

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

Reinstated  
Copy  
July

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O.A. No. 135 OF 1987  
T.A. No.

DATE OF DECISION 19-7-1991.

Prakashkumar P. Pandya, Petitioner

Mr. K.K. Shah, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. P.S. Chapaneri for Mr. P.M. Raval, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

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 ? No
4. Whether it needs to be circulated to other Benches of the Tribunal. No

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Prakashkumar P. Pandya,  
Adult, Occ: unemployed,  
Residing at Bhrahman Falia,  
Post Sevasi,  
Tal. & Dist. Baroda.

.... Applicant.

(Advocate: Mr. K.K. Shah)

Versus.

1. Union of India  
(Notice to be served through  
The Director General, Sanchar  
Bhavan, New Delhi - 1.)
2. The General Manager,  
Telecommunication Circle,  
Ashram Road, Ahmedabad - 9.
3. The Divisional Engineer Telegraphs  
Baroda Division,  
Baroda - 390 001. .... Respondents.

(Advocate: Mr.P.S.Chapaneri for  
Mr. P.M. Raval)

J U D G M E N T

O.A.No. 135 OF 1987

Date: 19-7-1991.

Per: Hon'ble Mr.M.M.Singh, Administrative Member.

The applicant had passed the matriculation examination in 1979. He passed the technical course of wireman apprentice from Paresh Technical Institute, Baroda, in 1980 which the applicant says is recognised by the State Government of Gujarat. Possessing these qualifications, the applicant joined the course for Electric Service Technician conducted by Xavier Technical Institute and passed it in 1983. This course is recognized by the State of Gujarat Technical Examination Board. Then, pursuant to advertisement dated 17-9-1983 in Lok Satta daily, he applied for the post of technician in Gujarat Telecommunication Circle, Ahmedabad. He was selected and was given a letter dated 15.3.1984 to the effect that he should report to the Assistant Engineer, I/C Circle, Telecom Training M.M.

Centre, New Mental Hospital Building, Asarwa, Ahmedabad and that his training would start from 16-3-1984. He underwent the required training successfully. He had figured at Sr.No. 20 of the list of successful candidates. After thus, he was asked to report at Savli exchange for practical training. He completed the practical training successfully. Then he was asked to wait for further posting orders at his residential address. However, after more than one year on 15.7.1986 he received a letter from the Divisional Engineer, Telegraphs, Baroda Division, respondent No.3, to the effect that the department did not find him suitable and therefore his name has been removed from select list of technicians. The applicant approached the respondent No.3 against the order and gave legal notice dated 11.1.1986. As the said notice did not serve purpose, the applicant filed the present application under section 19 of the Administrative Tribunals Act, 1985 for redressal of his grievance against communication dated 14.7.1986 (Exh. 'F') with prayer that the same should be quashed and set aside and the respondents be directed to appoint the applicant with retrospective effect as a technician with full backwages and other consequential benefits.

2. The reply of the respondents is to the effect that doubt had arisen regarding the eligibility of the applicant on grounds of his qualification. His case was therefore referred to the General Manager for clarification. The General Manager clarified that the applicant's qualification was not included in the recruitment rules framed by the Director General, Telecommunication, New Delhi, by his letter dated 1.10.1985 (Ann. B). The name of the applicant was A. M. D.

therefore removed from selection list of technicians and he was informed of the same by the impugned letter dated 15.7.1986. It is also alleged that the applicant has not passed SSC with Maths and Science which is as required by the rules due to which reason also applicant is not entitled to posting. It is also averred that the Government of Gujarat has recognised Paresh Technical Institute Baroda. But that qualification and certificate duly not entitle him for service in Government of India department. It is further averred that no appointment order was issued in favour of the applicant and therefore none of the fundamental rights under Article 14 & 16 are violated and the applicant therefore had no legal remedy. Reply also shows that the presumption of violation of principles of promissory estoppel does not arise as the applicant was never given a posting.

3. We have heard learned counsel for both the parties and perused the record.

4. Respondents' counsel relied on judgment of Ahmedabad Bench in O.A. 321/86, 127/86 & 148/87 and applicant's counsel on judgment of Gujarat High Court in Special Civil Application No. 348/83. The facts in O.A. 321/86 seen from the judgment pertain to recruitment for the post of technician where the applicants had been given the training as in the case before us but were not given the appointments. The application failed on the grounds that the applicants did not possess required qualifications and promissory estoppel did not operate because no appointment order was given to the applicants. In that case, advertisement specifying qualifications did not appear to be on record whereas such an advertisement is on record in the case before us and has important place

in our analysis as would be seen later. O.A. 127/87 relates to a case of disciplinary action under CCS(CCA) Rules and has no relevance to the case before us. O.A. 148/87 has the subject of validity of notice of termination of service to a casual labourer. This has also no relevance to the case before us. The judgment of Gujarat High Court in Special Civil Application No. 348/83 is on the subject of recruitment of a candidate who was underage and who was, after four and half years of service, terminated. The High Court took into consideration the age of the applicant on the day the question came up before the court for consideration and as the applicant was of age than, allowed the application. This Single Judge bench judgment relied upon the judgment in Letters Patent Appeal No. 91/80 in Special Civil Application No. 555/77. The facts of the case of this LPA were that three years experience was one of the qualifications whereas the applicant had only  $1\frac{1}{2}$  years experience on the date of his appointment. The division bench relied on ratio decided in Supreme Court decision in Ram Swaroop V/s. State of Haryana & Ors. (1979) 1 SCC 168, that the appointment will be automatically regularised on the candidate acquiring requisite experience on the post after his appointment. The matter before us requires weighing up of academic qualifications of the applicant and those mentioned in the rules. The judgment in Bhagwatiprasad V/s. Delhi State Mineral Development Corporation, (1990) 1 SCC 361, <sup>also</sup> relied upon by the applicant is on the subject of relevance of educational qualification of daily rated workers serving for long and the ratio of the judgment that though minimum educational qualification is undoubtedly a factor to be reckoned with at the time of initial entry into service, once a person is allowed

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to enter service and has worked for a suitable length of time it would be hard and harsh to deny him confirmation in his post on ground that he lacks the prescribed educational qualifications for entry into service.

5. The advertisement in the Gujarati Daily 'Lok Satta' mentions Matriculation or equivalent educational qualification after which electrical or mechanical or radio telecommunications or electronics engineering diploma from any technical institute recognised by the Central Government or diploma from Board of Technical Education of State as the educational qualification. We may point out here that English translation of this advertisement has not been submitted and we have rendered here into English only its relevant portion pertaining to educational qualification.

6. According to the respondents' reply the applicant was selected with qualification of electrical servicing technician whereas the General Manager, Telecom, Ahmedabad held that electrical servicing is not included in recruitment rules framed by Director General Telecommunication under his letter dated 1.10.1985. We are shown correspondence between various offices of the respondents to the effect that the trade of electrical servicing is not included in the recruitment rules. But the respondents have not produced the recruitment rules which alone would be the primary evidence on the subject. Further, the reply does not deny that the academic qualifications included in the advertisement were <sup>not</sup> strictly in accordance with the recruitment rules said to exist but not produced.

7. With recruitment rules not shown by the respondents and with the respondents not denying the

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correctness of the educational qualifications incorporated in the advertisement, the latter have to be taken as certainly correctly reflecting the educational qualifications figuring in the recruitment rules. Thus the dispute gets reduced to the question whether the applicant answers the academic qualifications included in the advertisement. There is no denial in the respondents' reply that the applicant does not possess qualifications according to the advertisement. On the contrary, there is an implied admission that the applicant was selected because he possessed the qualifications mentioned in the advertisement. That being the case and the applicant having satisfactorily gone through the training course and having established his utility for the respondent department, we are of the view that it is not open to the respondents to deny him posting.

8. The application thus has merits and has to be allowed and order dated 15.7.1986 has to be quashed and set aside. We hereby do so/<sup>with</sup> following directions to respondent No.3 :

(i) Respondent No.3 is directed to give a posting to the applicant within one month of the service of a copy of this order to him on the basis that the letter No.E.21/Tech/Rectt/86-87/154 dated 15.7.86 of his office was not issued.

(ii) Respondent No.3 is directed to treat the date of posting of the candidate next junior to the applicant in the merit list as the due date of posting of the applicant. The period between due date of posting of the applicant and actual date of the posting of the

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applicant shall be treated as period spent on duty for all service purposes including seniority in service and payment of backwages.

(iii) The amount of backwages shall be disbursed to the applicant within three months of the date of his joining posting.

9. There are no orders as to costs.

*R.C.B.*  
(R.C. Bhatt)

Judicial Member

*M.M. Singh*  
19/7/91  
(M.M. Singh)  
Admn. Member