



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE THOTTATHIL B. RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE C. T. RAVIKUMAR

MONDAY, THE 27TH DAY OF FEBRUARY 2012/8TH PHALGUNA 1933

OP (CAT) No. 421 of 2011 (S)

OA. 35/2010 of CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

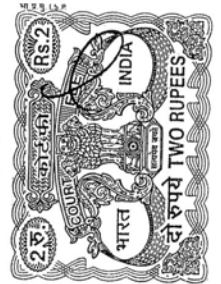
PETITIONER(S):

1. CHIEF GENERAL MANAGER,
TELECOM, BSNL, KERALA CIRCLE,
THIRUVANANTHAPURAM, PIN - 695 001.
2. THE CHAIRMAN CUM MANAGING DIRECTOR,
BSNL, SANCHAR BHAVAN,
NEW DELHI, PIN - 110 001
3. UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF TELECOMMUNICATIONS,
MINISTRY OF TELECOMMUNICATIONS,
DAK BHAVAN, SANSAD MARG,
NEW DELHI, PIN 110 001.

BY ADV. SRI. P. J. PHILIP, C. G. C

RESPONDENT / APPLICANT IN O. A NO. 35/2010 :

1. R. BIJOY, S/O. P. RAMACHANDRAN,
JUNIOR TELECOM OFFICER (OMCR),
BSNL, 3RD FLOOR, PANAMPILLY NAGAR EXCHANGE,
PANAMPILLY NAGAR, ERNAKULAM - 682 036,
RESIDING AT 7D, ROYAL FORTRESS,
MANAJALIPADAM ROAD, VADAKKEKOTTA,
TRIBNPUNITHURA, PIN - 682 301.
2. MARY DEEPA LOUIS,
JUNIOR TELECOM OFFICER (OMCR),
BSNL, 3RD FLOOR, PANAMPILLY NAGAR EXCHANGE,
PANAMPILLY NAGAR, ERNAKULAM - 682 036
RESIDING AT "OLATTUPURAM HOUSE",
CHANGAMPUZHA NAGAR, (P.O) KALAMASSERY,
COCHIN - 682 033.



3. UMMACHAN C. AMBOOKEN,
S/O. A H CHERIAN, JUNIOR TELECOM OFFICER,
BSS, BSNL, 4TH FLOOR, CATHOLIC CENTRE,
BROADWAY, ERNAKULAM RESIDING AT I.E.,
ROYAL FORTRESS, MANJALIPADAM ROAD,
VADAKKEKOTTA, TRIPUNITHURA, PIN - 682 301.
4. JOSHI DAS Y.S.,
S/O. LATE G. YESUDAS,
JTO (BSS), BSNL, O/O. DGM BSS,
TRIVANDRUM, OPP. POLICE HEADQUARTERS,
RESIDING AT "BETHEL", T.C. 11/920 (5),
NALANDA KOWDIAR (P.O.),
TRIVANDRUM, PIN - 695 039.
5. MADHUMOHAN HARIKUMARAN NAIR,
S/O. HARIKUMARAN NAIR, JTO, IT CELL,
BSNL, 1ST FLOOR, KAITHAMUKKU TELEPHONE EXCHANGE,
TRIVANDRUM, RESIDING AT "HARINDRAM",
TC 7/501, KUNJIRAMPARA (P.O.)
TRIVANDRUM, PIN - 695 001.
6. J. ANVAR SADATH,
S/O. JAMALUDEEN A., JUNIOR TELECOM OFFICER,
COMPUTER PROJECTS, O/O THE GM STR BSNL,
ERNAKULAM, RESIDING AT STAFF QUARTERS,
CARRIER STATION ROAD, ERNAKULAM SOUTH
PIN - 682 018.
7. V K RAMACHANDRAN.,
S/O. V.C. KRISHNAN, JUNIOR TELECOM OFFICER (NSS),
BSNL, O/O. THE DE NSS, BSNL TELEPHONE BHAVAN,
VELLAYIL, CALICUT - 673 032
RESIDING AT "VADAKKEKARA HOME",
PARUPHIPARA, SHORNUR, PALAKKAD DISTRICT - 680 631.
8. T. SHINEETH, S/O. O. THANKAPPAN,
JTO (ARIMPUR), BSNL, THRISSUR - 680 016,
RESIDING AT "VISHIDA VIHAR", KUTTIMUKKU,
RAMAVARMAPURAM, (P.O.) TRICHUR - 680 631.
9. S. RAJESH, D/O. M. SREEKUMAR,
JTO (TELEGRAPH), PUNALUR TELEPHONE EXCHANGE,
BSNL, PUNALUR, RESIDING AT "BHAVANA",
NEAR DIET, KOTTARAKKARA - 691 506.
10. K.M. SHAMEER, S/O. LATE K. MOHAMMED,
JTO (NIB), COMPUTER SECTION,
BSNL, E-10B EXCHANGE BUILDING,
CHEMBUKAVU, TRICHUR RESIDING AT
"KARRIYAT HOUSE", PERUMPILAVU (P.O.),
TRICHUR DISTRICT - 680 519.

11. J.K. RASHEED, S/O. SHIHABUDHEEN K.K.,
JIO (WLL) BSNL, TIRUR, MALAPPURAM - 676 561
RESIDING AT K.K. HOUSE,
PERITHIRITY, CHENNARA (P.O.),
MANGALAM, TITUR, MALAPPURAM DISTRICT,
PIN - 676 561.
12. U. HARI S, S/O. KUNHALAN U.,
JIO (BSS), BSNL, O/O. THE SDE BSS,
MANJERI TELEPHONE EXCHANGE,
MALAPPURAM - 676 561, RESIDING AT
"IRSHAD MANEIL", VARANGODE, DOWNHILL (P.O.),
MALAPPURAM DISTRICT - 676 519.
13. SONY GEORGE, S/O. E.V. GEORGE,
JTO (OFC), O/O. THE DE TRANS II,
E 10 B, EXCHANGE BUILDING,
THRUNAKKARA, KOTTAYAM - 686 001,
RESIDING AT THALAKULAM, CHEERANCHIRA,
CHANGANASSERRY, KOTTAYAM DISTRICT,
PIN - 686 101.
14. RINUB K. UMMER,
S/O. K.K. UMMER ALI RAWTHER,
JTO TRANSMISSION INSTALLATION & MAINTAINANCE,
THIRUVALLA, RESIDING AT "KANJIRAMKALAYIL",
ETTUMANOOR (P.O.), KOTTAYAM DISTRICT - 686 631.
15. M.C. MOHAMMED ALI, S/O. LATE AZEEEE,
JUNIOR TELECOM OFFICER, GROUPS,
VALAKKAI TELEPHONE EXCHANGE, BSNL,
KANNUR, RESIDING AT NAVAS MANEIL,
KOTTAMPALLY (P.O.), KANNUR - 15.
16. SAHEER, S/O. SAINULABDEEN,
JUNIOR TELECOM OFFICER, IT CELL,
BSNL, 1ST FLOOR, KAITHAMUKKU TELEPHONE EXCHANGE,
TRIVANDRUM RESIDING AT "FARHAN",
TC 48/995/7, AMBALATHARA, POONTHURA (P.O.),
TRIVANDRUM, PIN - 695 026.

R1 TO R10 & R13 TO R16 BY SRI.M.A.SHAFIK

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 27-02-2012,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B.RADHAKRISHNAN
&
C.T.RAVIKUMAR, JJ.**

O.P(CAT).No.421 of 2011

Dated this the 27th day of February, 2012

JUDGMENT

Thottathil B.Radhakrishnan,J.

1. The BSNL is before us. Respondents, who are applicants before the Central Administrative Tribunal, were working in different wings, other than the Kerala Circle, in the category of Junior Telecom Officers. They got inter-circle transfer and came over to the Kerala Circle. They were governed by Rule 38 of the P & T Manual Volume IV. It reads as follows:

"When an official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that Unit on the date on which the transfer order, issued, including also all persons who have been approved for appointment to that grade as on that date."

2. It appears that the claims of persons who came on inter-circle transfer vis.a.vis. the persons who initially entered service in the Kerala circle had been subject matter of consideration even earlier. That had also led to the judgment in O.P.Nos.29044/00 and 30644/00, delivered by the Division Bench of this Court on 5.12.2001. It was categorically found therein that there is irregularity in giving promotions on an adhoc basis on the basis of the circle seniority while regular promotions can be made only on the basis of all India seniority based on the date of entry into the service of BSNL. Even for circle promotions that was being adhered to provided if it is in the same cadre. The Bench had, in the judgment dated 5.12.2001, criticized that there is no justification in allowing persons who officiate in higher posts by defeating the claim of persons who aspire for regular promotion to that cadre. This obviously means that adhoc or officiating promotions which are effected to tide over emergent situation ought to be minimal and that procedure has to be adopted only where exigencies of

circumstance in the establishment need such promotions. However, as rightly opined in the judgment in O.P.Nos.29044/00 and 30644/00, that cannot be a mode for all times to come, depriving those aspiring to occupy higher posts on regular basis of their legitimate entitlement. We are in complete agreement with the views expressed in that judgment.

3. In the aforesaid view of the matter, while we do not find any illegality in the findings of the learned Tribunal in Ext.P1, the order impugned before us in this original petition, all that needs to be clarified is that the establishment shall take immediate action to ensure that there is no appreciable time lag in the matter of making promotions on regular basis as against vacancies. If admittedly promotions are made on regular basis, that will obviously take away the complaint on promotions on local officiating basis. While we say that the establishment may be justified in saying that delay in administration may lead to some overall delay in the matter

of regular promotion, we do not see any reason why that is reduced and promotions are made having due regard to the directions contained in the aforesaid judgment O.P.Nos.29044/00 and 30644/00, dated 5.12.2001. Further, we may indicate that if there is an integrated list that has to be operated upon, refusal to do so would even result in consequences which may indicate violation of Articles 14 and 16 of the Constitution of India. The impugned order Ext.P1 of the Tribunal is clarified as above and this matter is ordered accordingly.

Sd/-
THOTTATHIL B.RADHAKRISHNAN,
Judge.

Sd/-
C.T.RAVIKUMAR,
Judge.

APPENDIX

PETITIONER'S EXHIBITS:

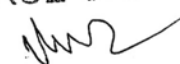
- EXT.P1 : COPY OF ORDER DATED 16.11.2010 IN O.A. NO. 35 OF 2010 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.
- EXT.P2 (1) TO (16) : COPY OF THE DECLARATIONS GIVEN BY THE RESPONDENTS.
- EXT.P3 : COPY OF THE O.A NO. 35/2010 FILED BY THE RESPONDENTS HEREIN FILED BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.
- EXT.P4 : COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS IN OA NO. 35/2010.
- EXT.P5 : COPY OF THE REJOINDER BY THE RESPONDENTS.
- EXT.P6 : COPY OF THE ADDITIONAL REPLY STATEMENT BY THE PETITIONERS.
- EXT.P7 : COPY OF THE NEW TRANSFER POLICY OF BSNL DATED THIS THE 31ST DAY OF DECEMBER, 2010.
- EXT.P8 : COPY OF THE PROCEEDINGS OF THE DPC HELD ON 24.3.2009 TO 30.04.2009.
- EXT.P9 : COPY OF THE ORDER NO. 1-12/2006-PERS-II DATED 15-03-2007.
- EXT.P10 : COPY OF ORDER DATED 3-11-2010 IN OA NO. 1358 OF 2010 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, CHENNAI.
- EXT.P11 : COPY OF ORDER DATED 20-12-2010 OA NO. 1358 OF 2010 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, CHENNAI.
- EXT.P12 : COPY OF ORDER BY BSNL CORPORATE OFFICE NO. 1-15/2001-PERS II DATED 19.12.2001.
- EXT.P13 : COPY OF ORDER OF DOT ND.NO.2-12/2002-STG-II DATED 24.6.2002.
- EXT.P14 : COPY OF ORDER NO. 314/19/22-STG-III DATED 02-09-1986 BY DOT NEW DELHI.

RESPONDENT'S EXHIBITS : NIL

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P.S. TO JUDGE

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EXAMINER

HIGH COURT OF KERALA
AT ERNAKULAM



Year and Number Of Suit : OFCAT/421/2011
or other proceedings

Name Of Applicant / :
Advocate P.J. PHILIP

Application Number : 15697/2012

Date Of Application : 23-1-12

Date Of Calling for Stamp : 08-MAR-12

Date Of Production of Stamp : 08-MAR-12

Date When Copy was Ready : 08-MAR-12

Date Notified for appearance
to receive the copy : 16-MAR-12

Date When copy was delivered : 01-3-12


Examiner