

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION NO. 529 OF 2003**  
Cuttack this the 29<sup>th</sup> day of October/2003

R.N.Maharana & Others ... **Applicants**

**VERSUS**

Union of India & Others ... **Respondents**

**FOR INSTRUCTIONS**

1. Whether it be referred to reporters or not ? **Yes**
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? **Yes**

*Mohanty*  
28/10/03  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

*Sonu*  
( R.N. SON )  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 529 OF 2003  
Cuttack this the 28<sup>th</sup> day of Oct./2003

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)  
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1. Rathunath Maharana, aged about 51 years, S/o. Late Natabara Maharana at present working as Telecom Technical Assistant Office of S.D.E., M.D.F., Telephone Bhawan, Bhubaneswar, Dist-Khurda
2. Golak Behari Sethi, aged about 49 years, S/o. Dhadi Sethi, at present working as Telecom Technical Assistant, Office of S.D.E., (E-16-B) Exchange, Telephone Bhawan, Bajrakabati Road, At/PO/Dist-Cuttack
3. Balaram Das, aged about 53 years, Son of Purnachandra Das, at present working as Transmission Assistant, Office of the S.D.O., Telephone Paradeep, At-Telephone Exchange, Tritel
4. Gayadhar Tarel, aged about 49 years, Son of late Manguli Tarei, at present working as Telephone Technical Assistant, Paradeep Telephone Exchange, Office of the S.D.E. (Phone) (Indeer) At/PO-Paradeep, Dist-Jagatsinghpur
5. Raghunath Behera, aged about 52 years, Son of late Dharanidhar Behera, at present working as Telecom Technical Assistant (TTA), Office of DBT, M.W. Project, Kalyani Mandap, Mayapalli, Bhubaneswar-1
6. Kartika Chandra Das, aged about 54 years, S/o. Late Bharat Chandra Das, at present working as Telecom Technical Assistant, Office of the S.D.E., RULE 10 B Bhubaneswar, Dist-Khurda

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Applicants

By the Advocates

M/s. K.C. Kanungo  
S. Behera

VERSUS

1. Director General of Telecommunication, Sanchar Bhawan, New Delhi-1
2. Chief General Manager, Telecommunication, Orissa Circle, Jawaharlal Nehru Marg, Bhubaneswar, Dist-Khurda

3. Pramed Kumar Behera, T.T.A., Teleprinter Maintenance, Central Telegraph Office, (CTO) Rourkela, Dist. Sundargarh, Orissa
4. Biswanath Behera, T.T.A., Telephone Exchange, Salipur, Dist. Cuttack
5. Gedabarish Ghadei, T.T.A., Teleprinter Telex Maintenance, Telephone Bhawan, Bajrakabati Road, Cuttack Town, Dist. Cuttack
6. S.N. Sethy, TTA, Mancheswar R.L.U., Telephone Exchange, Mancheswar, Bhubaneswar, Dist. Khurda
7. Fakir Mehan Behera, T.T.A., Telephone Exchange, Jatni, Dist. Khurda
8. G.C. Behera, T.T.A., Office of S.D.O. (Telephone) Puri Town, Dist. Puri
9. Jayram Behera, TTA, Circle Telecom Training Centre, Vanivihar, Bhubaneswar, Dist. Khurda
10. Karunakar Sahoo, TTA, Telephone Exchange Bhawan, Bhawanipatna, Dist. Kalahandi, Orissa
11. H.D. Sarkar, TTA, Power Room, Telephone Bhawan, Berhampur, Dist. Ganjam, Orissa

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Respondents

By the Advocates

Mr. A.K. Rose, S.S.C.

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O R D E R

MR. B.N. SOM, VICE CHAIRMAN: This Original Application, under Section 19 of the Administrative Tribunals Act, 1985, has been filed by Shri Raghunath Maharana and five others being aggrieved by notification dated 4.9.2000 vide Annexure-3 which does not contain their names amongst the list of successful candidates. They have further submitted that in the light of 82nd Amendment Act, 2000 (notified on 8.9.2000) vide Annexure-4 and subsequent Government Memorandum dated 3.10.2000 (Annexure-5) thereon, they should have been declared qualified. They have, therefore, assailed Annexure-3 as bad in law, hurting the provisions of Article 14 of the Constitution.

2. The facts of the case are that the applicants,

while working under Respondent No.2 as Telecom Technical Assistants and Transmission Assistants (in short T.T.As and T.As) had appeared in the qualifying screening test for promotion to the post of Junier Telecom Officer (in short J.T.Os) under 35% quota. The said test was held on 29.4.2000, the results of which were announced on 4.9.2000 under Annexure-3). However, the names of the applicants did not figure in the list of successful candidates on the ground that their performance in that test was evaluated in the same analogy as applicable to the candidates belonging to general category albeit the vacancies for which the examination was held mostly arose from pre 1997 period. As per the scheme of the examination, the qualifying mark is 40% in respect of all categories of candidates because of withdrawal of concession for the Scheduled Caste and Scheduled Tribe candidates prior to passing of 82nd Amendment Act of 2000 on 8.9.2000. The applicants have submitted that the results of the qualifying test were announced in piece meal, the first result and the secend result being on 4.9.2000 and 29.11.2000, respectively. Therefore, the selection process for appointment to the post of J.T.O. was continuing atleast till 29.11.2000, by which time the Government had restored concession for SC/ST candidates in the matter of promotion/Departmental Exam. and as such, the Respondents-Department should have, accordingly, revised the select list by giving concession to the SC/ST candidates, because, all the applicants in

the instant case, had scored although less than 40% marks, but more than 33% marks in that Examination and as per the scheme of screening test, SC/ST candidates are required to secure 33% marks for qualifying the test. The applicants have also referred to the decision of Hyderabad Bench of this Tribunal rendered in Original Application No.32/2000, wherein the Tribunal held that the judgment in the case of Smt.Nutan Arvind vs. U.O.I. (reported in 1996 (1) SLR 774) having been pronounced by the Apex Court on 1.10.1996, the vacancies which arose for the year 1995 upto 30.9.1996 have to be filled in accordance with the recruitment rules which provided relaxation of marks for the reserved candidates.

3. Respondents-Department have contested the prayer of the applicants in this Original Application, by filing their counter. They have submitted that the applicants are not entitled to any of the reliefs prayed for on the following grounds.

Their main argument is that the J.T.O. Examination having been held on 29.4.2000 and the results published on 4.9.2000 before the notification of 82nd Amendment Act vide Annexure-4 dated 8.9.2000 as well as Office Memorandum dated 3.10.2000 (Annexure-5) and the said amendment to the Constitution being prospective in nature, the restoration of reservation benefit in the matter of promotion cannot be made applicable retrospectively. In the circumstances as the selection was made prior to issuance of Office Memorandum dated 3.10.2000, the benefit of concession would be of no avail to the applicants.

Respondents-Department have further submitted that in Para-4 of the Office Memorandum dated 3.10.2000 makes it amply clear that the benefit of concession in respect of SC/ST shall take effect in case of selection to be made on or after the date of issue of that Office Memorandum and in the instant case the qualifying test and the announcement of the results having been completed before the date of issuance of Office Memorandum, i.e., 3.10.2000, the applicants cannot derive any benefit out of this Office Memorandum so far as the results in respect of the examination held on 29.4.2000 are concerned. They have also submitted that as regards the 1st screening test held in September, 1995, the same was governed under the prevalent rules at that time which provided concession for SC/ST. On the other hand, the 2nd screening test dated 29.4.2000 was held on the basis of terms and conditions contained in Office Memorandum dated 22.7.1997, under which no concession for SC/ST candidates was provided for the purpose of selection. On these grounds, the Respondents-Department have prayed for dismissal of this Original Application being devoid of merit.

4. We have heard Shri K.C. Kanunge, the learned counsel for the applicants and Shri A.K. Rose, learned Senior Standing Counsel for the Respondents-Department. We have also perused the records placed before us.

5. In the Original Application the applicants have raised two issues : firstly that by holding the 2nd screening test on 29.4.2000, the Respondents-Department were virtually filling up the vacancies which were of

mostly of pre 1997 and therefore, the rules governing the examination as prevalent in pre 1997 period should have been followed by the Respondents-Department. Had they done so, the SC/ST candidates could have been entitled to the lower standard of qualifying marks, i.e., introduced again 33%, which was in vogue before 1997 and/after 3.10.2000. The 2nd issue that the applicants have raised is that so long as the selection process is not over the Respondents Department are bound to apply the reservation instructions issued by the Government in that regard. In support of their 2nd issue, the applicants have submitted that the examination was held on 29.4.2000, but the results were announced in two segments, the 1st and 2nd segments being on 4.9.2000 and 29.11.2000, respectively. When the 1st segment of the result was announced on 4.9.2000, there was no order/instruction for applying concession in respect of SC/ST candidates in the matter of promotion. But when the 2nd segment of the result was announced on 29.11.2000, by that time, the Government had already carried out 82nd Amendment to the Constitution and as a result thereof issued executive instructions restoring concession in the matters of promotion in so far as candidates belonging to SC/ST are concerned. Therefore, while issuing the 2nd segment of the result/selection list, the Respondents-Department ought to have applied the lower qualifying standard of evaluation in respect of SC/ST and thereby declared the applicants successful.

6. We have given our anxious consideration advanced at the Bar. With regard to the 1st issue, the Respondents

Department in their additional counter have controverted this proposition being devoid of merit. We also find that this issue as raised by the learned counsel for the applicants holds no water inasmuch as the Departmental Examination is not held with a view to preparing year-wise merit/select list of qualified candidates. In the circumstances the question of applying the relevant rules recruitment rules as was applied in respect of the departmental examination held in the year 1995 does not arise and therefore, the 1st issue as raised by the applicants is to be set aside.

7. With regard to 2nd issue as to whether for the purpose of appointment on promotion to the post of JTO the date of publication of results of the screening test is to be held as the deemed date of finalization of selection for appointment to these posts or not, this question <sup>already</sup> has already been answered by the Karnataka High Court in Writ Petition Nos. 19694 & 19725-19727 of 2001 and 22468-22471 of 2001 (S.CAT) (Union of India & Ors. vs. M.S.Hunashikatti & ors. etc.). While disposing of these Writ Petitions, their Lordships have held that "selection Process" is completed when the results of the qualifying tests are declared. They have further observed 'Whether' selection process is complete or not is to be decided with reference to recruitment rules and not with reference to any training given to the candidates who are selected/promoted as JTOs." Adding to this, they have held that the Government order dated 3.10.2000 will not apply to those who took screening test prior to that date and

who failed as per result declared and notified prior to 3.10.2000. In the instant case, it has been clarified by the Respondents-Department that the results of the screening test held on 29.4.2000 were announced on 4.9.2000. Viewed from this angle, we are bound by the decision rendered by the Karnataka High Court in the aforementioned Writ Petitions and therefore, the 2nd issue raised by the applicants cannot be acceded to.

8. As regards the results announced in the 2nd segment on 29.11.2000, which in the instant case is the matter complained of, the Respondents-Department in their <sup>stating</sup> counter have thrown light on this point by the circumstances under which 2nd part of the result was ~~so~~ announced. The genesis of the matter is that some of the candidates, whose results were unpalatable applied for re-totalling and verification of the marks on payment of requisite fees and accordingly re-totalling and verification of marks in answer books were undertaken as per the rules of examination, and as on verification/re-totalling of marks the candidates were actually found to have secured qualifying marks, the results of two such candidates were announced on 29.11.2000. In other words, what the Respondents-Department have pointed out is that this type of verification/re-totalling of marks and/or supplementary actions are always followed publication of the results of the examination. This is also a standing practice followed by the Examination Boards, Universities, Recruitment Agencies etc. Thus, we are of the view that this stand point of the Respondents-Department being

in consonance with law and logic and in conformity with the practice followed by various Recruiting Agencies and/or Examining Bodies is invulnerable and therefore, we are content to hold that the selection process for promotion to the post of J.T.O.s for the year 2000 was complete in all respects by the Respondents-Department on 4.9.2000, i.e., before the 82nd Amendment to the Constitution was notified and/or the Government's order dated 3.10.2000 in pursuance to the said amendment was issued restoring concession in the matter of examination for promotion to SC/ST candidates.

9. Having answered both the issues raised by the applicants in the negative, we have no option but to reject this Original Application and accordingly we reject the same leaving the parties to bear their own costs.

  
28/10/03  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
(B.N. SOM)  
VICE-CHAIRMAN

Bjy/