

CAGIR
NO 405/99
1/11

Date of Order : 05.09.2001

1. O.A. No. 357/99

Gajadhar Sharma son of Shri Prahalad Rai Sharma aged about 51 years, resident of Qtr. No. B-11, P & T Colony, Shastrinagar, Jodhpur, at present employed on the Post of Phone Inspector, in the office of General Manager Telecom District, Kamla Nehru Nagar Jodhpur.

2. O.A. No. 405/99

Paras Ram Jalani son of Shri Ghasi Ram Jalani aged about 52 years, resident of Plot No. 7 Sector 7, New Power House Road, Jodhpur, at present employed on the post of Junior Telecom Officer, in the office of SDE Manji-ka-Hatha, Paota, Jodhpur.

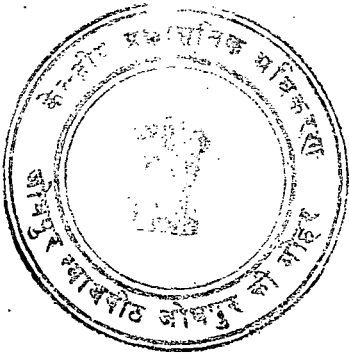
3. O.A. No. 29/2000

Ram Sukh Kaswa son of Shri Ganga Ram Kaswa aged about 56 years, resident of Qtr. No. 21/58, Chopasni Housing Board, Jodhpur, at present employed on the post of Transmission Assistant (earlier known as Repeater Station Assistant), in the office of SDE I/C Branch CTTC Telephone Exchange, Jodhpur.

... Applicants.

V E R S U S

1. Union of India through Secretary to Govt. of India, Min. of Communication, Department of Telecom, Dak Bhawan, Sansad Marg, New Delhi.
2. Director General, Department of Telecom, Government of India, Min. of Communication, Dak Bhawan, Sansad Marg, New Delhi.
3. Chief General Manager Telecom, Rajasthan Telecom Circle, Jaipur.
4. General Manager Telecom District, Jodhpur, Kamla Nehru Nagar,



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1

4. O.A. No. 30/2000

Avinash Kumar Tinna son of Shri Mukand Lal Tinna, aged about 44 years, resident of 284 Vinoba Basti, Sriganganagar, at present employed on the post of Repeater Station Assistant (presently designated as Transmission Assistant), in the office of DE. TAX, Sriganganagar.

5. O.A. No. 211/2000

Dharampal Sharma son of Shri Mahaveer Prasad Sharma, aged about 44 years, resident of 69-N Block, Gaushala Road, Sriganganagar, at present employed on the post of Sr. TOA (G), in the office of GMTD, Sriganganagar.

... Applicants.

VERSUS

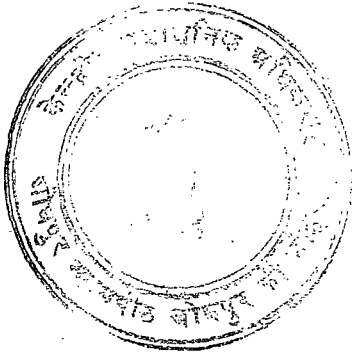
1. Union of India through Secretary to Govt. of India, Min. of Communication, Department of Telecom, Dak Bhawan, Sansad Marg, New Delhi.
2. Director General, Department of Telecom, Govt. of India, Min. of Communication, Dak Bhawan, Sansad Marg, New Delhi.
3. Chief General Manager Telecom, Rajasthan Telecom Circle, Jaipur.
4. General Manager Telecom District, Sriganganagar Shyam Nagar, Sriganganagar.

... Respondents.

Mr. J. K. Kaushik counsel for the applicants in all OAs.

Mr. K. S. Nahar, counsel for the respondents in OA Nos. 357/1999, 405/1999 & 29/2000.

Mr. Kuldeep Mathur, Adv., Brief holder for Mr. Ravi Bhansali, Counsel for the respondents in OA Nos. 30/2000 and 211/2000.



CORAM:

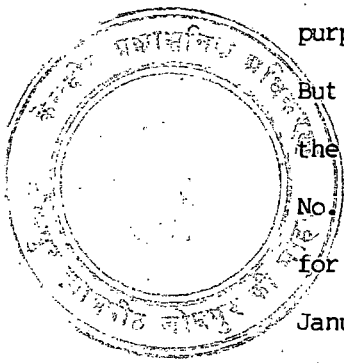
Hon'ble Mr. Justice, B.S. Raikote, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member

: ORDER :

(per Hon'ble Mr. Justice B.S. Raikote)

In all these cases, common questions of facts and law arise, and hence, we are disposing all of them by this common judgement. However, for the sake of convenience, we are referring to the facts mainly as given in OA No. 357/99.

2. All the applicants at the relevant point of time were working as Phone Inspectors. The promotional post from the post of Phone Inspector is that of Junior Engineer, which is subsequently redesignated as Junior Telecom Officer (hereinafter referred to as JTO). The applicants in all these cases had earlier passed the departmental competitive examination for the purpose of their promotion under 15% quota to the post of JTO. But they could not be promoted due to paucity of the vacancies at the relevant point of time. It appears that the applicant in OA No. 357/99 had passed the departmental competitive examination for recruitment to the cadre of Junior Engineer in the month of January, 1980, on the basis of the examination held in the month of August, 1979. Likewise, the applicant in OA No. 405/99 had passed such examination in the year 1974. In OA No. 29/2000, the applicant contended that he passed such competitive examination under 15% quota in the year 1974. The applicant in OA No.30/2000 stated that he had passed such competitive examination in the year 1982, and the applicant in OA No. 211/200 had passed such examination in the year 1984. It is not in dispute that all these persons though passed the necessary competitive



examination for the purpose of recruitment to the post of JTO, they could not be recommended for promotion due to lack of vacancy at that relevant point of time. Presumably, on representations made by such persons, the department issued a letter dated 30.06.95, which is filed alongwith the series of documents at Annexure A/6, by the applicant in OA No. 357/99, and the same reads as under:-

GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS
DEPARTMENT OF TELECOM
(NCG SECTION)

No. 5-5/93-NCG

Dated : 30/6/95.

To:

The all heads of Telecom Circles/
all heads of Telecom Distts./
heads of all other Administrative Offices/
CGM MTNL Bombay/New Delhi.

Sub: Filling up of JTO's posts regarding.

Sir,

Kindly refer to this office letter of even no. dated 24.8.94 in which it was decided to give relaxation for promotion of RS/Pis/AEAs/WOs etc. in the cadre of J T O in the vacancies against direct recruitment quota as one time measure. It is further decided that persons who qualified against 15% quota (all Gr.'C' cadres) and could not be absorbed as JTO due to want of vacancies may also be absorbed against direct recruitment quota after diverting direct recruitment quota vacancies to departmental competitive/qualifying quota.

It may be ensured that qualified candidates are absorbed according to the seniority maintained as per the orders on the subject.

It is requested that the action taken statement and no. of candidates who are still to be absorbed after the above process may be sent to this office urgently."

Yours faithfully,

Sd/-

(J.P. SRIVASTAVA)

Asstt. Dir. Gen. (STC) "



3. On the basis of the above letter, the Government of India

13

gave relaxation for promotion from the post of RSA/PIs/AEAs/WOs to the post of JTO under 15% quota (all Group 'C' cadres) to those who could not be absorbed as JTO due to want of vacancies, though they had qualified in the departmental competitive examination within 15% quota. But vide subsequent letter dated 25.07.95, the above letter dated 30.06.95 based on Government of India letter dated 24.08.94 has been cancelled vide Annexure R/4 (in OA No. 357/94). We think it appropriate to extract the said letter as under:-

GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS
DEPARTMENT OF TELECOM
(NCG SECTION)

No. 5-5/93-NCG

Dated : 25th July, 1995.

To:

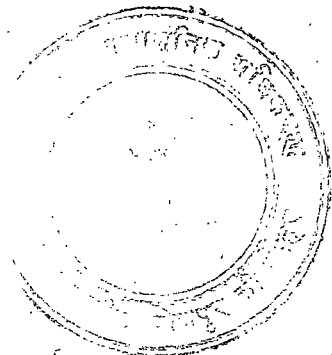
All Heads of Telecom Circles
All Heads of Telecom Distt.
Heads of all other Administrative Offices
Chief General Manager MTNL Bombay/New Delhi.

Sub: Filling up of JTOs posts - regarding.

The orders issued vide this office letter of even no. dated 30.06.95 allowing persons who qualified against 15% quota (all Grade 'C' cadres) to be absorbed against direct recruitment quota after diverting direct recruitment quota vacancies to departmental competitive / qualifying quota may be treated as cancelled and no action need be taken as per this orders.

sd/-
(V.K. Mahendra)
Director (ST-II)"

But thereafter, without noticing cancellation letter dated 25.07.95, on the representations received from the persons, who had passed earlier the required departmental competitive examination in the years 1974, 1980, 1982 and 1984 etc., for the purpose of promotion to the post of JTO, and who were not appointed due to lack of vacancies, a letter dated 17.05.99 was issued by the Assistant General Manager (Admn), Office of the



Chief GMT, Telecom Circle, Jaipur, stating as under:-

DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE CHIEF GMT RAJ. CIRCLE JAIPUR-8

Memo No. Rectt/XI-72/92/76
Dated at Jaipur, the 17 May, 1999.

In pursuance of D.O.T. New Delhi letter No.5-5/93-NCG dated 24.8/1994 & subsequent letter of even no. dated 30.06.95 (photo copies of the said letters are enclosed for ready reference) regarding filling up of JTOs posts to be given relaxation for promotion of RSAs/PIs/AEAs/WOs etc in the cadre of JTO who qualified against 15% quota (all group 'C' cadres) and could not be absorbed as JTO due to want of vacancies may also be absorbed against direct recruitment quota after diverting recruitment quota vacancies to departmental competitive/qualifying quota.

However, aforesaid instructions were one time measure, since now on receipts of some representation from various SSAs of concern officials. The competent authority is pleased to give special chance to those eligible RSAs/PIs/AEAs/WOs who had not applied earlier, to submit their representations along with supporting documents through their controlling SSA heads upto 15-6-1999.

On expiry of last date no such application will be entertained in this regard. It may be ensured that these instruction should be followed strictly & make wide publicity to all concerned.

Encl:- as above

(O.P. Pushkar)
Asstt. General Manager (Admn.)"

(emphasis supplied)



4. On the basis of the above circular, orders were issued either for directing such persons for promotion to the post of JTO or for sending for training etc. It appears that some persons were sent for traing also. But on subsequent information, the department came to know that it committed a mistake in issuing such directions as per Annexure A/6 dated 17.05.99 on the basis of Department of Telecommunications letter dated 24.8.94 and 30.06.95, without noticing that the said letters were cancelled vide letter Annexure R/4 dated 25.07.95 (= letter attached to Annexure A/1). Accordingly, they issued Annexure A/1 dated 02.12.99, by which the promotion/training of the applicants and other persons to the post of JTO, were

17

cancelled. It is this order and similar orders, the applicants have challenged in these applications, contending that the same is illegal and without jurisdiction.

5. The respondents by filing reply, have denied the case of the applicants, stating that the applicants were promoted / sent for training to the post of JTO under the mistake relying upon the letters of D.O.T. dated 24.08.84 and 30.06.95 without noticing the subsequent letter dated 25.07.95 vide Annexure R/4. Therefore, they have not committed any illegality in issuing the impugned orders.

6. Heard and perused the records.

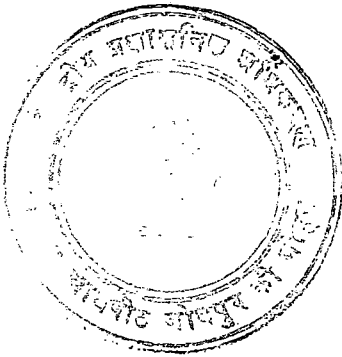
7. It is not in dispute that as per the history already stated above, that the letter dated 30.6.95 has been cancelled vide subsequent letter dated 25.07.95. Therefore, one time relaxation provided under the D.O.T. letter dated 30.06.95 for those persons who qualified the departmental competitive examination under 15% quota and could not be absorbed as JTO for want of vacancies, was no more available the moment the said scheme was cancelled vide letter dated 25.07.95 (Annexure R-4). Without noticing the letter dated 25.07.95, the applicants and some other persons have been promoted / sent for training under the mistake. Had the department noticed the said letter dated 25.07.95, it would not have made such a mistake. In the reply statement in OA No. 357/99, it is stated by the respondents, as under:-

"5. It is submitted that the selection of the applicant was considered as per instructions contained in DOT letter dated 30.6.95 vide which the scheme contained in DOT letter dated 24.08.94 has been extended for all Gr. 'C' cadres. But subsequently the scheme of the DOT letter mentioned above was cancelled vide DOT ND letter no. 5-5/93-NCG dated 25.07.95. As this office not received this letter till the



selection of the applicant was considered and copy of the letter dated 25.07.95 came into the notice of this office only when clarification received from DOT vide their letter No. 5/31/99/NCG dated 26.10.99 alongwith copy of the said letter dated 25.07.95, the selection of the applicant was considered as above."

8. From the above averment of the respondents, we are satisfied that the department has simply corrected the mistake, and it did not commit any illegality in issuing the impugned orders at Annexure A/1. Admittedly, the applicants passed the required departmental competitive examination in the years 1974, 1980, 1982 and 1984 etc. by placing their names in the panel. But the appointment could not be given to them due to lack of vacancies. The necessary consequence would be that those panels would automatically lapse after the period of one year from the respective dates of the panels. It is only by virtue of letter dated 30.06.95, a Scheme was thought of to provide appointment/promotion to the post of JTO by according relaxation, but the said letter was cancelled within a period of one month on 25.07.95. If that is so, there is no law nor there is any scheme for appointment/promotion of the applicants on the post of JTO on the basis of the panels prepared in the years 1974, 1980, 1982 and 1984. When without noticing the cancellation letter dated 25.07.95, promotions were given on the basis of the cancelled letter dated 30.06.95, the department corrected it by cancelling those promotion orders issued under mistake. Therefore, in these circumstances, the department has not committed any illegality, and as such, the impugned order vide Annexure A/1 cancelling the illegal promotions, does not call for any interference. In this view of the matter, we do not find any merit in the contentions of the applicants that there is a discrimination or violation of Articles 14 and 16 of the Constitution. When the mistake was simply corrected, the





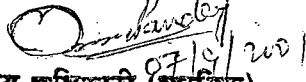
applicants were not entitled to any notice, since their sending for training was issued without noticing the said letter dated 25.07.95. Even the applicants also made mis-representation for consideration of their case on the basis of the letter dated 30.06.95 and suppressing the said letter dated 25.07.95. In this view of the matter, we do not find any merit in the contentions of the applicants raised in these applications. Accordingly, we pass the order as under:-

"The Original Application Nos. 357/99, 405/99, 29/2000, 30/2000 and 211/2000 are hereby dismissed. But in the circumstances, without costs."

sd/-
(A.P. NAGATH)
Adm. Member

sd/-
(JUSTICE B S RAIKOTE)
Vice Chairman

cvr.

प्रशासनिक सही प्रतिलिपि

अनुभाग अधिकारी (स्थायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर