

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/001018/2014

Thursday, this the 1st day of November, 2018.

CORAM:

**HON'BLE Mr. E.K. BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER**

K.N. Parameshwaran Nair, 71 years,
S/o. Padmanabha Paniker (late),
Retired Divisional Engineer,
Residing at 'Sri Kovil, Thamarakulangara',
Thripunithura, Kochi – 682 301. - Applicant

[By Advocate Mr. M.R. Hariraj]

Versus

1. Union of India represented by the Secretary,
Ministry of Communications, New Delhi – 110 001.
2. Chief General Manager (Telecom),
BSNL Kerala Circle, Thiruvananthapuram – 695 033.
3. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited, Kochi – 16. - Respondents

[By Advocates : Mr. George Joseph for R-1
Mr. T.C. Krishna for R-2 and 3]

The application having been heard on 05.10.2018, the Tribunal
on 01.11.2018 delivered the following:

O R D E R

Per: Ashish Kalia, Judicial Member

The applicant commenced his service as Telegraphist on 10.01.1964. He was promoted as Assistant Superintendent of Telegraph Traffic with effect from 26.12.1973 through All India Competitive Examination. He was promoted to the post of Telegraph Service Group B in the year 1984. At this stage, there was a proposal for merger of

Telegraph Traffic Service with India Telegraph Engineering Service (*in short TTS and ITS*). It is submitted that there have been litigation commenced on this merger and ultimately the proposal for merger was withdrawn as *ab-intio* by order dated 29.06.2000.

2. The applicant had filed O.A No. 1505 of 1998 before this Tribunal and it was disposed of directing the respondents to work out equities in favour of the applicant in accordance with the decision contained in the order dated 24.08.2000 in the light of the tripartite agreement signed on 16.08.2000. It is further submitted that the applicant was not considered for promotion despite availability of vacancies on the ground that the promotions to TTS Officer can be granted only if ITS Officers of the same length of service are promoted. The same is also challenged in O.A No. 136 of 2002 and the same was disposed of directing the respondents to consider the applicant for promotion with reference to the date of occurrence of vacancy and if found eligible, promote him with all consequential benefits.

3. It is further contended that regular promotions to Group A was not made at all despite availability of vacancies. Many Officers of Group B of ITS were given temporary officiating promotions to Senior Time Scale of ITS Group A and they were continuously working on the higher posts with artificial breaks. Many of such ITS Officers were also granted further *ad-hoc* promotions to higher post of Junior Administrative Grade of Group A and other benefits applicable to those

posts. The applicant has filed another O.A No. 645 of 2003 for non-grant of promotion to Group B post. The 2nd respondent, Chief General Manager has taken a stand even on promotion to the applicant, he will not be granted arrears of pay. This view has been set aside by the Tribunal and O.A was allowed with cost.

4. Thereafter, an order retrospectively promoting the applicant to TTS Group A with effect from 01.11.1997 was issued on 09.09.2004. It is further contended by the applicant that he was kept away from the higher post and he was superannuated from service on 31.01.2003. The said promotion to him in Group A was given retrospectively. It is further contended by the applicant that on retrospective promotion from 01.11.1997 to the same grade, his pay was fixed at Rs. 17,300/- in pay scale of Rs. 14500-18700. At the same time, his juniors, who were only officiating as Group A Officers or even Group B Officers drawing pay in the scale of Rs. 13000-18250 were drawing higher pay than the applicant. The applicant has given example of one Mr. Saju George, who was given promotion to ITS Group A on Temporary Officiating Capacity was promoted to Junior Administrative Grade of Group A by orders dated 06.04.1999, 14.07.1999 and 09.01.1999 and this adhoc arrangement would have continued. Then another case of Mr. Venugopala Warrier was cited by him and ultimately prayed for quashing of Annexure A-9 to the extent it refuses the promotion of the applicant with effect from the date of occurrence of vacancy in

Administrative Grade for Group A and sought directions of the respondents to grant him promotion to Junior Administrative Grade Group A with effect from the date on which person with lesser or equal length of service in Group A in ITS than the applicant was granted promotion to the Junior Administrative Grade with all consequential benefits including arrears of pay, allowances and pensionary benefits with interest @ 18% per annum from the date on which they fell due till the date of actual payment.

5. Notices were issued and respondents put appearance. Detailed reply statement also filed.

6. It is contended by the respondents that the applicant has no reason to be aggrieved because he had granted promotion to the cadre of JAG with effect from 01.11.2002 on completion of five years service in the STS cadre with effect from 01.11.1997 as per the provisions of the India Telecommunication Service, 1992 as directed by Department of Telecommunications by order dated 03.05.2013 and 13.06.2013. It is further contended that the juniors of the applicant who were officiating as Group A were drawing higher pay than the applicant is vague and incorrect. It is submitted that Mr. Saju George became STS(adhoc) on 09.09.1996 and became regular DE on 29.05.2000 eventhough he was given JAG only on 31.12.2004. This officiating arrangement was temporary stop gap arrangement for meeting urgent operational requirements ordered by Circle Head. This cannot be treated as a promotion since the ITS or TTS Group A and TTS Group A are All India

Cadres, promotions to these posts are to be done by Department of Telecommunications based on vacancies available All India wise eligibility conditions. It is further contended that the said junior as claimed by the applicant became JAG regular only on 31.12.2004, much after the retirement of the applicant, i.e., after 31.01.2003. Officiating orders cannot be given to a retired employee since it is used for meeting urgent operational requirements.

7. Rejoinder has been filed by the applicant and additional reply statement also filed by the respondents.

8. Mr. M.R. Hariraj, learned counsel for the applicant vehemently argued that the officiating promotions to ITS Group A were given in order to defeat the benefits to be granted to the TTS Group A officials, which is discriminatory on the part of the respondents. He has further contended that if an employee is put away from work for no reason and there is no justification to invoke the principle of '*no work no pay*'. The applicant was willing to work for no fault of his own and the promotion was denied to him. On the other hand, Mr. T.C. Krishna, learned Senior PCGC for the respondents submitted that this application is barred by Principle of Resjudicata. As applicant has filed O.As previously and in O.A No. 289 of 2011 decided on 29.02.2012 by this Tribunal, in which it was directed *to grant the applicant notional promotion to the JAG Group A in ITS with effect from the date of occurrence of vacancy and to refix his pension and other pensionary benefits accordingly. The payment of arrears of pension will be limited to 3 years prior to filing of*

the instant O.A. According to the learned counsel for the respondents, the issue of promotion have already been decided by this Tribunal. Thus the present O.A is nothing but agitating the same issue which has been decided by the Tribunal between the same.

9. We are in agreement with the stand of Mr. Krishna, learned Senior PCGC that the applicant cannot re-open the issues by taking a shelter of the order passed in Contempt Petition which is otherwise stated that he may approach this Tribunal for non-grant of payment of arrears, etc. This is a clear case of resjudicata. As per the principles of resjudicata, the matter which is decided by the competent Court cannot be allowed to re-open and relief prayed for, if granted, as deem to have been rejected. We are of this view and there is nothing survives in the present O.A and the same is rejected with no order as to costs.

(Dated, 1st November, 2018.)

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

ax

Applicant's Annexures

- Annexure A1 - True copy of Order No. 354-1/96-STG-III (pt) dated 24.8.2000 issued by the Director (ST-1) Department of Telecom Operations.
- Annexure A2 - True copy of final order dated 30.1.2003 in O.A 136/2002 on the file of this Hon'ble Tribunal.
- Annexure A3 - True copy of final order in O.A 645/2003 dated 19.11.2003 on the file of this Hon'ble Tribunal.
- Annexure A4 - True copy of order No. ST-III/4-25/TTS-A/2003-Pt dated 9.9.2004.
- Annexure A5 - True copy of representation dated 3.8.2007.
- Annexure A6 - True copy of representation dated 21.8.2008.
- Annexure A7 - True copy of order No. ST III/4-25/TTS A/ 2003 dated 4.8.2009 issued by the respondent.
- Annexure A8 - True copy of final order dated 29.2.2012 in O.A 289/2011 on the files of this Hon'ble Tribunal.
- Annexure A9 - True copy of order No. AO(Estt)/Pay/Fix/ 2012-13/16 dated 7.12.2013.
- Annexure A10 - True copy of final order dated 17.6.2014 in CPC 20/2013.
- Annexure A11 - True copy of representation dated 24.8.2014 submitted by the applicant.
- Annexure A12 - A true copy of the letter No. CPIO/KLM.15- RTI Act/2013/II/86 dated 19.02.2014.
- Annexure A13 - A true copy of the DOT letter No. 1103/1/ 2005-Admn.II/Absorption cell dated 29.08.2008.

Annexures of Respondents

- Annexure R2 (a) - A copy of the pay fixation memo issued to the applicant dated 06.07.2007.
- Annexure R2 (b) - A copy of the fixation memo dated 18.03.2004.
- Annexure R2 (c) - A comparative statement of the service particulars.
- Annexure R2 (d) - A true service particulars of Sri. Saju George
- Annexure R2 (e) - Service particulars of Sri Venugopala Warrier.
- Annexure R2 (f) - True copy of the letter No. ST-III/1-7/2000 dated 03.01.2000 of CGM, Trivandrum.
- Annexure R2 (g) - A true copy of the order No. 314/17/ 2013/ Prsl dated 27.11.2013.
- Annexure R2 (h) - True copy of fixation memo dated 24.03.2004.
