

6

CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1242/90

199

~~T.A. No.~~

DATE OF DECISION 6.1.1992.

Indian Telecommunication Service Petitioner
Association & Ors.

Shri K.T. Anantharaman, & Ors. Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Sh. M. L. Verma, Sh. M. C. Bhandare, Advocate for the Respondent(s)
Mrs. C.K. Sucharita and Shri V.S.R. Krisha, counsel

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *✓*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *✓*

I.K. Rasgotra
(I.K. Rasgotra)
Member (A)

6.1.1992

Ram Pal Singh
(Ram Pal Singh)
Vice-Chairman

50

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1242/90

DATE OF DECISION: 6.1.1992.

INDIAN TELECOMMUNICATION ...APPLICANTS
SERVICE ASSOCIATION & OTHERS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

CORAM:

THE HON'BLE JUSTICE MR. RAM PAL SINGH, VICE-CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS

SHRI K.T. ANANTHARAMAN,
COUNSEL.

FOR THE RESPONDENTS

SHRI M.L. VERMA, COUNSEL,
SHRI M.C. BHANDARE, SENIOR
COUNSEL WITH MRS. C.K.
SUCHARITA COUNSEL AND
SHRI V.S.R. KRISHNA, COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Indian Telecommunication Service Association (ITSA) and others, representing direct recruits jointly or individually have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the decisions taken by respondent Nos. 1 & 2 on the joint charter of demands submitted by JTO 'A' (India) and TES 'A' (India), as contained in Department of Telecommunications letter No.804/90/SRT dated 15.6.1990.

While the said communication lists 9 decisions, the applicants are primarily aggrieved by decisions at serial Nos. 2, 5 and 7. These are reproduced hereunder:-

"2. Lateral Advancement of TES Group 'B' Officers:

Lateral promotion for TES Group 'B' officers to Group 'A' is not agreed to. However, from now onwards, the TES Group 'B' Officers, who will be completing 12 years of service on ;year-to-year basis, will be given vertical promotion to

JTS. The administration will ensure this by finding by conversion sufficient additional posts of JTS. The clearance of the Ministry of Finance has already been obtained in this regard. It is also agreed to review the ratio of direct recruits to promotees at JTS level. Promotions against the regular quota of vacancies will be effected through regular DPCs involving UPSC and the remaining portion of the promotions will be through ad hoc DPCs, to be regularised against future promotion quota in JTS. Matching savings will be found for this.

5. Earmarking of JAG posts for promotee STS Officers:

It has been decided to earmark 30 posts of JAG to be filled up by the promotee DEs. This will include promotions through normal channel of promotion from STS to JAG.

7. Restoration of local officiating arrangements in STS:

It has been decided that the orders issued on 8.5.1989 will be withdrawn to restore the position existing prior to 8.5.1989."

2. Before we proceed with the case, it will be necessary to refer to some of the salient features of the ITSA Recruitment Rules, 1965.

The entry in the ITSA is at the level of Junior Time Scale (JTS) which is 50% by direct recruitment on the basis of All India Competitive Examination conducted by UPSC and 50% from the officers of Telecommunication Engineering Service 'B' by promotion on the basis of selection. The officers of the TES Group 'B' are eligible for promotion to ITSA after they have put in not less than 8 years regular service in that grade on the recommendation of a duly constituted Departmental Promotion Committee

52

(DPC) and in consultation with the UPSC. Rule 26 of the ITSA Rules further prescribes a probation period of two years. Rule 27 (a) of the ITSA Rules prescribes that appointment to senior time scale in the service shall be made by promotion of officers in the Junior Time Scale (JTS) in the order of seniority subject to the rejection of unfit. " A directly recruited Assistant Divisional Engineer shall not ordinarily be promoted Divisional Engineer unless he has put in 5 years service and has passed the prescribed departmental test." Rule 27 (b), however, stipulates that "posts in the Senior Time Scale (STS) may, however, be filled purely as a temporary measure, in an officiating capacity or to hold charge, by the promotion of permanent members of the Telegraph Engineering and Wireless Service who are on the approved list for promotion to Junior Time Scale (JTS)". Rule 28 of the said rules provides for appointment to Junior Administrative Grade (JAG) and prescribe that promotion will be made "by selection on merit from amongst officers ordinarily with not less than 5 years approved service in STS of Telegraph Engineering Service Class I on the recommendation of a DPC provided such officers hold lien in Class I service."

3. The contention of the applicants is that the respondents have been making recruitment to the JTS in an arbitrary manner, irrespective of the provision of the recruitment rules prescribing 50% by promotion at the JTS level. This has created difficulty in the management of the cadre at the level of STS where the two streams are integrated in the ratio of 1:1 inasmuch as the direct recruits are not being made substantive in the JTS and assigned proper seniority vis-a-vis promotees TSB officers.

2

53

4. In the course of hearing of the case it transpired that the rival claims for seniority, promotion etc. of the direct recruits and the promotee officers is a subject matter of a Writ Petition in the Hon'ble Supreme Court and the matter has been heard or was in advance stage of hearing. Both the sides, therefore, agreed that we may restrict the scope of litigation before us to the following two issues:-

- a) whether adhoc promotion to STS can be ordered in such a manner as to ensure promotion of T.E.S. Grade 'B' officer, to the exclusion of ITS 'A';
- b) whether earmarking 30 posts in JAG for the promotee STS officers is legally sustainable.

5. Referring to the respondents letter dated 8.5.1990 regarding delegation of powers to the heads of circles to make arrangements for filling up vacancies in STS to ITS Group 'A', the learned counsel for the applicants Shri K.T. Anantharaman submitted that the heads of circles have been authorised to make officiating arrangement on leave and short term vacancies for periods of not less than 30 days and not exceeding six months in STS in the following orders of preference:-

"(1) From amongst Jr. Time Scale officers of ITS Group 'A' on seniority-sum-fitness basis provided that:

(i) the Jr. Time Scale Officers of ITS Group 'A' who have been regularly promoted from TES Group 'B' to ITS Group 'A' will have priority over the direct recruit ADETs.

(ii) the direct recruit ADETs have successfully completed their probation and have passed the professional examination.

2

54

- (2) In case eligible JTS officers under (1) above are not available; and it is not possible to keep the STS post vacant, the Senior most TES Group 'B' officer in the Circle/District may be ordered to officiate locally against the short-term vacancies."

These instructions have been issued in supersession of respondents' letter dated 8.5.1989 as amended subsequently vide letter of even number dated 1.9.1989 and 3.11.1989. The 8th May, 1989 letter on the other hand made the following provisions for making adhoc arrangements under the delegated powers to fill up short term vacancies:-

- "(i) From amongst the approved Junior Time Scale Officers of ITS Group-A who have been promoted from Group-B to ITS Group-A by holding DPC.
- (ii) On seniority-cum-fitness basis from amongst the regular Junior Time Scale Officers provided they have completed the probation period. The direct recruit JTS Officers shall be considered subject to the condition that they have passed the professional examination....."

The above position has been reversed by the issue of letter dated 13.8.1990 which reads as under:-

"...Subject: Delegation of powers to the Heads of Circles to make local officiating arrangement for filling up vacancies in Senior Time Scale of ITS Group 'A' on temporary basis.

A reference is invited to this office letter of even No. dated 8.5.89 and 8.5.90 on the above subject.

2

88

2. In future, for the purpose of filling up of short-term vacancies not exceeding 180 days, the instructions issued vide this office Memo No.118-2/69-STA-I dated 15.5.69 amended subsequently by letter No.118-2/69-STA-I dated 23rd July, 1969 will be followed.

3. The Direct Recruit ADETs, already officiating locally in Senior Time Scale are, however, not to be reverted in view of the revised instructions.

4. These orders will be effective from the date of issue and are subject to decision taken in O.A. No.1242/90 filed in CAT Principal Bench, New Delhi...."

The learned counsel submitted that the reversal of the policy to promote TES Group 'B' officers in preference to Group 'A' JTS officers constitutes a hostile discrimination against the direct recruits.

Regarding earmaking of 30 posts in JAG for the benefit of only promotee STS officers, the learned counsel contended that after the two streams of JTS officers viz. direct recruits in ITS 'A' and TES Group 'B' promotees to JTS are fused, no group of JTS officers can be segregated for further promotional avenues. The integrated cadre of JTS forms the feeder cadre for promotion to STS and from there to JAG. The earmarking of the 30 JAG posts termed as General Civil Service (GCS) is a case of blatant discrimination against direct recruits in the integrated cadre of STS. The learned counsel, therefore, prayed that in regard to the adhoc promotions the status quo ante 13.8.1990 letter should be restored and the earmarking of the 30 JAG posts for the promotee STS officers should be held as violative of Articles 14 and 16 of the Constitution and the relevant order quashed. He further pointed

21

out that the 13.8.1990 order is not issued in the name of the President. and as such it cannot be allowed to supersede the order issued in the name of President dated 8.5.1989 and 8.5.1990.

6. Shri M.C. Bhandre, learned counsel for respondent No.5 on the other hand ardently contested the plea of hostile discrimination against the direct recruits and submitted that the provision of 30 posts in JAG from the promotee officers is designed to provide temporary relief to the promotee officers. Referring to a statement, indicating the representation of direct recruits and the promotee officers in the JAG of ITS Group 'A', the learned counsel submitted that in 1990 out of a total number of 470 posts in JAG, as many as 468 were occupied by direct recruits while the promotees occupied only 7 posts. He, therefore, averred that if there is any discrimination it is against the promotee officers and not against the direct recruits. Relying on **Mohd. Shujat Ali v. Union of India AIR 1974 SC 1631**, the learned counsel submitted that the Constitution permits reasonable classification as long as such classification is made to ensure that the persons or things similarly situated are all similarly treated. The question of discrimination, therefore, does not arise, as promotees are similarly treated as direct recruits. The earmarking of 30 posts in GCS for promotee STS officers meets the twin test of reasonable classification viz. similar treatment to identically placed persons with the object to be achieved and, therefore cannot be faulted. Shri Bhandare, learned counsel also referred to the case of **Debranjay Ray v. Comptroller & A.G. of India AIR 1985 SC 306** and submitted that opening up a limited avenue of promotion for the deprived section of the STS officers is not tantamount to hostile discrimination against the direct recruits.

57

7. Shri V.S.R. Krishna, learned counsel for respondent No.6 submitted that if the relief claimed viz. abolition of 30 JAG posts earmarked for the promotee JAG officers is granted, it would not confer any benefit on the direct recruits and as such they are not concerned with the limited provision for promotion to JAG to promote STS officers. In support of his case, the learned counsel referred to **AIR 1988 SC 1033 Raghunath Prasad Singh v. State of Bihar Police (Department)** and submitted that provision of 30 JAG posts for promotees exclusively would reduce stagnation among them and would lead to increasing efficiency in public service.

8. Shri M.L. Verma, learned counsel for the official respondents took the preliminary objection that the applicants had not exhausted the departmental remedies, as is apparent from the fact that they made a representation on 15.6.1990 to seek redress of their grievance and on the same day they filed the O.A. at the Principal Bench of the Tribunal. The learned counsel further contended that reliefs claimed in paragraph 8 of the O.A. are not maintainable for the reasons given at length in the counter-affidavit.

9. We have heard the learned counsel for the parties and given our careful consideration to the submissions made by them. We have also perused the record filed by the learned counsel for the applicants and the learned counsel for the respondents. We are of the view that the promotions to STS on regular basis and the promotions on adhoc basis are two different aspects. Regular promotions are regulated by rules 26 and 27 of the recruitment rules. A Group 'B' officer for regular appointment to STS has first to be inducted in the JTS after selection on merit by a duly constituted DPC and in consultation with the

2

UPSC, from among those who have put in not less than 8 years approved service in Class II. Once a TES Group 'B' officer is inducted in JTS, he ^{is} required to put in two years' period of probation. He will then be considered for promotion to STS in the order of seniority subject to rejection of unfit. As against this a direct recruit Assistant Divisional Engineer is to be promoted to STS ordinarily only after he has put in 5 years service and has passed the prescribed departmental test. Rule 27-B, however, enables the official respondents to fill up STS posts, as a purely temporary measure in an officiating capacity or to hold charge by the promotion on permanent basis of TES Group 'B' who are on the approved list for promotion to STS. ^{A Group 'B' officer for promotion to STS,} therefore, has first to come on the approved list of promotion to the JTS through a process of selection and in consultation with UPSC. The instructions issued to make stop gap arrangement on local officiating basis vide their letter dated 8.5.1990 are to meet administrative exigencies. These instructions have now been withdrawn vide letter dated 13.8.1990 and adhoc promotions for short term vacancies have to be regulated in accordance with the respondents' letters dated 15.5.1969, and 23.7.1989, according to which promotion to STS on short term basis can be made from the list of officers approved for promotion in the order of seniority given in such list. The letter dated 23rd July, 1969 further states that "In case approved officers for promotion are not available Heads of Circles/Districts may promote the senior most officer of the Circle/Unit belonging to TES Class II to TES Class I subject to his being considered fit for promotion."

It will be apparent from the above that the instructions that will now prevail for adhoc promotions were in vogue prior to the issue of 8.5.1990 instructions.

These policy directions for adhoc promotions have been framed, supplemented changed, as required in the exigencies of administration. Identical issues have been dealt with by a Full Bench of the Tribunal in **O.A. No.224 of 1986 Eastern Railway Class II Officers Association & Ors. v. Union of India & Ors.** vide its judgement dated 2.12.1991. In that case the Group 'B' officers were pitched against Group 'A' officers, as Group 'B' officers were to be considered for promotion on adhoc basis only failing availability of Group 'A' junior scale officers who were eligible for appointment to senior scale/holding current duties of the senior scale post. The Full Bench observed:-

"There is no dispute about the fact that the Government had made a change in the policy by Circular letter dated 19/31.12.1985. This policy decision was made by the Railway Board which was competent to do so. There is no dispute to the above. Thus the question to be considered is: whether the policy decision of the Government can be challenged in the present proceedings?

It is well settled by the Supreme Court in the case of THE DIRECTOR, LIFT IRRIGATION CORPORATION LTD. & ORS. ETC. ETC. Vs. PRAVAT KIRAN MOHANTY & ORS. (JT 1991 (1) SC 430) where their Lordships laid down:

'The policy decision is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle.'

The above decision also laid down another principle of law:

"Undoubtedly, in this process the respondent/writ petitioner lost some place in seniority which is consequential to amalgamation. He has not been deprived of his right to be considered for promotion,

2

only his chances of promotion have been receded. It was not the case of the respondent that the action was actuated by mala fide or colourable exercise of power. There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with the relevant rules. (Emphasis supplied)...."

"....In the case of COL. A.S. SANGWAN (supra), the Supreme Court had this to say in respect of a policy decision of the Union Government:

'The executive power of the Union of India, when it is not trammelled by any statute or rule, is wide and pursuant to its power it can make executive policy. Indeed, in the strategic and sensitive area of Defence, courts should be cautious although courts are not powerless. The Union of India having framed a policy relieved itself of the charge of acting capriciously or arbitrarily or in response to any ulterior considerations so long as it pursued a consistent policy.'

In the above case, the Supreme Court further held: 'that a policy once formulated is not good for ever; it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions of circumstances and the imperatives of national considerations.'...."

"...It is clear from the above that various changes were made from time to time in the exigency of the circumstances and the pressures generated by growing process, it was necessary to fill up posts and the only available source at those time was from the Group 'B' Officers."

In view of the above, we are not persuaded to interfere with the directions issued by the respondents vide their letter dated 13.8.1990. The said order of the respondents falls within the domain of policy and is not open to judicial review unless it is malafide, arbitrary or bereft of any discernible principle. It would perhaps curtail the chances of promotion but "mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount a change in the conditions of service. A right to be considered for promotion is a term of service, chances of promotion are not." Further,

22

(21)

a policy once formulated is not good for ever; it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions of circumstances and the imperatives of national considerations. (COL. A.S. SANGAWAN VS. UNION OF INDIA AIR 1981 SC 1545).

We may now come to the other issue of earmarking of 30 posts in JAG for the promoted STS officers. In accordance with Rule 28 of the Recruitment Rules, the appointments to JAG are to be made by selection on merit from amongst officers ordinarily with not less than 5 years approved service in STS of ITS Group 'A' on the recommendation of a duly constituted DPC, from amongst the permanent officers of TES Group 'A'. STS is a fused cadre where the two streams viz. direct recruits JTS and TES Group 'B' promotee to JTS amalgamate. Once the two streams have entered the integrated cadre they lose their original identity and the personnel in the integrated cadre have to seek promotion to the JAG in accordance with their position in the seniority list of the amalgamated cadre on the basis of selection on merit. Isolating an erstwhile stream from an integrated cadre for the purpose of promotion to JAG is repugnant to the Articles 14 and 16 of the Constitution of India, as an amalgamated cadre is not amenable to splitting up on the basis of its source of origin for the purpose of increasing the chances of promotion. Equals have to be treated equally. Accordingly, such a provision is prejudicial to the right of consideration to promotion of direct recruits and would be infraction of Articles 14 and 16 of the Constitution. Accordingly Memorandum No.314-17/90.STG.III dated 28.8.1990, issued by the Telecom Commission is set aside and quashed.


21

62

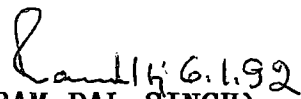
In the end the O.A. is partially allowed. Our conclusions are:

- i) The Government has a right to change the policy in accordance with the exigencies of administration. Therefore, we do not find any justification for our interference with the Government's Memorandum dated 13.8.1990.
- ii) Earmarking of 30 JAG posts for the sole benefit of one of the streams in the amalgamated cadre viz. TES Group 'B' inducted into JTS and promoted to STS in accordance with the Rules is held to be invalid and accordingly the order dated 28.8.1990 is set aside and quashed.

There will be no order as to costs.


(I.K. RASGOTRA)
MEMBER(A) 6/1/1992

6.1.1992


(RAM PAL SINGH)
VICE-CHAIRMAN