CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

Dated 23rd January 1990

Present

Hon'ble Shri N.V. Krishnan, Administrative Member

and

Hon'ble Shri N. Dharmadan, Judicial Member

ORIGINAL APPLICATION 360/89

K.T.A. Unnichekku ..the applicant

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1. The Union of India represented by the Secretary, Ministry of Communications, New Delhi

2. The Director General, Department of Posts and Telegraphs, New Delhi.

3. The Deputy General Manager(Admn.) Office of the Chief General Manager, Telecom, Kerala Circle, Trivandrum.

4. S. Krishna, Deputy General Manager, Planning, Office of the Chief General Manager, Telecom Kerala Circle, Trivandrum.

5. The Chief General Manager, Telecommunications, Kerala Circle, Trivandrum.

..... the respondents

M/s. K. Ramakumar and VR Ramachandran Nair, Advocates, Cochin : Counsel for the applicant

Mr. T.P.M. Ibrahim Khan, Additional Central Government Standing Counsel : Counsel for the respondents

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JUDGMENT

Shri N. Dharmadan, Judicial Member.

The applicant in this case is at present working as Divisional Engineer in the Senior Time Scale (STS) in the Telephone Department. The next promotion post to which the applicant is eligible is Director/Telecom District Manager/Deputy General Manager. According to the applicant these posts are in the Junior Administrative Grade (JAG). The relevant rule providing for appointment to JAG is extracted and stated in the Annexure-A. It reads as follows:

> "28. Appointments to the Junior Administrative Grade in the service shall be made by selection on merit from amongst officers ordinarily with not less than 5 years approved service in Senior Time Scale of Telegraph Engineering Service Class I, on the recommendations of a duly constituted Departmental Promotion Committee: Provided that such officers shall be permanent in Telegraph Engineering service class I....."

The applicant submitted that he is fully qualified to be appointed to the JAG, but he was not given promotion since thereis controversy exists between the direct

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recruitees and promotees and that matter is at present pending before the Supreme Court. It is true that there is no finality about the fixed position of the applicant in the seniority list, but the existing seniority list cannot be ignored. Neverthless he submitted that as per the seniority list in the Junior Time Scale as on 12th July 1983 the applicant was given rank No.896 and he claims that he is senior in the STS because of his continuous officiation in the post of STS. But the department is not accepting this position and granting the benefit due to him in the matter of at least in the posting in the next promotion post on a temporary or provisional basis. However, he submitted that the 4th respondent is far junior to him and he has only 2 years and 9 months service in the post of STS, while the applicant worked in that grade about 7½ years and he is fully qualified to be promoted and posted as Junior Administrative Grade Officer.

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2. The applicant further submitted that without considering the seniority and better claim of the applicant the third respondent promoted some of the juniors of the applicant including the fourth respondent as per Annexure-B as JAG/STS of ITS Group'A' under the guise that these promotions are affected in the interest of service and that they are for a limited period of 90 days. The applicant objected to Annexure-B promotions on the ground that the orders have been issued without satisfying the eligibility conditions prescribed in Anneuxre-A rules referred to above. Annexure-D is the copy of another representation submitted by the Association of Telecom Engineering Service Officers voicing same grievance. In this representation the following three points were specifically stressed:

"1. Passing Group B exam is a condition for regular promotion as AE. Those who do not pass that exam are not given officiating.

2. Approval by DPC is a condition for regular promotion thoose who are rejected by DPC are not given local offciating any more.

3. Though ADETS are senior toAEs they are not given officiating in STS as do not fulfil one of the conditions for regular promotion to STS viz. minimum service of five years....."

3. The P & T Board, by Annexure-C memo which was issued to all heads of Departments, indicated that the President has delegated powers for filling up the posts of Junior Administrative Grade of ITS Group 'A' on leave and short term vacancies for a period more than 30 days but not exceeding 90 days, after satisfying the suitability of the candidates for such temporary posts. In response to a letter sent by the Circle Secretary of the Association Annexure-E reply was sent in which it has been stated that inter se seniority list of direct recruitees and promotee officers in Junior Time Scale in ITS Group 'A', published by the BOT vide letter 6-8/87-STG.I dated 4.7.88 has not been kept in abeyance and it is still operative and that with regard to the filling up of short term vacancies in JTS grade only temporary postings are made subject to the candidates being found fit for the promotion from STS to JAG. The Circle Secretary

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submitted another representation to the Chief General Manager which was also replied by Annexure-F order stating that the promotions are being made only on officiating basis and the minimum conditions , and seniority will be considered only in regular promotion. Even though the matter was again taken up specifically pointing out the relevant rule in Annexure-A the respondents did not accept the case of the applicant and the Association of the Officers. Annexure-G reply was given informing that the case is pending with the Directorate. While so, Annexure-H was also issued by the Assistant General Manager (Admn.) in which it has been stated that the 4th respondent though reverted to the cadre of Divisional Engineer with effect from 31.3.1989 he was again promoted to the cadre of JAG and posted as Telephone District Manager, Kottayam from 1.6.1989. Hence under these circumstances the applicant filed this application challenging Annexure-F, G and H. He also seeks for a declaration that the promotion given to the 4th respondent is illegal and violative of Articles 14, 16 and 21 of the Constitution of India. His further

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prayer is that the applicant may be promoted to the next higher post.

4. Along with the counter affidavit filed by the respondents 1 to 3 in this case, they have also produced as Annexure-R(A) inter se seniority list between the direct recruitee and promotees in ITS Group 'A' in which the position of the applicant and the 4th respondent are shown as follows:

Sl. No.	Name	Rank in the seniority list	Remarks
1.	Ramakrishna Iyer	50	Promotee
2.	S. Krishnan (4th respondent)	189	direct recruitee
3.	A. Satyapalan	212	Promotee
4.	K.A. Joseph	261	DR
5.	M Haridasan	277	DR
6.	P.V. Vijayakumaran	361	DR
7.	A.K. Harsha Kurup	86	Promotee
8.	K.T.A. Unnichekku (the applicant)	896	Promotee

It is admitted in the counter affidavit that the dispute regarding the claim of the seniority between the direct recruitees and the promotees is pending before the Supreme Court. In this case the claim of the applicant is that he has put in 7 years and 4 months in the post of STS while the 4th respondent has only 2 years and 9 months

service in STS and the 4th respondent is totally inneligible to be even promoted on an officiating basis as JAG and there is no justification in ignoring the rights of the applicant to post in the temporary vacancies in preference to the less qualified persons as shown in Annexure-B. Admittedly there is no disqualification for giving the applicant temporary postings as JAG, when compared with Premachandra, Ramakrishna Iyer etc., included in Annexure-B list. In fact the applicant has a better claim and eligible to be posted in temporary vacancy because of the long experience and service in the light of para 28 of A Annexure-A. Even in cases of temporary postings for short term vacancies not exceeding 90 days, the respondents 1 to 3 are bound to make a selection for ascertaining the basic eligibility of candidate as contemplated in the Rule 28 of the Telegraph Engineering Service (Class I) Rules as extrated in Annexure-A. The seniority of the 4th respondent as submitted by the respondents 1 to 3 cannot be a final and conclusive because of the dispute regarding the same between the direct recruitees and promotees is pending final

adjudication before the Supreme Court of India. When there is no finality about the seniority to be accepted, the consideration for temporary posting as JAG should be based on the assessment of the experience and qualifications which as claimed by the applicant, are the basic eligibility conditions for the posting. There is no indication as to whether such an assessment had been made by the respondents 1 to 3 before passing Annexure-8 postings. The applicant's 7½ years experience as STS will have to be reckoned and some weight ought to have been given to the same. We are satisfied that having regard to the facts and circumstances of the case the applicant has got better claim for temporary posting but he had not been considered in the light of Annexure-A Rule. Inspite of repeated representation filed by the applicant and the Association of Telecom Engineering Service Officers, the respondents 1 to 3 did not care to consider the claim of the applicant and similarly placed officials. In fact according to the applicant they have taken a hostile attitude towards them even for considering these persons for temporary postings. The applicant has a further case that Annexure-8 would

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disclose that the posts have become vacant not temporarily but permanently and the 4th respondent and others who were posted as per Annexure-8 with the foot note "All the promotions ordered above are for a period not exceeding 90 days". Immediately after the expiry of such period mentioned in the order fresh orders for further period of 90 days are being issued to them so much to the applicant would be permanently debarred from getting further promotion. On a careful examination of Annexure-8 would disclose the fact that the persons posted as per that order are not posted to temporary or in the short term vacancies. Moreover Annexure-H would indicate that though the 4th respondent was reverted he was again promoted and that the respondents 1 to 3 are taking attitude of favouring him. Under these circumstances we feel that the present method of provisional postings are allowed to continue without considering the claims of the applicant or making an assessment of the basic requirements of the candidate, there is the possibility of permanent deprivation of right of the applicant and persons who are really eligible to get posting to get an officiating promotion. It would be an unsatisfactory state of affair and may cause heart burning to the applicant

and others having better claims on account of long service in the Department. It is pertinent to note in this connection that even under the authorisation at Annexure-C provisional short term appointments in the exigencies of service can be made only of the senior most officer of Senior Time Scale considered fit for promotion. Primarily to be fit for promotion the officer has to have at least 5 years service in the Senior Time Scale. This is not being adverted to by the respondents 2 and 3 for making the provisional promotions. This action of the responts 2 and 3 is arbitrary. Hence, we allow the application and quash the impugned orders ~~and direct the respondents~~ so far as it concerns the appointment of 4th respondent and direct the respondents to consider the claim of the applicant for temporary posting by virtue of long experience and better claim as alleged in the application.

There will be no order as to costs.

23.1.90
(N. Dharmadan)
Member (Judicial)

19.1.90
(N.V. Krishnan)
Member(Administrative)

Pronounced in the open court on 23.1.1990 on behalf of the Bench.

(N. Dharmadan)
Member (Judicial)
23.1.1990

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

RA 25/90 in O.A. No. 360/89 ~~199~~
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DATE OF DECISION 18-7-90

Union of India rep. by the Secretary, Ministry of Communications, New Delhi & others — Applicant (s)/Respondents in OA

Mr NN Sugunapalan, SCGSC — Advocate for the Applicant (s)

Versus

KTA Unnichekku & another — Respondent (s)/Applicant-1 in OA
Respondent-4 in OA

Mr K Ramakumar — Advocate for the Respondent (s) -1
Mr KRB Kaimal — for Respondent -2

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

Shri N Dharmadan, Judicial Member

Respondents 1 to 3 have filed this review application for reviewing the judgment passed by us in this case on 23.1.90 on the ground that there is error apparent on the face of the record and that the observations made in the judgment would affect the regular selections. They have also raised various other contentions.

2 The applicants in the OA have filed reply denying the statements made in the review petition.

3 We have heard the matter and after perusing the records we have satisfied that the review applicants have not made out any case for interference in this matter in exercise of our jurisdiction by way of review. We are

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inclined to dismiss this application with the observation that the only controversy placed before us for consideration was the rival claims of the applicant and the 4th Respondent to get provisional posting as Junior Administrative Grade in short-term vacancies of limited duration of 90 days. These postings were effected without considering the longer period of officiation of the applicant when compared with the officiation of the 4th respondent in the same post. We have considered this aspect in the light of Rule 28 which has been extracted in the judgment. The observations in the judgment are confined to settle the controversy that has been placed before us for consideration and they would not stand in the way of making regular selections by the Government in accordance with law.

With these observations, the review application is dismissed.

18.7.90 18/7/90

(N Dharmadan)
Judicial Member

(NV Krishnan)
Administrative Member

18-7-90