to consider the representation of the applicant dated 16.9.96 along with the supplemental representation and pass a speaking order within two months from the date of receipt of the supplemental



representation or from the date of receipt of a copy of the order whichever was later. In compliance with the direction in A-9 order, the 5th respondent passed A-11 order dated 15.12.99 rejecting the representation of the applicant. In the above background applicant filed this O.A. seeking the above reliefs. Applicant assailed A-11 on the ground that the same was illegal, arbitrary, unjust, unfair and in violation of Article 14 and 16 of the Constitution of India. A-11 order passed by the 5th respondent was without jurisdiction. The respondents ought to have deputed the applicant for training as per A1 OM of the Department of Personnel and Administrative Reforms. But contrary to the direction in A1 order the respondents deputed Smt. B. Sunitha Kumari in the panel for training and subsequently appointed her as Telegraphist w.e.f. 7.11.88 denying the applicant - a member of the Scheduled Caste - her legitimate claim for training and appointment at the relevant time. According to her as she was not sent for training in contravention to the relevant rules, and appointed only w.e.f. 16.4.91, she was entitled to seniority and fixation of pay from the date on which Smt. B. Sunitha Kumari was appointed as Telegraphist. The applicant could not be put to suffer owing to the failure to do the duty cast upon the respondents in time. Hence she was entitled to get seniority and fixation of pay as given to other candidates in the select panel. The action on the part of the respondents in giving seniority to Smt. Sushama Raman over the applicant based on the date of appointment was illegal, arbitrary and in violation of Article 14 and 16 of the Constitution. The applicant was a selected candidate of 1983 panel whereas Smt. Sushama Raman was a selectee of subsequent year. She also relied on A-12 interim order dated 30.10.89 in M.P. 651/89 passed by this Tribunal. The OA was also allowed by order

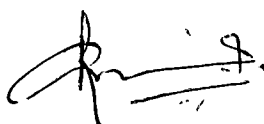


dated 26.2.90 directing the respondents to absorb the applicant as Telegraphist in Trivandrum Division. In the circumstances, the seniority given to the 6th respondent over the applicant was arbitrary and in violation of Article 14 and 16 of the Constitution of India.

3. Respondents filed reply statement resisting the claim of the applicant. It was submitted that as per the direction of this Tribunal contained in A-9 the 5th respondent after carefully considering the case sympathetically passed A-11 orders. It was submitted that a total of 18 candidates were selected (OC-13, SC-2, ST-1 Ex-Servicemen-2) The applicant was selected as the second candidate against SC quota. The training class was ordered for the training of RTP telegraphists commencing from 23.7.84 by the Chief General Manager, Telecom, Trivandrum in which 10 seats had been allotted for Trivandrum Division. One left over candidate from 1982 recruitment batch and 9 candidates from 1983 select list strictly on the basis of their merit in the select list had been deputed for the training. Having a lower position in the merit list, none of the SC candidates was sent for training in that batch. As the anticipated vacancies did not occur due to reduction in work load due to modernisation of telegraph net work and also due to reduction in staff consequent on the implementation of One Time Bound Promotion, no further training course was conducted for the remaining candidates. Consequently the remaining list was cancelled by Chief General Manager, Telecommunication Trivandrum by R-1 order. It was submitted that as stated in A1, the reservation roster was prescribed for determining the number of vacancies to be reserved for SC/ST in any particular examination or recruitment and not for determining the order of actual appointment or for the purpose of determining



seniority. It was submitted that out of the 10 candidates deputed for training only 8 turned up for training. On completion of the training they had been allotted to different CTOs in the division to be engaged as RTP telegraphist as per requirement. At the time of their regular appointment only 3 candidates were available and they were appointed as Telegraphists in 1988 and they had been appointed against communal roster points 56 to 58. The roster points upto 55 had been filled up by candidates from 1982 recruitment. The extract of the communal register from Roster point 56 are furnished for ready reference. The communal roster points 59 to 64 were filled by temporarily accommodating the trained RTP candidates from Ernakulam Telegraph Traffic Division in accordance with the policy of the department to absorb all the trained RTP telegraphist candidates existing as on date. For want of vacancies in Ernakulam division these trained candidates could not be accommodated in the posts sanctioned in Trivandrum. Smt. Sushama Raman (SC) was appointed against roster point 65 against a vacancy of ST. This inter change of vacancy of ST vacancy for SC was ordered by the Dy. General Manager, Trivandrum while reviewing the communal roster on 28.3.89. This also has occurred after the cancellation of the 1983 select list. When the Deputy General Manager reviewed the Communal roster on 28.3.89 and ordered interchange of one ST vacancy for SC in view of the difficulty on getting ST candidates with the instruction of filling up all reserved vacancies before 31.8.89 as per direction of the Govt. of India, this vacancy occurred after the cancellation of the select list for 1983. Recruitment was made and the candidate Smt. Sushama Raman was appointed on 15.10.90 whereas the applicant was appointed on 16.4.91 as per order of this Tribunal. As such the applicant could not claim seniority



over Smt. Sushama Raman who was appointed on 15.10.90. They submitted that the applicant had been correctly given seniority giving her due position in the Communal Roster. The applicant had no claim for any wages for the period for which the applicant had not worked as nobody junior to her in the select list had been appointed before her or placed above her in the seniority position. They submitted that the various grounds for reliefs raised by the applicant were not tenable and the O.A. was liable to be dismissed.

4. Rejoinder was filed by the applicant.

5. Additional reply statement, additional rejoinder, second additional reply statement and additional rejoinder were filed by the parties respectively.

6. Heard the learned counsel for the parties.

7. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record.

8. We find that the applicant had approached this Tribunal earlier through O.A. No. 541/89. We find from A-2 order dated 22.6.92 that the said OA was allowed by this Tribunal as follows:

6. In the result we allow the application, quash the Annexures A-5 and A-10 orders and direct the respondents to depute the applicant for training and absorb her in a vacancy of Telegraphist at Trivandrum Telegraph Traffic Division. The action on the above lines should be initiated within a period of one month from the date of this order. There will be no order as to costs.



Pursuant to the above orders, A3 order dated 2.5.91 was issued by the 4th respondent. In the said order in para 4 it is specifically stated that the applicant's seniority would be fixed in the order of marks obtained in the examination held at the end of the training. The applicant again approached this Tribunal through OA No. 1631/97. That OA was disposed of by this Tribunal by A-9 order dated 13.8.99 with the following directions:

"7. Accordingly, A11 is quashed. The applicant is permitted to submit a supplemental representation through proper channel to the first respondent within two weeks from today. The first respondent shall consider the original representation of the applicant dated 16.9.96 along with the supplemental representation and pass a speaking order within two months from the date of receipt of the supplemental representation or from the date of receipt of a copy of this order, whichever is later."

It is pursuant to the above order of this Tribunal the applicant filed A-10 supplementary representation which was considered and disposed of by the impugned A-11 order dated 15.12.99. A-11 is under challenge in this OA. Thus the position that emerges is that in both the above Original Applications, the applicant is not assailing A-3 order pursuant to which the applicant was appointed and the condition stated therein governing her appointment.

9. The first ground raised by the applicant is that A-11 order had been issued by the 5th respondent without jurisdiction as the representation was addressed to the first respondent. We find that there is substance in this plea of the applicant. Respondents admitted in the reply statement that it was the 5th respondent who after careful consideration of the case sympathetically passed A-11 order. This is against the direction issued by this Tribunal



contained in para 7 of A-9 order in OA NO. 1631/97 reproduced above. Therefore on this ground alone A-11 impugned order is liable to be set aside and quashed. The respondents plea on the basis of Central Secretariat Manual of Office Procedure has no force. According to them the 5th respondent was the authorised signatory of the Department of Telecommunications and therefore passing of the order by the 5th respondent was admissible. Their reliance on Rule 64 in our view is misplaced. The said Rule 64 reads as under:

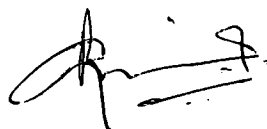
"64. Authentication of government orders:- (1) All orders and other instruments made and executed in the name of the President should be expressed to be made in his name and signed by an officer having regular or ex-officio secretariat status of and above the rank of Under Secretary or other specifically authorised to authenticate such orders under the Authentication Orders and Other Instruments) Rules, 1958

(2) Where the power to make orders, notifications, etc. is conferred by a statute on the Central Government such orders and notifications will be expressed to be made in the name of the Central Government.

The authentication of Govt. orders does not indicate, as is evident from the above, taking a decision which had been directed to be taken by the Secretary to the Govt. of India representing the Union of India. For the above reasons A-11 is liable to be set aside.

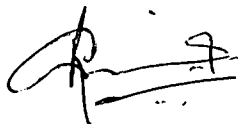
10. Having held as above the question that comes up is whether the applicant is entitled to a declaration as prayed for in the reliefs. Applicant is placing reliance on A1 OM issued by the Department of Personnel and Administrative Reforms in support of her claim. A1 OM reads as under:

Subject: Reservation for SCs/STs when appointments are made in different batches.



The rosters which have been prescribed to give effect to the reservations for Scheduled Castes and Scheduled Tribes are for determining the and Scheduled Tribes are for determining the Castes and Scheduled Tribes in any particular examination, recruitment, etc. and the roster is not for determining the order of actual appointment or for the purpose of determining seniority. After determining the number of reserved vacancies on the basis of the roster, the names of the selected candidates both general as well as those belonging to Scheduled Castes/Scheduled Tribes are arranged in the order of their inter se merit. Since in the case of direct recruitment through examination, generally all the selected candidates are appointed simultaneously, the question as to in which order appointments should be made against reserved vacancies, will not arise normally. However, a case has come to the notice of this Department in which all the candidates selected for appointment by direct recruitment through examination could not be appointed at the same time and offers of appointment were sent to a few candidates only, without however taking into account the reservations for Scheduled Castes and Scheduled Tribes which would have become due separately in those appointments. The remaining candidates were appointed in subsequent batches. As a result, some of the Scheduled Castes/Scheduled Tribes candidates who should have been appointed in the first batch itself were appointed only in the second batch. Where all appointments through examination for direct recruitment can not be made simultaneously, the correct procedure would be to determine the number of vacancies to be reserved for Scheduled Castes and Scheduled Tribes separately according to the roster in each batch of appointments and to make appointment of the required number of general and Scheduled Castes/Scheduled Tribes candidates in the batch.

According to the respondents the deputation for training was made strictly on the basis of merit. The applicant was selected as the second candidate against SC quota. According to the applicant the respondents ought to have deputed the applicant for training at the 5th place of the panel and appointed as Telegraphist. We do not find any merit in the submission. When the applicant is the second candidate among the SC candidates she could not claim the 5th position. In any case the point that instead of Smt. Sunitha Kumari she should have been sent for training had already been raised by her in OA No. 541/89 disposed of by this Tribunal by A-2 order. In that O.A. her case was as follows as seen from A-2:



"....The applicant therefore prays that the impugned orders at Annexure A-5 and A-10 may be quashed and that the respondents may be directed to absorb the applicant after Training in the existing regular vacancy, if any, to be filled up by Scheduled Caste candidates as per roster or to depute the applicant for training and employ her as short duty Telegraphist in Trivandrum Telegraph Traffic Division as notified in annexure A-1 and to absorb her as Telegraphist in a regular vacancy that has to be filled up by Scheduled Caste candidates in due course or to appoint her as a Clerk in the Telecom. Department permitting change of cadre." (Para 2)

A-5 and A-10 were the replies given to her representation. In the rejoinder filed by her in that she submitted as follows:

"4. The applicant thereafter filed a rejoinder. The important contention raised in the rejoinder are as follows. The applicant being a member of the Scheduled Caste should have been sent for Training as NO. 5 out of the persons selected on the basis of the communal roster. Out of the 13 candidates, all the 12 persons who belong to other communities were sent for Training excluding the applicant thereby discriminating her and also violating the mandate of Article 335 of the Constitution of India. The fifth place which as per the communal roster should have gone to the applicant has been wrongly given to one Sunithakukmari who was an O.C. candidate. The case of the respondent that she cannot be absorbed since the scheme for Training RTP hands has been abolished is unsustainable because no documentary evidence has been produced to show that such a scheme has been abolished and even if the scheme has been abolished, it cannot be abolished with retrospective effect so as to affect the rights of persons who had already been selected as RTP candidates. The respondents have not intimated the applicant about the cancellation of the list and it is not known as to when the list was cancelled. The respondents cannot cancel the list after training all the 12 O.C. candidates and refusing to send the applicant alone for Training. The denial of even the Scheduled Caste vacancy which occurred in 1988 or 1989 on conversion from Scheduled Tribe to the applicant on the ground that such vacancy arose only after the cancellation of the list is intentional and malafide to see that the applicant is not given employment. The respondents have admitted in the counter statement that 7 new posts have been created in these posts of RTP candidates from Ernakulam Division have been appointed while the applicant who has been selected in 1983 and to whom an offer of appointment has been made and who is kept waiting hopefully is remaining unemployed. The respondents could not have given employment to RTP candidates from other Division depriving the applicant of her chance. Instances of retired persons being appointed for months together has been mentioned in the rejoinder. The applicant prays that considering the fact that she is a



Scheduled Caste candidate that she was selected in the year 1983 and that she has become over aged to apply for any other Government job, the respondents may be directed to give her Training and to absorb her in a regular vacancy without delay.

11. Thus what we find is that she could have raised this point of appointment to the vacancy given to Smt. Sunitha Kumari when she approached this Tribunal through OA No. 541/89. We find that she did not seek such a relief in that OA. She only wanted the reliefs as reproduced above. This Tribunal gave direction as stated in para 6 ^{in that OA,} reproduced above, pursuant to which she was appointed by A-3. As already stated A3 is not under challenge in this OA. Moreover we find the intention of the order of this Tribunal from A-2 as follows: " So it is a case where the respondents have to be directed to depute the applicant for training forthwith and to absorb her in a vacancy without delay." (Para 5 of A2) When such is the case, we find force in the respondents' plea that the applicant who was appointed pursuant to A2 order of this Tribunal in OA NO. 541/89 on 16.4.91 could not claim seniority above the sixth respondent who was appointed on 15.10.90.

12. The third ground raised by the applicant is that the deliberate inaction and forbearance on the part of the respondents to send the applicant a member of the Scheduled Caste for training as per her rank in accordance with the inter-se merit shall not deprive the applicant her vested right to be trained and appointed and get seniority and fixation of pay along with other candidates in the select panel. The applicant had not been able to show that anybody junior to her in the panel had been appointed before her. Further her appointment was on the basis of the direction of this Tribunal given in 1990 and she was offered the appointment on 2.5.91. For the first time she approached



this Tribunal only in 1997 and in none of the OAs she had challenged the seniority clause included in A-3. It is an admitted fact that she had been appointed on the basis of the order of this Tribunal in OA NO. 541/89. All her rights accrued to her only arising out of the order of this Tribunal in that OA and as long as she had been given seniority on the condition mentioned in A-3 order of appointment and in accordance with the normal principles of seniority she cannot have any grievance. It had also not been shown by her that anybody junior to her in the panel had been appointed prior to her. Respondents' specific case is that nobody junior to her had been appointed earlier to her.

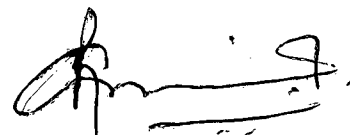
13. Under such circumstances we hold that notwithstanding the fact that A-11 had been passed by an officer without jurisdiction, the applicant is not entitled for the declaration sought for regarding pay fixation and seniority.

14. Accordingly we dismiss this Original Application with no order as to costs.

Dated the 2nd May, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of Government of India Department of Personnel & A.R. O.M.No.10/52/73-Est.(SCT) dated 24.5.74.
2. A-2: True copy of judgement dated 26.2.90 passed by this Hon'ble Tribunal in OA No.541/89.
3. A-3: True copy of Orders ST/Rectt/TLs/90 dated 2.5.91 issued by 4th respondent.
4. A-4: True copy of letter No.PF/PN/2224/91-92 dated 9.3.92 issued by 4th respondent.
5. A-5: True copy of applicant's representation dated, 16.6.94 to the 4th respondent.
6. A-6: True copy of letter No.PF/PN/744/94-95 dated 3.8.94 issued by 4th respondent.
7. A-7: True copy of applicants representation dated, 26.5.95 to the 2nd respondent.
8. A-8: True copy of applicant's representation dated, 16.9.96 to the 1st respondent.
9. A-9: True copy of order dated, 13.8.99 passed by this Hon'ble Tribunal in OA No.1631/97.
10. A-10: True copy of applicant's representation (Supplemental) dated, 24.8.99 to the 1st respondent.
11. A-11: True copy of order No.208-4/97-STN-1 (Part) dated 15.12.99 issued by the 5th respondent.
12. A-12: True copy of interim order dated 30.10.89 passed by this Hon'ble Tribunal in OA No.541/89.

Respondents' Annexures:

1. R-1: True copy of the CGMT letter Number STT/6-16/88 dated 7.2.89.
2. R-2: True copy of the letter No.ST/Rectt/TL/RTP/83 dated 9.2.89 issued by the 4th respondent to the applicant.
3. R-3: True copy of the relevant extract from the Central Secretariat Manual of office procedure.

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