

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

QA No. 411/2000 & QA No. 436/2000

Monday, this the 25th day of March, 2002

CORAM

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

QA No. 411/2000:

1. K.C. Muralee Manoharan,
S/o P. Chellappan Pillai,
Sr.TOA(P), Trunk Exchange,
Telephone Bhavan, Tiruvalla,
residing at Lakshmi Vilas, Kaviyoor PO,
Tiruvalla - 689 582

....Applicant

[By Advocate Mr. M.R. Rajendran Nair]

Versus

1. Union of India represented by the
Secretary to Government of India,
Ministry of Communications, New Delhi.

2. The Chief General Manager, Telecom,
Kerala Circle, Trivandrum.

....Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

QA No. 436/2000:

1. K.C. Muralee Manoharan,
S/o P. Chellappan Pillai,
Sr.TOA(P), Trunk Exchange,
Telephone Bhavan, Tiruvalla,
residing at Lakshmi Vilas, Kaviyoor PO,
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....Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The applications having been heard on 7-2-2002, the
Tribunal delivered the following on 25-3-2002:

Common order in OA 411/2000 &
OA 436/3000

ORDER

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant in both these Original Applications are one and the same person and the respondents are also same.

2. In OA 411/2000, the applicant is claiming that he is qualified to be appointed against the vacancies of JTO which existed in 1992 and in OA 436/2000 he is claiming the consequential benefits in case he is selected against the vacancies in 1992 itself. Therefore, the matter to be adjudicated is very much connected and co-related each other and as agreed by the parties, both the Original Applications are disposed of by this common order.

3. In OA 411/2000, the applicant who is working as a Senior TOA(P) states that he appeared for JTO competitive examination 1992 held in September, 1994 and claims to have received an average of 70% marks in that examination. The declared vacancy in JTO competitive examination 1992 was 41 in General category. But only 38 ranks in General category was published. 3 posts were kept unfilled due to the pendency of a Special Leave Petition filed against the judgement in OP No.16548/97. The Special Leave Petition dismissed and it is alleged in the petition that the applicant made his representation to take immediate steps for filling up of the 3 vacancies in the General list. The true copy of the representation dated 14-1-1998 is Annexure A1. The applicant did not receive any reply. The applicant came to know that the said 3 vacancies in 1992 were being carried forward. Aggrieved by this procedure, the applicant made representation dated 10-6-1998, which is Annexure A2. No reply received. The applicant claims that he

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is fully qualified to be appointed to the vacancies in the year 1992 and if the vacancies been filled in 1992 itself, the applicant would have been selected. The said carrying forward of the vacancies deprived the applicant of his legitimate claim and the applicant has filed this OA under Section 19 of the Administrative Tribunals Act for the following reliefs:-

- "I. To declare that applicant is entitled to be considered for filling up the 3 vacancies of JTO which existed in 1992, and that the carrying forward of the said vacancies is illegal and arbitrary.
- ii. Direct the respondents to consider the applicant for appointment against the vacancies of JTO which existed in 1992 in accordance with the rules.
- iii. Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- iv. Grant the cost of this Original Application."

4. The applicant claims to be qualified to be appointed in the vacancies in the year 1992 and he challenges the procedure of carrying forward the vacancies which deprived him of his legitimate right. The non-filling of 3 vacancies which occurred in 1992 was the result of a pending litigation and it is an established principle that act of Courts shall not prejudice anyone.

5. Respondents have filed a reply statement in the OA 411/2000 stating that the competitive examination for recruitment of Junior Telecom Officers under 15% departmental competitive quota vacancies for the recruitment year 1992 was held on 24th and 25th of September, 1994. The result of the said examination was announced on 3-2-1995. Eventhough 41 vacancies were announced for the said examination against unreserved quota, 3 vacancies were not filled up due to pendency of the Special Leave Petition before the Hon'ble Supreme Court of India. The said 3 vacancies were kept

reserved for the RTP candidates who were provisionally admitted for the above mentioned examination as per orders of this Tribunal. The SLP before the Supreme Court of India was disposed of vide judgement dated 1-8-1997. Accordingly, RTP service of an official cannot be taken into consideration for the purpose of eligibility to appear for the departmental promotion examination. Hence, the 3 officials who were provisionally admitted for the examination held on 24th and 25th September, 1994 as per orders of this Tribunal and whose result was kept held up pending disposal of the SLP, became ineligible for consideration for promotion as JTO. By this time, competitive examination for the vacancies announced for the recruitment year 1993 was held and the results published accordingly. As such the filling up of the 3 vacancies in a very belated stage was not considered desirable by the competent authority after a lapse of more than three years and by the administrative decision these 3 vacancies have been carried over to the vacancies for the recruitment year 1995 for which examination was held on 15th and 16th of May, 1999. The select list based on the result of that examination also had already been published. The applicant's contention that he would have been appointed as JTO if the 3 vacancies were utilised for the year 1992 is not correct. He is, according to the respondents, built up his case on his own presumption and imaginations. The real fact is that the applicant did not secure enough marks so as to secure a position in the select list even if the select list is prepared inclusive of the 3 vacancies. Hence he was not deprived of any chance or legitimate claim as stated by him. It is stated that the applicant appeared for the competitive examination held on 24th and 25th April, 1994 for filling up of the vacancies in JTO cadre under 15% departmental competitive quota belonging to the recruitment year 1992. But he did not secure enough marks to

get a position in the select list which was prepared based on the number of vacancies for the recruitment year 1992. The applicant has not secured enough marks to be included in the select list. Even if the select list was prepared for all the 41 vacancies, his name could not have found a place in it as he could not score the required marks and the 3 vacancies were carried forward to the vacancies for the recruitment year 1995 in consideration of the full facts and circumstances under orders of the competent authority. The Original Application does not merit consideration and the same may be dismissed. It is further stated that the 3 vacancies have been carried forward and included in the vacancies for the recruitment year 1995 for which examination was held on 15th and 16th of May, 1999, result of which has already been published and the applicant appeared for the said examination but failed to secure a place in the select list of successful candidates.

6. In OA 436/2000, the same applicant, who is aggrieved by his non-selection to the post of JTO against the vacancies pertaining to the years 1995 to 1998, is claiming the following reliefs:-

- "1. To declare Rule 2(c) in Column 12 of the schedule of JTO Recruitment Rules 1990 fixing the upper age limit of 40 years for recruitment to the category of JTO is ultra vires of Articles 14 and 16 of the Constitution of India and to direct the respondent not to enforce the same against the applicant.
- i(a) To declare that the proviso in the 12th schedule of Annexure R2A which reads "that they are not above the age of 40 years on the crucial date", is Ultra vires of Article 14 & 16 of the Constitution of India.
- ii. To declare that the applicant is entitled to be included in Annexure A4 list on the basis of marks obtained by him in competitive exam held on 15 and 16th May 1999 and to direct the respondents to consider him for promotion as JTO.

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- ii(a) Alternatively to direct the respondents to consider relaxation of age limit in respect of examination held as per Annexure A2.
- iii. Grant such other reliefs as may be prayed and the Court may deem fit to grant, and
- iv. Grant the cost of this Original Application."

7. In OA 436/2000, the applicant contended that the respondents called for applications for appearing in the competitive examination against the vacancies for the years 1995, 1996, 1997 and 1998. The notified vacancies were 47, 18 and 23 (unreserved) respectively. The notification is Annexure A3. The JTO Recruitment Rules was replaced and the notification dated 31-8-1999 is Annexure A2. The JTO Recruitment Rules, 1990 which the applicant claims to be entitled to be considered is Annexure A1. The applicant appeared for the examination and the rank list is Annexure A4. He contended that the rank list contains the names of individuals with lesser marks than him. It was submitted that the applicant was not considered for vacancies for the years 1997 and 1998 because he attained the age of 40 years in December, 1996. Annexure A2 Recruitment Rules prescribe the age limit to 40 years, which is challenged by him in this Original Application. He claims that he must be considered to be within the age limit for 1997 and 1998. Apart from that, he has stated a ground of declaration of 1992 vacancies as in the other Original Application.

8. In the detailed reply statement filed by the respondents in OA 436/2000, it is contended that the Recruitment Rules at Annexure R2(a) [Annexure A1 produced by the applicant] applicable for recruitment against vacancies in JTO cadre belonging to the recruitment years 1996, 1997 and 1999 and for vacancies in the subsequent period upto 31-8-1999, stipulate that 15% of the vacancies are to be filled by

promotion of officials in the eligible cadres as specified in the Rules on the basis of a competitive examination. The vacancies available are notified against the respective recruitment year for which the candidate is eligible by fulfilling the eligibility conditions laid down in the Recruitment Rules. Hence, those who have qualified marks may not get selected. The age of the departmental candidates in unreserved category has been refixed as 40 years and the crucial cut-off date is 1st of July of the recruitment year. A competitive examination was held in Kerala on 15th and 16th of May, 1999 and the applicant appeared for the examination. Since his date of birth being 1-12-1956, he was not considered for the years 1997 and 1998 and he has not secured enough marks for inclusion in the select list for the years 1995 and 1996. The contention that the applicant should be considered for the years 1997 and 1998 is against the statutory recruitment rules Annexure R2(a). Since he does not satisfy the condition regarding the age, he cannot be considered for the years 1997 and 1998 and the vacancies were also declared for the year 1998, which is Annexure R2(b). When a statutory rule is in force, the applicant cannot claim any benefit in violation of that rule.

9. Respondents have also filed an additional reply statement in OA 436/2000 and contended that the Government cannot relax the upper age limit to suit every individual at every instance and if done, the rules are to be entirely changed. Therefore, the arguments of the applicant cannot stand to legal footing.

10. We have heard the counsel appeared for the parties and have perused the materials placed on record.

11. In OA 411/2000, the question comes up for consideration of this Tribunal is (i) whether the carrying forward of the vacancies of a particular year to the incoming years is justified in view of the matter "an act of Court shall not prejudice anyone" and (ii) whether the application has got any merit and the applicant could have been considered for the post.

12. It is an admitted fact that there were 41 vacancies for the recruitment of JTOs under 15% departmental competitive quota for the year 1992 for which the examinations were held on 24th and 25th of September, 1994. 3 vacancies were not filled up due to the pendency of a Special Leave Petition, but kept reserved for the RTP candidates. But on dismissal of the Special Leave Petition, the 3 officials under RTP cadre who were provisionally admitted for the examination as per orders of this Tribunal, became ineligible for consideration for promotion as JTO. Therefore, the 3 vacancies, were not considered desirable to be filled up on a belated stage, i.e. after a lapse of more than three years, and vide an administrative decision this was carried over to the vacancies for the recruitment year 1995 for which the examination was held in 1999 and a select list based on the result of that examination was also published.

13. The examination in question conducted for the year 1992 and for the year 1995 in 1994 and 1999 respectively are competitive in nature. Therefore, what will be the position if 3 more were selected based on the examination for the year 1992 cannot be said with any amount of certainty. May be the applicant would not have been selected on the basis of 1992 examination as contended by the respondents. But, he might

have been selected on the basis of 1995 examination if 3 more were selected in 1992 batch. The principle "an act of Court shall not prejudice anyone" is to be upheld.

14. In the representations made by the applicant A1 and A2, he has consistently taken a stand that:

"Eventhough I got an average of above 65% marks in that examination, I am not included in the Select list. It is understood that, eventhough there are 41 declared vacancies in 1992 in the general list, only 38 were selected and that too in late 1995. If 3 more candidates were selected from the rank list, I am sure, I will be one among them."

It is understood that, due to some cases by RTP staff in Hon. Supreme Court, 5 candidates' selection were kept pending, 3 in general list and 2 in reservation quota and now the Supreme Court rejected the RTP case.

Now it is open to the department to select the 5 deserving candidates from that list in 1992 examination. Otherwise I will not get justice from the department and my future career will be spoiled."

15. In principle "an act of Court should not prejudice anybody". It is submitted that the examination conducted in 1996 will also consequently be affected by this irregular adverse administrative decision. We find that there is some force in that argument, especially when the applicant contended that he is not having a further chance for writing the examination for JTO post on account of age bar and his juniors with even lesser qualifications are appointed by this procedure. Therefore, it is quite clear that this is a case of denial of equal opportunity and denial of natural justice. The dictum that "an act of Court shall not prejudice anyone" is most appropriately applicable in this case. The reason for the administrative decision to carry forward the vacancies to subsequent years on account of delay is of no good reason. Therefore, the decision of the respondents in carrying forward the vacancies in the year 1992 by an administrative decision will prejudice at least some candidates including the

applicant. Hence, the decision to carry forward the 1992 vacancies by the respondents by an administrative order has to be set aside since it is irregular.

16. In OA 436/2000, the main question is regarding the relaxation of age. In the light of our findings in the other Original Application, i.e. OA 411/2000, that the decision to carry forward 1992 vacancies by the respondents was irregular and since the applicant is very confident that he in all probability will be selected in any of the vacancies upto 1996, the question considering the vacancy for the recruitment years 1997 and 1998 may not require. However, right from the beginning the applicant's grievance was that an irregular decision on the administrative side and the acts of a Court shall not prejudice anyone. Subsequent amendment to the Recruitment Rules reducing the age to 40 years in the year 1996 cannot be interfered with because it is a policy decision of the Government. The contention that on question of promotion the restriction of age limit from 50 years to 40 years under the Recruitment Rules is against the fundamental right also cannot be accepted for the reason that it is a policy of the Government and the recruiting agency to form the Recruitment Rules based on entire necessity, convenience and ensuring efficiency etc. However, learned counsel for the applicant expressed his hope that in the event the vacancies for the recruitment year 1992 are considered to the tune of 41, the applicant will have a good chance and therefore, regarding the question of reduction of age may be left open.

17. While 1990 Recruitment Rules prescribe the maximum age limit of 40 years for appearing in the competitive quota examination, the 1999 Recruitment Rules prescribed the age limit of 50 years for candidates like the applicant. The age

limit prescription is absolutely on the purview of the administrative parlance due to their own reasons and the scope for judicial review is very much limited unless otherwise it is warranted. In this case, admittedly, the applicant did not appear for examinations conducted for vacancies of the years 1997 and 1998 as per the existing Rules. Therefore, the question of considering him for selection does not arise. Therefore, prayer No.1 in OA 436/2000 is not sustainable and is disallowed. However, it is submitted that the applicant is confident that he will be selected if he is being considered for the years upto 1996 and his grievances will be redressed.

18. In the light of the above observations and findings, we are of the view that the total number of vacancies of the recruitment year 1992 may be considered for the same year and consequently, subsequent recruitments may be resettle and refixed in the respective years.

19. In the conspectus of the facts and circumstances, we declare that the decision of the respondents in carrying forward the vacancies of 1992 to incoming years by not filling up the same by successful candidates appeared for that examination as irregular and hence illegal. Respondents have to re-consider the case of the applicant by filling the 41 vacancies as per his merit in the examination and consider the applicant for such selection if he is qualified and merit his case. We, therefore, direct the respondents to re-consider the applicant along with others to the 41 vacancies which were available in 1992 and to be filled accordingly and consequently restructure the selection in the subsequent years, i.e. 1995 and 1996. Regarding the selection for the years 1997 and 1998 the matter is left open to be considered in case the applicant is not selected against any of the vacancies upto the

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recruitment year 1996 for which the applicant had appeared for the examinations. Regarding the selection against 1997 and 1998 vacancies, the applicant did not appear for the examination since the age limit has been reduced to 40 years. This is a policy that has been regulated by the recruiting agency. The applicant will be at liberty to file a representation to the authority concerned in case he requires relaxation of age for selection against 1997 and 1998 vacancies to be considered as per Rules and the authority to whom the representation is made will consider the same and pass appropriate orders after due application of mind. We are not giving any finding to the question of relaxation of age under the Recruitment Rules, but directing to consider the applicant's case separately since he was highly affected by this reduction in age for recruitment as JTO, as he crossed the limit of age prescribed in the Rules, which otherwise should have been 50 years during the year 1997-1998.

20. The above directions shall be carried out by the respondents within three months from the date of receipt of a copy of this order and restructure the entire selection module accordingly.

21. Both the Original Applications are disposed of as above by this common order allowing the same to the extent discussed above with no order as to costs.

Monday, this the 25th day of March, 2000

Sd/-

(K.V. SACHIDANANDAN)
JUDICIAL MEMBER

Sd/-

(G. RAMAKRISHNAN)
ADMINISTRATIVE MEMBER

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APPENDIX

Applicant's Annexure in OA 411/2000:-

1. Annexure A1 True copy of the representation dated 14-1-1998 submitted by the applicant to the 2nd respondent.
2. Annexure A2 True copy of the representation dated 10-6-1998 submitted by the applicant to the 1st respondent.

Applicant's Annexure in OA 436/2000:-

1. Annexure A1 True copy of the Clause 2(i) of Column 12 of JTO Recruitment Rules 1990
2. Annexure A2 True copy of the JTO Recruitment Rules 1999, published by notification dated 31-8-1999.
3. Annexure A3 True copy of the order No. Rectt/30-4/99 dated 4-12-1998, notifying the vacancies, issued by the Chief General Manager, Telecom, Trivandrum.
4. Annexure A4 True copy of the order No. Rectt/30-4/99/II dated 4-2-2000 issued by the Assistant General Manager, (Rectt) for the 2nd respondent.
5. Annexure A5 True copy of the letter No. Rectt/30-4/2000 dated 12-6-2000 issued by the 2nd respondent.

Respondents' Annexure in OA 436/2000:-

1. Annexure R2a Photocopy of the recruitment rules.
2. Annexure R2b Photocopy of the letter No. Rectt/ 30-4/99 dated 12-5-1999 issued by Sub Divisional Engineer (Rectt).

CERTIFIED TRUE COPY

Date

Deputy Registrar