

(10) (A8)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 446 of 1987

Allahabad this the 27th day of Jan. 1995

Hon'ble Mr. S. Das Gupta, Member(A)
~~666~~ Hon'ble Mr. Jasbir S. Dhaliwal, Member(J)

B.S. Bhatnagar, Asstt. Telegraph Master, Central
Telegraph Office, Allahabad, R/o 455 Attarsuiya,
Allahabad.

Applicant.

By Advocate Shri G.C. Bhattacharya

Versus

1. Director General, Telecom (Departmental Examination
Section) Sanchar Bhawan, New Delhi.
2. General Manager, Telecommunication Uttar Pradesh
Circle, Hazratganj, Lucknow.
3. S.S. Tewari, Asstt. Supdt. Telegraph @Traffic,
Central Telegraph Office, Varanasi.
4. S.N. Upadhya, Asstt. Supdt. Telegraph @Traffic,
Central Telegraph Office, Maranasi.

Respondents.

By Advocate Shri Ashok Mohiley.

O R D E R

By Hon'ble Mr. Jasbir S. Dhaliwal, Member(Jud.)

This petition has been filed by the petitioner pleading that he was a confirmed Asstt. Telegraph Master in the pay scale of Rs. 380-560. A competitive examination was held in July, 1979 for 51 vacancies for the post of Asstt. Superintendent Telegraph Traffic which post carried the pay scale of Rs. 425-750 which was later on revised. Out of these 51 vacancies 8 were reserved for SC/ST candidates. He claims that he appeared in this examination and had obtained 62% marks as ^{is} evident

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by Annexure A-1. At first, 39 candidates were selected on the basis of the said examination vide letter dated 31.1.1980 (Annexure -2). After some time a supplementary list was issued vide which 8 persons were further ~~also~~ selected and promoted against the said vacancies and this list included the name of respondent no.3 and 4 also. The petitioner claims that these two respondents had received less marks than him and thus, could not have been promoted. He further pleads that 4 vacancies still existed which had not been filled up. The petitioner made repeated representations to the respondent no.1 and 2 for his promotion on the basis of the said examination ^{without} ~~with~~ any result. Such representations dated 29.8.1985, 24.12.1985 and 10.2.1986 are Annexure 3, 4 and 5. He claims that since he was a leader of the ~~the~~ Trade Union, he has been victimised and for that reason has not been given promotion. He had filed an application under Section 19 of the Administrative Tribunals Act, 1985, registered as O.A. No. 658 of 1986 for a direction to respondent no. 1 and 2 to promote him and give him arrears of salary and other benefits w.e.f. 07.7.1981, the date from which respondent no.3 and 4 had been promoted. That petition was dismissed while directing the respondents to dispose of the representations of the petitioner. He sent a copy of the

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Judgement alongwith a letter (Annexure-7) and his representations were rejected vide letter dated 02.3.1987. On all these grounds, the petitioner has prayed for directing the respondents no.1 and 2 to appoint him on the promotional post of Assistant Superintendent ~~Telegraph~~ Telegraph Traffic w.e.f. 07.7.1981, given him arrears of pay and other benefits also from the same date.

2. The respondents in their counter-reply have pleaded that infact there were only 39 vacancies for ordinary candidates and 8 for SC/ST candidates out of which initially result of 37 ^{General} ordinary and 2 S.C. candidates were declared. The subsequent list contained the names of 6 SC and 2 ^{General} ordinary candidates who had all been found successful. In all there were 8 vacancies for S.C. and 4 for S.T. but these reserved vacancies could not be filled up for want of S.T. candidates. They have specifically denied that respondent no.3 and 4 had obtained less marks than the petitioner and have mentioned that both of them had infact obtained 253 marks whereas the petitioner had obtained 243 marks. Annexure C.A.-1 has been filed ~~as~~ as proof of this, which is a letter received from Department of Telecommunication, Departmental Examination, Selection, Dak Tar Bhawan, New Delhi. The petitioner had no claim to

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the reserved vacancies of S.T. candidates which were 4 in number. Even if, these were de-reserved, he could not have been appointed to the higher post ~~as~~ as there were 4 other candidates who had obtained higher marks than the petitioner. The representations of the petitioner was disposed of in compliance to the directions of this Tribunal rejecting the same on merits. It is pleaded that for that selection seniority only had no relevance as it was a competitive examination in which the petitioner did not figure in the ~~merit~~ merit list for the available vacancies. They have denied that the petitioner has been victimised due to Trade Union activities. The answer books were retained only for a period of one year after the declaration of the result and have since been destroyed. On these pleadings they have prayed for dismissal of the petition.

3. The learned counsel for the petitioner mainly banked upon the contention that the petitioner had obtained 62% marks as given in Annexure-1 and has claimed that he had ~~been~~ obtained more marks than respondent no.3 and 4. Annexure-1 shows that he had ~~been~~ obtained only 60.7% marks only. The petitioner has failed to bring anything on record to show that his marks as

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given in Annexure-1 were higher than the marks obtained by the respondent no.3 and 4. The initial burden of proof is always on a petitioner who comes to the Court seeking relief on the basis of the facts pleaded. On this aspect, the respondents have relied upon a letter issued by the examination branch of the respondent no.3 and 4 had obtained 253 marks while the petitioner had obtained 243 marks only. On these facts, we are left with no option but, to reject the claim of the petitioner on this aspect.

4. The learned counsel for the petitioner referring to Appendix-III of P & T Manual stresses that the respondents are supposed to keep the records of the examination papers for 3 years and their destroying the same after one year, should be taken to be a fact against them for drawing an adverse inference to the effect that what the petitioner claims is correct. We, however, cannot accept this contention. The examination was held in July, 1979 and the first list of selected candidates was made public, as pleaded by the petitioner, on 31.1.1980. The respondent no.3 and 4 who are in the supplementary list were also promoted w.e.f. 07.7.1981 under the list of the said examination. The petitioner

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filed his first petition in the Tribunal in the year 1986, we decline to draw an adverse inference against the respondents merely on the grounds that the records of the Answer Books were destroyed after one year and merely because the petitioner had approached this Tribunal in the year 1986 after almost 6 years from the declaration of the result. We cannot ignore the fact that examinations are held from time to time and record of the same is voluminous. There being no malafides alleged against the examiners, it cannot be inferred that they deliberately had under scored on the answer books of the petitioner. The mark lists are not destroyed with answer books and C.A.-1 is a communication from the authorities on the basis of such mark lists.

5. The availability of the vacancies which remain unfilled does not give a successful examinee an indefeasible right for appointment to the same and employer has the right to decide how many vacancies it wants to fill-up. This right, however, is subject to an exception that such denial should not be malafide or for extraneous reasons. The reply of the respondents shows that the 4 vacancies were for S.T. candidates to which the petitioner has no claim. He, thus, cannot claim a right of appointment to the reserved vacancies. It is besides the point that there are still 4 vacancies other successful

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candidates in the said examination who are above the petitioner in the ~~merit~~ merit list. The contention of the petitioner on this aspect is also found to be without any merit.

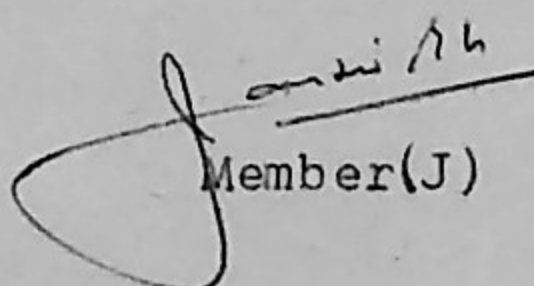
6. We have considered the case of the petitioner on merits to come to a conclusion that it has none. We are aware of the fact that the result of the competitive examination held in the July, 1979 was declared in the January, 1980. The respondent no.3 and 4 were promoted w.e.f. 07.7.1981, the cause of action, if any, had arisen to the petitioner on these dates. His filing of repeated representations could not have extended the period of limitation. We find that this Tribunal in its Judgement dated 15.1.1987 had found his petition to be badly time barred and had passed the following orders;

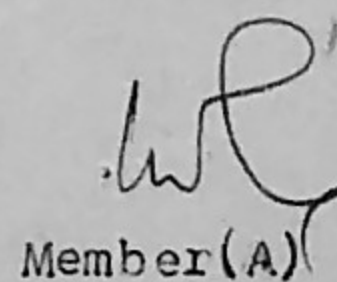
"Due to long delay, we find ourselves unable to entertain this petition. It is accordingly dismissed."

as given in Annexure-6 dated 15.1.1987. The Tribunal, however, had directed the respondents to dispose of his representations filed in August and December, 1985 and February, 1986. These have been rejected by the respondents with observations that the question raised by him, had already ^{been} considered by the

department which had come to the conclusion that the petitioner had not found^a placed in the merit list for the available vacancies and that Sri S.N. Tewari and Sri S.N. Upadhyay the respondent no.3 and 4 had obtained more marks than him. Communication of this order to him in the year 1987 could not have extended the limitation which had long expired, even prior to his earlier petition filed before this Tribunal. The present petition is barred under principles of res-judicata and also on the grounds of limitation.

6. For the foregoing reasons, the petition is dismissed without any order to the costs.


Member(J)


Member(A)

/M.M./