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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1282/2000
MA No.1602/2000
MA No.124/2001

New Delhi this the 19th day of September, 2001.

HON^{BLE} MR. M.P. SINGH, MEMBER (ADMN)
HON^{BLE} MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. All India Telecom Technical Employees Association through its Secretary, Sh. A.K. Tyagi, 200 Rama Market, Pritam Pura, New Delhi.
2. National Union of Telecom Employees Group 'C', D-9, Telegraph Place, Bangla Sahib Marg, New Delhi through its Secretary, Shri Ajit Pal Singh, Assistant Circle Secretary, NUTE, Gr. C, Delhi Circle. -Applicants

(By Advocate Mrs. Rani Chhabra)

-Versus-

1. Union of India, through its Secretary, Ministry of Communication, Sanchar Bhawan, New Delhi.
2. Department of Telecommunication Services, through the Secretary, 20, Ashoka Road, Sanchar Bhawan, New Delhi. -Respondents

(By Advocate Shri R.V. Sinha)

O R D E R

By Mr. Shanker Raju, Member (J):

MA-1602/2000 for joining together is allowed.

2. The applicants have assailed the Junior Telecom Officers (JTOs) Recruitment Rules, 1999 issued by the Department of Telecommunication vide notification dated 31.8.99 and change of criteria therein which had rendered them ineligible and amounts to change of service condition and have sought maintenance of same qualification and

experience for the posts of JTOs as contemplated under the recruitment rules of 1990 and 1996.

3. Briefly stated the applicants are working as Telecom Technical employees. In the year 1990 the recruitment rules for JTOs were issued by which posts of JTOs were to be filled 65% by direct recruitment through competitive examination and 35% by promotion of departmental candidates through competitive/qualifying examination. The 35% departmental quota of vacancies was to be filled 15% by promotion of departmental candidates through a competitive examination, 10% by promotion of Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators through a competitive examination and remaining 10% by promotion of Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators on seniority-cum-fitness basis through a separate qualifying test. Against this 10% quota Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators who have rendered 3/5 years continuous satisfactory service in any of the aforesaid four cadres as on the crucial date will be eligible to appear in the competitive examination for promotion to the cadre of JTO provide provided they have passed the High School/Matriculation examination or its equivalent examination. The educational qualification was matriculation and high school to appear in the screening test and Science Graduates with three years diploma are allowed to appear in the screening for the post of JTOs and for the direct recruitment the qualification was Bachelor

of Engineering. On 16.10.90 a new technical cadre (Group "C") of Department of Telecommunication was introduced, restructuring of the technical cadre in Group C and D. The restructuring cadre was Telecom Technical Assistant called as TTA in the pay scale of Rs.1320-2040 and for this cadre direct recruitment was restricted to incumbent who possess three year engineering diploma. During this transitional period a decision was taken to fill up the posts in the newly created restructured TTA cadre from departmental candidates in all cadres possessing 3 years engineering diploma by seniority-cum-fitness followed by training and post training test and the remaining was by competitive examination from Technicians only who are non-diploma holders. As a result Group D employees having three years engineering diploma were given the cadre of TTA and those who were not having three years diploma were allowed to become TTAs on their passing the competitive examination. DA-764/90 was filed before the Ernakulam Bench of this Court, alleging discrimination against the cadre of PIs/TAs/AEAs/WOs even though the cadres have been declared as wasting cadres. By an order dated 5.7.91 this court has directed consideration of the representation where it has been recommended that these cadres should be declared equivalent to that of TTA. In 1994 on the recommendations of the Committee screening test for JTOs was introduced for technical employees and the screening test was also to be held for the posts of JTO amongst all the cadres of TTAs, PIs/TAs/AEAs/Wos. As per the existing rules 35% quota of vacancies are to be filled up amongst the JTOs and other through a screening test and Group C Technicians are allowed to appear for JTO vacancies through competitive examination in this quota. Since after the

cadre of TTA is Group C of TTAs were allowed to appear in the screening test against 35% quota of the vacancies meant for them. A separate test was decided to be held for TTA after finalisation of the recruitment rules which was held on 29.1.95 and were appointed as JTOs under the recruitment rules of 1990. IN 1996 recruitment rules for JTOs were introduced superseding the earlier rules of 1990 where the method of recruitment was 50% by promotion, which, inter alia, included 15% by departmental candidates through competitive examination and 35% by promotion/transfer of TAs/WOs/AEAs/PIs/TTAs. 15% by promotion through competitive examination, inter alia, included Group C employees who were borne on regular establishment provided they have passed the High School/Matriculation examination and completed five years of regular service under the said rules. The TTAs were not permitted to appear in the competitive examination unless they had completed 6 years of regular service as TTA. In November, 1998 a circular for screening test of 35% of the quota was issued but the TTAs having not completed 6 years of service were not allowed to appear. The same was challenged before the Court and it was held that TTAs were eligible to appear in the screening test and their services as Technician was also to be taken into account while considering their service as TTA. Subsequently the respondents have amended JTOs by notification dated 31.8.99 wherein the educational qualification has been made Bachelor of Engineering in Telecom or Bachelor of Science with Physics and Chemistry with three years' diploma in Electronics/Radio/Computer Engg/Instrument Technology/Telecom and appear in the competitive examination for the posts of JTOs. The learned counsel of the applicant states that when the competitive

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examination was not found feasible the respondents have decided to introduce the screening test which was being conducted under the rules of 1990 and 1996. Now again by introducing the competitive examination new cadres have been added which are not eligible for promotion. By a circular dated 31.8.99 it has been decided to hold the screening test for 35 vacancies upto this date including TTA to provisionally appear in the qualifying screening test though vacancies upto 31.8.99 will be filled by TTA who are successful in the test and rest of them would be debarred which smacks of hostile discrimination violative of Articles 14 and 16. The learned counsel of the applicant has placed reliance on a decision of the Apex Court in I.R. Kapoor v. State of Haryana, AIR 1987 SC 415 to contend that the condition of the service cannot be changed unilaterally to the prejudice of certain employees. The learned counsel of the applicant stated that during the service tenure of the applicants the respondents have no right to change the educational qualification, resulting in withdrawal of their promotional avenues. It is also stated that when the applicants were appointed at the relevant time the educational qualification was apt for their promotional avenues, but the change of the same unilaterally is ultra vires. It is also stated that the change in qualification of direct recruitment can be made but this should not be subjected to the promotees as per the Fifth Central Pay Commission. It is also stated that these rules may be implemented prospectively for fresh recruitment of JTOs but the same cannot be applicable to promotees who had acquired their promotion according to new technology and rather not having the requisite qualification. They have been deprived of their

promotional avenues and as the scheme of re-structuring introduced in 1990 was approved by the Cabinet and taken not by the Fifth Central Pay Commission the same could not have been changed.

4. The learned counsel of the respondents strongly rebutting the contentions of the applicants stated that the recruitment rules of JTOs have been framed under Article 309 of the Constitution of India in consultation with the Ministry of Law, DOPT and UPSC was also consulted. It is also stated that on the recommendations of Fifth CPC the respondents have framed these rules wherein 50% of the posts are to be filled up through LDCE. The direct recruits qualification was changed for the JTOs as Department of Telecommunication is fast expanding and is to be equipped with latest technological equipments and to ensure that the more qualified persons get in at the entry level the rules have been framed. As the educational qualification for direct recruitment was modified as Bachelor of Engineering or Bachelor of Technology and the criteria in the rules of 1996 where the applicants were eligible for 35% departmental quota a suitable modification of 15% departmental quota has also been made in the 1990 rules for promoting the applicants not having qualification under 15% departmental quota. Placing reliance on the decision of the Apex Court in State of Maharashtra & Another v. Chanderkant Anant Kulkarni & Ors., 1981 (3) SLR 326 (SC) as well as I. Jagdeesan v. Union of India & Ors., 1990 (2) SLR 59 (SC), it is contended that a right to be considered for promotion is a condition of service but mere chance of promotion are not the conditions of service and Government has every right to amend the rules. It is

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also stated that TTAs who have completed six years regular service were permitted to appear in 35% quota for screening test for JTOs vacancies pertaining to the year 1996-98 and as such TTAs were allowed in the screening test provisionally without insisting on 6 years service in the cadre of TTA subject to the outcome of the cases. The screening test has now been replaced by a competitive examination to accord an opportunity to better qualified persons on gazetted posts of JTO. The future prospects of the existing employees have not been taken away. Those who fulfil the eligibility criteria in JTOs rules 1990 can still appear in the competitive examination and also their current grade has not been divested away from them. The respondents stated that they have allowed all the eligible candidates to appear in the screening test of 35% quota upto 30.8.99 and the vacancies which will be available thereafter would be filled up prospectively as per the rules notified on 31.8.99. As such there is no violation of Articles 14 and 16 of the Constitution of India.

5. We have heard the learned counsel of both the parties and perused the material on record. The claim of the applicants in the present case is not legally tenable. The respondents with a view to oversee that in view of fast expanding field of Telecommunication and introduction of high technological equipments etc. decided to increase the entry level qualification for direct recruits for JTO as Junior Telecom Officers by way of exercise of the powers conferred by the proviso to Article 309 of the Constitution of India the recruitment rules of JTOs of 1996 have been amended in 1999 in consultation with the nodal Ministry of DOPT, including Ministry of Law and the same has been

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consulted with the UPSC. This was necessitated as per the exigencies of service and as a policy decision which cannot be interfered with by the courts as settled by various judicial pronouncements of the Apex Court. Further more, as held by the Apex Court in Jagdeesan's case (supra) wherein by way of amendment of rules for the post of Director prescription of degree in Engineering was made a requisite qualification, which ultimately adversely affected the promotional avenues of the applicant therein. The Apex Court was of the confirmed view that the only right which a government servant is for consideration and promotion but mere chances of promotion are not the condition of service. Therein after having taking into reckoning the ratio of I.R. Kapoor's case (supra) cited by the applicants it was observed that as no retrospective effect has been given to the amended rules and the appellant therein has not been reverted from the post the only effect to his chance of promotion. As such his right to be considered for promotion is a term of service but if mere chances of promotion are adversely affected he cannot claim a right against that. Further the ratio of Apex Court in Govt. of A.P. & Others v. Syed Yousuddin Ahmed, 1997 (7) SCC 24 confirms our view wherein it has been held that origin of government service is contractual but once appointed to his post or office the government servant acquires a status and his rights and obligations are no longer determined by the consent of both parties but by statutory rules which may be framed and altered unilaterally by the Government under Article 309 of the Constitution of India determining the service conditions of the employees and such law can also be retrospective. As such in view of the ratio of the Apex Court that mere

chances of promotion not being a condition of service the applicants have not right to claim the same and as the amendment has been carried out for a purpose and for betterment of the service the same cannot be found fault with.

6. Apart from it, the post of JTO has been after the Fifth Pay Commission recommendation has been classified as Group "B" and as such this necessitated the relevant amendment in the educational qualification as well as other eligibility criteria of method of selection. The respondents have done away with the screening and have introduced departmental competitive examination. Thus who are not having the requisite eligibility under 35% quota have been allowed to compete in 15% departmental quota. The earlier classification for the post of JTO as Group "C" has been changed to Group "B" and due to this upgradation the minimum qualification has been increased the screening test has been replaced by competitive examination to give opportunity to better qualified person for group "B" gazetted post of JTOs. The future prospects of the existing employees have not been done away as those who fulfil the eligibility criteria as per the amended rules can still appear in the competition. The applicants who are not eligible under 35% departmental quota are eligible to appear in the 15% limited departmental quota. The applicants having carried promotion to the cadre of TTA have not been reverted and they are not affected. The respondents have fairly allowed the eligible candidates to appear in the screening test for 35% quota for the vacancies upto 31.8.99 and thereafter the vacancies are to be dealt with as per the amended rules. Those who qualify as per

the unamended rules would be eligible for promotion but the applicants having regard to their being qualified in the screening test held as per the orders of this court are eligible for consideration for promotion as per the vacancies and after 1999 they are amenable to the amended recruitment rules and if they are qualified they are eligible for accord of promotion. They are still eligible to compete with other candidates. There is no discrimination as alleged by the applicants under Articles 14 and 16 of the Constitution of India.

7. The contention of the applicants that the qualification should have been changed for direct recruitment also and the existing staff should not have been affected to their disadvantage which amounts to denial as the Fifth Central Pay Commission has recommended only the change of revision and qualification only for the direct recruit is not valid. The recommendation of Fifth C.P.C. is not binding on the Government and once they have accepted the same and thereafter the rules amended in 1999 have valid sanction of the competent authority. In absence of any justifiable reasons and grounds to challenge the vires of the rules and having no right to the chances of the promotion as a condition of service the contention of the applicants' counsel in view of the decision of the Apex Court (supra) is not legally tenable. The contention of the learned counsel for the applicants that the digital technology was introduced in the Department of Telecom in the year 1990 and a large number of suitable candidates have been selected and undergone training on new technology and after qualifying the training examination they have been posted on new technological cadres of TTA and after

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having incurred a heavy public exchequer and restructuring of TTA the amended rules should have been prospectively implemented and should not have been made applicable to promotees who acquired their qualification according to the new technology and once the scheme of restructuring approved by the Cabinet the method of promotion of Group "C" cadre has not been modified the qualification and method of promotion to Group "B" to Group "A" cadre having substantial number of matriculates which has no relevancy to the qualification and the fact that there has been a complete change in the qualification which deprive the right of the applicants is also not legally tenable as the mere chances of promotion cannot be claimed as a matter of right. The consideration of promotion being a condition of service is not justified. The rights of the applicants have not been adversely affected pertaining to their promotional avenues. Even they can compete with others under the requisite quota in a competitive examination. As regards the length of service the contention of the learned counsel of the applicants that having permitted all TTAs to appear in the screening test the shortage of vacancies has been artificially created by modifying the recruitment rules, which amounts to denial of legitimate rights of the existing staff as even TTAs are not allowed to sit in the 15% competitive examination whereas the other Group "C" employees are accorded the same on restructuring of the cadre and TTA being the newly created restructured cadre they would not be completing the requisite length of service whereas the others who fulfil the same would get promotion over and above the TTAs who have already rendered about 25 years of service. Since 1996 they have been denied promotion. The claim of the applicants to highlight

arbitrary and hostile discrimination under Articles 14 and 16 of the Constitution of India would be of no avail to them. The respondents having regard to all the contingencies and the administrative exigencies as well as in public interest and in the interest of the working of the Government has decided to change the criteria retrospectively clearly shows the bonafide of the respondents. The applicants if eligible under the amended rules are to be considered for promotion and this is not a case where their promotional avenues and right for consideration has been blocked permanently. In this view of the matter and having regard to the discussion made above, we do not find any merit in the present OA and the action of the respondents in amending the recruitment rules cannot be found fault with.

8. MA-124/2001 for diverting the vacancies for absorption of qualified candidates to the posts of JTO is rejected.

9. In the result, the OA fails and is dismissed, but without any order as to costs.

S. Raju
(Shanker Raju)
Member (J)

"San"

M.P. Singh
(M.P. Singh)
Member(A)