

CP 300/98
MA 2162/98
OA 2226/97

New Delhi, this the 18th day of May, 2000

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

CP 300 of 1998

1. Shri Nagesh Swami S/o Shri V.K. Swami
R/o Flat No.12/II, P&T Flats, Karol Bagh,
New Delhi-110005.
2. Shri A.P. Pandey S/o Shri V.M. Pandey
R/o Block No. 16/1C, P&T Type III Quarters,
Kali Bari Marg, New Delhi-110 001.
3. Shri S.K. Sharma S/o Shri R.C. Sharma
R/o A-2/32, Bridge Vihar,
Ghaziabad (U.P.). ..Applicants

(By Advocate - Shri R.K. Kapoor)

Versus

1. Shri Anil Kumar
Chairman, Telecom 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,
New Delhi. - Respondents

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

O.A. 2226/1997

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R/o Flat No.12/II, P&T Flats, Karol Bagh,
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R/o Block No. 16/1C,
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3. Shri S.K. Sharma S/o Shri R.C. Sharma
R/o A-2/32, Bridge Vihar,
Ghaziabad (U.P.). ...Applicants

(By Advocate - Shri R.K. Kapoor)

Versus

1. Union of India through
the Secretary,
Department of Telecommunication,
Sanchar Bhawan,
Ashoka Road,
New Delhi.
2. Shri S.K. Tyagi S/o Shri J.N. Tyagi
R/o 3/48 ALTCC, Ghaziabad (UP).
3. Sh.C.B. Singh S/o Shri Puran Singh
R/o 3/3 ALTTC, Ghaziabad (U.P).
4. Shri Sanjay Kumar S/o Shri Mahesh Prasad
R/o Gh-8/348 Paschim Vihar,
New Delhi. ...Respondents

(By Advocate Shri N.C. Sikri, Sr. Counsel with Ms.
Geetanjali Goel and Mrs. Meera Chhibber.

ORDER

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

In OA 2226 of 1997 the applicants are aggrieved of an Office Order issued by the respondents whereby the respondents have initiated a process for promotion of Junior Engineers who are presently working as Junior Telecom Officer (hereinafter referred to as JTO) to the Telecommunication Engineers Service Group 'B'. The said order has been issued in deference to the directions issued by the Hon'ble Supreme Court in SLP (C) No.2607/95 and a direction given by the Principal Bench, CAT, New Delhi dated 5.6.97 in OA No. 2573/96 as well as the direction of the CAT, Ernakulam Bench dated 23.7.97 in OA 453/96. According to the impugned Office Order dated 20.3.97 (Annexure A-1), the respondents have proposed to fill up the vacancies of TES Group 'B' service and

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guidelines have been issued. The directions given are in two parts -- regarding the vacancies which have arisen upto 22.7.96 and the vacancies which have arisen on or after 23.7.96.

2. The background, in which this Office Order has been issued, is that earlier the promotions from the post of Junior Engineer to the service were made on the basis of an examination held under the Paragraph 206 of the P&T Manual. In the year 1966 statutory rules came into force regarding recruitment to the post of Telegraph Engineering Service Class-II which were later on modified in the years 1981 and 1987. However, in the year 1996 new rules had taken the place of 1966 Rules w.e.f. 23.7.96, when the official Notification was issued.

3. Since there were various vacancies available and the Associations have been litigating with the Department for filling up those vacancies, so ultimately in an SLP before the Hon'ble Supreme Court, the Department had made a statement that vacancies which had arisen upto 22.7.96 shall be filled up in accordance with the old rules and the vacancies which may have arisen on or after 23.7.96 were to be filled up in accordance with the new rules. Accordingly, this impugned Office Order dated 20.8.97 was issued.

4. The grievance of the applicants is that though the Department has issued the impugned Office Order dated 20.8.97 but the department has not

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identified the number of vacancies which are in existence upto 22.7.96 and which have arisen after 23.7.96.

5. Under the 1966 rules promotion to the TES Group 'B' from JTOs cadre was initially based on the candidates qualifying a departmental examination and only those candidates were eligible who had rendered 5 years service prior to announcement of the examination either as Engineering Supervisor or Wireless Supervisors or Ex-Company Officials. In the year 1981 the rules were modified and by modification it was prescribed that 66-2/3% of the vacancies in the promotion quota were to be filled up by selection on the basis of departmental qualifying examination and 33-1/3% of the vacancies in the promotion quota were to be filled up by selection on the basis of limited departmental competitive examination. Junior Engineers with 5 years of service were eligible to appear in the said examination.

6. When the 1966 rules were replaced by 1996 rules, the method of promotion was changed and it was provided that 75% of the vacancies in the TES Group 'B' would be filled up by promotion on the basis of seniority-cum-fitness and rest of the 25% of the vacancies on the basis of departmental competitive examination. According to the applicants the vacancies which had occurred prior to 22.7.96 have to be filled up separately from the candidates who had qualified the departmental examination and the

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vacancies which have come into existence on or after 23.7.96 had to be filled up in from the applicants and other similarly situated persons.

7. The applicants apprehend that only those JTOs who had qualified the departmental examination would be included in the the eligibility list for absorption against the vacancies which had occurred prior to 22.7.96 whereas even those JTOs who have not qualified the departmental examination but are otherwise eligible because of seniority by virtue of their length of service have to share the vacancies which had arisen upto 22.7.96 for promotion to TES Group B.

8. It is also alleged that if any vacancy which had occurred or created after 23.7.96 is to be filled up by any candidates from the list of qualified candidates, the same would be in violation of the orders of the Hon ble Supreme Court. So it is stated that the respondents authorities cannot be allowed to accommodate all the qualified JTOs against the vacancies by clubbing the vacancies which occurred or were created after 23.7.96 with the vacancies which had occurred prior to 23.7.96.

9. It is further alleged that the respondents before issuing the impugned circular dated 20.8.97 without firstly indicating the number of vacancies which were available for the qualified candidates of JTOs cadre which are to be filled up in accordance with the pre-1996 rules and the number of vacancies

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which are to be filled up from JTOs cadre in accordance with the Telecommunication Engineering Service (Group 'B' Post) Recruitment Rules 1996. The number of vacancies which are to be filled up in accordance with the 1996 rules and the eligibility lists, should have been prepared and published.

10. It is further pleaded that the respondents have not come out with the list of vacancies which had occurred prior to 22.7.96, so the applicants apprehend that the respondents intention is not clear and they want to adjust the qualified JTOs against the vacancies which existed prior to 22.7.96 in the quota of non-qualified JTOs, who could be promoted on the basis of their seniority.

11. In the circumstances, it is prayed that an appropriate order be passed restraining respondents' authorities from filling up any vacancies with reference to Circular dated 20.8.1997 till the number of vacancies which occurred or were created prior to 22.7.96 and those which occurred or were created after 23.7.96 is published and the list of eligible JTOs prior to 23.7.96 and after 23.7.96 is published and circulated for corrections (within the prescribed time), as was done in earlier selections through DPCs.

12. The O.A. was contested by the respondents. They admit the issuance of the impugned Circular dated 20.8.97 and submitted that holding the DPC for

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promotion to TES Group B is in accordance with the Supreme Court's judgment dated 25.10.96 and as such the aforesaid circular was issued.

13. They have further stated that the eligibility list of qualified candidates upto the year 1990 have already been circulated to all circles and list of qualified candidates upto 1991 will be circulated before holding the ensuing DPC and the DPC would be held in the 1st instance only for the vacancies existing upto 22.7.96.

14. As regards Para 206 of the P&T Manual which enabled the department to conduct the examination, it is stated that the date of abrogation has been changed, i.e., the date when the new Rules came into force w.e.f. 23.7.96. It is also stated that in accordance with the Supreme Court order dated 25.10.1997 in SLP No. 26071/97, the candidates who qualified the exam upto the year 1991 can be accommodated against the vacancies upto 22.7.96. The number of vacancies upto 22.7.96, have been called for from all the circles and only qualified candidates can be accommodated against the vacancies upto 22.7.96 and vacancies arising on or after 23.7.96, would be filled up in accordance with the new Recruitment Rules.

15. It is also stated that the Government is not under any obligation to make public the number of vacancies. However, the Government has already circulated the list of qualified eligible officers upto the year 1990 and the eligibility list of

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candidates qualified in 1991 exam would be circulated before holding the ensuing DPC on the same pattern as was done in the past.

16. It is also stated that the qualified candidates would be considered for the vacancies which existed upto 22.7.96 and if any qualified candidates remain unadjusted against the vacancies prior to 23.7.96, then in that event those candidates would be considered as per the revised rules for the vacancies on or after 23.7.96. It is, therefore, prayed that the O.A. be dismissed.

17. We have heard the learned counsel for the parties and have gone through the records.

18. As far as the position with regard to the Recruitment Rules of the year 1966 as modified in the year 1981 and the replacement of the old rules by the 1996 Rules are concerned, that stands admitted by the parties.

19. The only short question to be seen is whether the department is under any obligation to identify the number of vacancies for conducting the DPC and whether the same should have been published before holding the DPC.

20. In the counter-affidavit the department has categorically stated that the list of the candidates who have qualified the examination conducted under the 1996 rules upto the year 1990 has already been

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circulated. It is not denied in the rejoinder even that the list of qualified candidates upto the year 1990 had been published but it is stated that mere publication of the list of qualified candidates is not enough until and unless the number of vacancies proposed to be filled up is ascertained.

21. As far as the identification of the number of vacancies is concerned, we find that the Recruitment Rules do not prescribe that the number of vacancies are to be clearly stated or identified before conducting the DPCs for promotion. It is an admitted fact that department through their counsel had made a statement before the Hon'ble Supreme Court that the vacancies which existed prior to 1996 rules when came into force shall be filled up under the old rules and vacancies arising after 1996 rules, shall be filled as per the new rules. We have no reason to disbelieve the department when a statement had been made before the Apex Court.

22. The apprehension of the applicants are unfounded. It is for the department to calculate the vacancies for each year. This has been directed by the Hon'ble Supreme Court in a subsequent case (Union of India Vs. Madras Telephones S.C. & S.I., Social Welfare Association, JT 2000 (6) SC 471). So the department is bound to prepare separate list for each year of recruitment in the feeder category. Shri N.C. Sikri, Sr. Counsel for the department has placed on record the said judgment of the Hon'ble Supreme Court titled as Union of India Vs. Madras Telephones S.C.

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& S.T., Social Welfare Association, JT 2000 (6) SC 471

in which the Hon'ble Supreme Court after commenting upon paragraph 206 of the P&T Manual and the statutory rules which have been promulgated for the purpose of promotion, 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 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

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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)

23. Since the above quotation of the Hon'ble Supreme Court has categorically analysed as to what steps are to be taken by the department for conducting the promotions and the Departmental Promotion Committee has to prepare separate lists for each year of recruitment in the feeder category and how the qualified eligible candidates who have passed the departmental examination are to be treated.

24. The aforesaid directions of the Hon'ble Supreme Court extracted in para 22 above, are clear and specific and we dispose of this OA with a direction to respondents to determine the number of vacancies and fill up the same strictly in accordance with those directions.

25. With the above directions, the OA is disposed of. No costs.

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Order on CP 300/98

26. During the pendency of OA 2226/97, an order was passed and a Corrigendum thereupon was issued on 8.10.97 where it was clarified that the vacancies existing prior to 22.7.96 will be filled up in accordance with the old rules and the vacancies arising on or after 22.7.96 will be filled up in accordance with the new rules.

27. In the present C.P. it is alleged that on 15.10.98, the department issued an order, the contents of the order suggest that the department has made an attempt to create vacancies from the year 1993 onwards and this could not have been done as the vacancies created vide order dated 15.10.98 would have been created as if the vacancies had arisen after 23.7.96, as such it amounts to contempt.

28. The respondents in their reply have submitted that the respondents had created 1996 SDE posts in TES Gr. 'B' by upgrading JTOs post and these posts have been created/upgraded w.e.f. 1993 and it is pleaded that the order dated 15.10.98 is not an order which violates the order of this Tribunal. The order dated 15.10.98 was issued to avoid any reversion of Sub-Divisional Officers already promoted and working on regular basis and it was decided that those JTOs who may face reversion may be adjusted by creating supernumerary post and it is in accordance

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with those instructions and to stall reversion of the officers who may be reverted due to the revision of the seniority list.

29. We have heard the learned counsel for the parties and we are of the considered opinion that it is the prerogative of the Department to create vacancies even with effect from retrospective date and in this case these posts are stated to have been created on supernumerary basis in accordance with the agreement between JTOs Association and the Department. A Committee under the Chairmanship of Adviser (HRD) was constituted to examine and suggest remedial measure to avoid reversion of certain officers of TES Group 'B' service whose seniority has been revised as per the judgment of the Allahabad High Court in the case of P.N. Lal Vs. U.O.I.

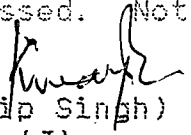
30. It is also stated that in the promotion lists issued in 1993 and 1994, the total number of JTOs were more than 7700 and to avoid reversion of already promoted 550 TES Group 'B' officers and this had occurred because of factual error based on the information received from the various Circles.

31. As regards the retrospective creation of post is concerned, the Commentary on the subject in Swamy's Establishment and Administration Section II Establishment Chapter 12 Creation of Posts does show that the Government can always create post with retrospective effect and the aforesaid chapter on the same subject prescribe conditions as to how the posts

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are to be created with retrospective effect. Thus, we find that there is no bar for creation of post with retrospective effect and the same, in no way violates the interim order passed by this Tribunal.

32. In view of the above, CP 300/98 is dismissed. Notices are discharged.


(Kuldip Singh)
Member (J)


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

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