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# CENTRAL ADMINISTRATIVE TRIBUNAL
# ERNAKULAM BENCH

**Original Application No. 133 of 2009**

Friday, this the 9th day of July, 2010

**CORAM:**

**HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER**
**HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. Shyamala M.L.,
Senior Telecom Office Assistant (General),
Office of the Chief General Manager,
Telecom (BSNL), Thiruvananthapuram.

2. C.G. Mohanan,
Senior Telecom Office Assistant,
Office of the Sub Divisional Engineer,
Karugachal, Kottayam.

3. M.K. Krishnan Kutty,
Senior Telecom Assistant (Retd.),
Central Telegraph Office, Punaloor,
Now Residing at "Krishna Nivas",
Koodal P.O., Pathanamthitta.

4. Pouthran. S,
Senior Telecom Office Assistant,
Office of the GMT, Sanchar Bhavan,
BSNL, Palakkad. ..... Applicants.

(By Advocate Mr. P. Santhosh Kumar)

versus

1. Ministry of Communications,
Represented by The Secretary,
Government of India, New Delhi.

2. The Chairman and Managing Director,
BSNL, New Delhi.

3. The Chief General Manager,
Telecom, BSNL, Thiruvananthapuram : 33.

4. The General Manager,
BSNL, Pathanamthitta Division,
Thiruvalla ..... Respondents.

(By Advocate Mr. N. Nagaresh)

The Original Application having been heard on 17.06.10, this Tribunal on 2/7/2010 delivered the following :

**O R D E R**

***HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATVE MEMBER***

This O.A. has been filed by the applicant seeking a direction to the respondents to regularize their service as Telephone Operators from the dates of their initial appointment with all consequential benefits.

2. The applicants were among 10 Reserve Trained Pool (RTP) Telephone Operators under the BSNL. After successful completion of 3 months' training, they were appointed as RTP Telephone Operators in the year 1983 and 1984. Out of the 10 persons, all except the applicants have been given regularization with effect from 01.11.1983, the date of their initial appointment. It is contended by the applicant that as per the order of this Tribunal in OA Nos. 661/1991 and 1140/1993, they are also entitled for the benefit given to the similarly placed applicants therein. The V[th] Central Pay Commission recommended that in matters of a general nature, all similarly placed employees are to be given the benefit of the decision so as to avoid needless litigation. A junior of the applicant has also been regularized with effect from 01.11.1983. The applicants have been discriminated when their junior has been given regularization. Therefore, the O.A. should be allowed.

3. The respondents in their reply statement submitted that no formal appointments were made to the applicants. They were engaged for certain hours in a day as and when needed. They discontinued their prospective claims in Thiruvalla, their original unit, voluntarily. The person junior to the applicant

was appointed against a vacancy of ST category. The applicants being not eligible for ST vacancy, there was no discrimination on the part of the respondents. The facts and circumstances of the applicants in OA Nos. 661/1991 and 1140/1993 are not exactly similar to that of the applicants in the present OA. The applicants are RTP Telephone Operators in various exchanges in the Telecom Division to compensate the shortages caused by leave, absentism of regular Telephone Operators as and when required. As the applicants were not working as RTPs in Thiruvalla Division in 1988, their cases were not considered for regular appointment as Telephone Operators in 1988. The principles laid down in O.A. Nos. 661/1991 and 1140/1993 are applicable only to the applicants in the said O.A.s and not to the applicants in the present O.A. as vacancies are not available.

4. In the rejoinder, the applicants submitted that after completion of the training, they were posted at the various places as per order from the Circle Telecom Training Centre, Trivandrum. The applicants are similarly placed persons as the applicants in O.A. Nos. 661/1991 and 1140/1993. The Director of Telecommunications South, Trivandrum, had created 10 posts of Telephone Operators in Thiruvalla Division. In fact, the 4th respondent had sought permission of the 3rd respondent for regularization of the applicants from 01.01.1983 as per Annexure A-18 dated 04.03.1993.

5. In the additional reply statement, the respondents submitted that there was no reply with respect to the letter dated 04.03.1993. As per the guidelines by the Telecom Directorate dated 28.07.1987, for absorption of all the RTP candidates, all the then unabsorbed RTP candidates opted for other divisions/circles. When the applicants expressed their willingness for being

Thiruvalla unit voluntarily. The respondents cited a decision of the Apex Court in **Union of India and Another vs. K.N. Sivadas and Others**, (1997) 7 SCC 30, and submitted that the reliefs sought by the applicants in the present O.A. are similar to the one that has been disallowed by the Apex Court.

6. In the additional rejoinder, the applicants submitted that it was possible for the respondents to accommodate the applicants herein in the vacancies available for accommodating the 10 employees as per Annexure A-18. Because the applicants submitted their options for posting in any other circles, their right for regularization and seniority will not be forfeited. The facts of the case mentioned in the Apex Court's decision cited by the respondents are entirely different from the facts of the present case and the same is not applicable to the case on hand.

7. We have heard the learned counsel for the parties and perused the documents.

8. In O.A. No. 661/1991, this Tribunal held as under :

> "9. On a perusal of the documents and after hearing the respective arguments on both sides, we are convinced that the 3 appointments made in 1983 referred to in the application cannot be objected to as they were from the list of RTPs and were according to seniority and merit with higher position than the applicants. They are not parties in the OA, and besides even the transferees from other units referred to in this application have not been made parties. They vacancy position of the Telephone Operators from 1983 as in the supplementary statement has to be relied on and the reply filed by the respondents has to be deemed corrected on this basis. This being the position, the respondents will be in a better position in exercise of their executive powers to

consider the cases of all the applicants according to their position in the original RTP list (taking into account their marks etc.) and consider them for appointment from the dates which they would have been eligible. If there were any ban orders about filling up of the post at any point of time about which a reference was made by the learned counsel for the respondents, this could also be taken into account and while we are not inclined to upset the appointments of transferees from elsewhere to the Thiruvalla Division, this should not stand in the way of considering on regular basis the appointments of these applicants from the respective dates according to the vacancy position. A speaking order indicating the vacancy position and giving appointments to the 2 applicants from the appropriate date should be issued by the respondents within a period of two months from the date of receipt of this order. However, they will not be entitled to any arrears on account of their proforma promotion to be decided on this basis but they will be entitled to their seniority and other benefits including fixation of pay.

10. There need not be any apprehension that the necessary parties have not been added as parties because as the application with the prayer for relief along with the supplementary reply about the vacancy position indicates, what is really intended is the fitment of the applicants in the proper place according to the vacancy position and this will not jeopardise the service prospects of any of the other employees.

11. The application is disposed of accordingly, without any order as to costs. "

9. In O.A. 1140/1993 also, this Tribunal directed the 3rd respondent therein to consider and dispose of the representation of the applicant therein on merits bearing in mind the principles laid down in O.A. No. 661/1991. We have no doubt that the applicants in the present O.A. are similarly placed as the applicants in the aforesaid O.As, and that the principles laid down in O.A. No. 661/1991 will apply to the case on hand. The Director of Telecommunications South, Trivandrum, vide its letter No. AMS/04-38/83 dated 20.05.1983 (Annexure A-17) had conveyed administrative approval for creation of 10 posts of Telephone Operators with a rider that they should not be filled up until further

clearance. The Telecom District Engineer in his letter dated 04.03.1993 at Annexure A-18 had recommended to regularize the applicants in the available vacancies. However, this proposal was not accepted. But it shows availability of vacancies. The applicants had shown their willingness for posting anywhere in Kerala in the proforma meant for declaring the willingness of RTP candidates for regular absorption in any recruiting units in Kerala. By showing their willingness they did not forfeit their right for regularization and seniority. In the facts and circumstances of the O.A., we are of the considered view that the applicants case for regularization with effect from the date of their initial appointment should be considered in the light of the decision in O.A. No. 661/1991.

10. Accordingly, the respondents are directed to consider the case of the applicants as above and communicate the decision taken to the applicants in a reasoned order within a period of three months from the date of receipt of a copy of this order.

11. The O.A. is allowed to the extent indicated above with no order as to costs.

(Dated, the 9th July, 2010)

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(GEORGE PARECKEN)
JUDICIAL MEMBER

cvr.

CERTIFIED TRUE COPY
Date 15.7.10

Section Officer (Judl)

## ANNEXURE

A ITEM NO.I

| Sl.no. | Name S/Shri/Smt. | Cadre | Period | Remarks |
|---|---|---|---|---|
| 1. | K.Vijaya kumar | Sr.TOA | As LDC in Board of Tech.Educatioin, New Delhi from 26.02.'83 to 20.02.'88 | Details of arrears drawn to these employees are not available since transactions relate to the year 2002 and the records are not readily traceable |
| 2. | L.Kailasanathan | Sr.TOA | As LDC in Law&Judicial, Delhi administration, New Delhi from 15.01.81 to 15.1.'87 | " " |
| 3. | V.S.Suraj Kumar | Sr.TOA | As LDC in Ministry of S.T.Deptt., New Delhi from 18.09.81 to 25.03.'88 | " " |
| 4. | Rollin Fernandez | Sr.TOA | As LDC in Ministry of Supply, New Delhi from 2.11.'82 to 9.4.'84 | " " |
| 5. | Bhagavathy Paramasivan | Sr.TOA | As LDC in A.F.Hqtr.,New Delhi from 5.10.84 to 21.11.89 | " " |

Contd —

B. Item No.2

| Sl.no. | Name S/Shri/Smt. | Designation | Period | Remarks |
|---|---|---|---|---|
| 1. | Baby Peter | Asstt.Director | 23.10.1998 | Pay stepped up from the stage of Rs.9000/- to the stage of Rs.9250 in the Pay Scale of 7500-250-12000 at par with Sh.T.S.Viswanathan,SDE w.e.f.23.10.'98 |
| 2. | Sreedevi Pillai | Asstt.Director | " " | " " |
| 3. | K.Santha Kumari | Asstt.Director | " " | Pay Stepped up from the stage of Rs.8750 to the stage of Rs.9000/- in the Pay Scale of Rs.7500-250-12000 at par with smt.K.P.Omana Amma approved w.e.f 23.10.'98 |
| 4. | P.M.Padma kumari Amma | Asstt.Director | " " | " " |
| 5. | M.Sreedevi | Asstt.Director | " " | Pay Stepped up from the stage of Rs.8750/- to the stage of Rs.9000/- in the Pay Scale of Rs.7500-250-12000 at par with Smt.K.P. Omana Amma SDE w.e.f.23.10.'98 |

Details of amount drawn as arrears of Pay & allowances due to the Stepping up to the above executives are not available, since preservation period of such records are over.

Chief Accounts officer(CA-II),
For CGMT, Trivandrum-33

B. Item No.2

| Sl.no. | Name S/Shri/Smt. | Designation | Period | Remarks |
|---|---|---|---|---|
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| 3. | K.Santha Kumari | Asstt.Director | " " | Pay Stepped up from the stage of Rs.8750 to the stage of Rs.9000/- in the Pay Scale of Rs.7500-250-12000 at par with smt.K.P.Omana Amma approved w.e.f 23.10.'98 |
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Details of amount drawn as arrears of Pay & allowances due to the Stepping up to the above executives are not available, since preservation period of such records are over.

Chief Accounts officer(CA-II),
For CGMT, Trivandrum-33

भारत संचार निगम लिमिटेड
(भारत सरकार का उद्यम)
मुख्य महाप्रबंधक कार्यालय
म.प्र.से -I अनुभाग , दूसरा मंज़िल
केरल दूरसंचार परिमंडल
तिरुवनन्तपुरम - 695033

BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprise)
OFFICE OF THE CHIEF GENERAL MANAGER
H.R-I SECTION, 2ND FLOOR
KERALA TELECOM CIRCLE
TRIVANDRUM – 695 033

To

The General Manager Telecom,
BSNL Pathanamthitta BA

No. HR I/O.A.No.133/2009/2017/3 dated at TVM the 4.10.2017

Sub:- Implementation of order dated 9.7.2010 of Hon'ble CAT, Ernakulam in OA No 133/2009 filed by Smt.Syamala & others - Approval thereof - reg

In pursuance of BSNL Corporate office, New Delhi letter No. 211-34/2010-Pers III dated 05.07.2017 the approval of the Competent Authority is hereby conveyed for implementation of the order dated 09.07.2010 of Hon'ble CAT, Ernakulam Bench in OA No 133/2009 filed by Smt. Syamala M L & three others Vs BSNL subject to the outcome of the review petition pending before the Hon'ble High Court, Ernakulam. The applicants are entitled for preponement of date of appointment as shown below under the following conditions.

| Sl No | Name of the applicant (Shri / Smt) | Date of appointment | Initial Appointment as | Preponement of appointment w.e.f. | Present details | Remarks |
|---|---|---|---|---|---|---|
| 1 | Smt L. Syamala PR No. 198911860 | 07/02/1989 | TOA | 01/11/1983 | AOS (G), CO TVM | ------- |
| 2 | C.O. Mohanan PR No. 198801423 | 17/10/1988 | TO | 01/11/1983 | Sr TOA(P) KTM | Retired on 31/10/2015 |
| 3 | T.K. Krishnankutty PR No. 198911909 | 09/02/1989 | TOA | 02/02/1984 | Sr TOA(G) KLM | Retired on 30/04/2007 |
| 4 | Chandran PR No. 198912529 | 09/02/1989 | TOA | 01/11/1983 | AOS(G), PGT | ------- |

1. The officials are entitled to the seniority and other benefits including fixation of pay w.e.f. the date of preponement.
2. The officials are entitled to any arrears of pay on the above proforma revision of appointment from the date of pronouncement of judgment, ie 09.07.2010.
3. The speaking order shall be vetted by the BSNL Counsel
4. After preponing the date of appointment necessary speaking order may be issued to the applicants under intimation to this office.

This issues with the approval of Circle Head

(D.James Sagavaraj)
उप महाप्रबंधक (प्रशा /मा.से) Dy. General Manager (HR)
कृते मु.म.प्र.कृ. भा.स.नि.लि. For CGMT, BSNL, Trivandrum-33
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1. The GMT, KTM / KLM / PGT – for kind information plc