

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

COA No. 389 of 1999

Wednesday, this the 25th day of July, 2001

CORAM

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

1. A. Vasudevan,
S/o Ashtamoorthi Namboodiripad,
Azhakath Mana, Kailas, 4/380,
Alagappa Nagar PO
[Retired Sub Divisional Engineer,
Alagappa Nagar]Applicant

[By Advocate Mr. M.R. Rajendran Nair (rep.)]

Versus

1. Union of India represented by its
Secretary to Government of India,
Department of Telecommunications, New Delhi.
2. The General Manager,
Telecom District, Trichur.
3. The Chief General Manager,
Kerala Circle, Trivandrum.
4. Bharath Sanchar Nigam Limited, represented
by the Chief General Manager, Telecom,
Kerala Circle, Trivandrum.Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 25-7-2001, the
Tribunal on the same day delivered the following:

O R D E R

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

The applicant seeks to quash A4 and to declare that he should be deemed to have continued to officiate as Sub Divisional Engineer and also that he must be deemed to have retired as Sub Divisional Engineer apart from directing the respondents to fix his pensionary benefits on that basis.

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2. The applicant was promoted as Junior Telephone Officer with effect from 22-3-1976. He was again promoted as Sub Divisional Engineer on officiating basis on 23-10-1996. He continued as such till the date of relief on voluntary retirement on 1-2-1999. Meanwhile he was on leave from 25-11-1998 to 19-12-1998 and from 20-12-1998 till 16-1-1999. As per A2, he applied for voluntary retirement. He was made to understand that voluntary retirement was being granted. He applied for commuted leave on 25-11-1998 and leave upto 16-1-1999 was granted to him. He rejoined on 17-1-1999. As per A4, he has been reverted to his parent cadre as Junior Telephone Officer for processing his voluntary retirement request. He submitted a representation to the 3rd respondent pointing out that the reversion will cause considerable financial loss in the pensionary benefits. He requested that the order reverting him to the parent cadre may be cancelled. That was not forwarded to the 3rd respondent. As per A6 it was informed that if he desires to retire voluntarily, it would be only as Junior Telephone Officer as he was not a regular Sub Divisional Engineer. Again he submitted a representation on 22-1-1999 to the 2nd respondent. He was informed as per A9 that action taken by the department while processing the case of voluntary retirement was found to be in order. He was relieved as per A10.

3. Respondents resist the OA contending that the applicant was promoted as Telecom Engineering Service Group B grade on purely temporary basis for a period of 179 days. The officiating period would have continued upto 27-3-1999 if he had not proceeded on leave. The competent authority for making regular appointment against Telecom Engineering Service Group B post is Member (Services), Telecom Commission. The officiating promotion was ordered for a specific period for a specific

purpose. If the applicant does not want to be on duty during the said specified period, the purpose for which the promotion was ordered locally is not served and there is no alternative except to revert him. The applicant rejoined duty on 17-1-1999 and the minimum period of 31 days was not left till his date of voluntary retirement. As such his claim for a fresh spell of local officiating promotion does not arise for consideration.

4. A4, the impugned order dated 28th of December, 1998, says that the applicant, officiating as Sub Divisional Engineer, is reverted to his parent cadre as Junior Telephone Officer with immediate effect for processing his voluntary retirement request. This is issued from the Office of the General Manager, Telecom District, Trichur in accordance with the orders of the Chief General Manager Telecom, Trivandrum dated 22-12-1998.

5. The learned counsel appearing for the applicant submitted that there is no legal backing for ordering reversion of the applicant to his parent cadre as Junior Telephone Officer for processing his voluntary retirement request.

6. Subsequent to A4, the applicant submitted A5 representation to the Chief General Manager Telecom, Kerala Circle stating that his reversion may be cancelled and he may be allowed to retire voluntarily as Sub Divisional Engineer (officiating). A5 is dated 7-1-1999. In response to A5, A6 dated 11-1-1999 was issued. There it is stated that the General Manager Telecom District, Trichur had a discussion with the Chief General Manager Telecom, Kerala Circle in detail, that an officiating officer who goes on long leave automatically gets reverted and when he rejoins he has to be promoted again and

that if the applicant desires to retire voluntarily, it will be only as a Junior Telephone Officer as he was not a regular Sub Divisional Engineer and A5 representation is not forwarded.

7. From A6 it is clear that the applicant was informed that if he wishes to retire voluntarily it will be only as Junior Telephone Officer as he was not a regular Sub Divisional Engineer and he was so informed based on the discussion made by the General Manager, Telecom District, Trichur with the Chief General Manager Telecom, Kerala Circle. So, it is the result of the discussion with Chief General Manager Telecom, Kerala Circle. After A6, the applicant submitted A7 representation to the General Manager, Telecom District, Trichur. A7 is dated 22-1-1999. He also submitted A8 representation to the General Manager, Telecom District, Trichur dated 22-1-1999. A9 is in response to A7 and A8 representations. A9 dated 23-2-1999 says that the action taken by the department while processing the voluntary retirement request of the applicant is found to be in order. As per A10 dated 29-1-1999, the applicant was relieved of his duties as Junior Telecom Officer with effect from the forenoon of 1-2-1999 on voluntary retirement.

8. The learned counsel for the applicant submitted that the applicant was not given any opportunity to press or not to press his request for voluntary retirement since he was not informed that if he wants to retire voluntarily he can do it only as Junior Telecom Officer. This cannot be accepted in the light of A6. A6 clearly says that if the applicant wishes to retire voluntarily, it will be only as Junior Telecom Officer. The applicant was fully aware and conscious of what is contained in A6 for he has submitted two representations, A7 and A8, after A6. In A9 it is clearly stated that the action taken by the department while processing the case of voluntary retirement is

found to be in order. The action taken is reversion of the applicant as Junior Telecom Officer. The applicant has not challenged A9 order. He has also not challenged A6 order. In the absence of any challenge to A6 order, it is to be taken that he has accepted the same, which means that he is to retire if he seeks to retire voluntarily only as Junior Telecom Officer. That position is affirmed by A9. As per A10 he has been relieved of his duties as Junior Telecom Officer. A10 is also not under challenge. The learned counsel for the applicant submitted that A10 being consequential to A4, if A4 is quashed, A10 will have no effect. The learned counsel for the applicant further submitted that the position with regard to A6 and A9 is also not different for the reason that those orders are issued by authorities subordinate to the Chief General Manager Telecom. On this aspect, it is to be seen that A6 is not in fact an order issued by an authority subordinate to the Chief General Manager Telecom, though apparently it will appear so, for the reason that it was issued after the General Manager, Telecom District, Trichur had a detailed discussion with the Chief General Manager Telecom. Though A9 is issued from the office of General Manager, Telecom District, Trichur, what it says is that the action taken by the department while processing the case of voluntary retirement is found to be in order. So, it is the action of the departmental authority competent and it cannot be termed as an order issued by an authority who is subordinate to the Chief General Manager Telecom, Kerala Circle.

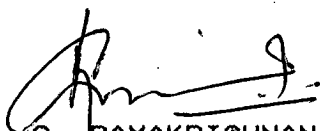
9. As the applicant has not challenged A6, A9 and A10, the position is that he has accepted what has been stated in A6, A9 and A10. That being so, he cannot now turn round and say that A4 should be quashed.

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10. Respondents have specifically stated in the reply statement that the officiating promotion was ordered for a specific period for a specific purpose, that if the applicant does not want to be on duty during the said specified period, the purpose for which the promotion was ordered locally is not served, that there is no alternative but to revert the applicant, that as he rejoined duty on 17-1-1999 the minimum period of 31 days was not left till his date of voluntary retirement and that as such his claim for a fresh spell of local officiating promotion does not arise for consideration. The stand of the respondents clearly reveals what is the purpose of granting officiating promotion and how the very purpose cannot be allowed to be defeated.

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

Wednesday, this the 25th day of July, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

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List of Annexure referred to in this order:

1. A2 True copy of the letter dated 30-10-98 submitted by the applicant to the 2nd respondent.
2. A4 True copy of the Memo No.STA/200/XI/20 dated 28-12-98 issued by the 2nd respondent.
3. A5 True copy of the representation dated 7-1-99 submitted by the applicant to 3rd respondent.
4. A6 True copy of the letter dated 11-1-99 issued by the Divisional Engineer, O/o the 2nd respondent.
5. A7 True copy of the representation dated 22-1-99 submitted by the applicant to 2nd respondent.
6. A8 True copy of the representation dated 22-1-99 submitted by the applicant to 2nd respondent.

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7. A9 True copy of the letter dated 23-2-99 No. STA/200/XI/99 issued by the Assistant General Manager (Administration), for 2nd respondent.
8. A10 True copy of the letter dated 29-1-99 No. E-2/99/22 issued by the Divisional Engineer, Chalakkudy.