

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 349/87  
T.A. No.

198

DATE OF DECISION 15.1.1990.

The National Federation of  
Telecommunication Employees through  
the General Secretary & Others

Applicant (s)

Shri Rakesh Luthra

Advocate for the Applicant (s)

Versus

Union of India & Others

Respondent (s)

Shri P.P. Khurana for  
respondent Nos. 1 and 2.

Advocate for the Respondent (s)

Shri V.J. Francis for respondent No.3.

CORAM:

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. I.K. BASGOTRA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *NO*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha,  
Vice Chairman(J))

The applicants in this application filed under Section 19 of the Administrative Tribunals Act, 1985 have challenged the abolition of the cadre of Junior Engineers in the Department of Telecommunications as being arbitrary and unconstitutional. The National Federation of Telecommunication employees is the first applicant. The Federation of National Communication Organisations is the second applicant. They represent non-gazetted employees in the Department of Telecommunications including Junior Engineers. Applicant No.3 is an employee of the Department of Telecommunications, Ministry

of Communications. Respondent No.1 is the Union of India, Ministry of Communications. Respondent No.2 is the Director General, Department of Communications. Respondent No.3 is the Junior Engineers Telecommunications Association<sup>a</sup> which also represent a group of Junior Engineers. Respondent No.4 is the Chief Labour Commissioner (Central).

2. Separate counter-affidavits have been filed on behalf of respondent Nos. 1 and 2 and on behalf of respondent No.3.

3. The facts of the case in brief are as follows. One of the existing cadres under the purview of the Department of Telecommunications is that of Junior Engineers. Recruitment of Junior Engineers is governed by the Junior Engineers (Recruitment) Rules, 1980. The post of Junior Engineer is a Group 'C' non-gazetted post.

4. The Recruitment Rules provide that Junior Engineers are recruited in the following manner:-

- (i) 65% by direct recruitment;
- (ii) 15% by promotion of departmental candidates through a competitive examination;
- (iii) 10% by promotion of Transmission Assistants, Telephone Operators, Auto Exchange Assistants and Wireless Operators through a competitive examination; and
- (iv) 10% by promotion of Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators on seniority-cum-fitness basis through a separate qualifying test, the inter-se seniority of officials being decided on the basis of the length of service in the grade.

5. Thus 65% of the vacancies are to be filled by direct recruitment from outside candidates while the remaining 35% are filled by promotion from the specified departments.

6. Vacancies for the departmental quota of 35% are filled in the order of merit from candidates who have successfully

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completed the prescribed examination.

7. All selected candidates are required to complete a training course for a period not exceeding 12 months. After completion of the training course, a candidate shall be appointed on trial, subject to availability of vacancies.

8. Respondent No.2 held selection of Junior Engineers against the vacancies for the years 1982 and 1983 after holding the examinations for departmental promotion. The applicants have also completed their requisite period of training. They have, however, not been appointed to the post of Junior Engineer against the declared vacancies.

9. In 1984 the Ministry of Finance imposed a ban on recruitment and creation of posts in the Civil Service. The ban was not to apply to cases where advance recruitment action had already been taken.

10. Respondent Nos. 1 and 2 had, however, clarified vide their order dated 3.2.1986 that vacancies which formed the basis for holding various examinations by the Staff Selection Commission during the years 1982 and 1983 and which were advertised before the issue of the ban orders in January, 1984 would not be affected by the ban orders. By another letter dated 27.2.1986, the respondents reiterated that all such posts which were approved for creation prior to January, 1984 for which issue of sanction was awaiting availability of trained candidates for appointment, would be deemed to have been sanctioned and created.

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11. The case of the applicants is that notwithstanding the aforesaid clarifications, the respondents failed to make the appointments. They have contended that on the pretext of restructuring, respondent No.2 abolished 3796 posts from 1982 to 1984 by creating superior Class II and Class I posts against Class III posts vacant for Junior Engineers. As on 1.1.1986 there were 1035 vacancies.

12. On 27.2.1987, an agreement was signed between respondent Nos. 1 and 2 and respondent No.3 for abolition of the entire cadre of Junior Engineers, Telecommunications. It was also agreed that the existing Junior Engineers would be placed in the grade of Junior Telecom Officers (JTOs) with effect from 1.1.1986. Pursuant to the agreement, orders were issued on 25.3.1987. The applicant Federations were not consulted in this regard.

13. The applicants have contended that no rules have been made by respondent Nos. 1 and 2 for recruitment and selection to the post of Junior Telecom Officers though provision has been made for further promotion of JTOs to a higher post.

14. Respondent Nos. 1 and 2 have contended that there is no basis for the apprehension of the applicants. The respondents have not taken any decision to abolish the cadre of Junior Engineers. They have admitted that certain departmental candidates appeared in examinations conducted in 1982 and 1983. The recruitment action was initiated against anticipated vacancies because there was a time lag of about 2 years by which a selected candidate is available for

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appointment after training. The candidates of 1982 and 1983 examinations appeared against anticipated vacancies likely to arise after 2 years. The departmental candidates who took 1982 and 1983 examinations for promotion to the post of Junior Engineer were to occupy vacancies likely to arise in 1984 and 1985. Due to ban on creation/filling up of posts, the vacancies could not be created and filled up. They have drawn our attention to letter dated 27.2.1987 in this regard whereby it has been sought to freeze further recruitment of JEs, Technicians, Telephone Operators etc. till such time as all those who have been selected and trained for these posts (both Departmental and Outsiders) are appointed throughout India against existing vacancies. According to them, this step has been taken to safeguard the interests of candidates who have already been trained.

15. The respondents have stated that the restructuring of the cadre is still under process. They have also drawn our attention to their letter dated 30.3.1987 according to which all those in the lower grade eligible for appointment as JEs will be absorbed before fresh recruitment is made to the grade of Junior Telecom Officers.

16. As regards the agreement reached between respondent Nos. 1 and 2 and respondent No. 3, respondents have stated that it pertained to the cadre of JEs and their pay scales. Some of the posts of JEs was agreed to be placed in the higher scale of Rs.550-900 from that of Rs.425-700/., keeping in view the work content of such jobs. This was followed up by job evaluation by the National Productivity Council and a detailed study by an Inter Ministerial Committee was made.

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Thereafter, there was an agitation by the Junior Engineers. It was in this background that the agreement was reached after negotiation by the Chief Labour Commissioner(Central) with respondent No.3.

17. In the separate counter-affidavit filed by respondent No.3 it has been contended that the memorandum of settlement dated 27.2.1987 has been arrived at for the interest of all the Junior Engineers in the department. By the settlement, no junior Engineer is made to suffer. The upgrading of a post will not adversely affect the interest of any existing Junior Engineers in the department. They also rely upon the orders issued by the respondents on 30th March, 1987 mentioned above. In this order, it has been specifically stated that those who have already been selected against vacancies, existing or anticipated, and awaiting appointment will continue to be appointed as JEs till all of them have been absorbed.

18. Having gone through the records of the case carefully and having heard the learned counsel of both parties, <sup>we are of the</sup> we <sup>are of the</sup> opinion that there is considerable merit in the contention of the applicants to the extent that those who have already been selected after <sup>they</sup> ~~have~~ successfully passed the examination have a right to be appointed as Junior Engineers in the available vacancies. As observed by the Supreme Court in Prem Prakash Vs. U.O.I., AIR 1984 SC 1831 at 1837, if selected candidates are available from the previous list, there should either be no further recruitment until they are absorbed or in the alternative vacancies which are declared for the

subsequent years should take into account the number of persons who are already in the list of selected candidates who are still awaiting appointment. There should be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies.

Once a person is declared successful according to the merit list of selected candidates, the appointing authority has the responsibility to appoint him, even if the number of vacancies undergoes a change after his name is included in the list of selected candidates. The Supreme Court also referred to the notification issued by the Ministry of Home Affairs, Department of Personnel & Administrative Reforms, on 8.2.1982 on this subject.

19. We do not, however, find any substance in the contention of the applicants that the restructuring of the cadre of Junior Engineers, as was <sup>or decided</sup> / by the respondents, suffers from any legal or constitutional infirmity. The restructuring has been done keeping in view the interest of all the Junior Engineers and based on the recommendations of an expert committee.


20. It has come to light during the oral arguments that several Junior Engineers have been absorbed already. There may also be vacancies in the various Circles/Districts in which the Junior Engineers are to be posted. The persons who are borne on the select list and who are yet to be appointed should

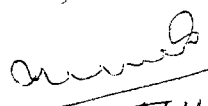
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be given the option for appointment in any of the Circles where vacancies in the departmental or outsider quotas may be available.

21. In the facts and circumstances of the case, we direct that the respondents shall fill up the existing vacancies of Junior Engineers in their various Circles/Districts after giving an option to the persons who are borne on the Select List on the basis of the examinations held in 1982 and 1983, to be appointed in any of the vacancies in the departmental or outsider quotas. If they exercise the option within the period to be specified by the respondents, they should be absorbed as Junior Engineers in the respective <sup>or</sup> circles/Districts. The manner of giving option to them and other modalities will have to be worked out by the respondents in consultation with the National Federation of Telecommunication Employees and other concerned associations within a period of 3 months from the date of communication of this <sup>or</sup> ~~order~~ order. The application is disposed of with the above orders and directions.

The parties will bear their own costs.

  
(I.K. RASGOTRA) 15/1/83  
MEMBER (A)

  
15/1/83  
(P.K. KARTHA)  
VICE CHAIRMAN (J)