

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Tuesday this the 30th day of April, 2002

OA Nos. 47/2000, 418/2000, 446/2000 & 448/2000

CORAM

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

OA 47/2000

Sindhu G.
Telecom Technical Assistant
Pambakuda
Ernakulam Telecom District.

Applicant

(By advocate Mr.K.V.Raju)

Versus

1. The Principal General Manager
Telecom, Ernakulam
Cochin-31.
2. The Chief General Manager
Telecom Circle, Kerala.
Trivandrum.
3. Director General
Telecommunications
New Delhi.
4. Union of India rep. by
Secretary
Ministry of Communications
New Delhi.

Respondents.

(By advocate Mr.C.Rajendran, SCGSC)

OA No.418/2000

Valsala C.V.
Telecom Technical Assistant
Panampilly Nagar Exchange
Ernakulam Telecom District.

Applicant

(By advocate Mr.K.V.Raju)

Versus

1. The Principal General Manager
Telecom, Ernakulam
Cochin.
2. The Chief General Manager
Telecom Circle, Trivandrum.
3. Director General
Telecommunications
New Delhi.
4. Union of India rep. by
the Secretary
Ministry of Communications
New Delhi.

Respondents.

(By advocate Mr.C.Rajendran, SCGSC)

ORDER

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

As in all these OAs the issues involved are identical, these OAs were heard together and are being disposed of by this common order.

2. Applicants in all these OAs have filed respective OAs aggrieved when they were not permitted to appear in the JTOs' Second Qualifying Screening Test for promotion to the cadre of JTO (Against 35% Quota) which was scheduled to be held in April, 2000.

3. For better understanding the issues involved, the details of the applicant in OA 47/2000 as also the rival contentions are given below.

OA No.47/2000.

4. Applicant was at the time of filing this OA 47/2000, working as Telecom Technical Assistant in the Pambakuda Telephone Exchange of the Ernakulam Telecom District. She applied for appearing in the examination of Screening Test of Telecom Technical Assistant for the recruitment to the cadre of Junior Telecom Officers. As per letter No.5-11/99-NCG dated 12.1.99 of the 3rd respondent, the Telecom Technical Assistants who have completed six years of regular service can appear for the screening test. But thereafter by A-1 letter dated 12.3.99 issued by the 3rd respondent, the eligibility conditions to appear for the JTOs qualifying screening test of TTA were liberalized on the basis of the interim directions of the Principal Bench of this Tribunal in MA No.199/99 in OA No.193/99

and MA No.226/99 in OA No.217/99 and permitted the TTAs provisionally to appear for the screening test. According to the applicant, it was specifically stated therein to permit the TTAs to appear for the screening test without insisting on the six year service condition in the cadre subject to the outcome of the above mentioned OAs. The 3rd respondent by A-2 letter further instructed that all TTAs may be permitted to provisionally appear in the test without insisting on the prescribed service of six years in the cadre if otherwise eligible as on 31st August, 1999. According to the applicant, a junior to her one Sri K.M.Chandran working in the Telephone Exchange, Muvattupuzha was permitted to appear for the screening test, Chandran joining as TTA in October 1996 and she joining in August 1996. A-3 letter dated 28.12.99 permitted the junior to her to appear for the screening test and refused to permit her to appear for the test. She filed A-4 representation dated 30.12.99 to the second respondent. According to her, after the issue of A-1 & A-2 orders if she was not permitted to appear for the screening test the same would be illegal and unjust. She further submitted that granting permission to the junior to the applicant to appear for the test without allowing her senior was discriminatory and violative of the provisions of the Constitution. Another ground advanced by the applicant was that no harm would be caused if the applicant was allowed to appear for the screening test provisionally and subject to the result of the pending original applications in the Principal Bench of this Tribunal. She sought the following reliefs:

- i. To call for the records relating to Annexure A3 and to strike down the same.
- ii. To declare that the applicant is eligible and entitled to appear in the Junior Telecom Officer Screening Test.
- iii. To issue appropriate directions or order to the 1st or 2nd respondent to allow the applicant also for appearing in the Junior Telecom Officer Screening Test to be held as per Annexure A3 order or as per any new order, if issued.
- iv. To grant such other reliefs which this Hon'ble Tribunal deem fit, proper and just in the circumstances of the case.
- v. To award cost of the applicant.

5. Respondents filed reply statement. According to them, as per R1(a) Recruitment Rules of JTO, TTAs with 6 years of regular service in that cadre itself can only be admitted for the screening test. Relaxation made in A-1 & A3 was only for the service in TTA cadre and not for the total service in the Department. Hence service in the Department should be minimum of 6 years as on 31.8.99 for consideration and the applicant had not completed 6 years of service as on 31.8.99. K.M.Chandran was appointed as TTA later than the applicant but as he had completed 6 years of service much before 31.8.99. As the OA was pending before the Tribunal the representation filed by the applicant had not been disposed of. It was also submitted that the screening test was postponed and the same would be held on 30.4.2000 as per R1(C). According to them, the OA was liable to be dismissed being devoid of merits.

6. Heard Sri K.V.Raju, learned counsel for the applicants in all the OAs and Sri C.Rajendran, SCGSC for the respondents in all the OAs. In OA 47/2000 SCGSC filed a counsel's statement enclosing therewith the order dated 19th August, 1999 of the Principal Bench of this Tribunal in OA 193/99. Learned counsel

for the applicants Sri K.V.Raju submitted that if the plea of the respondents is accepted it would mean that a junior TTA who had put in a total of 6 years of service or more in the department would get considered for promotion as JTO whereas a senior TTA like the applicant who had not completed 6 years of total service would not get considered for posting as JTO. This would create an anomalous situation and would result in a senior becoming a subordinate of the junior or the senior becoming a junior to the junior. According to him, when the condition of six years had been removed in A-1, she was eligible for appearing in the test. He also submitted that in the case of the applicant in OA No.418/2000, she had served in Maharashtra Circle as TTA and not admitting her in the screening test on the plea of lack of 6 years of service in Kerala Circle was not in order. Learned counsel for the respondents submitted that the department has filed a writ in the Hon'ble High Court of Delhi against the order of this Tribunal (Principal Bench) in OA 193/99 and the same was pending and in the meanwhile the department had permitted the applicants to appear in the screening test as per interim directions of this Tribunal.

7. On a careful consideration of the submissions made by the learned counsel for the parties, the rival pleadings and the documents brought on record, we find that the basic issues which are to be decided in this OA are as follows:

- i. The "six years of regular service" referred to in the JTO Recruitment Rules should be only as a TTA or would include the earlier service prior to his becoming a TTA.
- ii. If a junior TTA becomes eligible for participating in the screening test, will the senior TTA also become eligible for participating in the screening test even if he/she does not complete the six years of service.

iii. Whether the length of service put in by a TTA in another circle would get counted towards the 6 years of service in the case of employees who are transferred from one circle to another under Rule 38.

8. When these OAs came up for consideration at the admission stage, the candidates in all the OAs were directed to be permitted to appear for the screening test provisionally and subject to the final outcome of the OAs. At the relevant time when the OAs came up even though the OAs had been finally disposed of by the Principal Bench, the documents which were produced referred only to the interim orders passed by the PB in OA 193/99 and OA 217/99. Therefore, one of the reliefs sought for by the applicant had already been given to them. However, the question is whether they are liable to get the relief of a declaration that they are eligible and entitled to appear in the Junior Telecom Officer Screening Test. From R2 order of the Principal Bench dated 19th August, 1999, we find that the PB has finally disposed of OA 193/99 and OA 580/99. In paras 6,7 & 8 of the said order the Principal Bench held as under:

"6. Respondents have relied upon the CAT, P.B.order dated 9.1.98 in OA No.1820/97 Bachi Singh Vs.UOI & Ors, but that order does not assist them because in para 9 of the aforesaid order, it has been clearly stated that (ii) above does not say 6 years of regular service in the respective cadres. In any case that order has been stayed by the Delhi High Court vide its order dated 4.3.98 in CLP No.1071/98.

7. Further by the CAT Hyderabad Bench order dated 19.3.99 disposing of OA No.1754/98 S.Raja Babu & Ors. Vs. UOI & Ors. and connected OAs it has been held that the length of service as far as those applicants who claimed to be TTAs were concerned, was not to be confined to the period of service put in by them individually in the cadre of TTA, but their collective length of service in other cadres such as PI/AEA/TA/WO & other eligible cadres would also have to be taken into consideration. Nothing has been shown to us to establish that the aforesaid order dated 19.3.99 has been stayed, modified or set aside.

8. In the result, this OA is disposed of with a direction to respondents to call such or those applicants for the qualifying screening test who are TTAs with High School/Matric qualification and who have completed 6 years regular service which may not necessarily be as PI/AEA/WO/TA/TTA. No costs."

9. What we find from the above is that the Hyderabad Bench of this Tribunal had taken a slightly different view in the matter than the view taken by the Principal Bench in the matter. Whereas Hyderabad Bench of this Tribunal had held in OA 1754/98 that for a TTA to be permitted to appear for the screening test, collective length of service in other cadres such as PI/AEA/TA/WO and other eligible cadres would also have to be taken into consideration, Principal Bench had held that 6 years of regular service not necessarily as PI/AEA/WO/TA/TTA would be the criteria. As there are two interpretations of the Recruitment Rules made by two different Benches of this Tribunal, we are of the considered view that for resolving the question of law on this issue, the matter should be referred to a larger Bench. The question of law involved is framed as follows:

The "six years of regular service" referred to in the Recruitment Rules to be put in by the Phone Inspectors/ Auto Exchange Assistants/ Transmission Assistants/Wireless Operators who possess High School/Matric qualification to be called for the qualifying screening test under 35% quota would be the total service as interpreted by the Principal Bench of this Tribunal in OA No.193/99 or it should be 6 years in the cadre of TTA and other eligible cadres as interpreted by the Hyderabad Bench of this Tribunal in OA No.1754/98.

10. The other issues involved in these OAs could be considered once above question of law is resolved.

11. Registry is directed to place the matter before the Hon'ble Chairman for constituting a larger bench for deciding the above question of law.

Dated 30th April, 2002.

Sd/-
K.V.SACHIDANANDAN
JUDICIAL MEMBER

Sd/-
G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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