

8

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PRINCIPAL BRANCH**

**OA NO. 1756/2000 (PB)**

New Delhi, this the 21st day of December 2000

Hon'ble Justice Shri V Rajagopala Reddy, VC (J)

Hon'ble Shri Govindan S Tampli, Member (A)

1.K.MALLESH SASTRY S/O LATE K.MAHADEVA SASTRY  
AGED 35 YEARS, SrTOA(P), QUARTER NO E-15, P&T QUARTERS,  
Ashok Nagar, Hyderabad-500020

2.M.RAMACHANDRA PRABHU S/O M.NARASIMHAM AGED 38YEARS  
SrTOA(P), o/o SDE (MV&QTRS) SURYALOK COMPLEX GUNFOUNDRY,  
HYDERABAD.

3.S.SADA NIRANJAN S/O LATE S.RACHATAH AGED 48YEARS,  
SrTOA(P), o/o SDE (MDF) MUSHEERABAD TELEPHONE EXCHANGE,  
HYDERABAD.

4.S.HARIKANTH S/O LATE S.SATHATAH AGED 28YEARS  
SrTOA(P), o/o SDE (MDF) MUSHEERABAD TELEPHONE EXCHANGE,  
HYDERABAD.

5.M.DEVENDER S/O M.RAMASWAMY AGED 48YEARS STS o/o  
SDE (MDF) MUSHEERABAD TELEPHONE EXCHANGE, HYDERABAD.

6.N.Gandhi Raju S/O N.B.Raju aged 48years SrTOA(P),  
o/o SDE (MDF) Musheerabad Telephone Exchange,  
Hyderabad.

7.L.V.Krishna Reddy S/O L.Siva Rami Reddy aged 37 years  
SrTOA(P) o/o SDE (MDF) Musheerabad Telephone Exchange,  
Hyderabad.

8.M.Laxminarayana S/O M.Ganesh aged 48 years STS o/o  
SDE (MDF) Musheerabad Telephone Exchange, Hyderabad.

9.A.Krishna S/O A.Narayana aged 40years SrTOA(P), o/o  
SDE (MDF) Erragadda Telephone Exchange,  
Hyderabad.

10.A.Israel S/O A.Devasahayam aged 43 years, SrTOA(P),  
o/o SDE (MDF) Erragadda Telephone Exchange, Erragadda,  
Hyderabad.

11.Mohd.Obaidullah S/O Mohd. Yousuf aged 47years  
SrTOA(P) o/o SDE (MDF) Erragadda Telephone Exchange,  
Erragadda, Hyderabad.

12.UpendraNath Saxena S/O S.P.Saxena aged 48 years  
SrTOA(P) o/o SDE (MDF) Erragadda Telephone Exchange,  
Erragadda, Hyderabad.

13.V.Rajalaih S/O V.Jalaiah aged 48 years SrTOA(P)  
o/o SDE (MDF) Erragadda Telephone Exchange,  
Erragadda, Hyderabad.

14.P.Vijay Kumar S/O D.Venkat Swamy Aged 35 years  
SrTOA(P) o/o SUE (MDF) Erragadda Telephone Exchange,  
Erragadda, Hyderabad.

15.G.Krishna S/O G.Ramachander aged 38 years, SrTOA(P) o/o SDE(MDF) Erragadda Telephone Exchange, Erragadda, Hyderabad.

(9)

16.B.Rambabu S/O B.Veeraswamy Aged 41 years, SrTOA(P) o/o SDE(MDF) Telephone Exchange Kukatpally Housing Board RLU, Kukatpally, Hyderabad.

17.K.Venkatesham S/O Sri. K.Sathaiah Aged 43 Years SrTOA(P) o/o SDE(MDF) Erradadda Telephone Exchange, Erradadda, Hyderabad.

18.L.Rama Rao S/O L.Veeraiah Aged 42 years SrTOA(P) o/o SDE Vivekanand Nagar Telephone Exchange RLU, Vivekanand Nagar, Hyderabad.

19.CH.Maruthi O/O CH. Aged 38 years SrTOA(P) o/o SDE Vivekanand Nagar Telephone Exchange RLU, Vivekanand Nagar Hyderabad,

20.T.C.Ethiraj S/O T.C.Ramachandran Aged 46 years SrTOA(P) o/o SDE(OCB)MDF, Secunderabad Telephone Exchange, Secunderabad,

21.C.Chandra Sekhar S/O Late Sri.Mallaih 47 years SrTOA(P) o/o SDE(OCB)MDF, Secunderabad Telephone Exchange Secunderabad.

22.G.Mukesh S/O G.Manikyam aged 35 years SrTOA(P) o/o SDE(OCB)MDF, Secunderabad Telephone Exchange, Secunderabad.

23.C.Srinivas S/O C.Narasimha aged 35 years, SrTOA(P), o/o SDE(OCB)MDF, Secunderabad Telephone Exchange, Secunderabad.

24.Mallesham S/O Late M.Gopalaiah Aged 47 years SrTOA(P), o/o SDE(OCB)MDF, Secunderabad Telephone Exchange, Secunderabad.

25.O.S.Reddy S/O O.Venkat Rao aged 47 years SrTOA(P), o/o SDE(OCB)MDF, Secunderabad Telephone Exchange, Secunderabad.

26. V.Daniel Raju S/O Late G.Veeraswamy Aged 53years SrTOA(P), o/o SDE(MDF) EWSO, Telephone Bhavan, Saifabad, Hyderabad.

27. S.Narasimha Murthy S/O Late S.Thimmanna Aged 33years SrTOA(P), o/o SDE(TAX) 9th Floor, Telephone Bhavan Saifabad.

28. B.Vijaya Kumar S/O Late B.A.Charya Aged 45 years SrTOA(P), o/o SDE(MDF)EWSO,Telephone Bhavan, Hyd.

29.N.V.Prasad S/O N.Gopal Rao Aged 35 years, SrTOA(P), o/o SDE(OCB)MDF, Secunderabad Telephone Exchange, Secunderabad.

30.J.N.Prakash Kumar S/O J.Narsimlu aged 39 years SrTOA(P), o/o SDE(MDF) Secunderabad Telephone Exchange Secunderabad.

31. N.V. Sasidhar S/O K.N. Vasudave Paicher aged 42 years, SrTOA(P) o/o SDE(MDF), Secunderabad Telephone Exchange, Secunderabad. (10)

32. V. Vedamurthy S/O Late Kotaiah aged 51 years, SrTOA(P), o/o SDE(MDF), Secunderabad Telephone Exchange, Secunderabad.

33. P.M. Jayaramulu S/O M. Mutyalu aged 48 years, SrTOA(P), o/o SDE(Faults Control) Minerva Complex, Secunderabad.

34. N. Harinath S/O Late Sri. N. Rama Murthy aged 34 years SrTOA(P) o/o SDE(TNK&RP) Telephone Exchange Ramanthapur RLU, Ramanthapur, Hyderabad.

35. A. Seshadri S/O A. Papachary aged 44 years SrTOA(P), o/o SDE(MDF) E10B Tarnaka Telephone Exchange, Tarnaka, Hyderabad.

36. N. Venkat Reddy S/O N. Raja Reddy aged 46, SrTOA(P), o/o SDOP(IV) Nacharam, Habsiguda zonal office, Habsiguda Hyderabad.

37. R. Bhavani Sankar Rao S/O R. Hanumantha Rao, aged 43 years SrTOA(P), o/o CO(WL) West, o/o D.G.M. (West), HTD Tulajaguda complex, Mojampahali Market, Hyderabad.

38. K. Narasing Rao S/O K. Manik Das, aged 46 years, SrTOA(P) o/o SDE(OP) West, o/o D.G.M. (West) HTD Tulajaguda complex, jamjahi Market, Hyd.

39. M.W. Siddiqui S/O M.R. Siddiqui Aged 47 years SrTOA(P) o/o CO(WL) West, o/o D.G.M(West) HTD, Tulajaguda complex, Mojampahali Market, Hyderabad.

40. Y. Balagangadhar Reddy S/O Y. Ramachandra Reddy, aged 34 years, SrTOA(P), o/o SDE(MDF) Gowliquda Telephone Exchange, Gowliquda, Hyderabad.

41. M. Prabhakar Rao S/O Potha Raju aged 52 years, TS(O), o/o SDE(MDF) Gowliquda Telephone Exchange, Gowliquda, Hyderabad.

42. D. Krishna Chary S/O D. Jagannatha Chary aged 34 years SrTOA(P) o/o SDE(MDF), Gowliquda Telephone Exchange, Gowliquda Hyderabad. ....Applicants.

(By Sh. K Ramesh Shastri for APPLICANTS  
vs

1. UNION OF INDIA REPRESENTED BY THE CHAIRMAN TELECOM COMMISSION, SANCHAR BHAVAN, NEW DELHI-110001

2. Chief General Manager Telecommunications  
Andhra Pradesh Circle, Door Sanchar Bhavan, Abid Road Hyderabad.

3. Principal General Manager, Hyderabad Telecom District , Surya Lok Complex, Gunfoundry, Hyderabad.

(By H.K. Gangwani, for ..... Respondents.)  
O R D E R

11

Shri Govindan S. Tampi, Member(A)

K. Mallesh Shastry and 41 others had filed OA No. 680/1999 before the Hyderabad Bench of the Central Administrative Tribunal which has on their request been permitted to be transferred to the Principal Bench in PT 117/2000 and the same has been by Hon'ble Chairman on 2.6.2000. before us in OA No.1756-2000.

2. The challenge in this OA is against non inclusion of Sr. Telecom Operating Assistants (Phones), (Sr. TOA(P) for short) under 35% quota for screening test for promotion to the grade of Jr. Telecom Officer (J.T.O.) in the Recruitment Rules of 1996.

3. Facts ~~called~~ out from the long but vague pleadings of the applicants are that they are aggrieved by their non-inclusion in the 35% promotion quota for promotion to the grade of Junior Telecom Officer (JTO) in the recruitment rules of 1996. The Rules earlier provided that Technicians, Telephone operator, Telecom Operating Asstts. and a few others were allowed to take JTO Competitive examination under 15% quota while phone Inspector Auto Exchange Asstts. Wireless Operators, Transmissions Assistants etc. were permitted to write the 35% qualifying

✓

examination both the examination, having the same question papers. However, in the revised (impugned) recruitment rules of 1996 none of the four streams of Sr. Telecom Operating Asstts. (STOs) is included in the 35% quota, but is allowed to take 15% competitive examination along with basic cadres like phone mechanics, linemen, Cable jointers etc. This was incorrect and discriminatory as Sr. TOAs have come up from groups recruited with the minimum qualification of 10+2 and training including in Computers, and therefore their qualification is higher than that of TTAs etc. Their qualification specially stands out as for direct recruitment to the cadre of JTOs the basic qualifications are BE or B. Tech with Computer training. In the circumstances, placing them in 15% Competitive quota and denying them eligibility for 35% screen list quota was irregular and improper they allege. Recruitment Rules of 1996 were therefore liable to be quashed, is their plea.

4. On behalf of the Respondents it is contended the application is irretrievably time barred as the applicants have come with this CA only in April 1999 while the relevant RRs were issued as far back as in 1996. It is further stated that the revised recruitment rules for JTO notified on 31.8.98 have included SrTOAs also in the 35% Departmental quota along with TTAs and others by competitive examination and as such nothing remains to be done. Applicants state in their rejoinder that the present modification does not answer their requirement as their challenge is against the Rules of 1996.

Besides according to them, a large number of vacancies were existing prior to the issuance of the new RRs and unless and until all of them filled up in terms of the old rules the new Rules would not come into effect and they are therefore hurt. Their request is for making suitable modifications in the earlier rules and for giving them promotion under it. They also pray that their case is not hit by limitation as their case for promotion came up only in the examinations, which were to be held in April 1999.

(3)

5. Heard the counsel for both the applicants and the respondents. Shri Suresh Shastri, the learned counsel for the applicant re-iterated the pleas urged in the OA and requests that as his clients have been discriminated in a hostile manner in not being made eligible for the 35% quota for screening test as against TTAs who have been given the benefit. According to him as many as 20000 vacancies in the grade of JTOs existed on 31.3.94 and upto 24.9.99 when they filed their OA and over 14000 vacancies came up to be filled up in terms of the recruitment rules of 1996 after amending them providing for inclusion of his clients in the 35% quota. Unless this was done grave injustice would be done to them, he pleads.

6. Strongly Contesting the above Shri H K Gangwani, learned counsel for respondents states that the very same issue was considered before Chandigarh Bench of the Tribunal in a batch of 7 OAs in which a large number of SrTOAs had challenged the Recruit Rules of 1996 seeking parity with TTAs in respect of 35% quota, which was not agreed to. Though the

the decision was given while dealing with the interim relief, as it examined the entire gamut of the scheme it was applicable in this case as well. The learned counsel also raised the point of limitation and urged that the applicants if felt aggrieved should have challenged the recruitment rules when they were notified instead of coming up as later as 1999<sup>1</sup> i.e. more than three years later.

7. We have carefully considered the matter. The preliminary objection raised on behalf of the respondents on limitation, does not appear to have any merit. Though the impugned recruitment rules were notified in 1996, the applicants came up for consideration for promotion, on the basis of eligibility only during 1999 and they have immediately moved the Tribunal. Their case cannot be considered as being hit by limitation.

8. Coming to the merit, we observe that the applicants Sr. TOAs (P) are also among the feeder cadre for promotion to the post of Jr. Telecom officer (JTO) Recruitment Rules of JTO 1996 dated 8.2.96 provides that the said post shall be filled 50% by direct recruitment and 50% by promotion/transfer as indicated in column 12 of the Schedule. And column reads as below:-

1) 50% by promotion/transfer of departmental candidates referred in item (ii) column II will be regulated as under:-

i) 15% by promotion of departmental candidates through a competitive examination.  
ii) 35% by promotion/transfer of Transmission Asstts/Wireless Operators/Auto Exchange Asstt/Phone Inspectors/Telecom Technical Asstt. 15% promotion through competitive examination, the following group of employees

in the Department whose scale of pay is less than that of Junior Telecom Officers shall be eligible, if such employees are

(15)

(i) borne on the regular establishment and working in Telecom Engineer 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

(b) Plumbers/Sanitary Inspectors/Conservancy Inspectors

(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 Telecommunications circles.

(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 posses the qualifications prescribed in column B 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 B and have completed 5 years regular service in the cadre of phone Inspector / Auto Exchange Assistants / Transmission Assistant/Wireless Operator.

(b) The Phone Inspectors/Auto Exchange 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, unless he has already passed such test."

✓

9. Feeder cadres referred to above for 35% screening test do not include, Sr. TOAs, the group to which the applicants belong and hence their grievance.

16

10. On examination, we find that this not a case where the applicants who were originally permitted to appear in the 35% quota for screening test <sup>were</sup> denied the benefit by the recruitment rules of 1996. They were not so included in terms of the earlier recruitment rules also. The change in the format <sup>in the new rules</sup> is the inclusion of Telecom Technical Asstt. also in the 35% category, which the applicants protest, As according to this, they had a stronger case, keeping in mind their background and educational qualification. We are not convinced. We also find that the entire question had been gone through by the Chandigarh Bench of this Tribunal while disposing a batch of 7 applications by their order dated 20.5.1999 (OAs 248, 249, 345 & 351-PB/99, 255 & 293-HR/1999 and 355-CH/99), involving as many as 528 applicants. As the co-ordinate Bench of the Tribunal had examined the issue in detail, though in the context of an interim order, we adopt the same, as in our view the same represents the correct appreciation of the situation. The relevant portion of order is abstracted below with full endorsement.

"4. We have heard the 1<sup>st</sup> counsel on both sides length on the prayer for interim relief as claimed by applicants.

5. The main claim of the applicants is based Annexure A-4. This is a letter issued by the Ministry communication regarding preparation of eligibility list a select panel for restructured cadres of Gp. 'C'. Notwithstanding the claim of the applicants regarding the qualifications for the cadres of Sr. TOAs/TOAs and TTA being similar for forming part of a 'walk in group' this letter makes it clear that these are two separate cadre. We can take judicial notice of this fact also that qualifications for direct recruitment to the post of TTA and JTOs are essentially of technical nature and are

✓

much higher level. That there is some similarity at the initial stage, cannot be the determining factor that these are two equivalent or similar cadres.

6. Applicants have very strenuously argued that after introduction of sophisticated machinery by the Telecom Department, the cadres were restructured and the applicants are also dealing with sophisticated machinery as TTAs are. Such a contention is apparently deceptive. On a closer scrutiny, we find that the cadre of the applicants is basically of the persons who would be operating such sophisticated machinery, whereas the other categories, particularly the TTAs are the employees who would be responsible for maintenance, repair and other upkeep of that sophisticated machinery. Both these cadres have their separate Recruitment Rules with provision of distinct nature of duties.

7. Annexure R-2 is a copy of Telecom Technical Assistants Recruitment Rules, 1998 and examination of the same provides us with a factor which negates the claim of the applicants altogether. The cadre of Sr. TOAs is included in the category of feeder cadres for appointment to the posts of TTAs in Category (III), through competitive examination. Here also, the posts of TTAs are first to be filled from Category (1) which are basically technical people and, thereafter through qualifying screening test of Category No.(2) and only thereafter from the category of Sr. TOAs, through a competitive examination. Thus, the claim of the applicants against 35% quota by passing Categories (1) & (2) as aforesaid, *prima facie* appears to be far fetched, particularly for posts of JTO which still higher than TTAs.

8. While considering such a prayer for interim relief, a court of law is required to examine whether the applicants have a *prima facie* case in their favour. Admittedly, and even as per the case of the applicants, as long as the Recruitment Rules of 1996 stand, as they are today, and are not set aside. Applicants have no claim against the 35% quota. We will be assuming too much if we permit the applicants to be considered against the aforesaid 35% quota, meant for other categories, by ignoring the Recruitment Rules at this stage. It is yet to be decided as to whether the said Recruitment Rules for posts of JTOs are in violation of some provisions of the constitution and are likely to be quashed. *Prima facie*, rules can always be framed, providing for different quota for different categories, as it is in the present case. We do not find existence of any inherent vested right in favour of the applicants under any law for this purpose, much less in the Chapter of Fundamental Rights in the Constitution of India as claimed by the applicants. What to say of Fundamental Rights, they do not have as yet a right even under the Recruitment Rules.

9. As discussed above, we are of the opinion that *prima facie* the cadre of the applicants is of non-technical nature, while the TTAs included under 35% quota, are technical. Obviously, there appears to be no comparison between these two cadres. Such comparison, as claimed by the applicants, on the basis of equal pay scales is quite odious as, if accepted, it can make many more categories of employees eligible for such posts. Yet, the rules have made a provision for some persons even in the cadre of the

applicants who may have technical aptitude for technical jobs by earmarking 15% quota for their promotion through competitive departmental examination. In our opinion, that sufficiently takes care of the claim of the applicants.

10. Article 14 of the Constitution does not allow discrimination amongst equals, but does not prohibit framing of different sets of rules for different cadres. The cadre of the applicants is different from the cadre of the TTAs and other categories included in the 1996 Recruitment Rules viz-a-viz TTAs. In our considered opinion, the applicants have no case at all, what to say of existence of a *prima facie* case, for grant of interim relief, as prayed for. accordingly, the prayer for interim relief is hereby rejected."

11. Fully subscribing to the above, we hold that the applicants have not made out any case for parity with TTAs for being declared as eligible for 35% quota, in terms of the Recruitment Rules 1996. Further, what the applicants are seeking from us is a direction for retrospective revision of the Recruitment Rules, 1996, which is a neither desirable nor permissible. Even otherwise it is not for this Tribunal to question the qualifications fixed for technical posts by the experts as the alleged ground that they were so fixed either to suit someone or to inconvenience someone else. This is the ratio of the decision of the Hon'ble Supreme Court in the case of V K Sood Vs Secretary, Civil Aviation and others (1993 Supp.(3) SCC.9).

12. We also find that the applicants would not have any further grievance as in the revised recruitment rules for Sr. Telecom Officers notified on 31.8.99, have included Sr. T.O.As. also eligible among others (including TTAs) for 35% Departmental quota, on competitive examination basis.

(19)

13. In the above view of the matter the application which has no merit has to fail and is accordingly dismissed. However, in the circumstances and the case we are ordering no cost.

  
(Govindan S Tampli)  
Member (A)

Patwali

  
(V. Rajagopala Reddy)  
VC (J)