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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 2019 of 1987.

(Writ Petition No. 530 of 1984)

Sita Ram Mannwat & others.

Petitioners.

Versus .

Divisional Engineer Telegraphs,
Aligarh & others.

Respondents.

Hon'ble K.J. Raman, A.M.
Hon'ble D.K. Agrawal, J.M.

(Delivered by Hon. K.J. Raman, A.M.)

This is a Writ Petition No. 530 of 1984 filed on 9.1.1984 in the High Court of Judicature at Allahabad by the four petitioners, viz. S/Sri Sita Ram Mannwat, Chandra Pal Sharma, Tej Singh and Genda Lal against the Divisional Engineer Telegraphs, Aligarh, the General Manager, Tele-Communication, Lucknow and three private respondents, viz. S/Sri Igram Ujjaina Khan, Vishan Kumar and Ram Prakash, all employees of the Telegraph Department. This writ petition has come to this Tribunal on transfer under the provisions of Section 29 of the ~~Administrative~~ Tribunals Act, 1985. In this petition the petitioners have prayed for quashing the impugned memorandum dated 30-4-1983 (Annexure '3') and directing the respondents not to act upon the above impugned memorandum and to declare the petitioners as permanent and regular in the Department. The above impugned memorandum contains the orders of appointment of /number of persons and is in lieu of an earlier order of appointment dated 29.9.1981 (Annexure '1'), in which petitioners no.1 and 2 were appointed as Telephone Operators (TOs) on a regular basis and petitioners no.3 and 4 were appointed as Short-Duty Telephone Operators (SDTOs) on a hourly payment basis. The writ petition has been admitted by the High Court. By an order dated 25.3.1985 the Hon'ble High Court has stayed the

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operation of the impugned memorandum dated 30.11.1983, referred to above. The stay order continues to operate till now.

2. The case of the petitioners can be briefly stated as follows : In pursuance of an advertisement issued in 1981 by the Divisional Engineer Telegraphs, Aligarh, all the petitioners applied for the post of TOs. Petitioners no.1 and 2 were selected for regular posting as TOs, according to merit. Petitioners no.3 and 4 were not sufficiently up in the merit list for regular appointment. By a letter dated 25.5.1981 from the Telegraph Department, they were offered the post of SDTOs, subject to various conditions including payment of hourly wages. They were to be given training for three months. The period of duty was also fixed. It was stated that petitioners no.3 and 4 would be absorbed as regular TOs in future vacancies, subject to their work and conduct being satisfactory and subject to their working for/minimum of 120 days in six months. It was also made clear that their services could be terminated at any time without assigning any reason. Petitioners no.3 and 4 accepted the offer and attached conditions. All the four petitioners were accordingly appointed by an order dated 29.9.1981 (Annexure '1') along with 17 other candidates. As stated earlier, petitioners no.1 and 2 were appointed as regular TOs and petitioners no.3 and 4 were appointed as SDTOs.

3. It is stated that petitioner no.2 is an ex-service man and petitioner no.3 is a Scheduled Caste candidate, whereas petitioner no.4 is a Scheduled Tribe candidate.

4. It is stated that all the petitioners have been working continuously, to the entire satisfaction of the senior officers. Petitioners no.1 and 2 have been granted increments and are subscribing to the Provident Fund also. It is stated that after two years of their appointment, the impugned order dated 30.11.1983 (Annexure '3') has been issued according to which respondents no.3 and 4 have been placed at SI.Nos. 7 and 3 and all the four petitioners have

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been declared to be outside the regular list. In their case, however, the order states that status quo is maintained so far, but the petitioners cannot claim seniority even over the last RTP candidates. In other words, according to the impugned order dated 30.11.1983 (Annexure '3'), the four petitioners did not find place in the select panel, as against the earlier order dated 29.9.1981 (Annexure '1'), in which the names of all the petitioners figure, as stated earlier. The petitioners have accordingly challenged the validity of the impugned order on the ground that it is arbitrary, illegal and without jurisdiction.

5. In their counter affidavit, the official respondents no.1 and 2 have stated that after the publication of the select list of 1981 (Annexure '1'), certain complaints were received alleging irregularities in the preparation of the above select list by which the petitioners and others were appointed. The irregularities alleged were that certain bonus marks for higher education required to be added to the marks of the candidates, were not added in preparing the select list dated 29.9.1981. It is stated that according to the general orders, 5 bonus marks were allotted for educational qualification upto Pre-University course, 7 ~~555~~ marks for Intermediate examination and 10 marks for Graduate and above. A copy of the letter No.20/27/24-SPB.I, dated 17.2.1975 containing the detail/orders was produced during the hearing. When the omission was rectified and the fresh and correct select list was prepared, the petitioners were pushed down in the merit list and some others like the private respondents came up in the list because of the revised marking. (Annexure 'CA-1')

It is stated that as early as on 3.11.1981 a memorandum was issued in partial modification of the office memorandum of 29.9.1981 (Annexure '1'). Under this modification, it was specifically mentioned that postings made in accordance with the memorandum of 29.9.1981 were purely ad hoc and provisional as stop-gap arrangements and the services of the officials can be terminated at any time without

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giving any notice and assigning any reasons and also subject to the finalisation of the recruitment process. The impugned order dated 30.11.1983 was issued according to the correct marks and in that process the private respondents, viz. S/Sri Igram Ujjama Khan and Vishan Kumar found their place in the select list but the petitioners could not find place there because of their marks. The respondents aver that the impugned order is correctly issued in accordance with the prescribed rules and is quite legal and valid.

6. In the rejoinder affidavit filed by the petitioners, the issue of the amendment circular dated 3.11.1981 is admitted/ This shows that as early as in November, 1981, the petitioners were aware that the select list was still open and not final. Secondly, it is seen that in the rejoinder affidavit the petitioners have not disputed the rules relating to awarding additional marks for higher qualification. They have merely stated that there were no complaints from the Unions. The petitioners have not questioned the validity of the rules prescribing additional marks nor have they questioned the correctness of the marks themselves, as a result of the addition. Their only grievance seems to be that there were sufficient vacancies in the Department to enable the Department to adjust all the petitioners against regular posts, particularly taking into account the fact that the petitioners no. 2, 3 and 4 belonged to the reserved category, as stated earlier in this judgment.

7. We have heard the learned counsel for both the sides.

8. Admittedly, under the order dated 29.9.1981 (Annexure '1') petitioners no. 1 and 2 were appointed as regular TOs and petitioners no. 3 and 4 were appointed as SDTOs. Similarly, there is no dispute that all the four petitioners along with others were given proper training. They had also been working in their respective posts satisfactorily without any adverse marks, as admitted by the respondents in their counter affidavit. It is thus clear that all the petitioners had been properly selected for appointment according

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to the prescribed rules and received proper training. It is not a case where the petitioners were wrongly found fit and later on found unfit for the post. The only thing that has happened is that because of the award of additional marks for higher education, other persons have gone above the petitioners in the revised select list (Annexure '3') and the petitioners have gone down. The petitioners were also aware of the fact in November, 1981 that the select list dated 29.9.1981 was not final and the selection process was not complete. It does not appear that the petitioners made any specific representation questioning the reopening of the selection process at that stage. It, therefore, cannot be claimed that the impugned order dated 30.11.1983 (Annexure '3') was issued suddenly without any notice. Since the petitioners have not questioned the validity or correctness for the award of additional marks for higher education, the factual correctness of the impugned order dated 30.11.1983 is not in question before us. It is well settled that any error committed in preparing the select list can be corrected, of course, with due notice in an appropriate way, to the persons affected. In this view of the matter the prayer for quashing the impugned dated 30.11.1983 cannot be allowed.

9. However, even according to the impugned order, the status quo was maintained, i.e. petitioners no.1 and 2 were allowed to function as TOs against regular posts and petitioners no.3 and 4 were allowed to work as SDTOs as before. The stay order dated 25.3.1985 of the High Court of Judicature at Allahabad ^{has} ~~continued~~ the above position till date. Thus petitioners no.1 and 2 have been working as regular TOs and petitioners no.3 and 4 as SDTOs since 1981. Having been selected for the post of TO in accordance with the prescribed procedure, the petitioners are entitled to be appointed against regular posts, since nothing else is to be done by them by way of passing the test, etc. Admittedly, the work and conduct of the petitioners have been satisfactory. According to the rejoinder

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affidavit filed by the petitioners, a large number of vacancies have arisen during the intervening ~~period~~ ¹⁹⁹² in which the petitioners could be regularised. This was not disputed specifically during the hearing.

10. In the above circumstances, we direct that the services of the petitioners no.1 and 2 shall be regularised in the post of TO in accordance with their position in the final select list, according to merit, against the vacancies which they have been occupying. Any question of termination of ~~their~~ services does not arise. Petitioner no.2 shall be given due consideration under the rules taking into account his Military service. Petitioners no.3 and 4, who have been so long working as SDTOs, shall also be regularised as TOs against the existing vacancies, according to their number in the select list, as per merit. While assigning marks to them, relaxation to SC and ST in marking, as may be available under the rules, shall also be given to them, if not already done. Their services shall not be terminated. If there are no vacancies at present, they shall be adjusted against the next available vacancies in future and till that time they shall continue as SDTOs. They shall be afforded all the privileges due to them in their regular appointment as members of SC/ST.

11. The writ petition is allowed to the above extent. Subject to the above, the stay order is vacated. There will be no order as to costs.

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MEMBER (J).

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MEMBER (A).

Dated: June 27, 1990.