

Central Administrative Tribunal, Principal Bench

Original Application No. 755 of 1999

M.A. Nos. 733/99 and 709/2000

New Delhi, this the 8<sup>th</sup> day of December, 2000

Hon'ble Mr. Kuldip Singh, Member (J)  
Hon'ble Mr. M.P. Singh, Member (A)

1. Shri Kishan Lal S/o Shri Chatur Bhuj  
R/o 96, East Vinod Nagar,  
Delhi-110 091.
2. Shri K.L. Nigam S/o Bhupal Nigam  
R/o G-12/21, Gali No.4, Brahmपुरi,  
Delhi.
3. Shri Lokesh S/o Late Shri Parasha Bhoj  
R/o No.99, 11<sup>th</sup> Cross Telecom Colony  
(Near New Timberyard Layout),  
Mysore Road Cross,  
Bangalore-560026.
4. Shri B. Ramchandra S/o Late Shri Boraiah  
R/o 426, 7th A, Main Road,  
5th Cross, R.P.C. Layout,  
Vijayanagar - 2nd Stage,  
Bangalore-560040. - Applicants

(By Advocate - Shri R.K. Kapoor)

Versus

Union of India through the Secretary,  
Department of Telecommunications, Sanchar Bhawan,  
20, Ashoka Road,  
New Delhi. - Respondents

(By Advocate - Shri A.K. Bhardwaj)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (J)

In the present OA, the applicants are seeking the following reliefs:-

(i) To issue appropriate orders restraining the respondent authorities from implementing the impugned order dated 6.11.1998 till the promotion orders for reserved category from the post of JTOs to the post of TES Group 'B' is issued by the respondents

kr

26

simultaneously with the general category candidates.

(ii) To set aside the impugned order dated 6.11.1998 along with the list being illegal and unconstitutional.

(iii) Pass appropriate orders directing the respondent authorities for making immediate appointments/promotions of the Scheduled Castes/Scheduled Tribes category candidates against their quota vis-a-vis the newly created 1966 vacancies (created by Office Memorandum dated 15.10.1998) on the basis of seniority-cum-fitness without holding any qualifying examination.

(iv) Pass appropriate orders directing the respondent authorities to exclude the newly created 1966 vacancies from the qualifying examination which has been envisaged for Scheduled Castes candidates by Office Circular dated 6.11.1998.

(v) Pass appropriate orders restraining the respondent authorities from holding the qualifying examination for the Scheduled Caste candidates and Scheduled Tribe candidates for the vacancies which existed against their quota upto 22.7.96.

(vi) Pass appropriate orders directing the respondents authorities to review the result of all the Scheduled Castes candidates who had appeared for

ku

27

B

the qualifying examination upto and including the year, 1991 on the basis of the applicable instructions and promoting them even they secured zero percent marks in the examination.

T

(viii) Pass appropriate orders restraining the respondent authorities from holding any qualifying examination till the number of vacancies for which the examinations as contemplated by Circular dated 6.11.1998 is specifically notified both as existing prior to 22.7.1996 as against the general category as well as against the Scheduled Castes/Scheduled Tribes category and the number of candidates who had already appeared upto and including 1991 examinations and are entitled for promotions on the basis of review results and till then restraining the respondent authorities from holding any qualifying examination.

U

(ix) The applicants may be given promotion with retrospective effect against the vacancies for which they were eligible and consequential benefits may also be given to the applicants.

2. The applicants who are working as Junior Telecom Officers which is a feeder cadre for the Telegraph Engineering Service Group-B and as per the Rules of Telecommunication Engineering Service (Group-B posts) Recruitment Rules the method of recruitment to Group-B service is provided in the rules which is partly by promotion and partly by direct recruitment. The applicants allege that the officers working as JTO become eligible to be

h

considered for the post of TES Group 'B' after completing 3 years service as JTO and is required to appear in the qualifying examination and those who are declared successful in the examination are promoted as TES Group-B according to the availability of the vacancies but in the case of candidates belonging to SC/ST for them the condition had been relaxed in qualifying the examination as per various Office Memorandum dated 4.5.81 and 1.12.91 but still the vacancies belonging to the reserved category are not being filled up for the last many years and back log of vacancies are available since 1973. Besides that qualifying examination which was to be held regularly, was not held regularly from year to year basis. The examinations were conducted in the year 1973-74 and then in the year 1985 upto the year 1991. But after 1991, no such examination was conducted. A long battle of litigation continued between the reserved category candidates and general category candidates and despite various orders passed by the Tribunal, vacancies still exist for the quota for reserved category candidates.

3. It is further pleaded that the respondents authorities have created 1966 vacancies by way of O.M. dated 15.10.1998 which have to be filled up in accordance with the new Recruitment Rules as the same had been published on 23.7.96.

*h*

29

4. It is further pleaded that in these 1966 vacancies the Government is bound to earmark 22.1/2% of vacancies for reserved category candidates as required by the Constitution of India.

5. It is also pleaded that of these 1966 vacancies, there were certain vacancies which belong prior to 23.7.96 as the same had arisen for the period prior to 23.7.96 so their appointments had to be made in accordance with the old rules irrespective of the exemptions which were applicable in favour of reserved category candidates before 23.7.96 and the vacancies arising after 23.7.96, can be filled under the new Recruitment Rules.

6. It is further pleaded that the since the vacancies which had arisen after 15.10.1998 these are to be given to the credit of those officers who are entitled to fill up the same in accordance with the vacancies of the year 1998. Since the action of the respondents authorities is otherwise and they are not entitled to fill up such vacancies under the new Recruitment Rules which were published on 23.3.1996, so they are liable to be directed not to hold any qualifying examination for the SC candidates against the newly created 1966 vacancies for their quota but the respondents have recently issued the impugned circular dated 6.11.1998 vide which they are holding the qualifying examination for reserved category candidates for the vacancies which were existing against their quota prior to 22.7.96 as well as the vacancies which have been recently created vide order

h

30

.6.

dated 15.10.1998 so in this context the applicants have made prayer referred to in paragraph 1 of the OA and to challenge the impugned order, the applicants have stated that out of 1966 vacancies the respondents are first liable to identify the posts which are meant for reserved category candidates and then these posts are to be filled by the respondents by appointing reserved category candidates.

7. It is further pleaded that as per the directions of the Hon'ble Supreme Court it was pointed out that the respondents authorities can fill up the existing vacancies of 1966 upto 22.7.96 under the old Recruitment Rules and vacancies occurring thereafter, under the new Recruitment Rules. It is also stated that since the vacancies have been created after 23.7.96, the same cannot be filled up in accordance with the old Recruitment Rules and the reservation quota has to be specified before conducting any examination but the intention of the respondents is mala fide as the respondents as per their impugned circular dated 6.11.1998 are going to hold the examination merely upto the vacancies which existed before 22.7.96. Thus in a nutshell the applicants pray that before filling up 1966 vacancies, as it has been indicated vide order dated 15.10.98, the quota of the reserved candidates have to be indicated and the said vacancies have to be filled up only after earmarking those in accordance with the relevant rules for those to be given to the reserved candidates and

h

B

as the applicants are reserved category candidates, so they are to be appointed against those vacancies out of 1966 vacancies.

8. We have heard the learned counsel for the parties and have also gone through the record of the case.

T

9. The main attack of the applicants is on the impugned order dated 6.11.1998. A mere perusal of the same will show that this order has been passed in compliance of the judgment/order of the Hon'ble Supreme Court and of the Ernakulam Bench of the Central Administrative Tribunal to fill up the vacancies arising prior to 23.7.96 as per old Recruitment Rules of TES Group 'B' and it has been decided to hold a departmental competitive examination for the same. The order dated 15.10.1998 which is annexed at Annexure A-2 vide which 1966 vacancies had been created also show that earlier also vide order dated 15.10.1993, 2636 SDE posts were upgraded to avoid the reversion of about 550 SDEs already promoted and working on regular basis but on review it was found that 1966 posts in TES Group 'B' were less created as were actually required and the entire matter was considered by the Telecom Commission and it was decided to create balance posts of 1966 SDEs and these 1966 posts are deemed to have been created in respect of the year 1993 itself. Thus, this letter Annexure A-2 shows that these posts belong to that era when the amendment to the promotion rules had not been made since amendment had come only w.e.f. 1966.

U

h

32

10. Besides that the department before Hon'ble Supreme Court had given an undertaking in an unequivocal terms that whatever the vacancies had arisen prior to the amendment rules those will be filled up in accordance with the old rules and vacancies arising after that will be filled up under the new Recruitment Rule. The matter had also come up before the Hon'ble Supreme Court in the case of Union of India Vs. Madras Telephone SC and ST Social Welfare Association, JT 2000 (6) SC 471, whereby the department was given a go ahead for conducting the examination.

11. In this case when the OA was filed an interim order was passed and respondents were restrained from holding the examination in pursuance of the order dated 6.11.1998 which was scheduled to be held from 20.4.99. But subsequently that order was vacated vide order dated 10.2.2000.

12. Now in the present scenario we find that it will not be desirable to restrain the respondents department from conducting the examination particularly so when the examination is to be held in compliance of the directions give by the Hon'ble Supreme Court and of the Ernakulam Bench of the CAT. Besides that since the department had given an undertaking before the Hon'ble Supreme Court that whatever the vacancies had arisen upto 22.7.96 those will be filled up in accordance with the old Recruitment Rules and vacancies arising after 23.7.96

h

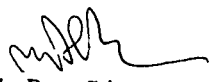
243

m

are to be filled up in accordance with the new Recruitment Rules and both the rules take care of the representation of the SC and ST and there are adequate measures provided for the up keep of the mandate of the Constitution of India for providing reservation to SC/ST candidates and it is expected that the respondents shall see to it that for filling up 1966 vacancies, the constitutional mandate regarding reservation shall be adhered to. If thereafter any further grievance survives, the individual applicant will be at liberty to approach this Tribunal again by filing a fresh OA.

B

13. In view of the above, OA is disposed of as above. No costs.

  
 ( M.P. Singh )  
 Member (A)

  
 ( Kuldip Singh )  
 Member (J)

/Rakesh/