

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.432/2000

Monday this the 3rd day of June, 2002

C O R A M

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. A.Sahadeva Babu,
Telecom Technical Assistant,
Office of SDOT Thodupuzha
2. M.K.Sreedharan,
Telecom Technical Assistant,
Parathode Telephone Exchange,
(SDE Murikkassery)
Parathode.
3. T.C.Kumaran,
Telecom Technical Assistant,
Telephone Exchange, Keecheri,
Kulayettikkara, P.O. Pin : 682 315
4. K.K.Lakshmikutty,
Telecom Technical Assistant,
SDE Office, Thrikkakara,
Kakkanad P.O

Applicants

[By Advocates M/s.M.M.Monayee & Paul Varghese]

Vs.

1. The Union of India represented by
its Secretary to Government,
Ministry of Communications,
New Delhi.
2. Director of Telecommunications,
New Delhi.
3. Chief General Manager, Telecom
Kerala Telecommunications,
Door Sanchar Bhavan,
Trivandrum - 695 033.
4. Principal General Manager,
Ernakulam Telecom District,
Kochi - 682 031.

Respondents

[By Advocate Mr C.Rajendran, SCGSC]

The application having been heard on 3rd June, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This Original Application has been filed by the applicants aggrieved by A-8 order dated 30.3.2000 issued by the 4th respondent's office and against the non absorption of the applicants to the restructured cadre of Telecom Technical Assistant (TTA in short) retrospectively from the date of successful completion of the pre-induction training to the cadre of TTA. They are also aggrieved by the rejection of their candidature to the qualifying Screening Test for promotion to the post of Junior Telecom Officer (JTO in short). They sought the following reliefs through this Original Application.

- (i) Declare that the applicants are eligible to be absorbed to the cadre of Telecom Technical Assistant retrospectively from the date of completion of the induction training to the cadre of TTA, and hence are eligible to appear for the qualifying screening test for promotion to the post of Junior Telecom Officer against 35% quota which is scheduled to be held on 30.4.2000, setting aside Annexure A-8 in respect of the applicants.
 - (ii) Direct the respondents to absorb the applicants to the cadre of TTA with effect from the date of completion of the induction training to the cadre and allow the applicants to appear for the qualifying screening test to the post of JTO's scheduled to be held on 30.4.2000.
 - (iii) Direct the respondents to appoint the applicants to the post of JTO's if successful in the Screening Test and the pre-induction training to the cadre
- and
- (iv) Grant such other reliefs as may be prayed and the Hon'ble Tribunal may deem fit.

According to the averments of the applicants, they joined the Telecom Department as Technicians. Applicant No.1 and 4 completed 24 years of service in the Department and applicant



No.3 completed more than 30 years and applicant No.2 more than 16 years of service in the Department. On introduction of restructured cadres in the Department of Telecom, the cadre of Technicians were included in the restructured cadre of TTA. The entry/absorption into the cadre of TTA was either by 'walk in' or by the qualifying Screening test for those who have opted. Applicants opted for the second qualifying screening test to the post of TTA and were qualified in the said examination. Applicants 1 and 2 were deputed for training from 7.6.99 to 13.8.99 by A-1 order dated 25.5.99. Applicants 3 and 4 were deputed for training from 5.4.99 to 11.6.99 by A-2 order dated 15.3.99. By A-3 order dated 13.8.99 applicants 1 and 2 completed the training successfully. On completion of the said training the applicants were relieved to their parent units. Respondents by A-7 letter dated 8.3.2000 proposed to conduct a screening test on 30.4.2000 for the post of JTO to which all the four applicants submitted their applications. They were intimated by A-8 letter dated 30.3.2000 that as they were not TTA's on 31.8.99 their applications had been rejected. According to the applicants, it was not due to their fault that they were not TTA's on 31.8.99. They relied on A-4 order dated 12/20.8.97 of the 2nd respondent and alleged ^{that} in spite of A-4 ^{that} the respondents did not absorb them as TTA's. They referred to A-9 and submitted that the respondents had agreed with the Trade unions to give retrospective effect to this appointment of TTA's. The applicants also submitted that in Trivandrum and Kozhikode Telecom Districts all those who had successfully completed the pre induction training were absorbed in the restructured cadre of TTA with effect from the next day of completion of the training in support of which A-5 order dated 14.11.99 was annexed.



Applicants also submitted that there were 14 clear vacancies in Ernakulam SSA under the 4th respondent due to the promotion of TTA's as JTOs. Applicants also submitted that by A-6 order dated 24.2.2000 they were posted as TTA's. According to them, the denial of the opportunity to write the examination and non-absorption to the cadre of TTA's retrospectively were violative of article 21 of the Constitution of India and would amount to preventing the legitimate expectation of the applicants for promotion. Hence they filed this Original Application seeking the reliefs mentioned above.

Respondents filed reply statement resisting the claim of the applicant. According to them the cut off date for appearing JTO examination was that the candidate should be in the TTA cadre as on 31.8.1999 and as the applicants were appointed to the TTA cadre only on 24.02.2000 they were not eligible for appearing in the JTO Examination. They submitted that subsequent to A-4, guidelines were issued which stated that all qualified candidates were to be trained without waiting for an event and creation of vacancies and absorb them in TTA cadre as and when vacancies are created. In this case the applicants were trained and subsequently when vacancies arose the applicants were appointed as TTA's on 24.02.2000. Existence of vacancies in other SSAs like Trivandrum and Kozhikode Telecom Districts could not facilitate the posting of the applicants in Ernakulam SSA and the applicant could not be posted before 31.06.1999 for want of vacancy in Ernakulam SSA. A-4 Guidelines was only to avoid posting of juniors to seniors and it was practically difficult to follow and subsequent instructions were issued to train all qualified candidates at the earliest by running training classes



at circle Telecom Training Centre and SSAs were to depute the qualified candidates for training without waiting for assessment and creation of vacancies and absorb them in TTA cadre as and when vacancies were created.

Heard the learned counsel for the parties.

Mr. Paul Varghese, learned counsel for the Applicant submitted drawing our attention to A-4 that the number of officials placed in the select panel should be equal to the number of posts created for that year and on completion of pre-induction training the qualified officials should be posted in the restructured cadres for the posts reserved for them. Not posting the applicants on completion of their training was not correct and had the respondents done the same the applicants would have been eligible for appearing in the JTOs Screening test. According to him, their non-posting was not due to the fault of the applicants. Had they been posted as in A-4, the applicants would have become eligible to appear for the screening test and hence applicants were entitled for the reliefs sought for. It is also submitted by him that there were 14 vacancies and that this has not been specifically contradicted by the respondents in the reply statement.

Learned counsel for the respondents relied on the pleadings in the reply statement and made his submissions.



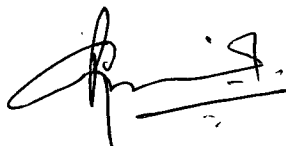
We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also carefully gone through the documents brought on record.

On a careful consideration of the materials placed before us, we are of the view that the applicants are not entitled for the reliefs sought for. The applicants mainly rely on A-4 guidelines issued on 12/20.8.1997 for the reliefs sought for. On going through A-4 letter, we find that the said letter had been issued in connection with two earlier letters of DOT issued on 29.3.94 and 27.4.94 by which detailed instructions were given about the preparation of yearly select panel out of the eligibility list of optees for restructured cadres and sending them for induction training. These letters have not been produced by the applicants. In any case from a reading of Para 2 of A-4 letter, we find that the said letter was issued in the context of certain queries raised by subordinate offices.

Para 2 reads as under:-

Instances have come to our notice that the spirit of instructions given in the above letters has not been strictly adhered to resulting in juniors being trained and actually absorbed in the restructured cadres leaving out seniors in the select panels. Queries are also being received such as :

- (a) whether the Senior Officials as per inter-se-seniority of the select panel for training are to be absorbed first even though their juniors have completed training earlier.
- (b) Whether any post has to be kept reserved for the senior officials who either did not turn up for training/trained later or yet to be trained.
- (c) Status of the senior officials after completion of training where there is no sanctioned post available.
- (d) Status of the junior officials who have already been trained and absorbed prior to their senior in the respective cadre.



It is evident from above, that the instructions given in the DOT letters dated 29.3.94 and 27.4.94 were not being followed and hence the DOT had to issue instructions clarifying certain points and the method to be adopted in the matter of preparation of eligibility test, preparation of select panel, creation of posts and posting of employees on completion of training. We find that nowhere in the letter any mandatory instructions are issued that all employees who have been trained are necessarily to be posted as TTA's on completion of training. In our view what the letter specifically states is that the number of employees to be kept in the select panel should be only equal to the number of vacant posts to be created and filled up in the ensuing year and only that many number of employees should be trained and thus for everybody who is trained in a particular year, there would be a vacant post and occasion for not posting a trained person would not arise. The applicants have no case that anybody junior to them had been posted prior to 31.8.99 to substantiate their claim to be posted on completion of training. Respondents specifically claim that there was no vacant post and on availability of vacant posts, the applicants have been posted on 24.2.2000. Even A-9 Union's letter rely on that the Circle Office instructions to post the TTA's with effect from 7.12.99 onwards only. In this letter the Union had never stated that there were 14 vacancies as claimed by the applicants, existing from July, 99 onwards. It only states that 12 TTA's were kept vacant in connection with JTO promotion. Even assuming that there were 14 vacancies as claimed by the applicants, the applicants had, not indicated that they were within the first 14 in the seniority list amongst the trained employees so as to claim that only they were eligible for being posted. From the applicants averments in the Original Application it would appear



that the respondents were not sending the employees for training according to seniority. This view we are taking from the applicants averment in Para 4 (B) where it was submitted that applicants were having 24, 16, 30 and 24 years of service and we find the first applicant who is at Sl.No. 22 in A-6 had been sent later than the 4th applicant who is at Sl.No. 23. We also find that the specific averment of the respondents that due to practical difficulties to follow the instructions contained in A-4, subsequent instructions were issued to train all qualified candidates at the earliest by running regular training classes at the Circle Telecom Training Centre, had not been denied by the applicants by filing any rejoinder. Further we find that there is no challenge against the posting of the applicants by A-6 order dated 24.2.2000.

Apart from the above, we are of the considered view that no employee gets any inherent right for promotion just because a vacancy is existing. It is for the authorities to decide as to when the vacancies are to be filled up. A right accrues to an employee for promotion only if somebody junior to him has been promoted without considering him. No such case has been made out in this Original Application.

It is evident from A-7 that only those who were TTAs on 31.8.99 were eligible for the qualifying Screening Test for promotion to the cadre of JTOs. Applicants were not TTAs on 31.8.99 and on the basis of the materials placed before us, the

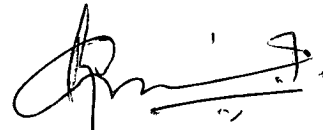
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applicants are also not liable to get such a declaration from us.
In the result, finding no merit, this Original Application is
dismissed with no order as to costs.

Dated this the 3rd day of June, 2002.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

vs

A P P E N D I X

Applicant's Annexures:

1. A-1: True photocopy of Memo No.ST/EK-261/3/VIII/31 dated 25.5.99 of the Asst. General Manager, (Admn.), O/o the 4th respondent.
2. A-2: True photocopy of Memo No.ST/EK-261/3/VIII/1 dated 15.3.99 of the Asst. General Manager, (Admn.), O/o the 4th respondent.
3. A-3: True photocopy of Memo No.T 1072/28/69 dated 13.8.99 of the Lecturer (Trg.) O/o the Director, RTTC, Trivandrum.
4. A-4: True photocopy of letter No.27-2/94-TE-II dated 12/20.8.97 of the 2nd respondent.
5. A-5: True photocopy of Memo No.ST/1034/TTA/Genl/Pt/33 dated 14.11.99 of AGM(Admn.) Telecom District, Trivandrum.
6. A-6: True photocopy of Memo No.ST/EK-261/4/III/15 dated 24.2.2000 of the Asst.General Manager (Admn.) O/o the 4th respondent.
7. A-7: True photocopy of the Memo No.Rectt/30-6/99 dated 8.3.2000 of the Asst. General Manager (Rectt), O/o the 3rd respondent.
8. A-8: True photocopy of Memo No.STA-1/EK-214/2(a)/XI/82 dated 30.3.2000 of the Asst.General Manager (R&E), O/o the 4th respondent.
9. A-9: True photocopy of letter No.E III/STAFF/2000 dated 1.3.2000 addressed to the 4th respondent by the All India Telecom Employees Union Class III (N).
