

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 25TH DAY OF FEBRUARY, 1987

Present

HON'BLE SHRI CH.RAMAKRISHNA RAO MEMBER(J)

HON'BLE SHRI L.H.A. REGO MEMBER(A)

Application No.1650 of 1986(T)

(Writ Petition 390 of 1982)

V.Ayyappan S/o V.Karappan
52 Yrs. S.I.Telegraphs,
Honnavar, U.K.

... Applicant

(Shri Abdur Rahim Ahmed, Advocate)

Vs

1. The General Manager,
Telecommunication,
Bangalore-9.
2. The Divisional Engineer,
Karwar,
Uttara Kannada District.
3. Sheik Madar,
Line Inspector Phones.
4. Baptista Domingo,
Line Inspector Phones.
5. K.Krishnan,
Line Inspector Phones.
6. T.Babu,
Line Inspector Phones.
7. Mohd. Hussain,
Line Inspector Phones.
8. G.D.Naik,
Line Inspector Phones.
9. Sourimuthu,
Line Inspector Phones.
10. Gangadharaiiah,
Line Inspector Phones.
11. M.V.Raghavan,
Line Inspector Phones.
12. Murugesan Gopal,
Line Inspector Phones.
13. Velayudhan,
Line Inspector Phones.

14. Kallagowda,
Line Inspector Phones.
15. Govindaraj.c,
Line Inspector Phones,
16. K.Bhaskaran,
Line Inspector Phones,
17. Narayanaswamy,
Line Inspector Phones.
18. T.K.Chandu,
Line Inspector Phones.
19. P.V.Velayudhan,
Line Inspector Phones.
20. T.P.Sethuraman,
Line Inspector Phones.
21. Jotiba Bhimappa Jadab,
Line Inspector Phones.
22. I.Govindan,
Line Inspector Phones.
23. K.Narayan,
Line Inspector Phones,
24. S.Ramaswamy,
Line Inspector Phones.

... Respondents

(Respondents No.3 to 24 are employees under Respondent No.1, General Manager, Telecommunications, Bangalore-9)

(Shri M.Vasudeva Rao, CGSC for R-1 & 2)

Application coming on for hearing this day, SHRI L.H.A.REGO, HON'BLE MEMBER, made the following:

ORDER

This is a writ petition transferred to this Bench, by the High Court of Judicature, Karnataka under Sec.29 of the Administrative Tribunals Act,1985, which is registered as an application. The applicant prays, that respondent(R)1, be directed to promote him

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to the post of Sub-Inspector and Line Inspector, Telegraphs/Telephones retrospectively, refixing his seniority for the purpose, from the date his juniors were promoted to those cadres and grant him consequential benefits.

2. The facts leading to this application are briefly as follows: The applicant joined service as Lineman, in the year 1947, in the Indian Posts and Telegraphs Department, under the Divisional Engineer, Telegraphs, Tiruchirapalli. He was transferred to Bangalore in April 1960 under the Divisional Engineer, Telegraphs, Bangalore, consequent to the formation of the Mysore Circle.

3. The applicant was removed from service with effect from 1-11-1966, on conclusion of disciplinary proceedings, relating to certain misconduct and irregularities committed by him. This order of removal of service was passed by the Sub-Divisional Officer, Telegraphs, Karwar [SDO(T), for short] on 15-7-1967.

4. Prior to this, he had filed Writ Petition No. 247/1967 in the High Court of Judicature, Karnataka, praying inter alia, for a direction to the respondents, to promote him as Sub Inspector, Telegraphs [SI(T), for short] from the date his juniors were promoted. The same was dismissed as infructuous, as in the meanwhile he was removed from service.

5. Therefore, the applicant filed another Writ Petition bearing No.4779/70 in the High Court, with a prayer to quash the above order dated 15-7-1967 of SDO(T), removing him from service. This was disposed of by the High Court, with a direction to the appellate authority, to consider the appeal of the applicant in the matter and to dispose it of within a period of two months. His appeal was duly considered by the appellate authority, who after noticing certain ^{ra} ~~technical~~ ^{ly} defects in the disciplinary proceedings, annulled the same on 4-9-1973, as also the order of removal of the applicant from service, passed by SDO(T) on 15-7-1967, with liberty, to initiate the proceedings de novo, in accordance with the rules.

6. Ere this, the applicant filed yet another Writ Petition bearing No.1721/72, in the meanwhile, praying inter alia, that the order of his removal from service be quashed. Since during the pendency of this Writ Petition, the Post and Telegraphs Board (P & T Board, for short), New Delhi, had suo motu, reviewed the case of the applicant and by their order dated 4-9-1973, quashed the disciplinary proceedings, as also the order of removal of the applicant from service, as aforementioned, the High Court observed in the said writ petition, that it was unnecessary to issue any writ, quashing the impugned order of removal of the applicant from service. The High Court also observed, that since the order of removal of the applicant from service, was set aside by the P & T Board, the applicant would be deemed to be in service and was entitled to salary from

15-7-1973 to 4-9-1973, and to be in service thereafter, subject to the liberty reserved to the concerned authority, to initiate disciplinary proceedings against the applicant de novo.

7. Consequent to the disciplinary proceedings having been annulled by the P & T Board as above, the Divisional Engineer, Telegraphs, Mangalore, by his Order dated 28-9-1974 (Annexure-D), treated the period from 15-7-1973 to 7-3-1974, in respect of the applicant, as duty for all purpose, with directions that his pay and allowances would be regulated as admissible from time to time.

8. Pursuant to the above direction of the High Court, the applicant was reinstated in service on 8-3-1974 and reported for duty as Lineman on that date, at Karwar under SDO(T). He was promoted as SI(T) in 1976 and was confirmed on 1-3-1980. The applicant states, that he was so confirmed, on the basis of his length of service and rank in the Gradation List.

9. The applicant therefore claims seniority with effect from 1-1-1966 (i.e., the date from which, he was earlier removed from service) over his juniors, who he states were promoted superseding him, by keeping him out of service arbitrarily.

10. The applicant states that after resuming duty as Linesman at Karwar as above, he represented to his superiors, namely, the Divisional Engineer, Telegraphs, Mangalore, on 27-5-1975(Annexure-G) and on 16-7-1975(Annexure-H) but as there was no response, he gave a lawyer's notice on 13-11-1975(Annexure-J) to the same officer, but to no avail. He was therefore, constrained to file a writ petition in the High Court of Judicature, Karnataka, which has since been transferred to this Bench, as stated at the outset, and is now before us for adjudication.

11. Neither the applicant nor his counsel was present at the time of hearing of the case. The contentions raised in the application are that, the applicant is denied the legitimate right of promotion to the post in question retrospectively, placing his juniors above him, despite his good service record, violative of the principles of equality and equal opportunity in public service and therefore, his seniority should be restored over his juniors namely, R3 - R24 in the relevant Gradation List, and his promotion to the next post granted to him with retrospective effect, in accordance with law.

12. In rebutting this claim and contention, Shri M.V. Rao, learned Counsel for the respondents,

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submitted that the applicant was undergoing punishment of reduction of his increment, by one stage, during the period from 24-3-1964 to 24-9-1964 on account of which, his juniors viz., R5 and R8 were promoted as SI(T)s with effect from 21-4-1964 and 30-4-1964 respectively, superseding the applicant. Consequent to reinstatement of the applicant in service, the DPC considered his case on the recommendation of which, he was ^{LA promoted} with effect from 9-4-1976. Though he was restored to his original position in the Gradation List on his reinstatement in service, Shri Rao brought to our notice, that the applicant could not be promoted to the post in question, with retrospective effect, as his earlier service record was not satisfactory and his suitability and fitness could not be assessed, as he was out of service for nearly nine years. He was however promoted as SI(T), with effect from 7-4-1976 on the basis of the recommendation of the DPC, not long after his reinstatement in March 1974.

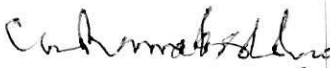
13. Shri Rao also pointed out, that the claim of the applicant for retrospective promotion to the post in question is hit by laches, as he was promoted as SI(T) in 1976, whereas he approached the High Court after a lapse of six years.

14. We have examined the matter in all its aspects. We noticed that the Counsel for the applicant has not filed any rejoinder to the statement of objections, particularly in regard to the point on laches. Actually, the cause of action for the applicant arose in 1976, but he did not bester himself till 1982, when he filed a writ petition in the High Court of Judicature, Karnataka, i.e., after a lapse of six years. The applicant has not given any explanation to this inordinate delay. We ^{are} therefore of the view, that his application is clearly hit by laches, on which ground alone, we reject the application.

15. In view of this, it is not necessary for us to examine other pleas urged in the application.

16. In view of the foregoing, this application is disposed of accordingly.

No order as to costs.


25.2.87
(Ch. Ramakrishna Rao)
Member (JM)


25.2.87
(L.H.A. Rego)
Member (AM)