

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No. 370/97

Thursday, this the 28th day of October, 1999.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER  
HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. K. Bhaskaran I, S/o K.K. Krishnan,  
Senior Telephone Supervisor,  
Telephone Exchange, Kannur.  
Residing at 'Darshana', Kuzhikkunnu, Kannur -1.
2. M. Sunder Raj, S/o R.D. Muliyl,  
Senior Telephone Supervisor,  
Residing at AKG Nagar Housing Colony,  
Kakkad Road, Kannur -2.
3. Vilasini Kurup, S/o P. Sekhara Marar,  
Senior Telephone Supervisor,  
Telephone Exchange, Kannur.  
Residing at Arun Villa,  
East Talap, Kannur -2.
4. N. Chandra Lekha, D/o P. Anandan Adiyodi,  
Senior Telephone Supervisor, Tellocherry.  
Residing at Krishnapuram, Manikkara,  
(P.O) Panniannare, (Via) Chokli.
5. P.K. Raghavan, S/o E. Gopalan Nambiar (Late),  
Senior Telephone Supervisor,  
Telephone Exchange, Mattanur.  
Residing at Saraswathi Sadanam,  
P.O. Mattanur, Kannur District -2.
6. K.S. George, S/o Scaria,  
Senior Telephone Supervisor,  
Telephone, TRA, Kkannur -2.  
Residing at Karukayil House,  
Cut & Cover Road, Mattanur.

...Applicants

(Applicants 2 to 6 represented by their authorised agent-  
1st applicant - K. Bhaskaran).

By Advocate Mr M.R. Rajendran Nair.

Vs

1. The General Manager, Telecom,  
Kannur.
2. The Chief General Manager, Telecom,  
Trivandrum.
3. The Chairman, Telecom Commission,  
New Delhi.

...Respondents

By Advocate Mr George Joseph, ACGSC.

: 2 :


The application having been heard on 14.10.99  
the Tribunal delivered the following on 28.10.99.

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Applicants seek to quash Clause (iii) of Annexure A-3 and A-6, to declare that they are entitled to be promoted as Grade IV with effect from the date of promotion of their junior K. Bhanumathi, and to direct the respondents to consider them for promotion as Grade IV with effect from the date of promotion of K. Bhanumathi with consequential benefits.

2. Applicants say that they are Senior Telephone Supervisors in the scale of pay of Rs.1640-2900. Their basic cadre is that of Telephone Operator. On completion of 16 years in that cadre, they will be entitled to get Time Bound One Promotion (TBOP for short). On completion of 26 years, they will be further promoted under the Biennial Cadre Review (BCR for short). 10 per cent of those promoted under BCR are entitled to be placed in Grade IV. This promotion is on the basis of seniority. Initially promotions to Grade IV was on the basis of seniority in BCR. But the Principal Bench of this Tribunal took the view that promotion to Grade IV should be on the basis of seniority in the basic cadre. This view was upheld by the Supreme Court. Accordingly, the Government of India, Ministry of Communications, Department of Telecom issued the letter dated 13.12.95 (A-1) which inter alia says that it has been now decided in supersession of earlier instructions that promotion to the said Grade IV may be given from amongst officials



in Grade III on the basis of their seniority in the basic grade. Various clarificatory orders were issued to A-1. In the clarificatory order dated 17.5.96 it is provided that all the promotions made since the inception of the scheme are to be reviewed and regulated in terms of the order dated 13.12.95 and 10.5.96 and further promotion in any case have to be made strictly in accordance with the new procedure. Another order issued on 10.5.96 says that:


"(i) The officials already promoted in Grade IV of Rs.2000-3200 should not be reverted and may be allowed to continue in Grade IV.

(ii) Number of posts required in excess of 10% of BCR posts be created to the extent to avoid reversion of officials already promoted in Grade IV posts.

(iii) The posts created in excess of 10% of posts in BCR are to be adjusted against the justified posts for promotion in future and till these excess posts are adjusted, no promotion would be further made in Grade IV in that unit till the total number of posts in Grade IV comes back to the prescribed limit of 10% posts of BCR."

3. Applicants submitted representations requesting to promote them to grade IV. In their representations they have pointed out that Grade IV promotion was granted to K. Bhanumathi who is junior to them in the basic cadre. Their representations now stand rejected as per A-6.

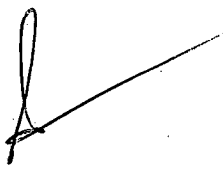
4. Respondents resist the O.A. contending that the applicants can be considered for promotion to Grade IV as per their turn in accordance with the orders issued



of the applicants for the sole reason that their junior K. Bhanumathi was promoted. The apprehension of the applicants are not now pertinent in view of R-1. Promotion of the junior official as per orders existing prior to 13.12.95 does not in any way affect the promotion prospect of the applicants since as per R-1 order, posts for such officials already promoted would be created supernumerary and the same would not be adjusted against the justified posts in Grade IV as per rules on the subject. Applicants are not denied any opportunity.

5. Applicants have stated in para 6 of the O.A. that as per A-4 and A-5, 2nd and 6th applicants submitted representations and other applicants also submitted similar representations and as per A-6 their representations were rejected. So, it is the case of the applicants that A-6 order was issued in pursuance of their representations. From A-6 it is clearly seen that the 4th applicant has not submitted any representation, since the name of the persons from whom representations were received have been clearly stated in A-6. It is factually incorrect to say that all the applicants have submitted representations. A bare statement by the applicants that all of them have submitted representations is not sufficient to arrive at the conclusion that all of them in fact have submitted representations. A party approaching the Tribunal should come forward with clean hands and should not suppress any material fact or make averment which is not true.

6. The verification to be made in the O.A. is not to be taken as an empty formality. This O.A. is verified



stating that the contents from para 1 to 12 are true.  
It is not so.

7. As far as the relief sought to quash Clause (iii) of A-3 is concerned, in the light of R-1 dated 13.2.97 has become redundant.


8. Clause (iii) of A-3 reads thus:

"(iii) The posts created in excess of 10% of posts in BCR are to be adjusted against the justified posts for promotion in future and till these excess posts are adjusted, no promotion would be further made in Gr.IV in that unit till the total number of posts in Gr.IV comes back to the prescribed limit of 10% posts of BCR."

9. R-1 dated 13.2.97 has amended Clauses (ii) and (iii) of A-3 and the amended version is quoted in para-4 supra.


10. According to applicants, the wording contained in A-3 that 'to the extent to avoid reversion of officials already promoted in Grade IV posts' have been interpreted in a very narrow manner by the respondents to the effect that if one junior is already promoted, only one additional post need be created. That difficulty has been now removed by the amendment as per R-1. Applicants thus now cannot have any grievance on this aspect.

11. Applicants have also sought to quash A-6. A-6 is dated 1.1.97. The 4th applicant is not entitled to seek the relief of quashing A-6, since she has not made any representation and A-6 is not issued in pursuance



of any representation submitted by her and her name does not figure in A-6. That apart, what is stated in R-1 is that as per the latest orders promotion to Grade IV (10%) is to be issued according to basic cadre seniority, that action is already in hand to promote the eligible officials to Grade IV (10%) according to their basic cadre seniority (seniority-cum-fitness), and that none of the officials mentioned therein come within the purview of the revised order for considering promotion as Grade IV (10%). A-6 was issued according to the orders in force prior to the amendment to A-3 as per R-1. Now, R-1 is in force and therefore, A-6 which was issued prior to the commencement of R-1 is of little consequence.

12. The other prayer is to declare that the applicants are entitled to be promoted to Grade IV with effect from the date of promotion of their junior and to direct the respondents to promote them accordingly. In the reply statement it is clearly stated that the apprehension of the applicants is not having any basis now in the light of R-1 that promotion of the junior as per orders existing prior to 31.12.95 does not in any way affect the promotion prospect of the applicants, since as per R-1 order posts for such officials already promoted would be created supernumerary and the same would not be adjusted against the justified posts in Grade IV as per rules on the subject. So, the position is made clear by the respondents. It is also made clear that the applicants will be considered for promotion to Grade IV in the light of R-1. In the light of the specific admission by the respondents, it is not necessary to



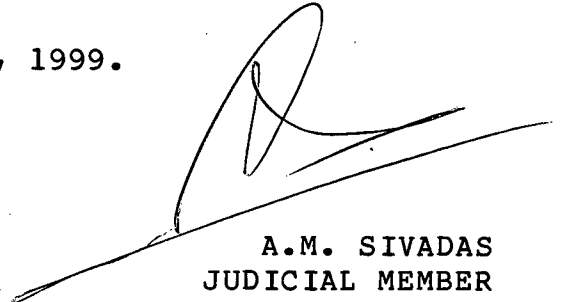
grant the declaration sought for.

13. Accordingly, the Original Application is dismissed. No costs.

Dated the 28th of October, 1999.



G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER



A.M. SIVADAS  
JUDICIAL MEMBER

P/271099

List of Annexures referred to in the order.

A-1, True copy of the letter No.22-6/94-TB-II dated 13.12.95 issued by the Govt. of India, Ministry of Communications, Deptt. of Telecom, Sanchar Bhavan, New Delhi.

A-3, True copy of the letter No.22-6/94-TE.II dated 10.5.96 issued by the Director (TE), Govt. of India, Ministry of Communications, Deptt. of Telecom, Sanchar Bhavan, New Delhi.

A-4, True copy of the representation dated 30.10.96 submitted by the 2nd applicant to the 1st respondent.

A-5, True copy of the representation dated 31.10.96 submitted by the 6th applicant to the 1st respondent.

A-6, True copy of the Order No.ST-206/BCR/TOS/110 dated 1.1.97 issued by the Assistant General Manager (Administration), Office of the 1st respondent.

R-1, True copy of the letter No.22-6/94-TE-II dated 13.2.97 of the Department of Telecommunications, New Delhi.

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