

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

1820 of 1997

DATE OF DECISION 09-01-1998

Bacchi Singh

Petitioner

Sh. H.K. Gangwani & Sh. V.K. Rao

Advocate for the Petitioner(s)

Versus

UOI & Ors.

Respondent

Sh. R. P. Aggarwal

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Dr. T. T. Varma, VC (J)

The Hon'ble Mr. N. Sahu, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? NO
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? NO
4. Whether it needs to be circulated to other Benches of the Tribunal? NO

JUDGEMENT

(N. Sahu)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA-1820/97

New Delhi, this the 9th day of January, 1998.

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Mr. N. Sahu, Member (A)

Bachi Singh
Transmission Assistant
O/o SDE.VFT Station
Ministry of Communications,
Kidwai Bhawan,
New Delhi

...Applicant

(By Advocate : Sh. H. K. Gangwani and
Sh. V. K. Rao)

Versus

Union of India : Through

1. The Secretary
Ministry of Communications
Deptt. of Telecommunications
Government of India, Sanchar Bhawan,
Parliament Street, New Delhi-110 001
2. The Chairman (Telecommunications)
Government of India
Sanchar Bhawan, New Delhi-110 001
3. The Director (ST-II)
Ministry of Communications
Deptt. of Telecommunications
Sanchar Bhawan, Ashok Road
New Delhi
4. Er. B. L. Singh
All India President
Diploma Engineers
Telecom Association
Sanchar Bhawan, Ashok Road
New Delhi-110 001

...Respondents

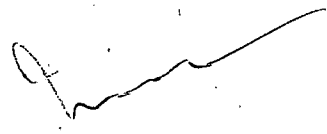
(By Advocate: Sh. R. P. Aggarwal)

ORDER

By Sh. N. Sahu, Member (A) -

MP-2012/97 praying for impleadment of the applicant who is All India President of Diploma Engineers Telecom Association as Respondent No. 4 is allowed and the reply to the impleadment application and the arguments of both the parties at the time of admission to the application are considered in disposing of this OA.

2. This OA seeks the prayer of quashing the impugned order dated 11.03.1997 (Annexure A-1) which contains an interpretation of the recruitment rules for the post of JTO. The subject concerns the deputation of PI/TA/WO/AEA/TTA for JTO training. This communication refers to the Explanation under Column 12 of the Recruitment Rules dated 09.02.1996 for the post of JTO along with a subsequent amendment dated 15.10.1996. It will be appropriate to extract the relevant rules on the subject because their interpretation is crucial to the resolution of the dispute raised in this OA. Before the relevant Column 12 is extracted it is necessary to notice that under a notification dated 09.02.1996 the Junior Telecom Officer (JTO) Recruitment Rules 1996 was issued under the powers conferred by the proviso to Article 309 of the Constitution. It is expressly provided that these rules are in supersession of the JTO Rules 1990 and also the Department of Telecommunications Recruitment Rules 1992. It is stated that these rules regulate the method of recruitment to the post of JTOs in the Department of Telecommunications. Clause 7 contains the power to relax. It states that "where the Central Government is of the opinion that it is necessary or expedient so to do, it may by order or reasons to be recorded in writing, relax any of the provision of these rules with respect to any class or category of persons." The existing reservation concessions to SC/ST and Ex-servicemen are preserved by Clause 8. These recruitment rules pertain to 20030 posts as on 31.03.1994 of Junior Telecom Officers

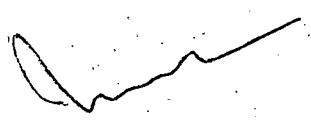


which are classified as General Central Service Group 'C' Non-gazetted, Non-Ministerial Posts. Educational and other qualifications required for direct recruitment are a Bachelor of Engineering degree or a B.Sc. degree with Hons. It is made very clear in Column 9 that the age and educational qualification prescribed for direct recruits would not apply in the case of promotees. The method of recruitment consists of 50% by direct recruitment through a competitive examination in accordance with the instructions issued in this behalf. We are not concerned in this OA with the provisions for direct recruitment. The other 50% are to be recruited by promotion/transfer as indicated under Column 12. Column 12, therefore, is essential and is extracted as under:

- "(1) 50% by promotion, transfer of departmental candidates referred to in item (ii) column 11 will be regulated as under:-

(i) 15% by promotion of departmental candidates through a competitive examination.

(ii) 35% by promotion/transfer of Transmission Assistants/Wireless Operators/Auto Exchange Assistants/Phone Inspectors/Teleco. Technical Assistants (for short, TA, WO, AEA, PI, TTA).



With regard to 15% Promotion through competitive examination, the following group 'C' employees in the Department whose scale of pay is less than that of Junior Telecom. Officers shall be eligible, if such employees are:

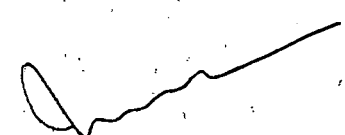
(i) borne on the regular establishment and working in Telecom. Engineering Branch of Department including those working in the office of Chief General Manager, Telecommunication Circles/Districts other than -

(a) Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators and T.T.A.

(b) Plumbers/Sanitary Inspectors/ Conservancy Inspector

(ii) working in Telecommunication Factory, other than those borne on industrial establishments.

(iii) borne on the regular establishment and working as Accounts Clerks in the Accounts Wing under the Telecommunication circles.



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(iv) borne on the regular establishment and working as Works Clerks Grade I and II, Work Assistants, Draftsman, Junior Architects and Electricians in the Civil Wing under Telecom. Circles:

Provided that -


(a) they have passed High school/Matric examination or its equivalent and have completed five years regular service, or

(b) they possess the qualifications prescribed in column 8 and have completed 3 years regular service:

Provided further that they are not above the age of 40 years on the crucial date.

35% transfer/promotion from amongst -

(a) the Phone Inspectors/Auto Exchange Assistants/ Transmission Assistant/Wireless Operator who possess the qualification prescribed in column 8 and have completed 5 years regular service in the cadre of Phone Inspector/Auto Exchange



Assistant/Transmission Assistant/
Wireless Operator (emphasis supplied
by us).


(b) the Phone Inspectors/Auto
Exchange Assistant/Wireless
Operators/Transmission Assistant/
Telecom. Technical Assistants who
possess the High school/Matriculation
qualification and who have completed
6 years of regular service through a
qualifying screening test (emphasis
supplied by us) unless he has already
passed such test.

Note :

They shall have to undergo a simple
medical test to ensure that they are
physically fit and mentally alert to
perform the duties expected of a
Junior Telecom. Officer.


Explanation:

Length of service in the cadre of
Phone Inspector/ Auto Exchange
Assistant Transmission Assistant/
Wireless Operator will be the
criteria for sending them for JTOs
training."



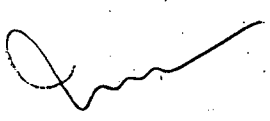
As mentioned above, we are concerned with the 35%. This 35%, as noticed above, is further sub-divided into two categories. With regard to PIs, AEAs, TAs and WOs who possess a Degree in Engineering or a Degree in B.Sc(Hons.) and have completed 5 years of regular service in the cadre of PI/AEA/TA/WO shall be eligible for promotion to the post of JTOs. With regard to those who do not have the qualification of Degree in Engineering or B.Sc(Hons.), such of the PIs, AEAs, WOs, TAs and TTAs who possess only a Matriculation qualification and who have completed 6 years of regular service should also undergo a qualifying screening test. After selection, they shall undergo a simple medical test.

3. Certain important differences between the two classifications are to be noted. With regard to (a) above where the qualification required is Engineering graduate or a B.Sc(Hons.), the TTAs as a group are not mentioned at all and 5 years regular service in the respective cadre is emphasised but in regard to sub-clause (b), the TTAs are mentioned along with other categories but what is emphasised is 6 years of regular service only and not necessarily service in the respective cadres. The impugned letter is an interpretation of an Explanation and says as under:




"I am directed to refer to the "explanation" under column 12 of the RRs for the post of JTO notified vide notification dated 09.02.96 and subsequent amendment notified vide notification dated 15.10.96 which states that "length of service in the cadre of Phone Inspector/Auto Exchange Assistant/Transmission Assistant/Wireless Operator/ Telecom Technical Assistant will be the criteria for sending them for JTOs training". The said explanation mentions the criteria to be followed for sending the candidates for JTO training without reference to any minimum service condition. It is further clarified that in the case of those TTAs who opted to become TTA from PI/TA/WO/AEA, their length of service in PI/TA/WO/AEA cadre may also be counted for deciding their eligibility for sending them for JTO training."

4. The grievance of the applicant is that these instructions are contrary to the statutory rules. As such administrative instructions cannot change the criteria laid-down in the rules and cannot be inconsistent with the provisions of the rules. Administrative instructions can be issued for filling-up the gaps in the existing rules. Such




instructions cannot amend or supersede the statutory rules. By the impugned letter, the respondents have brought in a new criterion in the rules and virtually amended the rules. It is challenged that this impugned administrative instruction is arbitrary, improper and issued in colourable exercise of power. This was done according to the applicant, to give an undue advantage/benefit to the TTAs by trying to dispense with the requirement of 6 years regular service in the statutory rules. They earlier issued an order dated 24.12.1996 to this effect but this was withdrawn on 15.01.1997. Similar order was issued on 02.12.1996. This was also withdrawn. The impugned present order is stated to be similar to the earlier orders dated 02.12.1996 and 24.12.1996. It appears an intra-departmental clarification has been sought. By a letter dated 31.03.1997 (Annexure A-8), it is stated that all the qualified candidates are to be sent on training irrespective of the fact whether they have rendered 5 years or 6 years of service, as the case may be. Because at the time of taking the examination, there was no such condition for eligibility.

5. After notice, the respondents refer to the notification dated 16.10.1990 which is unnecessary for our purposes here except understanding the background. The respondents state that they introduced a restructured cadre of TTAs in the scale of pay of Rs.1320-2040 by an order dated 16.10.1990. This cadre was introduced after the July, 1990 Recruitment Rules. The TTA cadre comprises of officials who have come out



of PIs, TAs, WOs, AEAs and officials who have come from lower cadres of technicians who have a 3 year diploma in Electrical Engineering, Mechanical Engineering, Radio Engineering, Telecom Engineering, Electronics, Computer Science awarded by a recognised technical institute. The substance and import of the submissions of the respondents is that the TTA has emerged as a very important branch of the Telecom Engineering tree comprising of Technicians, PIs, TAs, WOs and AEAs. On 18.04.1994 the Telecom Commission by their order dated 13.12.1994 allowed TTAs to appear in the qualifying screening test against the 35% departmental quota of vacancies of JTOs irrespective of their length of service. Para 5 of the counter affidavit focuses one important aspect and deserves to be extracted as under:

"5. Under 35% quota of vacancies to be filled by promotion in Column 12 of the schedule of Recruitment Rules of JTO notified in the Gazette of India on 9.2.96 (Annexure A-2), it is provided that the condition of 6 years of service is not applicable to the persons who have already taken the qualifying screening test prior to the said rules. The qualifying screening test for 35% quota was held on 29.1.95 i.e. prior to the JTO Recruitment Rules of 1996 which did not specify any minimum service condition."




6. It is explained that the letter dated 11.03.1997 gave benefit to those TTAs who had switched-over to the cadre of TTAs from PI/TA/WO/AEA only to have their service counted in these cadres for the purpose of deputing them for JTO training. The other aspect of the contention of the respondents is that at no point of time there was a condition of 6 years regular service for successful TTAs or for that matter successful PIs/TAs/WOs/AEAs having successfully qualified the screening test. For sending them for JTO training, the criterion was length of service in these cadres. Thus, any successful official having the maximum length of service in these cadres have the first right to go for the JTO training.

7. Before we take up the main issue, the following well-recognised principles may be restated and kept in view while deciding the dispute before us. Executive instructions can have no effect of amending the rules without formally amending the same. Secondly, administrative authority is empowered to issue executive instructions only to fill-up the gaps in the recruitment rules. Such authority cannot issue instructions to amend or modify the rules. Once rules are issued under Article 309 and spelt-out the recruitment procedure and eligibility conditions for posts, the administrative instructions cannot alter or modify those rules - Keshav Chander Joshi Vs. Union of India - AIR 1991 SC 284. Thirdly, a statutory rule is prospective unless it is expressly or necessary implication has retrospective effect - P. Mahendran Vs. State of Karnataka - 1990(12) ATC 727 SC. Finally, an

Explanation if it widens the scope of main section must be read harmoniously with the main section - Bengal Immunity Company Vs. State of Bihar - AIR 1955 SC 61, Bihar Cooperative Union Vs. Bank of Bihar - ISCR 848 - AIR 1967 SC 389. Any recruitment made to the post of JTOs in the Department of Telecommunications after the promulgation of the rules under Article 309 on 08.02.1996 must be in conformity with the rules. Although, under Para 7 of the rules, Central Government can relax the provisions with respect to any class or category of persons, the impugned order has not been issued in exercise of the power to relax contained in para 7. That apart, where it is case of recruitment to the post, the rules of recruitment and eligibility conditions of qualification must be strictly complied with.


8. The contention of the applicant is that TTAs have not completed 6 years of service as TTAs and therefore, have no right to go for training for the post of JTOs because the recruitment rules of 1990 did not provide for TTA as a feeder cadre for recruitment as JTOs. This aspect was challenged before the Ernakulam Bench which directed the Secretary, Ministry of Communications to consider the representations by his order dated 22.10.1991. At para 4(c) the Secretary gave the four cadres TA, PI, AEA and WO. 35% quota of JTO vacancy for the recruitment year 1994 to improve their promotional prospects and by an order dated 11.09.1994, the time limit for the departmental examination with regard to these four cadres has been extended upto the year 2000. Therefore, it is



contended that TTAs have no place within the 35% quota for the recruitment years 1991 to 1994 and upto the year 2000. Even if they have appeared for the qualifying test in 1994 they cannot be sent for training till they have completed 6 years of service in the cadre as TTAs. It was only by an order dated 02.02.1995 that the recruitment rules for JTOs were considered fit for amendment to make the TTAs eligible for promotion to the cadre of JTOs. The basic contention of the applicant is that the condition of 6 years service is not applicable to the persons who have taken the qualifying screening test prior to the said rules. The order of the Central Administrative Tribunal, Hyderabad Bench in OA-649/95 dated 30.04.1996 clearly mentions as under:

"Action if any thereafter to promote them (TTA) to the cadre of JTO (if they are successful in that test) in the light of the length of service requirements, as applicable in their case, shall be determined in accordance with the Recruitment Rules which have since been formulated by the department" issued on 09.02.1996."

Thus, according to the applicant, the condition of 6 years of service as TTA is very necessary to be fulfilled both under the recruitment rules, the Hyderabad Bench judgment and the respondents instructions dated 13.12.1994.




9. We have carefully considered the submissions. The rules extracted above clearly stipulates that there must be 6 years of regular service. We have already pointed out above that sub-clause (b) does not say 6 years of regular service in the respective cadres.

10. It is a settled principle of interpretation of statutes that an 'Explanation' cannot override the substantive provision. An 'Explanation' only explains the existing substantive provision. The minimum condition of 6 years regular service in sub-clause (b) is a categorical imperative and must be complied with; but there is no stipulation that the 6 years of service in clause (b) should be in the same cadre as mentioned in sub-clause (a). If a TTA has come out of any of the four cadres of PIs, AEAs, WOs and TTAs, the length of service in those cadres can be aggregated into the service with TTA and if he has completed 6 years, he should appear in a qualifying screening test and should be successful in that test, whereafter he will undergo another medical test. The Explanation then will come into play. If let us say, there are 100 candidates who have completed 6 years of regular service in the respective cadres or respective cadres plus TTAs, then the persons with the longest service who have also qualified in the screening test and medical test will be eligible for being sent to JTO training. The respondents contention is only valid to this extent. Under sub-clause (b) any TTA belonging to the four wasting cadres can request his earlier service to be counted in the 6 years of




service and that too if he had come out of the first four categories of PIs/AEAs/WOs and TAs. This also sounds eminently logical. These cadres have been declared as wasting cadres. A separate cadre of TTAs has emerged out of these cadres. These TTAs have been trained in a forward technology. Therefore, earlier experience cannot be ignored. We also make it very clear that the earlier experience for reckoning of 6 years period cannot be again availed of by other than any of these four categories. We are convinced that this is the only reasonable interpretation of these two clauses. We accordingly hold that the impugned letter dated 11.03.1997 to the extent it gave prominence to the 'Explanation' overriding the main rule is ultra vires the statutory rules. The main rule is 6 years of regular service. Even in sub-clause (a) qualified persons are required to have 5 years of regular service in the respective cadres. It will be a gross perversity if we interpret the legislative intent as saying that the 6 years of service was not required when it came to sub-clause (b). The length of service in the 'Explanation' is only applicable when this minimum requirement is fulfilled. We are, therefore, of the view that to the extent that this minimum requirement is not enforced in the impugned official communication, the said directive is bad in law. Having said that we also add that TTAs who have come out of the wasting cadres can add their experience of the earlier cadres with the experiences of TTAs Cadre both for reckoning the minimum condition of 6 years regular service as well as for length of service. Respondents shall



accordingly regulate the candidates and send them for training on the basis of the provisions of rules interpreted by us as above.

11. All the candidates who are considered fit for being sent to training for JTOs eventually leading to their appointment as JTOs after the publication of the notification shall comply with the rules issued by the notification on 08.02.1996. Any person sent on training after this date which is not in accordance with the rules as interpreted by us as above, is hereby declared as not in accordance with law. Respondents shall with care and diligence choose such of the candidates who fulfil the criteria as interpreted by us and who are to be sent for training after 09.02.1996 and notify to them within four weeks from the date of receipt of a copy of this order.

12. OA is disposed of as above. No costs.


(N. Sahu)
Member(A)


(Dr. Jose P. Verghese)
Vice Chairman(J)

/Kant/