

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 398 of 2013

Thursday this the 10th day of December, 2015

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

1. Jobi Joseph S/o late T.K. Joseph, aged 52 years
Assistant Director (Official Language), Officiating
Office of the General Manager, Telecom, BSNL, Palakkad
residing t C/F, 1st floor, Telecom Staff Quarters.
Telephone Exchange, Olavakkode, Palakkad.2.

2. C..Mridula D/o Sri C. Balakrishnan, aged 44 years
Assistant Director, (Official Language)-Officiating,
Office of the General Manager, Telecom, BSNL, Kozhikode
residing at Mridula Nilayam, PO. Guruvayoorappan College
Pin. 673014.

...Applicants

[By Advocate Mr. OV Radhakrishnan (Sr. Counsel) with Advocate Antony
Mukkath)

Versus

- 1 Bharat Sanchar Nigam Limited, represented by its Chairman &
Managing Director, Statesman House, B-148, Barakhamba
Road, , New Delhi-110 001.
- 2 Chief General Manager, Telecommunications,
Bharat Snachar Nigam Limited,
Kerala Circle, Thiruvananthapuram.33.
- 3 General Manager, Telecom, Bharat Sanchar Nigam Limited,
Balan K. Nair Road, Kozhikode.1.
- 4 General Manager, Telecom, Bharat Sanchar Nigam Limited, TB
Road, Palakkad-14.
- 5 Union of India, represented by its Secretary,
Ministry of Communications & Information Technology,
Department of Telecommunications, 421 Sanchar Bhawan,
20, Ashoka Road, New Delhi-110001.

...Respondents

(By Advocate Mr. Pradeep Krishna ACGSC for R 1 to 4
Advocate Mr. N. Anil Kumar, SPCGSC for R5)

This application having been finally heard on 10.12.2015, the Tribunal on the same day delivered the following:

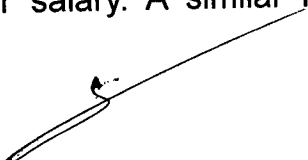
ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

A detailed interim order was passed by this Tribunal on 2.5.2013 as follows:

"The applicants were continuing on officiating basis in the post of Assistant Director (Official Language) now re-designated as Rajabhasha Adhikari. They approached the Hon'ble High Court against on-regularization of their adhoc service. Subsequent to the conferment of jurisdiction on this Tribunal the matter was transferred. The cases were disposed of by order dated 8th April, 2010 produced as Annexure A1 as per which the eligible applicants were directed to be considered for promotion as Assistant Director (OL) against the vacancies which arose prior to the Rajabhasha Adhikari Recruitment Rules, 2005 on the premise that the said rule will not apply to their cases for being considered against the vacancy which arose prior to the promulgation of the Rules. This order was challenged before the Hon'ble High Court but without success. Now matter is pending before the Apex Court in SLP. No stay has been granted.

In the circumstances the course open to the respondents was to implement the order of this Tribunal as confirmed by the Hon'ble High Court provisionally subject to the final orders to be passed in the SLP pending before the Apex Court. But curiously enough even the present position occupied by the applicants on the officiating capacity has been disrupted by not issuing an order allowing them to continue on officiating basis. The result is that not only that the respondents have not considered the applicants for promotion as directed by this Tribunal but they are not allowed to continue in the present position on adhoc basis pending consideration of the matter by the Apex Court. The effect will be that they stand reverted to the parent position and there will be a cut in their salary. A similar matter which came up for



consideration before the Coordinate Bench of this Tribunal in OA No.385 of 2013 wherein this Tribunal directed the applicants to be allowed to continue as Rajabhasha Adhikari subject to the outcome of the SLP.

Counsel appearing for the respondents would submit that all that has been done is not to continue their officiating position in the promoted post.

Heard the learned counsel for both sides.

In the facts and circumstances of the case and in the light of the order that has been passed by this Tribunal in an earlier case it is only appropriate and I direct that the applicants may be allowed to continue in the same post occupied by them prior to the issuance of Annexure A4 and pay them their salary accordingly subject to the decision of the Apex Court in the SLP pending before it or till such time as the respondents may obtain any interim order from the Apex Court, whichever is earlier."

Thereafter the aforesaid OA was posted along with OA 385/2013. The learned counsel for applicant would submit that since the applicants are continuing in the same post as per the interim order, in the post occupied by them prior to Annexure A4, the interim order may be made absolute since there is a condition that the said order would be subject to the decision of the apex court pending in SLP. The fact of the case as revealed from the interim order quoted above is not in dispute. It is also not in dispute that the applicants are officiating in the post of Assistant Director (OL) (Rajabhasha Adhikari). Since it has already been held by this Tribunal in the interim order that the applicants will be allowed to continue in the same post occupied by them prior to issuance of Annexure A4 and pay them their salary accordingly, subject to the decision of the apex court in the SLP pending before it, we dispose of the OA making the

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interim order absolute.

2. The learned counsel for the respondents would submit unless a condition is imposed regarding the execution of a bond by the respective applicants, it would be difficult to recover the amount, if any, paid pursuant to the order of this Tribunal, since the applicants will then raise objection against recovery pointing out the decision of Hon'ble Supreme Court in ***State of Punjab and others etc. Vs. Rafiq Masih (White Washer etc) Civil Appeal No.11527/2014 (order dated 18.12.2014)***. In view of such an eventuality, it is better that the applicants execute a bond before the respondents undertaking that they will not raise any objection against the recovery, in case the Supreme Court holds against them and that they will refund the amount, and will not raise any objection against the recovery of the amount. Therefore, subject to the condition that they will execute a bond to the above effect, and that they will not raise any objection, in case recovery of amount paid is required, the interim order passed by this Tribunal on 2.5.2013 is made absolute.

3. OA is disposed of as above. No order as to costs.



(P. Gopianth)
Administrative Member



(N.K. Balakrishnan)
Judicial Member