

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

FRIDAY, THIS THE 20TH DAY OF SEPTEMBER, 2002

ORIGINAL APPLICATION NO: 687 OF 2002

HON.MR. S. DAYAL, MEMBER-A

HON.MRS. MEERA CHIBBER, MEMBER-J

1. Shayam Charan Pandey,  
s/o Shriram Pandey,  
a/a 45 years,  
r/o 1/11 PNT Colony  
Gwalior Road, Jhansi.
2. Ram Singh,  
s/o Hanuman Singh,  
a/a 49 years,  
r/o QN.7,  
Block No. 3  
Old Telephone Exchange Compound,  
Jhansi.
3. Santosh Kumar Shukla,  
s/o Ram Chandra Shukla,  
a/a 47 years,  
r/o 128/82 G-Block  
Kidwai Nagar ,  
Kanpur.
4. Shiydhan Vishwakarma,  
s/o Bhagvati Prasad Vishwarkarma,  
a/a 47 years,  
r/o Telephone Exchange Campus,  
Telcom Colony, Bhadohi,  
Dist- Sant Ravi Das Nagar.
5. Anand singh Ringwas,  
S/O Late Ram Singh Ringwal,  
a/a 33 years  
r/o C-59/204-A,  
Hari Nagar Chandwa  
Chhittapur, Varanasi.
6. Puran Singh Budiyal.  
S/o Shoban Singh  
a/a 29 years,  
r/o C-33/204-13,  
Chandua Chhittapur,  
Varanasi. ....Applicants.

(By Advocate:-Shri O.P.Gupta)

Versus

1. Chief General Manager,  
Telcome U.P.East,  
Circle Hazarat Ganj,  
Bharat Door Sanchar Nigam Ltd.  
Lucknow.
2. Union of India through Secretary,  
Ministry of Communication Government of India  
Sanchar Bhawan,  
New Delhi. ....Respondents.

(By Advocate:-Shri R.C.Joshi)

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O R D E R

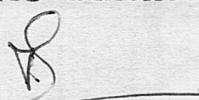
HON. MRS. MEERA CHIBBER, MEMBER-J

This O.A has been filed by three applicants who were working as Phone Mechanics. It is submitted by them that the notification was issued on 3-11-2000 (page 21, Annexure A-2) holding the screening test/ Competitive Departmental Examination for the next post of Senior Telecom Operating Assistant. As per applicants submission, in this notification, it was only mentioned that Phone Mechanics with 5 years of service shall be eligible for the Departmental Examination and there was no cut off date for the purpose of Screening for the eligibility of a candidate and since on the said date all the applicants had already completed 5 years of regular service as Phone Mechanic, they applied for the said examination and after their applications were scrutinised, they were allowed to appear in the said examination vide letter dated 2-7-01. The result of the screening test for the post of Senior TOA had been declared in which all the applicants were declared passed. Three applicants namely Shri Santosh Kumar Singh, Shri Ram Singh and Shri S.C.Pandey were shown in Jhansi Division but shri Puran Singh, Shri Shiv Charan Vishwakarma and Shri Anand Singh were shown under Varanasi Division. It is submitted by the applicants that thereafter, while all other candidates were sent for a training, some of the candidates, who had though passed, were directed not to be sent on training till their service particulars were verified vide letter dated 23-7-01 issued from Lucknow Office and 30-7-2001 issued from Varanasi (Annexure A-10, Page 11). All the applicants names were mentioned in this letter. However, no



reasons were assigned as to why their results should be treated as provisional. It is further submitted by the applicants that vide letter dated 10-12-2001, the Deputy General Manager (Recruitment) had addressed a letter to the Senior DDG (pers.) recommending therein that as a one time measure it being a last chance of screening test for Senior TOA, period of Officiating/Adhoc service rendered by the Telecom Mechanics in restructured cadre without breaking towards regular service and last date of receipt of application may be treated as cut off date for testing the eligibility of the Candidates. In this letter itself it was mentioned that in the notification dated 3-11-2000, the cut off date namely 1-7-2000 was not indicated, Even though for departmental exam, cut off date is taken to be first July of the recruitment year. However, vide letter dated 24-12-2001, the said recommendation was not acceded to (page 30) for granting one time measure relaxation in screening test for the post of Senior TOA.

2. The grievance of the applicants, in this case, is that since in the notification dated 3-11-2000, no cut off date was mentioned by the respondents. Therefore, all those candidates, who had put in 5 years of regular service as on 3-11-2000, should have been considered to be eligible for appearing in the Departmental examination. But for <sup>the</sup> reasons, best known to the respondents, they have applied the cut off date as 1-7-2000 to see the eligibility of the candidates and had declared them to be ineligible on the ground that on 1-7-2000, they had not completed 5 years of regular service as Phone Mechanic. The applicants counsel has invited our attention to the recruitment rules annexed at page 14 dated



31-5-1996 wherein the requirement for the post of Senior TOA, all that is required under column 12, was that those who do not possess the Higher Secondary (10+2) standard or equivalent qualification but our four Phone Mechanics with 5 years regular service, shall be considered for promotion on the basis of their screening test. The applicants had submitted that they were not Higher Secondary passed therefore, all that they were required to possess was 5 years regular service under the recruitment rule, which are statutory in nature for being considered for promotion on the basis of ~~the~~ screening test and in the recruitment rules, there is no cut off date mentioned as 1-7-2000. They have further explained by way of annexing their appointment letters on record to show their initial dates of regular appointment as Phone Mechanics. For example, in Annexure-I to the MA 2445/02, Shri Shayam Charan Pandey and Shri Ram Singh are shown, who have been promoted as Phone Mechanics w.e.f. 16-10-1995 and 4-10-95 vide order dated 14-11-1995. Similarly, Shri Santosh Kumar Shukla was promoted as Phone Mechanics w.e.f. 20-11-1995 vide order dated 8-12-1995. Similarly, Anand Singh Rigwal and Shri Puran Singh Budiyal were promoted w.e.f. 20-11-1995 vide order dated 27-11-1995 and Shri S.D. Vishwarkarma was promoted w.e.f. 23-12-1995 vide order dated 19-2-1996. Therefore, it is submitted by the applicants that in the absence of any cut off date mentioned in the notifications as <sup>the</sup> last date of application should have been considered to be cut off date for considering the eligibility as has been held in Mills Douglass Michael and others Vs. Union of India and Others reported in 1996 SCC (L&S) 1094. The said judgement decided by the Hon'ble Supreme Court is annexed as Annexure-2 with the rejoinder filed by the applicant. Relying on this Judgement, the applicant stated that since the last date for giving applications as per the

notification dated 3-11-2000 was 3-1-2001, therefore all the applicants had completed 5 years of regular service as on 3-1-2002. Accordingly, the order by which they were deprived from being sent on training is illegal, arbitrary and liable to be quashed. They have thus, sought the relief for quashing the impugned orders and <sup>give B</sup> ~~by~~ direction to the respondents to allow the applicants to complete requisite training of 4 weeks and thereafter, promote them as Senior TOA on regular basis alongwith other sucessful candidates. It was also stated by the applicant's counsel at bar that since the number of candidates was very large, the training is imparted in batches and the next batch is likely to be sent shortly and since thereafter no such screening test would be held. They submitted that even on the basis of equity, they submitted that even on the basis of equity, they should be sent to complete the training as this would only be a qualifying training and they would get their promotions only ~~at the~~ subject to the availability of vacancies in due time. B

3. The respondents, on the other hand, have opposed the O.A and they have submitted that 50% of the post of Senior TOA are to be filled up by walk in group, that is, those TOA, T.O and Office Assistants, who are intermediate pass and they are to be promoted directly and Senior TOA without passing any test etc. by completing required training only. But remaining 50% of posts of Senior TOA are to be filled up by those Phone Mechanics who have completed 5 years service provided they qualify the required Departmental Test and the successful training thereafter. They have admitted that the last date for submitting application as per the notification dated 3-11-2000 was 3-1-2001 but no cut off date was <sup>Imp B</sup> mentioned that as per departmental circular dated

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29-7-1987, the candidates like applicants were required to have minimum 5 years of regular services and the said 5 years period was to be recorded w.e.f. first of July of the recruitment year. They have annexed the said circular as Annexure C.A.II with their counter affidavit. They have further submitted that on 1-7-2000, the applicants had not completed 5 years of regular service. They were inadvertently allowed for appearing in the said test even though they were not eligible for appearing in the said screening test, and this mistake was detected. <sup>late on</sup> Therefore, they were not sent for training. They have further submitted that the matter was taken up with the Directorate for grant of one time measure relaxation but the Directorate has rejected the same vide letter dated 24-12-01. Therefor according to them taking the cut offd date to be 1-7-2000, the applicants had not completed 5 years of regular service. Therefore, they are not entitled to any of the reliefs as claimed by them. They have infact, given the break-up of the number of years and months <sup>according to 19</sup> put up in which all the applicants were not eligible by taking 1-7-2000 to be cut off date and have annexed as Annexure CA-I.

4. Therefore, the short point for consideration before us is as to whether the respondents could take ~~a~~ cut off date to be 1-7-2000 for <sup>computing of</sup> completing the eligibility of applicants or the same had to be the last date of applications to be received as per the notification dated 3-11-2001.

5. We have heard both the counsels and perused the pleadings on record.

6. The question as stipulated above need not hold us too long as the point raised for hearing is already discussed, adjudicated and settled by Hon'ble Supreme Court in the cases as mentioned above. In the case of

Mills Douglass Michael and others, the Hon'ble Supreme Court had referred to the case of Rekha Chaturvedi vs University of Rajasthan reported in 1993 Supp (3)SCC 168 wherein it was held that in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for scrutiny of the qualifications will be the last date for making the applications. Therefore, in Mills Douglass case, also, the Hon'ble Supreme Court held as under.-

In view of our conclusion that the cut off date 1-8-1992 has no application to the acquisition to deemed qualification of a graduate for Ex-Service man on completion of 15 years of service in the Armed forces and applying the ration in Rekha Chaturvedi's case, it must be held that a candidate who is not a graduate but is an Ex-servicemen must complete 15 years of service by the last date of receipt of application i.e., 7-9-1992 for being eligible to be considered for the recruitment to the post of Inspector of Central Excise and Income Tax etc. 1992. Since, admittedly, the appellant in the first case completed 15 years of service by 31-8-1992 and the last date of receipt of application was 7-9-1992 he was fully eligible for being the considered and, therefore, the order of cancellation of his selection is wholly illegal. Accordingly, the impugned order of the Tribunal at Madras Bench is set aside and OA NO. 658/94 stands Allowed."

7. A perusal of the judgement clearly shows that the law is well-settled by now, that in the absence of any cut off date mentioned in the notification, the cut off date has to be taken to be the last date of submission of application. Therefore, applying the ratio of the Supreme Court Judgement as referred to above in the present case before us, it would be seen firstly that there was no cut off date mentioned in the notification dated 3-11-2000 and the last date for submission of application was 3-1-2000



Therefore, the eligibility of the applicant had to be seen with reference to date 3-1-2002. Secondly, it is also seen that under the recruitment rules all that is required to be eligible for consideration is 5 years of regular service as a phone Mechanics. Therefore, if the cut off date is taken to be 3-1-2002 as per the law laid down by Hon'ble Supreme Court, naturally all the applicants would be eligible to be considered for appearing in the Departmental examination. Admittedly, they were all allowed to appear in the said test and have also passed the said examination. We do not see how the respondents can apply the cut off date of 1st July 2000 in the present state of affairs when they never mentioned about that circular in the notification dated 3-11-2000. Moreover, this is only an administrative order not having any statutory force.

8. Apart from it we have also seen in the letter dated 23/30 July, 2001 no reasons were given at all as to why the applicants were not to be sent for training. On the contrary, it was only said that so long their service particulars are not verified till such time, their results shall be considered to be provisional and they should not be sent for training. It is, only in the counter, that respondents have come out for the 1st time with the statement that the cut off date would be 1-7-2000. In view of the law laid down by Hon'ble Supreme Court the cut off date has to be taken as last date for submitting the applications. The order dated 23/30 July, 2001, is accordingly quashed and set aside. The respondents are directed to treat applicant's results in the Departmental examination as final and depute them for the training in the next batch likely to be sent by the respondents, and if they successfully complete the training. They should be considered for

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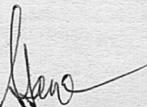
promotion as Senior TOA in accordance with law on the availability of vacancy and as per their placement.

9. With the above directions, the O.A is partly allowed and finally disposed of.

No order as to costs.



Member-J



Member-A

/madhu/