

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 401/97

Thursday the 8th day of December, 1999.

CORAM

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

R. Jayalakshmi
Telecom Office Assistant
Office of the General Manager
Telecom District
Thiruvananthapuram. ...Applicant

(By advocate Mr G.Sasidharan Chempazhanthiyil)

Versus

1. General Manager
Telecom District
Thiruvananthapuram.
2. Telecom District Manager
Thiruvalla.
3. Chief General Manager, Telecom
Kerala Circle, Thiruvananthapuram.
4. Sri Janardhanha Iyer
Section Supervisor
O/o Sub Divisional Engineer
East I Thiruvananthapuram.
5. K.Prabhakaran Nair
Telecom Office Assistant
O/o General Manager Telecom District
Thiruvananthapuram.
6. S.Vijayakumaran Nair
Telecom Office Assistant, Telecom Revenue
Accounting Unit, O/o the General Manager
Telecom, Thiruvananthapuram.
7. S.Mohanan Nair
Assistant Cashier
O/o the General Manager Telecom District
Thiruvananthapuram.
8. C.Krishnankutty
Telecom Office Assistant
Office of the Deputy General Manager
Telecom Planning, Vazhuthacaud
Thiruvananthapuram.
9. Sri Hanok Samuel
Telecom Office Assistant
Computer Centre, O/o the General Manager
Telecom District
Thiruvananthapuram.

10. S.Sreekumar
Telecom Office Assistant Commercial Section
O/o General Manager, Telecom District
Thiruvananthapuram
11. Sri Ranjith Kumar K.G.
Telecom Office Assistant
O/o the Divisional Engineer, Telecom
Attingal. ...Respondents.

(By advocate: Mr Sunil Jose and Mr Thomas Mathew)

The application having been heard on 8th December 1999, the Tribunal on the same day delivered the following:


O R D E R

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

Applicant seeks to quash A-6, to declare that she is entitled to have her seniority fixed in Annexure A5 seniority list under Rule 38 (1) of P & T Manual Vol IV and direct the first respondent to revise her seniority treating her as a 1983 recruit in Thiruvalla.

2. The applicant was recruited as a Telecom Office Assistant in the year 1983 under the second respondent. While she was working on deputation and on temporary transfer in a vacancy of Lower Division Clerk in the office of the third respondent applied for mutual transfer and as per A-4 the mutual transfer was allowed. Accordingly she joined the office of the first respondent on 10-5-89 as a Telecom Office Assistant. She wasd given placement as Telecom Office Assistant of 1984 appointee. The applicant deserves to be placed as per Rule 38 (1) of P & T Manual Vol.IV in Annexure A-5) as a 1983 recruit just above the fourth respondent at Sl.No.166. She has been placed at Sl.No.175 below respondents 4 to 11. The first respondent without giving notice has brought down her position at Sl.No.218(A) as per A-6.

...3/-



3. Official respondents contend that from A-4 it is clear that Smt.Chitrakumari, Section Supervisor (Operative) was transferred on promotion to fill up the newly sanctioned post of Section Supervisor (Supervisory) in Thiruvalla Secondary Switching Area and the transfer of the applicant to Thiruvananthapuram Secondary Switching Area was to fill up the resultant vacancy in the cadre which implies that the applicant will become the junior most under the provisions of Rule 38 (2) of Post and Telegraph Manual (Volume IV) in the Thiruvananthapuram Secondary Switching Area. The applicant is not entitled to have any claim for seniority as in the case of a mutual transfer between officials of the same cadre by simply relying on a mere reference of mutual transfer cited in A-4 order of the third respondent. The correct position has been clarified by the third respondent in the communication dated 7.1.97 issued by the third respondent [Annexure R1(a)]. This factual position was lost sight of in the preparation of gradation list cited at A-5. As a result of the same, wrong ranking at Sl.No.174 was assigned to the applicant. Annexure A-6 was issued to avoid perpetuation of a bonafide error crept in A-5 gradation list.

4. Private respondents 5 to 8 and 10 in their reply statement contend that they were selected as Telecom Office Assistants after passing the Departmental Promotion Examination in the year 1983 and after successful completion of training they were appointed to the cadre of Telecom Office Assistants during various dates in 1986. The seniority position assigned to them as per A-5 is in conformity with relevant rules. They have been ranked at

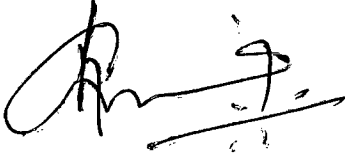
Sl.Nos 167, 168, 169, 170 and 1 72 respectively, while the applicant's seniority position is shown at Sl.No.174. The applicant joined the new unit at Trivandrum on transfer from Thiruvalla unit at her own request.

5. A-5 is the provisional seniority list of Telecom Office Assistants of Trivandrum SSA as on 1.1.95. In A-5, the seniority position of the applicant is shown at Sl.No.174. In the Original Application, it is stated that the applicant is placed at Sl.No.175. It is apparently a mistake. It is also stated in the OA that the applicant is to be placed above the fourth respondent at Sl.No.166. At this juncture it is pertinent to note that in A-11 submitted by the applicant to the third respondent it is clearly stated that "It is therefore clear that the position assigned to me was strictly as per rules and the revision thereof is not justifiable". The position assigned referred to in A-11 is the placement of the applicant at Sl.No.174 in A-5. A-11 is dated 21-2-97. This OA was filed on 6-3-97. Though in the OA it is stated the applicant is to be placed above the fourth respondent, there is absolutely no whisper anywhere in the OA to the effect that the specific admission of the applicant in A-11 that her seniority position has been correctly shown in A-5 at Sl.No.174 is wrong. The applicant cannot be allowed to blow hot and cold simultaneously. Even before the filing of the OA there is a categorical admission by the applicant that the seniority position assigned to her in A-5 is not only correct but is strictly as per rules. If that is so, without any reason the applicant cannot be permitted to take a different stand now. That being the position, the second relief cannot be granted.

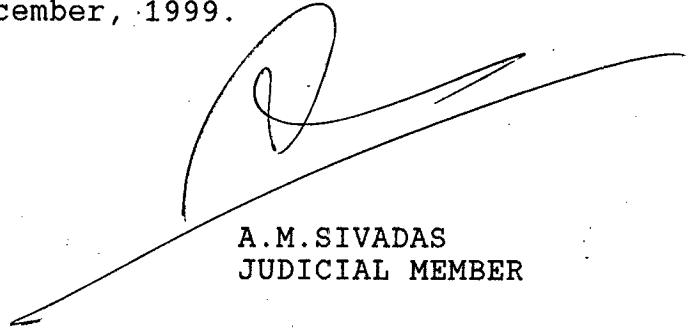
6. A-6 is the order issued in February 1997 from the office of the first respondent. By A-6, the seniority position of the applicant has been brought down from 174 to 218(A). The reason is also stated in A-6 for bringing the applicant's seniority down. The reason stated is that the ranking of seniority of the applicant at Sl.No.174 in A-5 was made erroneously on the plea that the applicant's transfer from Thiruvalla to Thiruvananthapuram was on mutual basis, that it has been clarified by the Chief General Manager, Telecom, Kerala Circle that as per order dated 29.3.89 it was only a Rule 38 request transfer and that the Telecom District Manager, Thiruvalla has also intimated that the said order of Chief General Manager was only a request transfer by citing entries in the service book of the concerned official. So A-6 is based on the clarification R1(A) and R1(B) issued by the authorities concerned. In R1(b) it is specifically stated that the transfer of the applicant to Thiruvananthapuram was on request under Rule 38 and the same cannot be treated as mutual transfer with Smt. Chithrakumari, since they were not occupying equal posts. R-1(b) says that Smt. Chithrakumari joined Thiruvalla SSA on request transfer and not on mutual transfer with the applicant. If A-6 is to be quashed, R1(a) and R1(b) are to be quashed for the reason that A6 is based on R1(a) and R1(b). The applicant cannot say after the filing of R1(a) and R1(b) by the official respondents that she is in the dark about R1(a) and R1(b). After the filing of R1(a) and R1(b), the applicant if really serious of challenging A6 should have got the OA amended by challenging R1(a) and R1(b). That has not been done. That being the position, A6 cannot be quashed.

7. We do not find any merit in the OA and accordingly the OA is dismissed with costs to respondents 5 to 8 and 10 [which we fix at Rs. 1000/- (Rupees one thousand only)].

Dated 8th day of December, 1999.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

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Annexures referred to in this order:

- A-5: True copy of Gradation List of Telecom Officers Assistants vide letter No.ST 45/GL/TOA dated 23.3.96 issued by first respondent.
- A-6: True copy of the letter No.ST 45/GL TOA/95/97 dated 2/97 issued by the first respondent.
- A-4: True copy of memo No.STB/6-2/88/IX dated 29.3.89 issued by the Assistant Director (S) for Chief General Manager Kerala Telecommunication.
- A-11: True copy of the representation dated 21.2.97 submitted by the applicant to the 3rd respondent.
- R1(a): True copy of the letter No.E/7.16/96 dated 7-1-97 of the third respondent.
- R1(b): True copy of the letter No.Q1169/TLA/63 dated 31-12-96 of the second respondent.