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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J_O_D_H_P_U_R.

Date of Order : 31.8.2000.

O.A. No. 519/95

D.N. Lalwani, S/O Shri S.R. Lalwani, aged 35 years,
R/O L-57, Sector 6, Hiram Nagri, Udaipur, Telephone
Inspector, Office of Telecom Distt. Manager, Udaipur.

... Applicant

vs.

1. Union of India through the Secretary to the Govt.
Department of Communication (Tele. Com. New Delhi.)
2. Director General, Telecommunication, New Delhi.
3. Chief General Manager, Tele Com, Rajas-than, Jaipur.
4. Assistant Director (Rectt.) Office of Chief General
Manager, Telecom, Rajasthan, Jaipur.

... Respondents

Mr. Vijay Mehta, Counsel for the Applicant.

Mr. S.K. Vyas, Counsel for the Respondents.

CORAM :

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

O_R_D_E_R

(PER HON'BLE MR. GOPAL SINGH)

In this application under Section 19 of the
Administrative Tribunals Act, 1985, applicant D.N. Lalwani,
has prayed for setting aside impugned order dated 30.10.95
(Annexure A/1) and order dated 18.4.94 (Annexure A/2) and
for a direction to the respondents to restrain from effecting
promotions from A & C categories before holding competitive
examination for 'B' category against 20% quota and further
to hold competitive examination against 20% quota.

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2. Junior Engineers(Recruitment) Rules, 1980 as circulated by Ministry of Communication, Department of Telecom vide letter dated 15.6.90 (Annexure A/3) provide following method of recruitment for the post of Junior Telecom Officer (JTO) :

"(i) 65% by direct recruitment through a competitive examination in accordance with the information issued by the Department on this behalf.

(ii) 35% by promotions of departmental candidates through competitive/qualifying examination as indicated under column 12 of the schedule.

1.35% recruitment by promotion of departmental candidates referred to in item (2) of column 11 will be regulated as under :

"(i) 15% by promotion of departmental candidates through a competitive examination;

(ii) 10% by promotion of Transmission Assistants, Telephone Inspectors, Auto Exchange Assts. & Wireless Operators through a competitive examination and

(iii) 10% by promotion of Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators on seniority-cum-fitness basis through a separate qualifying test, the inter se-seniority of the officials being decided on the basis of length of service in the grade.

2. Against 15% quota of vacancies referred to in Serial No.(i) above, the following Group 'C' employees in the department whose scale of pay is less than that of Junior Telecom Officer, shall be eligible :

(i) Those borne on regular establishment and working in Telecom Engineering Branch of the Department including those working in the office of the Chief General Manager, Telecom Circles/Districts other than Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators,

Group 'C' employees of the Telegraph Traffic Branch of the Department, and
Plumbers/Sanitary Inspectors/Conservancy Inspector

(ii) Those working in Telecom Factory, Other than those borne on industrial establishments.

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(iii) Those borne on the regular establishment and working as Accounts Clerks in the Accounts wing under the Telecommunication Circles.

(iv) Those borne on the regular establishment and working as Works Clerks, Grade I and II, work Assistants, Draftman, Junior Architects and Electricians in the Civil Wing under Telecom Circles.

Provided that : (a) they have passed High School/ Matric Examination or its equivalent.

(b) they have put in atleast five years of continuous satisfactory service in one or more eligible cadres. Those employees who hold the qualifications as prescribed in column 8 of the schedule will be eligible to appear in the competitive examination after three years of continuous satisfactory service in one or more eligible cadres. The length of service for the purpose of eligibility will be determined on the crucial date referred to in Note under Col.6 of the Schedule."

3. Further the Department issued the percentage quota for promotion to the post of JTO for the years 1990, 1991, 1992, 1993 & 1994 as under vide their letter dated 02.12.91 (Annexure A/4).

"(3) (b) Percentage of departmental quota for the cadres of PI/TA/WO/AEA for the recruitment to the cadre of JTO will be as follows for the 5(five) recruitment years 1990, 1991, 1992, 1993 & 1994.

(i) Existing quota increased from 10% to 20% through competitive examination.

(ii) Existing quota increased from 10% to 15% through qualifying examination.

(iii) For either Group 'C' employees who are eligible to compete in departmental examination for JTO as per provision in the existing recruitment rules for JTOs, the 15% quota will remain unchanged."

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4. With the above modifications percentage promotion quota works out as under :

- (i) 15% by promotion of departmental candidate (High School + 5 years of service) through a competitive examination.
- (ii) 20% by promotion of competitive examination.
- (iii) 15 % by promotion of qualifying test.

5. The respondent-department further changed the mode of promotion to the post of JTO vide their letter dated 18.4.1994, which reads as under :

"DOT Letter No.27-2/94-TE-II dated 18.4.1994
Promotion of PIs/AEAs/WCs/TAs to the cadre of JTOs.

A Committee was set up to examine the various issues relating to the Scheme of Cadre Restructuring / Biennial Cadre Review. The report has been considered by the Telecom Commission and am directed to inform that 35% quota earmarked for PIs/AEAs/WOs/TAs in recruitment of JTOs will be filled as under :

- (a) The PIs/AEAs/WOs/TAs who hold qualifications prescribed for outsiders for recruitment to the Cadre of JTOs and have completed five years of regular service in the cadre of PIs/AEAs/WOs/TAs would be treated as Walk-in group and would be sent for JTO training.
- (b) The remaining vacancies will be filled by the PIs/AEAs/WOs/TAs through a qualifying examination irrespective of their length of service."

6. The respondent-department conducted a screening test in replacement of Departmental Qualifying Examination for promotion to the cadre of JTO on 25.1.1995 for the recruitment year 1993 (Annexure A/7) and declared the result on 15.5.1995 (Annexure A/8). The applicant had also passed this test. Thereafter, the respondents vide letter dated 30.10.95 appointed some candidates for the Recruitment year 1993 as JTO in accordance with the instructions dated 18.4.1994 (Annexure A/2).

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7. The contention of the applicant is that while the respondents had conducted screening test in lieu of Departmental Qualifying Examination (15%), they have appointed the candidates against 35% quota (15% qualifying + 20% Competitive Examination quota), on the basis of this screening test, which is not in accordance with the rules. Further, he has challenged the respondents' letter dated 18.4.1994, which provides different method of promotion to the post of JTO as it does not form part of the rules on the subject. And hence the prayer.

8. In the counter, the respondents have contested the application on the ground that screening test was conducted in accordance with the guidelines issued vide letter dated 18.4.1994 (Annexure A/2) and all the candidates eligible for departmental qualifying examination (15%), and competitive examination (20%) had appeared in the screening test and had passed the same and he will be promoted to the post of JTO on his turn.

9. We have heard the learned Counsel for the parties, and perused the records of the case carefully.

10. The respondents have also contested the application on the ground that the applicant has not approached the Tribunal with clean hands inasmuch as he has filed another application No. 472/95 praying for the same relief. This was O.A. decided on 10.11.1995. We have examined O.A. No. 472/95 and Tribunal's order thereon dated 10.11.1995. This application has been filed three days after the earlier O.A. was decided. Moreover, the applicant had challenged in that O.A. orders dated 07.6.95 and 2/3.12.95, whereby the respondent had proposed examination for category 'A' & 'C' and applican-

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had prayed that examination under category 'B' should also be held. In the present application, the applicant has challenged order dated 18.4.'94 (Annexure A/2) and consequential order dated 30.10.'95 (Annexure A/1) and has prayed for quashing these orders and for a direction to the respondents to restrain from effecting promotions from 'A' & 'C' categories before holding competitive examination for 'B' category. Thus, it is seen that the present application was filed after the earlier O.A. had been decided. Moreover, orders impugned in the present O.A. are different than the orders impugned in the earlier O.A. We are, therefore, of the view that the contention of the respondents in this regard is not tenable and, therefore, rejected.

11. Undoubtedly, the screening test was held in lieu of departmental qualifying examination as would be seen from Annexure A/7, and the departmental qualifying examination carries 15% quota. Thus, the contention of the respondents that screening was held for 35% quota is untenable. It is ~~different~~ ^{possible} that the candidates who appeared in the screening test were eligible for both types of examination (qualifying as well as competitive). ~~but syllabii~~ for both type of examination is different and the objective of both types of examinations are different as is clear by the nomenclature itself-qualifying and competitive. Further, the screening test was held for the recruitment year 1993 and only 24 candidates from amongst 157 candidates who had passed the screening test were appointed as JTO for the Recruitment Year, 1993 vide Annexure A/1. It is not clear as to why such a long list of qualified candidate (157) was declared (Annex.A/8) when only 24 candidates were adequate for the recruitment

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year 1993. The argument of the respondents that they will be appointed in subsequent years does not carry conviction as the department is required to conduct selection every year depending upon the number of vacancies and method of recruitment prevalent for that year.

12. The respondents have heavily relied on letter dated 18.4.94 (Annexure A/2) in defending their action. This letter has completely changed the method of promotion to the post of JTO. We are of the firm view that unless this letter forms part the Rules, it cannot be acted upon. Further, a reading of this letter gives the impression that the method of promotion outlined therein is for implementation of cadre restructuring scheme/Biannual cadre Review scheme. In that view of the matter, the method outlined in letter dated 18.4.94 should not have been applied to normal promotions. Further, subsequent guidelines of letter dated 18.4.94 cannot be applied to promotion for the year 1993 as against the rules holding the field.

13. In the light of above discussion, we conclude that the screening test was held only in lieu of Departmental qualifying Examination for 15% quota. The respondents will have to conduct competitive examination for 20% quota. Letter dated 18.4.94 cannot be applied to till it forms part of the Rules. Thus, the application deserves to be allowed.

14. The O.A. is accordingly allowed. Order dated 30.10.95 (Annexure A/1) is quashed. Letter dated 18.4.94 is declared non-enforceable. The respondents are directed to conduct competitive examination for 20% quota for the year 1993, as per the Rules.

15. Parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH
Adm. Member

B.S. RAIKOTE
(B.S. RAIKOTE
Vice Chairman

Part II and III destroyed
in my presence on 9/10/07
under the supervision of
Section Officer (as per
order dated 10/14/06)

Manu
Section Officer (Records)