

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

New Delhi, dated this the 27 November, 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

R.A. No. 194 of 1995
in
O.A. No. 850 of 1993

1. Union of India through
the Secretary,
Ministry of Communication,
Dept. of Telecommunication,
Sanchar Bhawan,
New Delhi.
2. The Chief General Manager
Maintenance (NTR),
Dept. of Telecommn.
Kidwai Bhawan,
New Delhi. REVIEW APPLICANTS

(By Advocate: Shri V.S.R.Krishna)

VERSUS

1. Shri Satyamurti Sharma,
S/o Shri B.P. Sharma
2. Shri Satpal Sharma,
S/o Shri Ram Kishan
3. Shri Ravi Shankar,
S/o Shri Jagdev Ram,
4. Shri Santar Pal,
s/o Shri Rumal Singh
5. Shri Syam Lal Dua,
S/o Shri U.B.Dua
6. Shri Devmani Yadav,
S/o Shri R.D. Yadav
7. Shri J.C.Bajaj,
S/o Shri Govind Ram
8. Shri Garib Ram,
S/o Shri Baldev Singh
9. Shri D.S.Bedi,
S/o Shri G.S. Bedi
10. Shri R.S.Gahlawat,
S/o Shri Kali Ram
11. Shri R.D. Nair,
S/o Shri Thakur Dass
12. Shri Sabir Ali,
S/o Shri Sajjad Ali
13. Shri Rajeshwar Singh,
S/o Shri C.B. Singh

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14. Shri Chamela Ram,
S/o Shri Matu Ram
15. Shri Brahma Nand,
S/o Shri Lala Ram
16. Shri B.M. Thakur,
S/o Shri S.L. Thakur
17. Shri B.R. Verma,
S/o Shri Sadhu Ram
18. Shri Raj Kumar Bajaj, RESPONDENTS
S/o Shri Hans Raj Bajaj

(By Advocates: Shri Sant Lal for
R-1 to R-16
Shri M.L.Chawla for R-17 & 18
[R-3 & R-4 in the OA])

R.A. No. 196 of 1995
in
O.A. No. 850 of 1993

1. Shri B.R. Verma
S/o Shri Sadhu Ram,
Asst. Supdtt. Telegraphic Traffic
Central Telegraph Office,
Eastern Court,
New Delhi-110050.
2. Shri R.K. Bajaj,
S/o Shri Hans Raj Bajaj,
Asst. Supdtt. Telegraph Traffic,
Central Telegraph Office,
Eastern Court,
New Delhi-110050. ... REVIEW APPLICANTS

(By Advocate: Shri M.L.Chawla)

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9. Shri D.S.Bedi,
S/o Shri G.S.Bedi
10. Shri R.S.Gahlawat,
S/o Shri Kali Ram,
11. Shri R.D.Nair,
S/o Shri Thakur Dass
12. Shri Sabir Ali,
S/o Shri Sajjad Ali
13. Shri Rajeshwar Singh,
S/o Shri C.B.Singh
14. Shri Chamela Ram,
S/o Shri Matu Ram
15. Shri Brahma Nand,
S/o Shri Lala Ram
16. Shri B.K.Thakur,
S/o Shri S.L.Thakur
(applicants in
O.A.)
17. Union of India
through the Secretary,
Ministry of Telecommunications,
Dept. of Telecommunication,
Sanchar Bhawan,
New Delhi.
18. The Chief General Manager,
Maintenance (NTR),
Dept. of Telecomm.,
Kidwai Bhawan,
New Delhi.

.... RESPONDENTS

(By Advocates: Shri Sant Lal for
R-1 to R-16
applicants in O.A.
Shri V.S.R. Krishna for
R-17 & R-18
official Respondents
in O.A.)

O R D E R

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

As both R.As involve common question
of law and fact they are being disposed of by
this common order.

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2. RA No. 194/95 filed by the UOI & Ors.

(official respondents in OA-850/93) seeks review of judgment dated 29.5.95 in OA-850/93 on the ground that the prayer made in the O.A. was for quashing of the impugned orders and the gradation list as on 1.1.93 and for declaring the criteria of fixing seniority of TTS Group 'C' (ASTTs) on the basis of marks secured in the post training test as arbitrary and discriminatory and for a direction to refix the seniority of those applicants. It is contended that the Tribunal in paragraph 13 of its impugned judgment dated 29.5.95 had not found any merit in the applicants' contention and once this view had categorically been affirmed, the O.A. should have been dismissed, but instead the Tribunal erroneously traversed further than the relief prayed for in the pleadings, allowed the O.A., quashed the seniority list, in so far as it placed R-3 & R-4 above the applicants and directed that the applicants be placed immediately above R-3 & 4. In this connection, it is further contended that while doing so, the Tribunal was swayed by the consideration that dereservation meant creation of fresh vacancies which was erroneous and needed to be corrected. Even if it was assumed that dereservation led to creation of fresh vacancies, then eligible lower cadre

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officers would also have to be considered for promotion as ASTT and R-3 & 4 to the O.A. could not alone be appointed. Furthermore once the intention of the Review Applicants (UOI) while dereserving the vacancies was to operated the 1984 panel, then acceptance of the contention that there were fresh vacancies would mean that the very appointments of R-3 & 4 in the O.A. would be illegal and void but the applicants in the O.A. had not prayed for quashing of the appointments made to R-3 and 4 in the O.A. Furthermore the rules/guidelines for assigning seniority in cadre of ASTTs was categorical and made no provision that which having was conducted at different points of time those rules would not operate.

3. Similarly, in R.A. No. 196/95 review has been sought in respect of the same judgment dated 29.5.95 in O.A. No. 850/93 on behalf of R-3 & 4 in that O.A. on the ground that when the Tribunal had not found any merit in the contention of the O.A., it was not called upon to adjudicate as to whether the Govt. was right in giving a higher seniority to R-3 & 4, or not which was essentially a question of policy in the matter of recruitment, appointment and reservation. In this connection it has been averred that the Tribunal lost sight of Government's reservation policy as contained in the relevant Brochure (1987 Edition).

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It is also contended that the Court posed certain queries to the Govt. counsel about the vacancies arising on account of dereservation taken as "new" and the Court had observed that the same should have been filled up by holding a fresh examination, but such conclusions should not have been arrived only on the basis of oral arguments and could have been justified only on the basis of documentary evidence supported by affidavits. It is also contended that the Court drew a wrong conclusion, when it was observed that the process of dereservation which started in 1984 and having culminated in 1987, the vacancies reserved for STs were fresh vacancies which arose in 1987. It has also been contended that the Tribunal was wrong in holding that the Training Course had been revised, and in the absence of any materials to hold so, it must be presumed that the Course was the same. Even assuming that the Course had been revised on account of advancements in telecommunications it could only have been upgraded, and R-3 & 4 received more detailed and arduous training. Other grounds of similar nature have also been advanced in support of the prayer for review.

4. A perusal of the grounds taken in both the RAs makes it abundantly clear that

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in the guise of Review Applications, the review applicants are actually seeking to appeal against the impugned judgment which was a detailed and well considered one delivered after hearing all the concerned parties at considerable length. If the review applicants are dissatisfied with its conclusion, it is open to them to challenge the same in the appropriate forum but a review application is not the proper instrument for doing so, as has been held by the Hon'ble Supreme Court in a catena of judgments including AIR 1979 SC 1047 A.T. Sharma Vs. A.P. Sharma; AIR 1975 SC 1500 Chandrakanta & Anr. Vs. Sheikh Habib and AIR 1964 SC 1372 Thungabhadra Industries Ltd. Vs. Govt. of Andhra Pradesh.

5. Under Section 22(3)(f) A.T. Act read with Order 47 Rule 1 C.P.C. a judgment of the Tribunal can be reviewed only if;

- i) it suffers from an error apparent on the face of the record;
- ii) new material or evidence is discovered which was not within the knowledge of the parties or could not be produced by that party at the time the judgment was made, despite due diligence; or
- iii) for any sufficient reason construed to mean analogous to reasons.

6. The grounds taken by the Review Applicants cannot be termed as errors apparent on the face of the record and it is not the case of the review applicants in either RA that new material was subsequently

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discovered which could not be placed before
the Tribunal at the time of judgment despite
due diligence. as has been held by the Tribunal

7. Under the circumstances both R.As are
rejected.

8. Let a copy of this order be placed in
the case records of both R.As.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)
/GK/

S.R. Adige
(S.R. Adige)
Member (A)