

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH NEW DELHI

Original Application No. 1670 of 1987

## VERSUS

Union of India & Others . . . . . Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. S. R. Adige Member (A)

( By Hon'ble Mr. Justice U.C. Srivastava, VC)

This application has been filed by the All India Radio Technical employees Association, now it is by one individual Chiranji Lal, but the relief so claimed in the original application has not been amended with the result, his relief continued to be same i.e. prayer for general directions for each and every employee. The application has been confined to the said Chiranji Lal only.

2. The respondents ~~are~~ / violating the rules relating to promotion, holding of departmental examination without declaring vacancies and not announcing results are against the orders prescribed by the Government on the subject and also ~~are~~ violate quota and rota rules and denying left over vacancies to promotional quota in the recruitment year and holding direct examination for leftover vacancies after 3 years and holding departmental examination when qualified candidates are available and the same are wholly illegal, arbitrary, discriminatory and be set aside. The challenge to this has been made on the ground that the promotional avenues kept for Sr. Technicians to the post of Engineering Assistant limited to 20% for next higher

Cont d.. 2/-

cadre and the same is against the procedure prescribed in the D.P. & A.R. O.M. dated 22.5.1979 and the discrimination is being done in as much as double standard has been followed(1) for promotion from Sr. Technician to Engineering Assistant the Departmental Examination prescribing it as "competitive" and not "qualifying" when in case of promotion from SEA to EA it is qualifying falling in category 'C' non-gazetted and the Ministry of Personnel , office memorandum have been followed in breach and even the year leave vacancies are not calculated and the quota and rota rule ~~maxxmark~~ is not being followed and the departmental examination is being held even though there is no such provision for departmental examination and which is also against the Ministry of personnel and A.R.O.M. dated 8.2.1982.

2. The respondents have refuted the claim of the applicant and have pointed out that as a matter of fact , every action is being taken in accordance with the guidelines laid down by the department of personnel and administrative Reforms O.M. No. dated 22.5.1979 as amended from time to time including the amendment made in the year 1987. The respondents stated the facts stated have no relevance to the case i.e. promotion from senior Technician to Engineering Asstt. for 10% quota through limited departmental examination. The rule pertaining to recruitment of Engineering Asstt. have been revised on 3.6.87 and the applicant praying more or less is for regarding the said rules by the tribunal. According to the respondents the examinations standard are fixed keeping in

(1)

:: 3 ::

view of the recommendation dated 22.5.1987 and the competition is also being held in accordance with law and this process starts from the advertisement, ~~xxxxxx~~ and the roster is also being maintained. The quota system is being fully implemented i.e. 80% vacancies are being given to direct recruitment and 20% to departmental promotes. There is no shortfall in either case and there is no need of giving the vacancies to either side and that the vacancies are being worked out on yearly basis i.e. from the 1st January to 31st December each year and as such it is not possible to give vacancie while issuing the circular for the departmental examination. The rules which have been framed after all the relevant fact taking into consideration and cannot be ~~said~~ to be arbitrary and malafide and as such the same are beyond the date of challenge.

3. On behalf of the applicant, it has been contended that the recruitment rules in the present forms while 10% promotion by competition against the agreed policy of qualification examination. Although a provision for ~~xxxxxx~~ meant has been made in the rules, but the said provisions has been changed the administration decision by introducing the provisions of assessment of character-roll part of ~~xxxxxx~~ declaring on successful. The examination has taken placed while the result has not been pronounced and now the respondents agreed that the results will announce and the mark-sheet be given so that no one can get the chance of re-calculation. It has also been contended that in the year 1984 last direct recruitment examination took place and the vacancies declared

11  
:: 4 ::

250/- The recruitment rules under 80% vacancies is to be filled by direct method and the total number of vacancies come to 300/- out of which 250 ~~for~~ was for direct recruit and for competitive departmental examination. Whereas the respondents in their reply have stated that the total vacancies were 249 which itself makes it clear that the calculation which have been made by the respondents itself is not correct, with the result the person like the applicant are to have been made to suffer and are suffering. The learned counsel vehemently contended that under the statutory rules 18% posts are to go by the direct recruitment and 10% posts by duty departmental competition and 10% by promotion by merit and by administrative instructions , the provisions for departmental promotion committee has been introduced, it may be to the selection for favourist and excludes ~~the~~ those who really deserves the said promotion. The

4. The learned counsel for the applicant has drawn our attention to the executive direction dated 21.8.1987 in which so far as the limited 10% departmental competitive examination is concerned; those who secured 50% or more marks are to be considered by the D.P. for promotion to the cadre of Engineering ASSTT. against 10% departmental quota. In the written statement it has been pointed out that so far as the 10% limited departmental competitive examination, though , it has been mentioned as D.P.C also and so far as the limited departmental promotion is concerned ~~it appears~~ that some confusion has been created by executive order. As it is the case of competition and not of adjudging the merit of a candidate

4/

Contd., 5/-

15  
:: 5 ::

by promotional post, there is no question of a D.P.C. after a person qualified in the written examination. If is the D.P.C./only for interpret judging the merits of a particular departmental candidate then it is a different matter because it is always ~~for~~ open for the authority concerned to provide both the modes of competition written as well as interview and there is nothing for re-judging of the merit of the candidate by a departmental promotion committee which met in various aspects. The learned counsel rightly contend that of course, the vacancies should be declared year-wise or whenever the selection take place in the particular year so many vacancies are existing that may be given opportunity to the candidates to offer their candidature in both general and reserved and a person who has qualified in the earlier years, can also offer his candidature and he should be considered in that year and subsequent year also. A

5. Accordingly, the respondents are directed to declare the vacancies/<sup>year-wise</sup> as and when selection takes place. Lastly it was contended that indiscriminate promotion is being given although the ~~vacancies~~

Contd.. 6/-

16

:: 6 ::

promotion quota is limited to 10% , but not the direct appointment is made , it appears that as directment appointment has not been made for such reason or the other, may be in the exigencies of situation and rather the work may go on , the promotions are made, but these promotion are only a time gap arrangement and it cannot be said that the promtees take the place of direct recruits, whenever the direct recruits are made, they L entitle to occupy their own quota , as such the seniority will not be affected. In the mean time the promtees have earned certain promotion of certain seniority obviously, they can find to their seniority within normal course and meaning thereby the promtee will not enjoy the cost of direct recruits and vise-versa. If wrong seniority has been given to the promtee beyond that quota , the seniority obviously will be mis-done. No order as to the costs.

*Arif Ali*  
Member (A)

*L*  
Vice-Chairman

Dated: 18.3.1993.

(RKA)