

Central Administrative Tribunal, Principal Bench

C.P. No. 320/98
M.A. No. 2122/98
O.A. No. 1085/96

(54)

New Delhi, this the 31st day of July, 2000

Hon'ble Mr. S. R. Adige, Vice Chairman(A)
Hon'ble Mr. Kuldip Singh, Member (J)

CP 320/98

1. Shri Harbhajan S/o Shri Lachhman Dass
R/o 62-B, Pocket-I, Phase-I, Mayur Vihar,
Delhi.

2. Shri Sant Raj Singh R/o House No. 104-E,
Sector-IV, Pushp Vihar, M.B. Road,
New Delhi.

3. Shri Chhote Lal,
R/o D-16, Kanchan Apartments,
Shastri Nagar,
New Delhi. ... Applicants

(By Advocate Shri R.K. Kapoor)

Versus

1. Shri Anil Kumar
Chairman, Telecon Commission/Secretary,
Department of Telecommunication,
Ministry of Communication, Sanchar Bhawan,
Ashoka Road,
New Delhi.

2. Shri Krishan Singh,
Assistant Director General (TE),
Department of Telecommunication,
Ministry of Communication,
Sanchar Bhawan,
Ashoka Road,
New Delhi.

3. Shri S.M. Kaushal,
Assistant Director General (SGT),
Department of Telecommunication,
Ministry of Communication,
Sanchar Bhawan,
Ashoka Road, - Respondents
New Delhi.

(By Advocate - Shri N.C. Sikri, Sr. Counsel with Ms.
Geetanjali, Counsel)

O.A. No. 1085 of 1996

1. Harbhajan
S/o Shri Lachhman Das
R/o 62-B Pocket-I, Phase-I,
Mayur Vihar, Delhi.

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2. R.C. Singh
S/o Shri Hari Singh
R/o H.No. T-384, Gali No.11,
Gautam Puri,
Delhi-110 053.

3. Ram Bharosey
S/o Shri Sujan Singh,
R/o E-884, MIG Flats, Pratap Vihar,
Ghaziabad (UP).

4. Dharam Singh
S/o Shri Bharat Singh
H.No.137 B-1, Gautam Nagar,
New Delhi-110 049.

5. Bijendra Singh
S/o Shri Julay Singh
R/o C-44 LIG DDA Flat,
East of Loni Road,
Shahdara, Delhi-93.

6. Maha Ram Singh
S/o Shri Kanwar Sen
R/o J-IIIB, 95/2 Sangam Vihar,
New Delhi-1110 062.

7. Shankar Lakra
S/o Shri Samatroy Lakra
R/o 136/15, Gali No.32,
Sant Nagar (Burari)
Delhi-9.

8. A. Radha Krishna
S/o Shri A. Subbaiah
R/o N-292B, Janta Flats,
Sarita Vihar,
New Delhi-44.

9. Nanak Chand
S/o Shri Mewa Ram
R/o G-51, Vijay Vihar Rithala,
Near Rohini,
Sector-4, Delhi-85.

10. Mangat Singh
S/o Shri Khajan Singh
R/o House No.93B, Gali No.7,
Shiv Mandir Marg,
Mauj Puri,
Delhi-110 053.

11. Kanwar Pal
S/o Shri Bishamber Singh
R/o H.No.WS-59, Bakerpur, Sudamapuri,
Bhagat Singh Gali,
Shahadara-32.

12. Hans Ran
S/o Shri Jammu Ram
R/o RZ-B-19, Jeewan Park,
New Delhi-59.

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13. Suraj Singh S/o Shri Chandra Pal Singh R/o H.No.247, Pocket A-1, Sector-4, Rohini, Delhi-85.

14. Somvir Singh S/o Shri Soran Singh R/o S-120, Kondli Colony, Delhi-96.

15. Surender Kumar S/o Shri Ram R/o H1/10/1, Raja Puri, Uttam Nagar, New Delhi.

16. Ram Baboo Arya S/o Shri Tej Singh R/o K-1769, Jahangir Puri, Delhi-33.

17. Raja Ram S/o Shri Ram Swaroop R/o D-348, Pal Psahlad Puri, New Delhi-110 044.

18. Harpal Singh Arya S/o Shri Baljeet Singh H. No. 373, Gali No.7 Durgapuri Extension, New Delhi-93.

19. Kiran Singh S/o Shri Abhey Ram R/o RA-29A, West Sagar Pur, New Delhi-46.

20. Chattar Singh S/o Shri Shyam Lal R/o E-39, 40, Mangolpuri, Delhi-83.

21. Karamvir Singh S/o Sh. Hoshiyar Singh R/o J3/328 DDA Flats, Kalkaji, New Delhi.

22. Manoj Kumar Rakosi S/o Late Sh. Mathura Lal, R/o B-34, Kondli Colony, Delhi-96.

23. Ram Prasad Singh S/o Sh. Moti Lal R/o E-26, Nai Basti Kondli, Delhi-96.

24. Mahavir Singh S/o Shri K. Singh R/o J2-B-95, Sangam Vihar, New Delhi.

25. Prem Lal S/o Shri Jauhari Lal R/o DG-II/2-6B, Vikas Puri, New Delhi-110 018.

26. Ghanshyam Dass S/o Late Shri Gainchand R/o Gh-2/62C LIG Flat, Paschim Vihar, New Delhi-63.

27. Sant Ram Singh S/o Shri Nathi Singh R/o 45-A, Sector-IV Pushp Vihar, M.B. Road, New Delhi-17.

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28. Mor Dhewaj S/o Shri Lekh Raj Singh
GH-9/31, Paschim Vihar, New Delhi-41.

29. Chhote Lal S/o Late Sh. Khargai Lal
R/o D-16, Kanchan Apartments,...
Shastri Nagar, Delhi-31.

30. Kushal Pal Singh S/o Shri Baldev Singh
R/o 5P-49, Faridabad. .

31. Hari Shanker S/o Shri Pran Sukh
R/o 31/275, DESU Colony, Janak Puri,
New Delhi-58.

32. Narayan Singh Harit S/o Late Shri Prabhati
Singh
R/o IV/2761, Gali No.3, Bihari Colony,
Shahdara, Delhi-32.

33. Raghu Nandan Singh S/o Sh. Din Dayal
R/o B-520 Balmiki Kunj, Meerut Road,
Ghaziabad (U.P.).

34. Ram Prasad S/o Shri Angonu Prasad
R/o 40-C, Janta Flats, Phase-III,
Ashok Vihar, Delhi-52.

35. Gopal Singh S/o Shri Shis Ram
R/o H.No.E-14, Ashok Nagar Extension,
Shahdara, Delhi-93.

36. Gopal Das Arya
MTNL Fault Control SEC-II,
Ashoka Hotel, Chanakyapuri, New Delhi.

37. Krishna Singh S/o Shri Mohan Lal
R/o D-1/607, Gali No.13-B, Ashok Nagar,
Shahdara, Delhi.

38. Om Pal S/o Shri Ganga Dass
R/o K-113, Sector-9, Vijay Nagar,
Ghaziabad (U.P.).

39. Kishori Lal S/o Shri Het Ram
R/o H.No.558/15, New Defence Colony,
Behind Railway Quarter, Gali No.3, Murad
Nagar, District Ghaziabad (UP).

40. Dudd Nath Prasad
S/o Shri Mathura Prasad
R/o RZ-16, Jagdamba Vihar West Sagarpur,
New Delhi-46.

41. Bishwa Nath Prasad S/o Sh. Bhikhari Sah
R/o RZ-52/333, Madan Puri, West Sagar Pur,
New Delhi-46. . .Applicants

By Advocate Shri R.K. Kapoor.

Versus

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Union of India through
Secretary, Department of Telecom.,
Sanchay Bhawan,
20, Ashoka Road,
New Delhi. Respondents

(By Advocate Shri N.C. Sikri, Sr. Counsel with Ms.
Geetanjali, Counsel)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)
O.A. 1085/96 P

This O.A. has been filed by certain reserved category Junior Telecom Officer (JTO for short), wherein they have sought the following reliefs:-

(i) To consider the applicants for promotion each against a vacancy reserved for Scheduled Caste/Scheduled Tribe candidates by reviewing their result in the light of instructions dated 4.5.81. They may be given benefits from retrospective effect with reference to the year of examination in which they had appeared individually.

(ii) To not to fill up vacancies reserved for SC/ST communities by promotion of General category candidates, without formal dereservation of the vacancies, where such reserved vacancies have been filled up equal no. of SC/ST candidate, be promoted against existing vacancies to balance the quota of reservation.

(iii) To interchange the vacancies between SC and ST, when candidates of other community are not available.

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(iv) To grant the applicants ad hoc promotion against existing vacancies.

(v) Grant arrears of pay and allowances w.e.f. the date promotion was due to the applicants against reserved vacancies one year to year basis.

(vi) To produce rosters for regular and ad hoc promotion in the grade of (SDE Telecom) in support of their claim for implementation reservation policy.

(vii) To show de-reservation sanction where reserved vacancies have been filled up by General community candidates.

(viii) To grant them lateral Advancement against 22-1/2% of total posts included in the scheme.

(ix) In the matter of promotion to the level of Senior Sub Divisional Engineer the length of service for eligibility should be counted from the date the applicants are promoted pursuant to the orders of this Hon'ble Tribunal in this application.

(x) Any other reliefs this Hon'ble Tribunal deems fit in the circumstances of the case.

2. A perusal of the entire OA shows that the applicants who belonged to the reserved category (SC/ST) have a grievance that the vacancies to the

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Grade of TES Group 'B' service have not been filled up giving adequate representation to the reserved category candidates that is why they have approached this Tribunal that the reserved category candidates should be given promotions against the reserved category slots with retrospective effect.

3. During the pendency of this case, a similar matter was decided by the Hon'ble Supreme Court in the case of Union of India Vs. Madras Telephones S.C. & S.T. Social Welfare Association, JT 2000 (6) SC 471 wherein the court have observed as under:-

"16.....The Court no doubt has noticed the arguments advanced by placing reliance on the provisions of the recruitment rules of 1966 but it ultimately came to the conclusion that the views of the Allahabad High Court has reached a finality because of the dismissal of the SLP against the same and as such the eligibility list is required to be prepared in accordance with paragraph 206 of the P & T Manual. The aforesaid conclusion is undoubtedly incorrect, as the Judgment of the Allahabad High Court proceeded by interpreting paragraph 206 of the P & T Manual, which was an administrative instruction which governed the field until promulgation of the recruitment rules framed under proviso to Article 309 of the Constitution. Once the statutory recruitment rules have come into force and procedure has also been prescribed under the said rules for preparation of the eligibility list of officers for promotion to Engineering Service Class II by notification dated 28th of June, 1966, it is that procedure which has to be adopted and the earlier administrative instruction contained in paragraph 206 of the P&T Manual cannot be adhered to. Under the recruitment rules read with Schedule appended thereto and Appendix 1 to the rules, the recruitment to the service in -Class II- has to be made entirely by promotion on the basis of selection through a qualifying departmental examination. The Departmental Promotion Committee is duty bound to prepare an approved list by selection from amongst the officials who qualify in the departmental examination. In view of the

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amendment to the rules made on 4th of February, 1987, the criteria for selection is seniority-cum-fitness. In accordance with the prescribed procedure for preparation of eligibility list, notified by the Government on the 28th of June, 1966, the Departmental Promotion Committee has to prepare separate lists for each year of recruitment in the feeder category. In other words, if in 1958, the Departmental Promotion Committee is recommending people for promotion to Class-II, then all the eligible candidates who had passed the departmental examination and who had been recruited in 1950, are to be listed separately from those officers who also have qualified departmental examination and were recruited in the year 1951 and so on and so forth. Once separate lists are prepared by the Departmental Promotion Committee of the officers recruited in different recruitment years in the feeder category and the criteria for promotion being seniority-cum-fitness, then it would create no problem in promoting the officers concerned. As to the inter se position of the officials belonging to the same year of recruitment in the feeder category, the procedure to be adopted has been indicated in paragraph (iii) of the Memorandum dated 28th of June, 1966. In this view of the matter, we are of the considered opinion that the Judgment of this Court in Civil Appeal No. 4339 of 1995 has rightly been decided interpreting the relevant provisions of the recruitment rules read with the procedure prescribed under the Memorandum dated 28th of June, 1966. We however make it clear that the persons who have already got the benefit like Parmanand Lal and Brij Mohan by virtue of the judgments in their favour, they will not suffer and their promotion already made will not be affected by this judgment of ours."

(emphasis supplied)

4. Another matter was pending before this Tribunal (OA No. 1173/96) which was decided by a Co-ordinate Bench of this Tribunal on 5.7.2000.

5. The counsel appearing for the department in this O.A. (1085/96) was also the counsel in OA 1173/96 and in the judgment it was observed that Shri N.C. Sikri, appearing on behalf of the respondents states that the present OA (1173/96) has now become
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~~infructuous~~. He made a further statement that the ~~promotion~~ to the posts of TES Group B will now be regulated in terms of the directions given by the Hon'ble Supreme Court and respondents shall strictly adhere to the same.

6. On the same lines, this OA can be disposed of as the same has also become infructuous and since the department is bound to obey the directions given by the Hon'ble Supreme Court in Union of India Vs. Madras Telephones SC & ST, Social Welfare Association, JT 2000-(6)-SC-471 and department had already made a statement in the connected OA (1173/96).

7. As such the present OA 1085/96 is also disposed of with a direction to the respondents that they will make promotions considering the interest of SC/ST in accordance with the directions given by the Hon'ble Supreme Court in the case of Madras Telephones SC & ST (Supra). No costs.

C.P. 320/98

8. This C.P. has been filed for the contumacious disobedience of the order passed by this Tribunal in OA 1085/96 on 2.1.98 which was in the following terms:-

"(i) For the years 1986 to 1990 (both inclusive) in the event that vacancies are still available (Shri Kaushik contends that vacancies are still available for each of those years but this is denied by Shri Sikri as well as Mrs. Chhibber), 22.1/2% of

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vacancies for each of such years shall remain unfilled, while the remaining 77.1/2% of those vacancies may be filled as per rules.

(ii) For the years 1991 and onwards, as both parties admit that vacancies are still available, 22.1/2% of vacancies each year shall remain unfilled while the remaining 77.1/2% of those vacancies may be filled up by respondents as per rules."

9. While this O.A. (1085/96) was pending, the department had issued a Scheme vide order dated 15.10.98 whereby they had created 1966 posts of TES Group 'B' service, which according to the respondents was as a consequence of an agreement arrived at between the JTOs Association and department under which certain posts had already been created earlier in the years 1993 and 1994 but after re-calculating, it was found that certain vacancies were available but not created. As such 1966 additional posts were created which were on the basis of an agreement arrived at between the JTOs Association and Department.

10. The grievance of the applicants is that while creating 1966 vacancies, no reservation has been made for the reserved slots despite orders of the Tribunal.

11. In reply to this, respondents have stated that the grievance of the applicants are unfounded and they have submitted that 22.1/2% of the vacancies had been kept reserved for SC/ST and these vacancies would be filled up in accordance with the rules on the availability of the officials.

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12. We have heard the learned counsel for the parties and gone through the record.

13. Vide order dated 2.1.98 the department was directed that "(i) For the years 1986 to 1990 (both inclusive) in the event that vacancies are still available (Shri Kaushik contends that vacancies are still available for each of those years but this is denied by Shri Sikri as well as Mrs. Chhibber), 22.1/2% of vacancies for each of such years shall remain unfilled, while the remaining 77.1/2% of those vacancies may be filled as per rules and (ii) For the years 1991 and onwards, as both parties admit that vacancies are still available, 22.1/2% of vacancies each year shall remain unfilled while the remaining 77.1/2% of those vacancies may be filled up by respondents as per rules" and since as per the reply the department has stated that 22.1/2% of the vacancies had been kept reserved and these will be filled up in accordance with the rules on availability of suitable officials, so it is stated that the creation of vacancies vide scheme dated 15.10.98 has nothing to do with the filling up of vacancies but rather these vacancies have been created to avoid reversion as per the agreement arrived at between the JTOs Association and the department. This goes to show that under the Scheme dated 15.10.98 whereby 1966 posts have been created, the department is not going to fill up any fresh vacancies but will be adjusting

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the persons who had already been promoted so as to avoid reversion of those officers. As such we find that the order dated 2.1.98 has not been violated by the respondents in any manner.

14. In view of the above, nothing survives in the C.P. which is accordingly dismissed. Notices discharged.

Kuldeep
(Kuldeep Singh)
Member (J)

Adige
(S. R. Adige)
Vice Chairman (A)

/Rakesh/