

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATE OF DECISION: 21-4-1993

P R E S E N T

Hon'ble Shri N.Dharmadan, Judicial Member

&

Hon'ble Shri R.Rangarajan, Administrative Member

I. O.A. 423/93

Mr. K.Salahudeen & 6 others ... Applicants

Mr. G.Sasidharan Chempazhanthiyil...Counsel for applicants

Vs.

The Chief General Manager,  
Telecom, Kerala Circle & 2 others... Respondents

Mr. George C.P.Tharakan -..... Counsel for the respondents

II. O.A. 322/93

Mr. N.Ravindra Prasad & 9 others ... Applicants

Mr. P.S.Biju ... Counsel for applicants

Vs.

Chief General Manager, Telecom,  
Kerala Circle & 2 others ... Respondents

Mr. George Poomthottam, ACGSC ... Counsel for R 1-2

Mr. G.Sasidharan Chempazhanthiyil.. Counsel for R-3

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O R D E R

R.Rangarajan, AM

Two O.As, namely, OA 423/93 and OA 322/93 have been filed in connection with sending the qualified candidates for training for promotion and posting as JTOs in the 1990<sup>and</sup> promotional examination held on 22.10.92 & 23.10.92 for the year 1990 and 29.2.92 and 1.3.92 for the year 1991. The main question arises as to who should be sent for the training-- whether those who passed in the earlier examination or the later examination, eventhough the later examination was conducted for the year 1990 and the earlier examination for

the year 1991. In the OA 423/93 the applicants pray for sending them first for training as they have qualified for the promotion for the year 1990, whereas the applicants in the OA 323/93 pray for sending them for training first as their qualifying examination was conducted first. The prayers in both the OAs are contrary in nature to each other. As the issue involved is same, it has been decided with the consent of all parties concerned to combine both the OAs and pass a common judgement.

2. The facts of the OAs are as follows:

The recruitment rules for JTOs issued as per Annexure II order stipulates that the mode of recruitment for JTOs will be 65% by direct recruitment, 15% by promotion of Departmental candidates through a competitive examination, 10% by promotion of Transmission Assistants, Telephone Inspectors, Auto-Exchange Assistants and Wireless Operators through a competitive examination and the rest 10% by promotion of the categories of T.As/T.Is/A.E.As/W.Os on seniority-cum-fitness basis through a qualifying examination, inter se seniority of officials being decided on the basis of length of service in the grade. The relevant <sup>portion of</sup> recruitment rules is extracted below.

- "(i) 65 per cent by direct recruitment;
- (ii) 15 per cent by promotion of departmental candidates through a competitive examination;
- (iii) 10 per cent by promotion of Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators through a competitive examination; and
- (iv) 10 percent by promotion of Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators on Seniority-cum-fitness basis through a separate challenging post, the inter-se-seniority of the officials being decided on the basis of length of service in the grade."

The present examination is against the 10% quota by promotion to JTOs on the seniority-cum-fitness basis. This

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10% quota was subsequently increased to 15% as per order at Annexure VIII. The seniority in this quota is fixed on the basis of the length of service in the grade and the fitness is decided by means of a qualifying examination.

The first respondent invited applications from the eligible candidates for promotion to JTO cadre against the 10% quota reserved for the Departmental candidates on the basis of seniority-cum-suitability as per Annexure-III for recruitment year 1990. As per Annexure-V, the candidate should have put in 10 years of service as on 1.7.90 for being eligible to sit for this examination. The eligible candidates applied for this examination but the first respondent cancelled the examination notified in Annexures III, IV & V under the pretext of non-availability of vacancies. Aggrieved by this cancellation some of the T.A/P.I/A.E.A/W.Os filed OA 22/91 in this Tribunal. By the judgement dated 20.12.91, this Tribunal directed the first respondent to conduct the qualifying departmental examination for the years 1990 and 1991. The relevant portion of this Annexure-VII judgement is reproduced below:

"In the result we quash Annexure-V letter and direct the respondents to implement the policy decision in Ann.III and conduct two qualifying departmental examinations for promotion to the cadre of JTOs for the years 1990 and 1991, in accordance with the statement in Ann.III and IV as per the existing rules and instructions in this regard."

Pursuant to this Annexure VII judgement, the 1st respondent conducted the 1991 examination on 29.2.92 and 1.3.92. A copy of the notification issued for the 1991 examination is at Annexure-IX. As per this notification those who have put in 10 years of service as on 1.7.91 will be eligible to appear in the 1991 examination. This Annexure-IX also indicated that those who have already submitted their

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application in response to the earlier notification of the examination which was postponed need not apply again. Only fresh candidates fulfilling the condition of eligibility of service were only needed to apply. The result of the 1991 qualifying examination was published on 18.9.92.

Pursuant to the judgement in OA 22/91 of this Tribunal qualifying examination for recruitment year 1990 for the 10% quota was also held on 22.10.92 and 23.10.92 in terms of the letter at Annexure-X. In this notification also it has been indicated that those who have already applied in pursuance of the notification dated 9.7.90 need not apply once again and only fresh applicants who fulfil the length of service of 10 years as on 1.7.90 only need apply. This would mean that all those who applied in pursuance of the notification dated 9.7.90 and fresh candidates who applied in pursuance of notification dated 18.9.92 <sup>were</sup> / allowed to take the examination, if they had completed 10 years of service as on 1.7.90. The list of the candidates admitted to the 1990 examination and those not admitted to the examination held on 22.10.92 and 23.10.92 is at Annexure-XI. The results of this examination is at Annexure-XII. The applicants in this OA 423/93 who qualified in the examination for the year 1990 held on 22.10.92 and 23.10.92 pray for the following reliefs.

"1. Declare that the candidates who successfully wrote the 1990 qualifying examination for promotion to the post of JTO at Annexure-I are entitled to be sent for pre-appointment institutional training earlier than those who came out successful in the 1991 qualifying examination.

2. Direct the 1st respondent to send the candidates at Annexure-I for training forthwith and at any rate before sending the successful candidates of 1991 examination and fix their inter-se-seniority accordingly.

3. Any other further direction or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

4. Award the cost of these proceedings in favour of the applicants."

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3. The grounds for asking the above reliefs are that the qualifying examination for 1990 issued as per notification dated 9.7.90 was irregularly cancelled and the qualifying examination for 1991 was conducted earlier to ~~conducting~~ <sup>rules</sup> ~~the~~ the 1990 examination against  $\angle$  and that the candidates for the 1990 examination have more length of service in the feeder category. The applicants in OA 323/93 are those who appeared in the 1991 examination held on 29.2.92 and 1.3.92. Those who have qualified in this examination can be seen at Annexure-I of this O.A. They pray for a declaration that the applicants are entitled to be sent for training earlier to the persons qualified in a subsequent examination held on 22.10.92 and 23.10.92.

4. As said earlier that the prayers of the applicants in OA 423/93 and OA 322/93 are contrary in nature and hence an amicable solution satisfying the majority of the candidates of all sections has to be found.

5. The respondents in their reply statement in OA 423/93 have stated that the qualifying examination for the year 1990 was not held for want of vacancy. The affected parties approached this Tribunal in OA 22/91. This Tribunal has directed that the said examination should be conducted. In the meantime the JTO qualifying examination for the year 1991 was already announced. The 1990 examination could not be held immediately on a short notice throughout India. Therefore the examination for 1991 was held earlier on 29.2.92 and 1.3.92 and the 1990 examination was held later on 22.10.92 and 23.10.92. This has resulted in the controversy between the candidates qualified in the year 1990 and 1991 as to who should be sent for training first.

6. To set the controversy at rest the department has taken a decision to train first all the 1990 eligible



candidates whether they have appeared in the examination held on 29.2.92 and 1.3.92 or the examination held on 22.10.92 and 23.10.92. They have divided the candidates into three categories. Category A&B applies to those who were eligible to appear for the qualifying examination for 1990 and actually qualified and the category C <sup>applies to</sup> those who were eligible for appearing for the qualifying examination 1991 and also qualified. The category C candidates will be sent for training later. As per the statement of the respondents seniority of the candidates in category A&B will be suitably interpolated and sent for training first as per their interpolated seniority.

7. The averments of the respondents in this connection are reproduced below:

"However, it was decided to categorise the candidates who passed the aforesaid examinations as follows:

Category A: Candidates who are eligible to appear in 1990 examination and have passed the earlier examination held on 29.2.92 and 1.3.92.

Category B: Candidates who are eligible to appear in 1990 examination and have passed the 2nd examination held on 22.10.92 and 23.10.92 conducted as per the specific direction of the Hon'ble CAT Ernakulam Bench in OA 22/91 after the publication of the result of the first Exam.

Category C: Candidates who are eligible to appear only in 1991 examination and have passed the Examination held on 29.2.92 and 1.3.92.

and to keep Category A enblock senior to Category B and Category B enblock senior to Category C for the purpose of deputing them for Training. This decision was taken taking into account the Departmental instructions on clubbing of candidates who qualify in different year (DOT No.4-16/85 NCC dated 7.9.90) provisions in the recruitment rules that a candidate once passed need not appear again, etc. (Annexure I & II). As seniority of the candidates in the JTO Cadre relating to one recruitment year is with reference to their performance in the training deputing for training earlier or later do not count much in so far as they belong to the same year."

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8. We have heard the learned counsels of all parties in the above two OAs and also perused the documents produced before us by the contesting parties.

10. Under the conditions as explained above where there are conflicting interests it will be difficult to satisfy everybody. An equitable solution which will be fair to a sizeable number of the contestants have to be arrived at. No solution will be foolproof under the present circumstance. A solution which will satisfy a maximum number of candidates without much of hardship to <sup>others</sup> has to be found. The department themselves have agreed that the candidates who qualified to appear for 1990 examination and appeared in the examination held on 22.10.92 and 23.10.92 and also in the examination held on 29.2.92 and 1.3.92 have to be sent for training first. However, the integrated seniority list to be prepared for the category A&B as indicated by the respondents though generally acceptable needs amendments as voiced by the learned counsels for the applicants in both the OAs.

11. On the basis of the submissions made in the Bar, the following consensus have emerged:

i) Candidates who were eligible to appear in 1990 examination and who applied in response to the notification dated 9.7.90 and appeared in the qualifying examination of 1991 held on 29.2.92 and 1.3.92 will automatically be included in the list for training <sup>to be deputed</sup> first, if they have qualified in this examination and eligible in all other respects.

ii) Candidates who were eligible to appear for 1990 examination and applied in pursuance of the notification issued on 9.7.90 and 18.9.92 will also be sent for training first, if they have qualified in the examination held on 22.10.92 and 23.10.92 and satisfy all other requirements.

iii) The seniority of candidates in item (i) and (ii) will be interpolated as per their length of service in the

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grade keeping the inter se seniority of each group in tact and thus the integrated seniority list will be prepared.

iv) The candidates in the integrated seniority list as mentioned in (iii) above will be sent for training first as per their seniority to the extent of available training facility. If the training could not be given to all the persons in one lot in this group, they will be sent in batches, without locating the priority indicated above:

v) The candidates who <sup>were</sup> ~~are~~ eligible for appearing in the qualifying examination 1991 and appeared for the qualifying examination 1991 held on 29.2.92 and 1.3.92 and qualified in the same will be sent for training only after the completion of the training of the candidates listed in (iii) above.

11. The above consensus solution present two anomalies. The candidates eligible to appear for the qualifying examination of 1990 and wrote the examination held on 29.2.92 and 1.3.92 but failed to qualify in this examination might have come out successful in the later examination held on 22.10.92 and 23.10.92. This would mean that those who failed in the first attempt but successful in the second attempt will also be eligible to be included in the seniority list mentioned in item (iii) above. Their seniority will also be <sup>as per</sup> ~~fixed~~ their length of service in the grade. They may also rank senior to those passed in the first attempt. This anomaly has ~~also~~ been brought out by the respondents also in their reply statement. This point was considered by us in detail. Had the qualifying examination for 1990 held earlier this anomaly could have been avoided. As the types of questions asked may not be same in these two examinations, this type of anomaly is bound to occur. As the candidates

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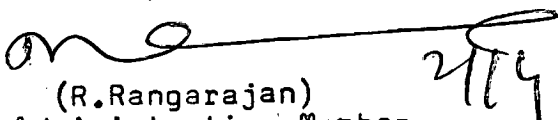



mentioned above were eligible to apply for 1990 qualifying examination, their passing of the examination in the 2nd attempt should not be treated as a disadvantage for them particularly when they sat for the examination notified for the year 1990 and the respondents have taken the view that the seniority of the candidates in JTO cadre in one recruitment year is to be fixed with respect to their performance in training. As indicated earlier, the consensus in this respect and the solution suggested may not be acceptable to all, but in the interest of arriving at a just and fair solution, anomaly of this type indicated here has to be put up with. In our opinion, this anomaly may be ignored.

12. The second anomaly is that the candidates though qualified for the 1990 examination have not given their willingness for writing the examination in response to the notification dated 9.7.90 but gave their willingness to sit for the examination only in response to the second notification dated 18.9.92. Thus, these candidates took advantage of the second notification. This in our view is not a very serious anomaly and hence may be passed over.

13. From the conspectus of facts and circumstances of this case we have come to the conclusion that a direction to the respondents to follow the consensus formula arrived at as indicated in items (i) to (v) of para 10 will meet the ends of justice. Accordingly we direct the respondents to prepare the seniority list and send them for training on the basis of the seniority list at item (iii) in para 10 first and the other candidates listed in item (v) in para 10 subsequently.

14. The OAs are disposed of by this common order as above. There will be no order as to the costs.

  
(R. Rangarajan)  
Administrative Member

  
(N. Dharmadan)  
Judicial Member

21.4.93