

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 337 of 2000

Monday, this the 16th day of October, 2000.

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. A.N. Ramani,
D/o late P.K. Narayanan Kutty,
Sub Divisional Engineer (officiating),
O.C.B. Telephone Exchange, Manjery,
Residing at House No. 34, 656,
Padivattom, Kochi-24 Applicant

[By Advocate Mr. O.V. Radhakrishnan]

Versus

1. Chief General Manager,
Telecommunications, Kerala Circle,
Thiruvananthapuram - 695 033
2. Secretary, Department of Telecom Services,
Sanchar Bhavan, New Delhi.
3. Chairman, Telecom Commission,
Sanchar Bhavan, New Delhi-1
4. Union of India, represented by its Secretary,
Ministry of Telecommunications,
New Delhi. Respondents

[By Advocate Mr. Govindh K. Bharathan, SCGSC (rep.)]

The application having been heard on 16th October, 2000,
the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. A. V. HARIDASAN, VICE CHAIRMAN

The applicant while working as Junior Telecom Officer qualified the examination for promotion to Telecom Engineering Service (TES for short) Group 'B' held on 22-23rd May, 1987. In the list of officers promoted to TES Group 'B' from JTO against the upgraded posts issued on 16-11-1990, the applicant's name was at Sr.No.2116. She was allotted to Maharashtra Circle. Owing to personal domestic problems the applicant requested that she may be considered for allocation to Kerala Circle. Though the applicant was not given any reply, by order dated 18-1-1991 (A-4) the applicant was

promoted and allotted to Ahmednagar. The applicant declined promotion as her domestic background did not permit her to go to such a distant place. However, the applicant has made representation for a posting on promotion to Kerala Circle. A d.o. letter (A-7) was written from the Office of the Chief General Manager, Telecom, Kerala to the Deputy Director General (Personnel) stating that it would be in the fitness of things if 15 persons whose names were mentioned at the bottom are also considered for appointment to TES Group 'B' in Kerala Circle against the 20 vacancies that were likely to arise shortly. The applicant was at Sr.No.11 in that list. In the meanwhile, the applicant was served with a memorandum of charges for a major penalty on 27-8-1992. As a result of the departmental disciplinary proceedings, the applicant was awarded a penalty of stoppage of increments for a period of two years by the Disciplinary Authority by order dated 30-6-1997 (A-10) and the penalty was reduced to stoppage of increment for a period of one year by the Revisional Authority by order dated 29-4-1999 (A-11). While all others, excepting the applicant, whose names were mentioned in the letter at A-7 were promoted to TES Group 'B' and posted in Kerala Circle, the applicant was not given promotion. After the expiry of the period of stoppage of increment the applicant made A-12 representation. Even then the applicant did not get any response. Alleging that the charge sheet dated 27-8-1992 after the applicant was placed in the panel for promotion could not have any effect on her promotion, the applicant has filed this application for the following reliefs:

- [i] to declare that the initiation of the disciplinary proceedings against the applicant as per Annexure A-8 memo dated 27-8-1992 cannot deprive the applicant of the benefit of promotion earned as per Annexure A-2 dated 16/19-11-1990 from 18-11-1993, the date on which persons who declined promotion as that of the applicant were given effect to the promotion ordered in Annexure A-8; and

[ii] to issue appropriate direction or order commanding the 2nd respondent to give effect to the promotion of the applicant to TES Group 'B' ordered as per Annexure A-2 dated 16/19-11-1990 with effect from 18-11-1993 as in the case of the Junior Telecom Officers covered by Annexure A-7 who are identically placed as that of the applicant with all service benefits including arrears of pay and allowances.

2. Respondents contend that the persons whose names were included in A-7 along with the applicant were promoted on the basis of recommendations of the Departmental Promotion Committee held in November, 1993 and that the applicant could not be considered then as he was facing departmental disciplinary proceedings for a major penalty.

3. When the application came up for hearing today, the learned counsel for respondents stated that now the applicant has been promoted to TES Group 'B' and posted in Kerala Circle by order dated 9-10-2000. The question which remains to be considered is whether the applicant was also entitled to be considered for promotion along with those whose names were mentioned in A-7 letter issued from the Office of the Chief General Manager, Telecom, Kerala. The contention of the respondents that the applicant's case could not be considered as the departmental disciplinary proceedings were pending against her is not tenable. The learned counsel for the applicant argued that as the applicant had already been empanelled the applicant should have been promoted even without being subjected to another DPC proceedings. Even according to the applicant, her name was at Sr.No.11 in the list mentioned in Annexure A-7 letter. All those whose names were mentioned in Annexure A-7 letter were promoted on the basis of the recommendations of the DPC which was held in November, 1993. The applicant also therefore was entitled to be considered by the same DPC. The action of the respondents excluding the applicant from consideration for promotion by

the DPC cannot be sustained. If departmental proceedings for a major penalty was pending, the recommendation of the DPC in her case could have been kept in a sealed cover to be opened and also opened after the culmination of the proceedings. Since the respondents unjustifiably excluded the applicant from consideration for promotion, we are of the view that they have to be directed to have the case of the applicant for promotion along with others whose names were mentioned in Annexure A-7 considered by a review Departmental Promotion Committee as on November, 1993.

4. In the result, in the facts and circumstances of the case now that the applicant has already been promoted to TES Group 'B', we dispose of this application directing the respondents to have the case of the applicant considered for promotion to TES Group 'B' along with the other 14 persons whose names are stated in A-7 and resultant orders issued by the competent authority in accordance with law within a period of three months from the date of receipt of a copy of this Order. If the applicant is found on such consideration to be entitled for promotion along with the other 14 persons and if the competent authority issued orders in his favour, the applicant shall be entitled to consequential benefits. No costs.

Monday, this the 16th day of October, 2000



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

ak.

List of Annexures referred to in this Order:

1. A-2 True copy of the Memorandum No. 232-4/89-STG.II dated 16-11-1990 along with extract of the list of TES Group 'B' Officers.
2. A-4 True copy of the memo No. ST/EKJ.203/8/XIV/A dt. 18-1-1991 of the General Manager, Telecom, Ernakulam.
3. A-7 True copy of the D.O. letter No. STA/1-7/93/Genl dated 24-5-1993 along with annexure.
4. A-8 True copy of the Memorandum No. ETD/Disc/ANR/3 dated 27-8-1992 along with Annexure I to IV of the Divisional Engineer, Telecom, Thodupuzha.
5. A-10 True copy of the Memo No. ET/AM(U)/Disc/ANR/80 dated 30-6-1997 of the Area Manager (Urban), Ernakulam.
6. A-11 True copy of the Memo No. STA/P-157/98 dated 29-4-1999 of the 1st respondent.
7. A-12 True copy of the representation dated 23-9-1998 of the applicant to the 3rd respondent.