

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 8 APR 1988

APPLICATION NO

798

/87(F)

W. P. NO.

1

Applicant

Shri M. Ganesan

Respondent

1/8

The GM, Telecom, Bangalore & 2 Ors

10

1. Shri M. Ganesan
No. 3, Rattan Singh Road
Fraser Town
Bangalore - 560 005
2. Col V.K.K. Nair (Retd)
Advocate
16, Hospital Road
Shivajinagar
Bangalore - 560 001
3. The General Manager
Telecom District
Bangalore - 560 009
4. Shri P.B. Jaganmohan
Telephone Revenue Inspector
Office of the Accounts Officer
Telephone Revenue (West)
Bangalore - 560 020
5. Shri Anandkumar
Telephone Revenue Inspector
Office of the Accounts Officer
Telephone Revenue
Seshadripuram
Bangalore - 560 020
6. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/SDM/1955XMX0005X passed by this Tribunal in the above said application on 29-3-88.

R.A. Verba
DEPUTY REGISTRAR
(JUDICIAL)

FIGCL 4 As above

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT BANGALORE

Dated the 29th day of March, 1988

Present

THE HON'BLE MR.JUSTICE K.S.PUTTASWAMY .. VICE CHAIRMAN
THE HON'BLE SHRI L.H.A. REGO .. MEMBER(A)

APPLICATION NO.798 OF 1987(F)

M.Ganesan
No.3, Rattan Singh Road,
Fraser Town, Bangalore-560 005.

Applicant

(Retd.)
(By Col.V.K.K.Nair, Advocate for the applicant)

-vs.-

1. Union of India,
represented by the
General Manager,
Office of the General Manager,
Telecom District,
Bangalore-9
2. Sri P.B.Jaganmohan,
TRI,
Office of the Accounts Officer,
Telephone Revenue(West)
Bangalore-20.
3. Shri Anandkumar, TRI,
Office of the Accounts Officer,
Telephone Revenue, Sheshadripuram,
Bangalore-20. ..

Respondents.

(By Shri M.Vasudev Rao, Addl.Standing Counsel for Central
Government for R-1)

Application coming on for hearing this day, Hon'ble
Shri L.H.A.Rego, Member(A), made the following:

ORDER

ORDER

In his amended application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant prays mainly, that the impugned communication dated 6-4-1987 (Annexure-D), inviting applications for the post of Telephone Revenue Inspectors (TRIs, for short) and the Order dated 8-7-1987 (Annexure-E), both emanating from Respondent (R)-1, be quashed and that the respondents be directed to retain him, in the post of Section Supervisor (Supervisory) /SS(S), for short, to which he had been promoted in April 1986.

2. The following are the salient facts, which place the case ⁱⁿ its perspective, to help determine the questions raised. The applicant entered service on 22-7-1987, in the Office of the Divisional Engineer, Telephones, Bangalore, in Class IV (Group 'D') ministerial cadre. This Office is now designated as that of the General Manager, Telecom, District Bangalore, and the applicant is currently serving in that Office, as SS(S), under the Area Manager (Rest), Telecom District Bangalore, according to the Order dated 1-9-1987 (Annexure-J) of R-1.
3. After passing the prescribed Clerical examination, he was appointed as T.S.Clerk (Office Assistant), with effect from 18-8-1962. He was promoted as Lower Selection Grade, Section Supervisor, Operative /SS(O) for short, under the 20% promotion (Incentive) scheme, with effect

from 26-4-1979, on an ad hoc basis, under Memo dated 30-4-1979 of R-1, who later regularised him in this post, under his Memo dated 26-9-1981.

4. According to the aforesaid promotion(incentive) scheme, formulated by the Director General, Posts and Telegraphs, New Delhi (DG, for short), under his Letter dated 15-6-1974, (an excerpt of which, is at Annexure-B), the Lower Selection Grade posts (LSG, for short), in the pay scale of Rs.425-640, which comprised the posts of SS(O) and SS(S), were enhanced by 20% ~~of the strength~~ of the strength of Telephone Operators and Time Scale Clerks, by appropriate conversion. According to this scheme, these additional LSG posts, which carried higher responsibility, could be utilised both for supervisory or supervisory-cum-operative duties, at the discretion of the competent authority, who was to identify these posts. This was clearly mentioned in the aforesated Order dated 30-4-1979 by R-1, promoting the applicant as SS(O), on an ad hoc basis.

5. As stated earlier, the LSG comprises both SS(O) as well as SS(S), carrying an identical pay scale of Rs.425-640. The post of SS(S) however, carries a Special Allowance of Rs.35/- per mensem, as it entails movement over a fairly wide area, in the discharge of the duty attached to it, namely, collection of departmental dues, unlike SS(O), where the duty is static in nature and therefore does not carry such allowance. It is pointed out by the respondents, that continuance of this allowance, or otherwise, is under the consideration of the Government of India.

6. The applicant was directed by R-1, by his Memo dated 23-4-1986 (Annexure-A), according to his discretion, to work as SS(S) and was granted the benefit of Special Allowance of Rs.35/- per mensem.

7. According to the instructions contained in Letter dated 24-10-1970 of the DG, the posts of TRIs, were to be filled in by selection, from amongst permanent/temporary L.S.G. Clerks, which comprised both SS(O)s, as well as SS(S)s. The tenure in the post of TRI, was fixed at four years.

8. A scheme known as the Time Bound One Promotion Scheme (TBOPS, for short), came to be introduced by the DG, under his Letter dated 17-12-1983 (Annexure-C), with a view to provide incentive to regular employees, in the Operative cadres of the Posts and Telegraphs Department. This Scheme became effective from 30-11-1983. The applicant states, that Annexure-C, dated 17-12-1983 (TBOPS), supersedes Annexure-B dated 15-6-1974 (The 20% Incentive Scheme). The respondents do not admit the same, and clarify that Gradation Lists are maintained separately in respect of those promoted under the TBOPS and the 20% Incentive Scheme.

9. By his communication dated 6-4-1987 (Annexure-D), R-1 invited applications from among SS(S)s, in receipt of Special Allowance of Rs.35/- per mensem and from SS(O)s (excluding those promoted under the TBOPS) to work as TRIs, on the terms and conditions specified

therein. This communication reads thus:

"DEPARTMENT OF TELECOMMUNICATIONS

Office of the General Manager,
Bangalore Telecom District,
Bangalore-9.

No. ST-5/10/94, dated at Bangalore-9
the 6-4-1987.

Sub: Selection for the post of Telephone Revenue Inspector.

Applications are invited from amongst section supervisors (Supervisory) who are in receipt of special allowance Rs.35/- per month and section supervisors operative, (excluding the Time bound promotees) to work as 'Telephone Revenue Inspector' .

The appointment will be purely on selection for a tenure period of 4 years.

The official selected will be required to do extensive outdoor work and should be able to work efficiently to realise departmental dues. They should be highly tactful, be conversant with the local language as well as Hindi.

The officials should own the motorised vehicles for outdoor work. All applications routed through the section Officer, should reach the STAFF-'A' section on or before 25-4-87. The applications received after the due date, will not be considered.

The section supervisor(Supervisory) when selected for the post of TRI, will not be entitled for the special allowance(Rs.35/- p.m.) during the tenure period.

Sd.SS. Rao,
Asst.General Manager(s),
Bangalore Telecom Dist.
Bangalore-9."

10. The applicant states, that as he did not own a motorised vehicle and was thus ineligible for the above post of TRI, he did not apply for the same.

11. According to the applicant, R-1 selected two SS(O)s, who were ineligible, who were appointed as TRIs, vice those who had completed their tenure of 4 years, and were thereafter posted as SS(S). As a result, the applicant who was working as SS(S), drawing Special Allowance of Rs.35/- per mensem, had to make place for one of the TRIs, who was posted as SS(S), on completion of his tenure as TRI, and the applicant was directed to work as SS(O), according to Memo dated 8-7-1987(Annexure-E) by R-1.

12. The applicant was under the impression, that this was tantamount to reversion from the post of SS(S) to that of SS(O) and therefore submitted a representation to the Assistant General Manager(Staff), Telecom District, Bangalore, on 17-7-1987(Annexure-H) for redress. The applicant reminded the Assistant General Manager(Staff), by his letter dated 11-8-1987(Annexure-I), for an early decision on his above representation, dated 17-7-1987 and informed him, that he had in the meanwhile complied with the instructions of R-1, under his Memo dated 8-7-1987 (Annexure E) under protest, by joining duty as SS(O).

13. By his Memo dated 1-9-1987 (Annexure-J), R-1 posted the applicant as SS(S), until further orders in the vacancy, that arose, consequent to the retirement



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of one Shri P.R.Menon, SS(S), with effect from 31-8-1987 AN and granted him the benefit of Special Allowance of Rs.35/- per mensem, indicating, that continuation of this Allowance, was under review and that the same would be liable to be recovered from him if found inadmissible. The applicant was not satisfied with this posting as SS(S), as he was apprehending, that he would be soon displaced by one Shri A.Gnanaprakasan, on being posted as SS(S) on completion of his tenure of 4 years as TRI. The applicant urges, that he should be appointed as SS(S) regularly and should not be subjected to the vagaries of being displaced now and then from this post, by someone else. He has also challenged the arbitrariness of the terms and conditions specified by R-1, in his communication dated 7-4-1987(Annexure-D), for the post of TRI, particularly in regard to a motorised vehicle required to be owned by one, aspiring for this post. The applicant states that since he did not receive justice from the respondents to his representation, he has approached this Tribunal through his present application.

14. Col.(Retd)(R) V.K.K.Nair, learned Counsel for the applicant contended, as a first string to his bow, that the post of SS(S), was superior to that of SS(O); to substantiate, which he relied on the following:

- (i) The Memo dated 6-1-1981(Annexure-A) issued by R-1, in regard to promotion of certain Office Assistants, as SS(O)s

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reveals, that the relevant vacancies in the posts of SS(O)s, ~~arose~~ ^{arose} as a result of promotion of incumbents, in these posts of SS(O)s, as SS(S).

- (ii) The Gradation(Seniority) List, for the cadre of SS(O)s and SS(S)s, is not common but maintained separately, showing thereby, that these posts are not equivalent.
- (iii) Para-10 of the Letter dated 17-12-1983 (Annexure-C) by the DG reveals, that Supervisory LSG posts, are promotional posts.
- (iv) Para-15 ibid stipulates, that under TBOPS ~~that~~ incumbents in regularly sanctioned supervisory posts only, are entitled to Special Allowance, as indicated in Annexure B(2) to the Agreement.
- (v) According to DG's Letter dated 24-10-1970 (a copy of which is not produced by either side) only LSGs (i.e. from SS(S) cadre only) are to be considered for being posted as TRIs.

15: Col.(R)Nair further contended, that Annexure-B dated 15-6-1974 (The 20% Incentive Scheme), was later superseded by Annexure-C, dated 17-12-1983 (TBOPS) and consequently, the competent authority could not exercise unfettered discretion as before (according to Annexure 'B' dated 15-6-1974) to identify the LSG posts, for the purpose of being utilised for Supervisory or Supervisory-cum-Operative duties.

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16. The point that Col.(R) Nair was seeking to advance, in the light of the foregoing was, the post of SS(S) was superior to that of SS(O) and his client having been once promoted to the cadre of SS(S), on a regular basis, could not be reverted as SS(O), according to the whim and caprice of the respondents, depriving him thereby of the legitimate benefit, in the shape of financial incentive of Special Allowance of Rs.35/- per mensem, in the post of SS(S). According to the Order dated 23-4-1986 (Annexure-A) by R-1, Col.(R) Nair stressed, the appointment of his client as SS(S), with the benefit of Special Allowance of Rs.35/- per mensem, was against the six additional posts of SS(S) created and was thus a regular appointment and not provisional or ad hoc and therefore, he could not have been reverted as SS(O), with concomitant loss of Special Allowance, for no fault of his.

17. Drawing out the second string to his bow, Col.(R) Nair sedulously argued, that arbitrariness and flagrant discrimination, were writ large in the precondition, requiring a motorised vehicle to be owned by an aspirant to the post of TRI, as stipulated by R-1, in his communication dated 6-4-1987 (Annexure-D), inviting applications from SS(S)s and SS(O)s (excluding the TBOPS promotees) for the posts of TRIs. Such a pre-requisite according to him, was ex facie, invidious, arbitrary and unconscionable, as it sought to place a premium on financial viability of the

 aspirant

aspirant, at the cost of merit, thereby denying equality before law and equality of opportunity in the matter of public employment and therefore, attracted the provisions of Articles 14 and 16 of the Constitution. He therefore pleaded, that such a pre-condition (for the post of TRI) which was patently unconscionable and irrational, should be forthwith quashed and if this was done, he said he was sanguine, that his client would succeed in this application.

18. Rebutting the above contentions of Col.(R)Nair, the mainspring of Shri M.V.Rao, learned Counsel for the respondents, was, that ^{the} applicant was under an erroneous impression, that the post of SS(S) was superior to that of SS(O). He sought to articulate his reasoning on the premise, that the posts of SS(O) and SS(S) were identical, in their time-scale of pay viz., Rs.425-640 and were borne on a common Gradation(Seniority) List, and not ^a separate Seniority List, as contended by Col.(R)Nair. He therefore asserted, that the question of reversion or promotion, in so far interchange of postings in these two cadres was concerned, did not at all rise. The applicant could therefore have no legitimate cause for grievance in this respect, he averred.

19. The incentive of Special Allowance of Rs.35/- per mensem for the post of SS(S) he explained, was governed by certain criteria, such as ^{the} arduous ~~the~~ ^{and} nature



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nature of duty, the workload and the responsibility involved. The incumbent in this post, he said, was required to travel rather extensively, in the performance of his field duty, in recovering departmental revenue with the utmost promptitude, which also involved added responsibility, for which he was compensated in the shape of Special Allowance. Such was not the case in the case of the SS(O), where the nature of duty, was more or less sedentary.

20. The TBOPS and the 20% Incentive Scheme, he said, were mutually exclusive and the Gradation(Seniority) Lists, in respect of each of these two schemes, were not common but separate. The TBOPS had not superseded the 20% Incentive Scheme, he said. The two officials who were appointed as TRIs (vide para 11 supra), he explained, were promoted as SS(O)s, in April/June 1982, under the earlier 20% Incentive Scheme, and not under TBOPS, effective from 30-11-1983. These officials were borne on a separate Gradation List and they were given priority for further promotion, as compared to those promoted under the TBOPS, who were borne on a separate Gradation List of Office Assistants in the lower cadre.

21. Shri Rao clarified, that the applicant was promoted as SS(O), from the post of Office Assistant, under the 20% Incentive Scheme on an ad hoc basis, by R-1, under the 20% Incentive Scheme, by his Memo dated 30-4-1979, with effect

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from 26-4-1979 and this promotion was later regularised by R-1, by his Memo dated 26-9-1981 and that it was clearly mentioned in his promotion order, that according to the 20% Incentive Scheme, the services of a SS(O), could be utilised either for supervisory or Supervisory-cum-Operative duty, at the discretion of the competent authority.

22. As regards the pre-requisite stipulated in Annexure-D(also vide para 9 supra) by R-1, that an aspirant for the post of TRI, should among other things own a motorised vehicle for outdoor work, Shri Rao asserted, that there was nothing unconscionable, discriminatory or irrational therein, as alleged by Col.(R)Nair, as this pre-requisite had a clear nexus with the object sought to be achieved. The object was to facilitate prompt realisation of departmental dues, from the defaulters and this work entailed extensive travelling, for which conveyance allowance is being paid separately under the departmental rules. A motorised vehicle, he said, would be a great aid and facility, in discharging this duty as desired and was in fact a desideratum.

23. If the applicant had any grievance in this respect, he could have promptly represented the matter to R-1 and sought clarification and guidance, which Shri Rao said, he failed to do ^{so}. He also did not apply for the post of TRI(pending the above clarification, if he so desired) in response to the opportunity given to

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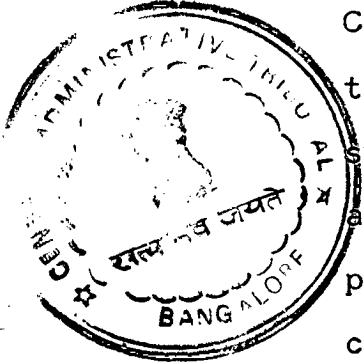
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him by R-1, according to Annexure-D. Shri Rao, therefore, pleaded, that the applicant cannot make a grievance of this default, at this belated stage.

24. Shri Rao further clarified, that the post of TRI did not carry any Special Allowance, and that in view of enhancement of the promotional posts in the cadre of LSGs to 20%, from June 1974, the post of TRI could be filled in both from among SS(S)s as well as SS(O)s, (borne on a separate Gradation List, unlike the promotees under the TBOPS) provided, there were no volunteers among the SS(S), in accordance with the instructions contained in Letter dated 17-12-1975 from the DG.

25. The applicant he said, was not posted as SS(S) on a regular or permanent basis, as claimed by the applicant, but continues in the cadre of LSG to date, on a temporary basis and has not yet become substantive.

26. We have given due thought to the pleadings of both sides and have examined carefully, the pertinent record placed before us. The contention of Col.(R) Nair, that the post of SS(S) is superior to that of SS(O), in the cadre of LSG, for the reasons stated by him in para 14 supra, does not carry conviction, against the predominant fact, that the time-scale of pay of either of these posts viz., Rs.425-640 is identical and that these posts are borne on a common Gradation List. The Gradation List at Annexure-F, cited in support,



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by Col.(R) Nair does not seem relevant, as it is seen to pertain to that of Office Assistants. Even then, the remarks column of this Gradation List reveals, that the incumbents therein, have been officiating both as SS(O)s as well as SS(S)s. According to the instructions of the DG in his Letter dated 17-12-1975 referred to above, both SS(O)s as well as SS(S)s, are eligible for the post of TRI.

27. The question of reversion from the post of SS(S) to that of SS(O) or of promotion from that of SS(O) to that of SS(S), as contended by Col.(R)Nair, attracting the provisions of Article 311(2) of the Constitution, in the case of the former, does not therefore arise. Only the nature of duties in these posts differ, as is indicative from their respective designations and a mere stray and inadvertent inexactitude, in the use of words by the respondents, in some of their communications, relied upon by Col(R)Nair, can be hardly of any avail to the applicant. Besides, interchange of posts of SS(S) and SS(O) of identical time-scale of pay, does not visit the civil servant with any civil consequences such as, stopping or postponing his future chances of promotion, or affecting his seniority in substantive rank. Besides, we are convinced from perusal the TBOPS and the 20% Incentive Scheme, that they are mutually exclusive.



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We therefore hold, that the posts of SS(O) and SS(S) are equivalent and that the applicant cannot have any grievance of alleged reversion, if he is posted as SS(O), having once worked as SS(S), particularly when he was not appointed to the latter post, substantively, as pointed out by Shri Rao.

28. As for the precondition imposed by R-1, under his communication dated 6-4-1987 (Annexure-D), that among other things, the aspirant to the post of TRI, should possess his own motorised vehicle, we are persuaded by the argument of Shri Rao, that this has a nexus with the object, sought to be achieved, namely, of ensuring speedy recovery of departmental dues from the defaulters, dispersed over a wide area, which calls for mobility. The applicant does not seem to have made any effort whatsoever, to represent his difficulty if any, in this regard to the concerned authority and obtain the necessary clarification or guidance. Besides, such a condition cannot be said to have operated harshly against the applicant from the financial angle, as he could have availed of the facility of drawing an advance from his Department, for the purchase of a motorised vehicle, repayable in easy instalments. On the other hand, the applicant is seen to have remained inert and did not take any initiative in the interest of his career.



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Under these circumstances, he cannot make a fetish at this stage, that the above precondition was discriminatory, unconscionable and irrational. For the reasons aforementioned, we hold, that the said pre-condition stipulated by R-1, for the post of TRI in Annexure-D, was fair and reasonable, as it had a nexus with the object sought to be achieved.

29. In the result, the application fails and is liable to be dismissed. We dismiss the same accordingly, but with no order as to costs.

Sd/-

(K. S. PUTTASWAMY)
VICE CHAIRMAN

Sd/-

(L. H. A. REGO)
MEMBER (A)

TRUE COPY

R. Venkatesh
DEPUTY REGISTRAR (JDL) 8/4/78
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
II Floor, Indiranagar,
Bangalore- 560 038.

Dated: 8 APR 1988

To

1. Shri. Sanjeev Malhotra,
All India Services Law Journal,
Hakikat Nagar, Mal Road,
New Delhi- 110 009.
2. Administrative Tribunal Reporter,
Post Box No.1518,
Delhi- 110 006.
3. The Editor,
Administrative Tribunal Cases,
C/o. Eastern Book Co.,
34, Lal Bagh,
Lucknow- 226 001.
4. The Editor,
Administrative Tribunal Law Times,
5335, Jawahar Nagar,
(Kolhapur Road),
Delhi- 110 007.
5. M/s. All India Reporter,
Congressnagar,
Nagpur.

Sir,

I am directed to forward herewith a copy of the ~~under~~
mentioned order passed by a Bench of this Tribunal comprising of
Hon'ble Mr. Justice K. S. Puttaswamy Vice-Chairman/
Member(J) and Hon'ble Mr. L. H. A. Rego Member(A)
with a request for publication of the order in the Journals.

Order dated 29-3-88 passed in A.Nos. 798187(F).

Yours faithfully,

sdl
(B.V. VENKATA REDDY)
DEPUTY REGISTRAR(J).

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U/A/2000
U.R.D.S
11-4-88

Copy with enclosure forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi- 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I.Compunds, Madras- 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O.Complex, 234/4, A.J.C. Bose Road, Nizam Palace, Calcutta- 700 020.
4. The Registrar, Central Administrative Tribunal, CGO Complex(CGO), 1st Floor, Near Kankon Bhawan, New Bombay- 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A, Post Bag No. 013, Thorn Hill Road, Allahabad- 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O.102/103, Sector 34-A, Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shilong Road, Guwahati- 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th & 6th Floor, Opp.Maharaja College, M.G.Road, Ernakulam, Cochin-682001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15 Civil Lines, Jabalpur(MP).
10. The Registrar, Central Administrative Tribunal, 88-A B.M.Enterprises, Shri Krishna Nagar, Patna-1.
11. The Registrar, Central Administrative Tribunal, C/o.Rajasthan High Court, Jodhpur(Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmedabad.
14. The Registrar, Central Administrative Tribunal, Bolamundai, Cuttak- 753001.

Copy with enclosure also to:

1. Court Officer(Court I)
2. Court Officer(Court II)

B.V. Venkata Reddy
(B.V. VENKATA REDDY)
DEPUTY REGISTRAR(J).

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT BANGALORE

Dated the 29th day of March, 1988

Present

THE HON'BLE MR.JUSTICE K.S.PUTTASWAMY .. VICE CHAIRMAN
THE HON'BLE SHRI L.H.A. REGO .. MEMBER(A)

APPLICATION NO.798 OF 1987(F)

M.Ganesan
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Applicant

(Retd.)
(By Col.V.K.K.Nair, Advocate for the applicant)

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(By Shri M.Vasudev Rao, Addl.Standing Counsel for Central
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2. The following are the salient facts, which place the case into its perspective, to help determine the questions raised. The applicant entered service on 22-7-1987, in the Office of the Divisional Engineer, Telephones, Bangalore, in Class IV (Group 'D') ministerial cadre. This Office is now designated as that of the General Manager, Telecom, District Bangalore, and the applicant is currently serving in that Office, as SS(S), under the Area Manager (Rest), Telecom District Bangalore, according to the Order dated 1-9-1987 (Annexure-J) of R-1.

3. After passing the prescribed Clerical examination, he was appointed as T.S.Clerk (Office Assistant), with effect from 18-8-1962. He was promoted as Lower Selection Grade, Section Supervisor, Operative /SS(O) for short, under the 20% promotion (Incentive) scheme, with effect

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from

from 26-4-1979, on an ad hoc basis, under Memo dated 30-4-1979 of R-1, who later regularised him in this post, under his Memo dated 26-9-1981.

4. According to the aforesaid promotion(incentive) scheme, formulated by the Director General, Posts and Telegraphs, New Delhi (DG, for short), under his Letter dated 15-6-1974, (an excerpt of which, is at Annexure-B), the Lower Selection Grade posts (LSG, for short), in the pay scale of Rs.425-640, which comprised the posts of SS(O) and SS(S), were enhanced by 20% ~~of the strength~~ of the strength of Telephone Operators and Time Scale Clerks, by appropriate conversion. According to this scheme, these additional LSG posts, which carried higher responsibility, could be utilised both for supervisory or supervisory-cum-operative duties, at the discretion of the competent authority, who was to identify these posts. This was clearly mentioned in the aforesated Order dated 30-4-1979 by R-1, promoting the applicant as SS(O), on an ad hoc basis.

5. As stated earlier, the LSG comprises both SS(O) as well as SS(S), carrying an identical pay scale of Rs.425-640. The post of SS(S) however, carries a Special Allowance of Rs.35/- per mensem, as it entails movement over a fairly wide area, in the discharge of the duty attached to it, namely, collection of departmental dues, unlike SS(O), where the duty is static in nature and therefore does not carry such allowance. It is pointed out by the respondents, that continuance of this allowance, or otherwise, is under the consideration of the Government of India.

6. The applicant was directed by R-1, by his Memo dated 23-4-1986 (Annexure-A), according to his discretion, to work as SS(S) and was granted the benefit of Special Allowance of Rs.35/- per mensem.

7. According to the instructions contained in Letter dated 24-10-1970 of the DG, the posts of TRIs, were to be filled in by selection, from amongst permanent/temporary L.S.G. Clerks, which comprised both SS(O)s, as well as SS(S)s. The tenure in the post of TRI, was fixed at four years.

8. A scheme known as the Time Bound One Promotion Scheme (TBOPS, for short), came to be introduced by the DG, under his Letter dated 17-12-1983 (Annexure-C), with a view to provide incentive to regular employees, in the Operative cadres of the Posts and Telegraphs Department. This Scheme became effective from 30-11-1983. The applicant states, that Annexure-C, dated 17-12-1983 (TBOPS), supersedes Annexure-B dated 15-6-1974 (The 20% Incentive Scheme). The respondents do not admit the same, and clarify that Gradation Lists are maintained separately in respect of those promoted under the TBOPS and the 20% Incentive Scheme.

9. By his communication dated 6-4-1987 (Annexure-D), R-1 invited applications from among SS(S)s, in receipt of Special Allowance of Rs.35/- per mensem and from SS(O)s (excluding those promoted under the TBOPS) to work as TRIs, on the terms and conditions specified

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therein. This communication reads thus:

"DEPARTMENT OF TELECOMMUNICATIONS

Office of the General Manager,
Bangalore Telecom District,
Bangalore-9.

No.ST-5/10/94, dated at Bangalore-9
the 6-4-1987.

Sub: Selection for the post of Telephone Revenue Inspector.

Applications are invited from amongst section supervisors (Supervisory) who are in receipt of special allowance Rs.35/- per month and section supervisors operative, (excluding the Time bound promotees) to work as 'Telephone Revenue Inspector' .

The appointment will be purely on selection for a tenure period of 4 years.

The official selected will be required to do extensive outdoor work and should be able to work efficiently to realise departmental dues. They should be highly tactful, be conversant with the local language as well as Hindi.

The officials should own the motorised vehicles for outdoor work. All applications routed through the section Officer, should reach the STAFF-'A' section on or before 25-4-87. The applications received after the due date, will not be considered.

The section supervisor(Supervisory) when selected for the post of TRI, will not be entitled for the special allowance(Rs.35/- p.m.) during the tenure period.

Sd.SS. Rao,
Asst.General Manager(S),
Bangalore Telecom Dist.
Bangalore-9."

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10. The applicant states, that as he did not own a motorised vehicle and was thus ineligible for the above post of TRI, he did not apply for the same.

11. According to the applicant, R-1 selected two SS(O)s, who were ineligible, who were appointed as TRIs, vice those who had completed their tenure of 4 years, and were thereafter posted as SS(S). As a result, the applicant who was working as SS(S), drawing Special Allowance of Rs.35/- per mensem, had to make place for one of the TRIs, who was posted as SS(S), on completion of his tenure as TRI, and the applicant was directed to work as SS(O), according to Memo dated 8-7-1987(Annexure-E) by R-1.

12. The applicant was under the impression, that this was tantamount to reversion from the post of SS(S) to that of SS(O) and therefore submitted a representation to the Assistant General Manager(Staff), Telecom District, Bangalore, on 17-7-1987(Annexure-H) for redress. The applicant reminded the Assistant General Manager(Staff), by his letter dated 11-8-1987(Annexure-I), for an early decision on his above representation, dated 17-7-1987 and informed him, that he had in the meanwhile complied with the instructions of R-1, under his Memo dated 8-7-1987 (Annexure E) under protest, by joining duty as SS(O).

13. By his Memo dated 1-9-1987 (Annexure-J), R-1 posted the applicant as SS(S), until further orders in the vacancy, that arose, consequent to the retirement

of one Shri P.R.Menon, SS(S), with effect from 31-8-1987 AN and granted him the benefit of Special Allowance of Rs.35/- per mensem, indicating, that continuation of this Allowance, was under review and that the same would be liable to be recovered from him if found inadmissible. The applicant was not satisfied with this posting as SS(S), as he was apprehending, that he would be soon displaced by one Shri A.Gnanaprakasan, on being posted as SS(S) on completion of his tenure of 4 years as TRI. The applicant urges, that he should be appointed as SS(S) regularly and should not be subjected to the vagaries of being displaced now and then, from this post, by someone else. He has also challenged the arbitrariness of the terms and conditions specified by R-1, in his communication dated 7-4-1987(Annexure-D), for the post of TRI, particularly in regard to a motorised vehicle required to be owned by one, aspiring for this post. The applicant states that since he did not receive justice from the respondents to his representation, he has approached this Tribunal through his present application.

14. Col.(Retd)(R) V.K.K.Nair, learned Counsel for the applicant contended, as a first string to his bow, that the post of SS(S), was superior to that of SS(O); to substantiate, which he relied on the following:

- (i) The Memo dated 6-1-1981(Annexure-A) issued by R-1, in regard to promotion of certain Office Assistants, as SS(O)s

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reveals, that the relevant vacancies in the posts of SS(O)s, ~~come~~ ^{arose} as a result of promotion of incumbents, in these posts of SS(O)s, as SS(S).

(ii) The Gradation(Seniority) List, for the cadre of SS(O)s and SS(S)s, is not common but maintained separately, showing thereby, that these posts are not equivalent.

(iii) Para-10 of the Letter dated 17-12-1983 (Annexure-C) by the DG reveals, that Supervisory LSG posts, are promotional posts.

(iv) Para-15 ibid stipulates, that under TBOPS ~~the~~ incumbents in regularly sanctioned supervisory posts only, are entitled to Special Allowance, as indicated in Annexure B(2) to the Agreement.

(v) According to DG's Letter dated 24-10-1970 (a copy of which is not produced by either side) only LSGs (i.e. from SS(S) cadre only) are to be considered for being posted as TRIs.

15: Col.(R)Nair further contended, that Annexure-B dated 15-6-1974 (The 20% Incentive Scheme), was later superseded by Annexure-C, dated 17-12-1983 (TBOPS) and consequently, the competent authority could not exercise unfettered discretion as before (according to Annexure 'B' dated 15-6-1974) to identify the LSG posts, for the purpose of being utilised for Supervisory or Supervisory-cum-Operative duties.

16. The point that Col.(R) Nair was seeking to advance, in the light of the foregoing was, the post of SS(S) was superior to that of SS(O) and his client having been once promoted to the cadre of SS(S), on a regular basis, could not be reverted as SS(O), according to the whim and caprice of the respondents, depriving him thereby of the legitimate benefit, in the shape of financial incentive of Special Allowance of Rs.35/- per mensem, in the post of SS(S). According to the Order dated 23-4-1986 (Annexure-A) by R-1, Col.(R) Nair stressed, the appointment of his client as SS(S), with the benefit of Special Allowance of Rs.35/- per mensem, was against the six additional posts of SS(S) created and was thus a regular appointment and not provisional or ad hoc and therefore, he could not have been reverted as SS(O), with concomitant loss of Special Allowance, for no fault of his.

17. Drawing out the second string to his bow, Col.(R) Nair sedulously argued, that arbitrariness and flagrant discrimination, were writ large in the precondition, requiring a motorised vehicle to be owned by an aspirant to the post of TRI, as stipulated by R-1, in his communication dated 6-4-1987 (Annexure-D), inviting applications from SS(S)s and SS(O)s (excluding the TBOPS promotees) for the posts of TRIs. Such a pre-requisite according to him, was ex facie, invidious, arbitrary and unconscionable, as it sought to place a premium on financial viability of the

aspirant, at the cost of merit, thereby denying equality before law and equality of opportunity in the matter of public employment and therefore, attracted the provisions of Articles 14 and 16 of the Constitution. He therefore pleaded, that such a pre-condition (for the post of TRI) which was patently unconscionable and irrational, should be forthwith quashed and if this was done, he said he was sanguine, that his client would succeed in this application.

18. Rebutting the above contentions of Col.(R)Nair, the mainspring of Shri M.V.Rao, learned Counsel for the respondents, was, that ^{the} applicant was under an erroneous impression, that the post of SS(S) was superior to that of SS(O). He sought to articulate his reasoning on the premise, that the posts of SS(O) and SS(S) were identical, in their time-scale of pay viz., Rs.425-640 and were borne on a common Gradation(Seniority) List, and not ^a separate Seniority List, as contended by Col.(R)Nair. He therefore asserted, that the question of reversion or promotion, in so far interchange of postings in these two cadres was concerned, did not at all rise. The applicant could therefore have no legitimate cause for grievance in this respect, he averred.

19. The incentive of Special Allowance of Rs.35/- per mensem, for the post of SS(S) he explained, was governed by certain criteria, such as ^{the} arduous ~~the~~ ^{the} nature

nature of duty, the workload and the responsibility involved. The incumbent in this post, he said, was required to travel rather extensively, in the performance of his field duty, in recovering departmental revenue with the utmost promptitude, which also involved added responsibility, for which he was compensated in the shape of Special Allowance. Such was not the case in the case of the SS(O), where the nature of duty, was more or less sedentary.

20. The TBOPS and the 20% Incentive Scheme, he said, were mutually exclusive and the Gradation (Seniority) Lists, in respect of each of these two schemes, were not common but separate. The TBOPS had not superseded the 20% Incentive Scheme, he said. The two officials who were appointed as TRIs (vide para 11 supra), he explained, were promoted as SS(O)s, in April/June 1982, under the earlier 20% Incentive Scheme, and not under TBOPS, effective from 30-11-1983. These officials were borne on a separate Gradation List and they were given priority for further promotion, as compared to those promoted under the TBOPS, who were borne on a separate Gradation List of Office Assistants in the lower cadre.

21. Shri Rao clarified, that the applicant was promoted as SS(O), from the post of Office Assistant, under the 20% Incentive Scheme on an ad hoc basis, by R-1, under the 20% Incentive Scheme, by his Memo dated 30-4-1979, with effect

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from 26-4-1979 and this promotion was later regularised by R-1, by his Memo dated 26-9-1981 and that it was clearly mentioned in his promotion order, that according to the 20% Incentive Scheme, the services of a SS(O), could be utilised either for supervisory or Supervisory-cum-Operative duty, at the discretion of the competent authority.

22. As regards the pre-requisite stipulated in Annexure-D(also vide para 9 supra) by R-1, that an aspirant for the post of TRI, should among other things own a motorised vehicle for outdoor work, Shri Rao asserted, that there was nothing unconscionable, discriminatory or irrational therein, as alleged by Col. (R)Nair, as this pre-requisite had a clear nexus with the object sought to be achieved. The object was to facilitate prompt realisation of departmental dues, from the defaulters and this work entailed extensive travelling, for which conveyance allowance is being paid separately under the departmental rules. A motorised vehicle, he said, would be a great aid and facility, in discharging this duty as desired and was in fact a desideratum.

23. If the applicant had any grievance in this respect, he could have promptly represented the matter to R-1 and sought clarification and guidance, which Shri Rao said, he failed to do ~~so~~^{as}. He also did not apply for the post of TRI(pending the above clarification, if he so desired) in response to the opportunity given to

him by R-1, according to Annexure-D. Shri Rao, therefore, pleaded, that the applicant cannot make a grievance of this default, at this belated stage.

24. Shri Rao further clarified, that the post of TRI did not carry any Special Allowance, and that in view of enhancement of the promotional posts in the cadre of LSGs to 20%, from June 1974, the post of TRI could be filled in both from among SS(S)s as well as SS(O)s, (borne on a separate Gradation List, unlike the promotees under the TBOPS) provided, there were no volunteers among the SS(S), in accordance with the instructions contained in Letter dated 17-12-1975 from the DG.

25. The applicant he said, was not posted as SS(S) on a regular or permanent basis, as claimed by the applicant, but continues in the cadre of LSG to date, on a temporary basis and has not yet become substantive.

26. We have given due thought to the pleadings of both sides and have examined carefully, the pertinent record placed before us. The contention of Col.(R) Nair, that the post of SS(S) is superior to that of SS(O), in the cadre of LSG, for the reasons stated by him in para 14 supra, does not carry conviction, against the predominant fact, that the time-scale of pay of either of these posts viz., Rs.425-640 is identical and that these posts are borne on a common Gradation List. The Gradation List at Annexure-F, cited in support,

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by Col.(R) Nair does not seem relevant, as it is seen to pertain to that of Office Assistants. Even then, the remarks column of this Gradation List reveals, that the incumbents therein, have been officiating both as SS(O)s as well as SS(S)s. According to the instructions of the DG in his Letter dated 17-12-1975 referred to above, both SS(O)s as well as SS(S)s, are eligible for the post of TRI.

27. The question of reversion from the post of SS(S) to that of SS(O) or of promotion from that of SS(O) to that of SS(S), as contended by Col.(R)Nair, attracting the provisions of Article 311(2) of the Constitution, in the case of the former, does not therefore arise. Only the nature of duties in these posts differ, as is indicative from their respective designations and a mere stray and inadvertent inexactitude, in the use of words by the respondents, in some of their communications, relied upon by Col(R)Nair, can be hardly of any avail to the applicant. Besides, interchange of posts of SS(S) and SS(O) of identical time-scale of pay, does not visit the civil servant with any civil consequences such as, stopping or postponing his future chances of promotion, or affecting his seniority in substantive rank. Besides, we are convinced from perusal the TBOPS and the 20% Incentive Scheme, that they are mutually exclusive.

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We therefore hold, that the posts of SS(O) and SS(S) are equivalent and that the applicant cannot have any grievance of alleged reversion, if he is posted as SS(O), having once worked as SS(S), particularly when he was not appointed to the latter post, substantively, as pointed out by Shri Rao.

28. As for the precondition imposed by R-1, under his communication dated 6-4-1987 (Annexure-D), that among other things, the aspirant to the post of TRI, should possess his own motorised vehicle, we are persuaded by the argument of Shri Rao, that this has a nexus with the object, sought to be achieved, namely, of ensuring speedy recovery of departmental dues from the defaulters, dispersed over a wide area, which calls for mobility. The applicant does not seem to have made any effort whatsoever, to represent his difficulty if any, in this regard to the concerned authority and obtain the necessary clarification or guidance. Besides, such a condition cannot be said to have operated harshly against the applicant from the financial angle, as he could have availed of the facility of drawing an advance from his Department, for the purchase of a motorised vehicle, repayable in easy instalments. On the other hand, the applicant is seen to have remained inert and did not take any initiative in the interest of his career.

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Under these circumstances, he cannot make a fetish at this stage, that the above precondition was discriminatory, unconscionable and irrational. For the reasons aforementioned, we hold, that the said pre-condition stipulated by R-1, for the post of TRI in Annexure-D, was fair and reasonable, as it had a nexus with the object sought to be achieved.

29. In the result, the application fails and is liable to be dismissed. We dismiss the same accordingly, but with no order as to costs.

Sd/-

(K. S. PUTTASWAMY)
VICE CHAIRMAN

Sd/-

(L. H. A. REGO)
MEMBER (A)

TRUE COPY

B. Venkateshwaran
DEPUTY REGISTRAR (JD)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE