

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application. No. 35 of 2010

Tuesday..., this the^{16th} day of November, 2010.

CORAM:

**HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER
HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER**

1. R. Bijoy, S/o. P. Ramachandran,
Junior Telecom Officer (OMCR), BSNL,
3rd Floor, Panampilly Nagar Telephone Exchange,
Panampilly Nagar, Ernakulam – 682 036
Residing at 7D, Royal Fortress, Manjalipadam Road,
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- 2 Mary Deepa Louis,
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Residing at “Olattupuram House”,
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- 3 Umachan C. Ambooken,
S/o. A.H. Cherian, Junior Telecom Officer BSS,
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- 4 Joshi Das Y.S., S/o. Late G. Yesudas,
JTO (BSS), BSNL, O/o. DGM BSS,
Trivandrum. Opp. Police Headquarters,
Residing at “Bethel”, TC 11/920(5),
Nalanda, Kowdiar (P.O)
Trivandrum – 3.
- 5 Madhumohan Harikumaran Nair,
S/o. Harikumaran Nair, JTO, IT Cell,
BSNL, 1st Floor, Kaithamukku Telephone Exchange,
Trivandrum. Residing at “Harindram”, TC 7/501,
Kunjirampara (P.O), Trivandrum.

6 J. Anvar Sadath, S/o Jamaludeen A.,
 Junior Telecom Officer, Computer Projects,
 O/o. The GM STR, BSNL, Ernakulam.
 Residing at "C-II, Staff Quarters,
 Carrier Station Road, Ernakulam South.

7 V.K. Ramachandran, S/o. V.C. Krishnan,
 Junior Telecom Officer (NSS), BSNL,
 O/o. The DE NSS, BSNL Telephone Bhavan,
 Vellayil, Calicut – 673 032.
 Residing at "Vadakkekara Home",
 Paruphipara, Shornur, Palakkad District – 679 121.

8 T. Shineeth, S/o. O. Thankappan,
 JTO (Arimpur), BSNL, Thrissur – 680 016.
 Residing at "Vishidha Vihar", Kuttimukku,
 Ramavarmapuram (P.O.), Trichur – 680 631.

9 S. Rajesh, S/o. M. Sreekumar,
 JTO (Telegraph), Punalur Telephone Exchange,
 BSNL, Punalur. Residing at "Bhavana",
 Near DIET, Kottarakkara – 691 506.

10 K.M. Shameer, S/o. Late K. Mohammed,
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 Trichur. Residing at "Kariyat House",
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11 K.K. Rasheed, S/o. Shihabudheen K.K.,
 JTO (WLL), BSNL, Tirur, Malapuram – 676 561.
 Residing at K.K.House, Perithirithy, Chennara (P.O.),
 Mangalam, Tirur, Malappuram District.

12 U. Haris, S/o. Kunhalan U.,
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13 Sony George, S/o. E.V. George,
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 Exchange Building, Thirunakkara,
 Kottayam – 686 001. Residing at
 Thalakulam, Cheeranchira,
 Changancherry, Kottayam District.

14 Rinub K. Ummer, S/o. K.K. Ummer Ali Rawther,
 JTO Transmission Installation & Maintenance,
 Thiruvalla. Residing at "Kanjiramkalayil",
 Ettumanoor (P.O), Kottayam District – 686 631.



15. M.C. Mohammed Ali, S/o. Late Azeez,
 Junior Telecom Officer, Groups,
 Valakkai Telephone Exchange,
 BSNL, Kannur, Residing at Navas Manzil,
 Kottampally (P.O.), Kannur – 15.

16. S. Saheer, S/o. Sainulabdeen,
 Junior Telecom Officer, IT Cell, BSNL,
 1st Floor, Kaithamukku Telephone Exchange,
 Trivandrum. Residing at "Farhan",
 TC 48/995/7, Ambalathara,
 Poonthura (P.O), Trivandrum. ... Applicants

(By Advocate Mr. Shafik M.A.)

Versus

1. Union of India
 Represented by the Secretary,
 Department of Telecommunications,
 Ministry of Communications,
 Sanchar Bhavan, New Delhi.

2. The Chairman cum Managing Director,
 Bharat Sanchar Nigam Limited,
 Sanchar Bhavan, New Delhi

3. The Chief General Manager,
 Telecom, BSNL, Kerala Circle,
 Trivandrum ... Respondents

(By Advocate Mr. T.C Krishna).

The application having been heard on 09.11.2010, the Tribunal
 on 16.11.10.. delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

This O.A. has been filed by the applicant for the following reliefs :

(i) To call for the records relating to Annexure A-1 to A-8
 and to declare that the applicants are to be considered for



local officiating promotions as Sub Divisional Engineers in TES Group B with reference to their position in the combined seniority list of JTOs on the basis of the year of recruitment as specified in A-2 & A-4.

(ii) To direct the 3rd respondent to prepare a combined seniority list of JTOs in the circle as per their year of Recruitment and to make local officiating promotions to the vacancies of SDEs in TES Group B, based on the position of the officials in such list.

(iii) To direct the 3rd respondent, not to make any local officiating promotions till such a combined list as per A-2, A-4 and A-5 order is prepared.

(iv) To issue such other appropriate orders or directions this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case.

(v) To grant the costs of this Original Application.

2. The applicants are Junior Telecom Officers recruited in 2001 who joined the Kerala cadre in 2004 and 2005 forgoing their seniority in the Kerala Circle under Rule 38 on transfer from outside the Circle. However, they are eligible for promotion to SDE cadre in Telecom Engineer Service Group-B) based on all India seniority, which is not affected by their transfer to Kerala. The third respondent is resorting to ad hoc/officiating promotion to SDE in TES Group-B based on the circle level seniority bypassing those who are having all India higher seniority and who joined the Kerala Circle under Rule 38 on transfer, inspite of the instructions in Annexure A2 to prepare the combined seniority list of JTO on the basis of the recruitment year for making locally officiating promotion to SDE in TES Group-B and Annexure A4 instruction to make local officiating promotion strictly on the basis of year of recruitment in compliance of the order of this Tribunal in O.A. No. 679/2000 and Annexure A5 direction again on the same line in O.A. No. 1278/2000. Hence the O.A.

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3. The applicants contended that the action of the 3rd respondent in promoting their juniors on ad hoc basis is against the principles of service jurisprudence of seniors getting promotions before juniors, against Annexures A2, A4 and A5 orders and the directions of the Hon'ble High Court of Kerala in O.P. Nos. 29044 and 30644 of 2000 is illegal, arbitrary, discriminatory and violative of Articles of 14 and 16 of the Constitution of India.

4. The respondents contested the O.A. on the following grounds. The local officiating promotions are ordered temporarily by the head of Telecom Circles under the delegated powers by the erstwhile Department of Telecommunications for a period of not exceeding 179 days from the circle gradation list till regular promotions are made at all India level. The applicants are juniormost in the circle gradation list due to their transfer from outside the Circle. The scope of Annexure A2 order of the Hon'ble Supreme Court is limited only to the extent that the basis of preparation of eligibility list for promotion to TES Group-B will be the recruitment year in JTO cadre and not the qualifying year and that the circle level seniority of JTO, like the applicants would be governed by the provision of para 38 of P&T Manual Volume IV, as per Government order dated 23.01.2001 at Annexure R2(B). The Hon'ble High Court of Kerala in O.P. Nos. 29044 and 30644 of 2000 upheld that ad hoc promotion is to be effected on the basis of circle seniority, therefore, the applicants have no legally enforceable right for considering them for local officiating promotion above their seniors in the circle gradation list.

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5. In the rejoinder, the applicants submitted that the transfer policy of BSNL presently gives undue advantage to juniors to become seniors in officiating promotions. Even there are cases like a 2002 year recruitee, is place above the senior 2001 year recruitee in the circle gradation list, even if both came under Rule 3-8 transfer, on account of not following a uniform policy on request transfer and non consideration of position of officers in all India gradation list. For removal of such anomaly, this Tribunal had directed vide its order dated 25.06.2002 in O.A. No. 1278/2000 to consider the service rendered in totality, which has not been implemented by the BSNL, Kerala Circle, till date. Even though the local officiating promotion is made temporarily, those who have been promoted for 179 days are reverted for one day and again promoted to SDE till they get permanent promotion. If local officiating promotion is made on the basis of present circle gradation list, those who are having higher span of service, higher pay and higher seniority in all India list are are deprived of the basic right of consideration for promotion before juniors. The respondents are attempting to promote the juniors in preference to the applicants even for short term vacancies, inspite of Annexure A5 order of this Tribunal.

6. In the additional reply, the respondents referred to Annexure R2(f) order dated 23.01.2001 and reiterated their position in the reply statement. When an officiating promotion is effected from the JTOs, which is a circle based cadre, the seniority position of that particular circle will alone be looked into.

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7. We have heard Mr. Shafik M.A., learned counsel for the applicant and Mr. T.C. Krishna, learned counsel for the respondents, and have perused the records.

8. On admitting this OA, an interim order dated 13.01.2010 was passed directing the respondents not to act upon Annexure A1 gradation list for grant of local officiating promotion.

9. On a careful consideration of the contentions of the contestants we find that the applicants, JTOs who came to Kerala Circle under Rule 38 are not given local officiating promotion to SDE based on their all India seniority. The Rule 38 is reproduced as below :

"When an official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that Unit on the date on which the transfer order, issued, including also all persons who have been approved for appointment to that grade as on that date."

As per Rule 38, the applicants became juniomost in the gradation list of the Kerala Circle. But their all India seniority based on which only promotion to SDE is considered, is intact. There is nothing in rule 38 which affects adversely the promotion of the applicants for which Circle gradation list is not relevant. They are deprived of their legitimate promotion based on their seniority in all India gradation list as meetings of the DPC are not held in time while ad hoc promotions based on Circle gradation list are being liberally given to their juniors in all India gradation list. Ad hoc

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promotions ordered by virtue of delegated powers to the Circle head is extended beyond 179 days by reverting the ad hoc promotees to JTO for one day and then again promoting him. Telecom service exigency is the cause of the overuse of the delegated powers. There is no urgency to hold DPC in time to give regular promotion.

10. There is no justification to give ad hoc promotion on the basis of circle gradation list when regular promotion is based on all India seniority. Any administrative difficulty on account of making ad hoc promotion on the basis of all India seniority can be overcome by making ad hoc promotion strictly on the basis of all India seniority of the officers available within the Circle. Annexure A2 order of 05.02.2000 in compliance with the Apex Court judgement dated 26.04.2000 in O.A. No. 4339/1995 directed the heads of Telecom Circles to prepare combined seniority list of JTOs strictly on the basis of year of recruitment. However, in the clarificatory letter of 23.01.2001 (Annexure-R2(f)) it was stated that JTOs who came under Rule 38 transfer would be given seniority in the circle as per Rule 38 for local officiating promotion. This clarification is in direct conflict with the Annexure A4 order of the respondents dated 02.11.2000 issued in compliance with the Annexure A3 order of this Tribunal dated 22.09.2000 in O.A. No. 679/2000.

11. The Annexure A/5 order of this Tribunal dated 25.01.2002 in O.A. No. 1278/2000 declared the entitlement of the applicants therein who were similarly placed as the applicants herein, as under :

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"13. In view of the facts explained above, we declare that the applicants are entitled to be considered for promotion to TES Group 'B' even on local officiating basis in preference to the JTO whose year of recruitment is later than that of the applicants and direct the respondents accordingly. We direct the respondents to take steps to give effect to the above declaration in accordance with the existing rules, instructions and orders, more particularly, A-2 and A-7 at an early date in any case, not later than three months from the date of receipt of copy of this order.

14. The O.A is disposed of as above. No costs."

12. The judgement of the Hon'ble High Court of Kerala in O.P. No. 29044 and 30644/2000 dated 09.12.2001 at Annexure R2(E) does not stand in the way of the respondents in implementing the order of this Tribunal at Annexure A5. The operative part of the judgement is extracted below:

"3. We are of the view in the absence of any challenge against the circle seniority for effecting adhoc promotion this court is not justified in examining the validity or otherwise of the executive orders. Going by the circle seniority applicants are juniors to the contesting respondents. Therefore there is no irregularity in giving promotion to contesting respondents on the strength of circle seniority. All the same, we are of the view there is no justification in allowing persons like the contesting respondents to officiate in a higher post by defeating the claim of persons who aspire for regular promotion. Adhoc or officiating promotions are effected to tide over emergent situation. As the rules allow adhoc promotion upto 180 days we find Department is not justified in extending the period of adhoc promotion resulting juniors to occupy higher post to the prejudice of the seniors. This is a matter which requires serious consideration by the Department. In such circumstances we are inclined to dispose of the writ petitions with a direction to the Department to consider the grievances raised by the petitioners. We therefore find no reason to interfere with the adhoc promotion subject to review as ordered by us. In such circumstances the authorities would consider the grievance raised by the petitioners and also take steps to effect regular promotions. With the above observation these original petitions are disposed of."



13. The view of the Hon'ble High Court was that in the absence of any challenge against the circle seniority for effecting promotion it was not justified in examining the validity or otherwise of the executive orders. Hon'ble High Court held that there was no irregularity in giving promotion to the contesting respondents on the strength of circle seniority. This was subject to the direction that followed. In the view of the High Court, there was no justification in allowing persons like the contesting respondents to officiate in higher post by defeating the claim of persons who aspire for regular promotion. Again, Hon'ble High Court found that the department is not justified in extending the period of ad hoc promotion resulting juniors occupying higher post to the prejudice of the seniors. The Hon'ble High Court did not interfere in the promotions already made subject to the review/direction to consider the grievances raised by the petitioners. Therefore, the respondents are bound to settle the grievances of the seniors before they make any ad hoc promotions of the juniors. During the last 9 years the respondents have not carried out the direction of Hon'ble High Court; instead they are going ahead with the present promotions against the judgement of the Hon'ble High Court. The direction of the Hon'ble High Court binds the respondents to take steps to effect regular promotions. If there is any delay in making regular promotions, local officiating promotions may be made, considering the entitlement of seniors in all India gradation list like the applicants, for such promotion in preference to the JTOs whose year of recruitment is later than the seniors.

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14. In view of the discussion above, following the decision of this Tribunal in O.A. No. 1278/2000, we declare that the applicants in the instant O.A. are to be considered for local officiating promotions as SDE in TES Group-B with reference to their position in the combined seniority list of JTOs on the basis of the year of recruitment as specified in A2 and A4. The 3rd respondent is directed to prepare such a combined seniority list of JTOs in the circle as per their year of recruitment for making local officiating promotions as SDE within a period of 60 days of receipt of this order.

15. The interim order dated 13.01.2010 directing the respondents not to act upon Annexure A1 gradation list for grant of local officiating promotion is made absolute.

16. The O.A. is allowed as above. No order as to costs.

(Dated, the 16th November, 2010)


Dr. K.B. SURESH
JUDICIAL MEMBER


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER