

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.384/1997

Monday this the 22nd day of May, 2000

CORAM

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

P.C.Ismail aged 34 years
S/o T.C.Yousef,
Telephone Operating Assistant (G)
(TOA) Telecom Centre, Kadmat,
Union Territory of Lakshadweep,
residing at Kadmat. ... Applicant

(By Advocate Mr. P.V.Mohanan)

Vs.

1. Union of India represented by the Secretary,
Ministry of Communications,
New Delhi.
2. The General Manager,
Telecommunications,
Ernakulam. Respondents

(By Advocate Mr. Sunil Jose, ACGSC)

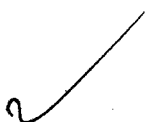
The application having been heard on 22.5.2000, the Tribunal
on the same day delivered the following:

O R D E R

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


The applicant was initially recruited as Telephone
Operating Assistant (TOA for short) in the 1982 batch. On
completion of the practical training he was posted as TOA on
20.4.83 by order Annexure.AI. The appointment of the
applicant was approved by proceedings dated 26.4.84
(Annexure.A2). In the A2 order clause (6) reads as follows:

He/She will have to pass the confirmation
examination within three years of their recruitment
during which they will be able to avail of six
chances. If they fail to pass the confirmation
examination within three years, they will be allowed



to continue as TOA for a further period of one year. In the fourth year they will be allowed two chances to appear in Paper III of the Departmental Examination for promotion to the cadre of TOAs, and will be considered as Departmental Candidate of that year and would take seniority below all the departmental candidates of that year. In case they fail to pass this examination they will be offered appointment in the lower cadre and if they are not willing to accept this offer, they will be discharged from service.


The applicant though appeared in three chances earlier did not pass the competitive examination. However, he passed the examination within the stipulated period of three years appearing in a special examination which was held on 23.3.86. By proceedings dated 26.10.90 the applicant was confirmed as TOA in the scale Rs.975-1660 with effect from 1.4.88. Thereafter a provisional gradation list of TOAs as on 1.1.90 was issued on 29.5.92. The applicant allegedly made a representation in the year 1992 itself objecting to the low seniority assigned to him and seeking revision but he was not informed of the result. However, on 22.10.96 the applicant made Annexure.A5 representation requesting that his seniority be fixed taking into account the length of continuous service. Finding no response to this and seeing that persons who according to the applicant rank junior to him in the cadre of TOAs were being considered for promotion to higher posts the applicant has filed this application for a direction to the respondents to refix the seniority of the applicant as TOA with effect from 19.1.83 the date on which he commenced service in the category of Telephone Operating Assistant with all consequential benefits, to consider and dispose of the representation submitted by him and not to



make further appointment/promotion to the category of Senior TOA without finalising the seniority list of TOAs.

2. The applicant has alleged in the application that since he has passed the examination within the stipulated time and not have alerted for more than four occasions, the inaction on the part of the respondents to grant him seniority reckoning the length of service in the grade is arbitrary and irrational and that since on implementation of the order of the Tribunal in Sri Dev Dutt Sharma's case delinking the date of confirmation with seniority as the Ministry of Communication issued an order dated 28.5.87 there is no grace in the respondents contending that the applicant's seniority would not be reckoned on the basis of length of continuous service.

3. The respondents in their reply statement contend that since the applicant has passed the departmental examination only in the special examination held for those who could not qualify in six chances his seniority got affected and that this has no connection with the confirmation. The respondents have also stated that although the representations are alleged to have been made by the applicant in the year 1992 has not been received by the respondents, the representation Annexure.A5 was still under consideration. However, the respondents contend that the applicant is not entitled to the relief as claimed for in this application.



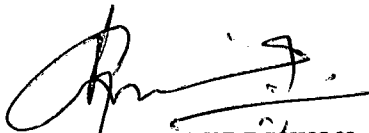
4. We have gone through the pleadings and the materials placed on record and have heard the learned counsel on either side. The respondents have no case that the seniority of the TOAs is fixed reckoning the date of confirmation. The contention of the respondents that the applicant has gone down in seniority because he has not passed the examination within the stipulated time is untenable because it is admitted by the respondents that the applicant passed the confirmation examination which was held on 23.3.86 (see para 4 of the additional reply statement). As the applicant has availed of only four chances and has passed the confirmation examination held on 23.3.86 it cannot be seriously contended that his seniority has been affected because in terms of para 6 of Annexure.A2 he need pass the confirmation examination within three years of the date of his appointment namely 20.4.1983. The applicant having passed the confirmation examination which was held on 23.3.86 ie., within three years from 20.4.83 the stand taken by the respondents that he has lost seniority on account of late passing of the confirmation examination has to be rejected.

5. In the result, the application is allowed. The respondents are directed to fix the seniority of the applicant as TOA with effect from 20.4.83 and grant him the

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consequential benefits. This should be done and necessary orders issued by the competent authority within a period of three months from the date of receipt of a copy of this order. There is no order as to costs.

Dated the 22nd day of May, 2000



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

S.

List of annexures referred to:

Annexure.A1: True copy of the posting order Memo

No.E9/IX/167 dated 15.4.83 (Endt.No.E.7/17/SS
84/15 dated 3.4.83) issued y Divisional
Engineer, Telecom, Ernakulam.

Annexure.A2.: True copy of order of appointment
No.E.209/7/9 dated 26.4.84 issued by
Assistant Engineer, Wirless, Kavaratti.

Annexure.A5: True copy of the representation by the
applicant to the Assistant General Manager
(Administration), Ernakulam dated 22.10.1996.

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