

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.47/98

Thursday, this the 17th day of August, 2000.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P.Lamrathudeen,
Telegraphman(Indoor),
Telecom Centre,
Mannancherry.

- Applicant

By Advocate Mr GD Panicker

Vs

1. Union of India represented by
its Secretary,
Telecommunications,
Sanchar Bhavan,
New Delhi.

2. Chief General Manager,
Telecommunications,
Vikas Bhavan.P.O.
Trivandrum.

3. Saidalavi.K.K.
Telegraphman,
Telecom Centre,
Nilambur.

- Respondents

By Advocate Mr George Joseph, ACGSC (for R.1 & 2)

By Advocate Mr M Paul Varghese (for R-3)

The application having been heard on 17.8.2000, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to declare that A-3 is illegal to the extent it has selected 3rd respondent under quota reserved for

physically handicapped employees, without notifying such vacancy/such reservation and direct the respondents to reconduct the examination for Telegraphist/Telegraph Assistant exclusively for handicapped persons.

2. Applicant is working as Telegraphman under the respondents with effect from 9.1.80. He is an orthopaedically handicapped. He was recruited under the reservation for physically handicapped persons. Second respondent issued a notification dated 9.12.96 for conducting a departmental examination for promotion of Lower Grade officials to the cadre of Telegraph Assistant/Telegraphist for the deferred recruitment of 1989. Examination was conducted on 22nd and 23rd March, 1997. Applicant applied for the same. Since no post was earmarked for handicapped persons, he could not apply against that particular quota for physically handicapped. The action of the 2nd respondent in selecting the 3rd respondent under physically handicapped quota without being notified is bad.

3. In the reply statement filed by respondents 1&2 the contentions raised are that it was felt that reservation for orthopaedically handicapped was not applicable to this selection and so no post was shown as earmarked in this category in the notification. It was clarified later that reservation for orthopaedically handicapped has to be extended for uplifting them. Accordingly one out of 27 vacancies of unreserved category was set apart for physically handicapped persons and one candidate was selected. The selection of



candidates in a competitive examination is limited to the extent of available vacancies only from among the qualified candidates in the order of merit subject to the rules regarding reservation.

4. From the stand of the official respondents it is to be taken that the selection was based on merit. When the selection is based on merit as far as physically handicapped candidates are concerned, all those who are physically handicapped should have been considered, provided they are eligible to be considered. For that purpose, it is necessary to give an opportunity to all those who are eligible to be considered to apply and that facility is to be extended by specifically mentioning the earmarking of the post for physically handicapped. Admittedly, it has not been done. It appears that wisdom dawned at a later stage on the officials respondents to give a lift to the 3rd respondent.

5. What is the legal basis on which the official respondents selected the 3rd respondent in the reserved category according to them earmarked for physically handicapped when notification does not say of any post having been earmarked for physically handicapped and the application form does not contain a column to state the physical disablement of the candidates applying in that quota is not known. It cannot be a case of the official respondents notifying in a particular fashion and then selecting candidates according to their whims and fancies. The rules should be strictly followed and nobody can be allowed to flout the rules.

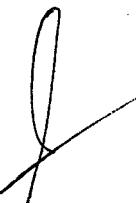


6. As it implies from the reply statement that the selection was based on merit, there should have been a comparative assessment of physically disabled candidates before the selection of the 3rd respondent. The learned counsel for the official respondents submitted that both the applicant as well as the 3rd respondent entered into service as physically handicapped persons. The applicant has also specifically stated in the O.A. that he is physically handicapped and the same is not denied in the reply statement. On the last hearing date, we directed the official respondents to produce the file relating to the selection in question. A file is produced today and the learned counsel for the official respondents submitted that this is the only file relating to the selection in question. We doubt very much whether it can be really called a selection file. That apart, from the said file it is seen that one the post has been earmarked to physically handicapped as the post is included in the identified category and one candidate duly qualified for the same. It is not known on what basis the fact of earmarking one post for physically handicapped was not disclosed in the notification. When there is a post earmarked for physically handicapped, that should have been made clear in the notification and thereby giving opportunity to all those who are eligible to compete in that category. Official respondents denied the opportunity to all those who are eligible to apply and contest in that category by suppressing the fact that one post is earmarked for physically handicapped.



7. The learned counsel appearing for the official respondents drew our attention to para 3 of the reply statement wherein it is stated that it was clarified later that reservation for physically handicapped has to be extended for uplifting the socially backward. If there was a clarification, the date of the clarification and by whom that clarification was issued are kept as top secret. Whether such a clarification, if issued, was brought to the notice of all those who are eligible to apply in that category is also not known from the reply statement. Even if there was a clarification, it was not enough to keep it in the office, but it should have been made known to those who are entitled to avail it. There is absolutely no case for the official respondents that the clarification was made known to candidates like the applicant.

8. As already stated, from the reply statement it is seen that the selection was made on the basis of merit. We asked the learned counsel appearing for the official respondents whether the file produced contains the marks obtained by the candidates including the 3rd respondent. It was submitted by the learned counsel for the official respondents that this file does not contain marks obtained by the candidates. We are constrained to say that if he had gone through the file, such a submission could not have been made. We are unable to give the page number of the file because pages are not numbered. It can only be said as 34 series in the file. Therein the name of the 3rd respondent is shown correctly and within brackets it is also written as PH which we assume as

A handwritten signature or mark, appearing to be a stylized 'J' or 'L' shape, located in the bottom left corner of the page.

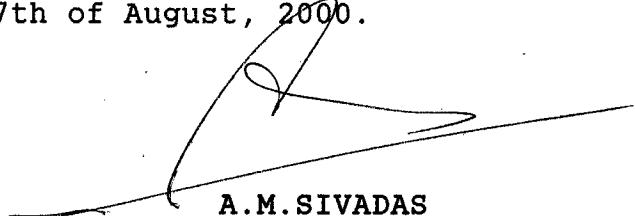
Physically Handicapped. His Roll No. is shown as 216. We ascertained from the learned counsel for the 3rd respondent that the Roll No. 216 shown is the roll No. of the 3rd respondent. He has been awarded 80 marks. A-6 is the mark list issued to the applicant by the official respondents. There is no dispute raised against A-6. From the same it is seen that the applicant had obtained more than 80 marks. That being the position, we are unable to understand and appreciate the stand taken by the official respondents in the reply statement that the selection was based on merit. It cannot be a case that the person got less marks is to be considered as more meritorious. From the file produced, it is seen that the applicant was not considered in the quota for physically handicapped. Why was it so remains as a mystery.

9. Accordingly the O.A. is allowed quashing A-3 to the extent it relates to selection of the 3rd respondent under the quota reserved for physically handicapped and the officials respondents are directed to conduct fresh selection for Telegraphist/Telegraph Assistant in the physically handicapped quota in strict compliance with the rules in force. The applicant is entitled to costs which we quantify at Rs.1000(Rupees thousand).

Dated, the 17th of August, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A. M. SIVADAS
JUDICIAL MEMBER

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List of Annexures referred to in the Order:

1. A-3: True photocopy of letter No.Rectt/39-4/TA/TL/96 dated 30.9.97 from 2nd respondent.
2. A-6: True copy of Memorandum No.Rectt/39-4/TAs/TLs/96 dated 2.12.97 from the 2nd respondent showing the mark awarded to applicant.