

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. Nos. 484/2000 & 485/2000

THURSDAY, THIS THE 14th DAY OF NOVEMBER, 2002.

C O R A M

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

O.A. No. 484/2000

K.P. Rajan
Telecom Technical Assistant
Office of the Sub Divisional Engineer
(Installation)
Calicut-32.

Applicant

By Advocate Mr. T.C. Govindaswamy

Vs.

1. Union of India
represented by the Secretary
Ministry of Telecommunications
Sanchar Bhavan,
Asoka Road,
New Delhi.
2. The Chief General Manager,
Telecom. Kerala Circle
Thiruvananthapuram.
3. The General Manager,
Telecom, Calicut.

Respondents

By Advocate Mr. P. Vijayakumar, ACGCS

O.A. NO. 485/2000

1. Hafiz Muhammed Arackal
Telecom Technical Assistant
Office of the Sub Divisional Officer
Telecom, Parappanangadi.
2. T. Abdul Basheer
Telecom Technical Assistant
Office of the Sub Divisional Engineer
(Installation) Calicut.

Applicants

By advocate Mr. T.C. Govindaswamy

Vs.

1. Union of India represented by the
Secretary, Ministry of Telecommunications
Sanchar Bhavan,
Asoka Road,
New Delhi.
2. The Chief General Manager,
Telecom. Kerala Circle
Thiruvananthapuram.

3. The General Manager,
Telecom, Calicut.

Respondents

By Advocate Mr. P. Vijayakumar, ACGCS

The Applications having been heard on 27.9.2002 the Tribunal delivered the following on 14.11.2002

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

As the issues involved in these two Original Applications were similar these two OAs were heard together and are decided by this common order.

O.A. 484/2000

2. Applicant aggrieved by provision in A1 order dated 31.8.99 issued by the second respondent by which it permitted only those who were eligible as on 31.8.1999 in the second screening test for promotion to the post of Junior Telecom Officer (JTO for short) filed this Original Application seeking the following reliefs:

- (a) call for the records relating to Annexure A1 to A4 and declare that the applicant is also entitled to be considered for promotion to the cadre of JTOs against the 35% departmental quota and that he is eligible to compete in the screening test proposed to be conducted for this purpose as Annexure A1 and direct the respondents accordingly.
- (b) issue such other further orders or directions as deemed just fit in the facts and circumstances of the case.
- (c) award costs of and incidental to this application.

3. Applicant was appointed as Technician in the scale of Rs. 260-400 at Bombay w.e.f. 16.10.73. He was later transferred to Cannanore Secondary Switching Area during 1990. He was promoted as Technical Supervisor in scale Rs. 1400-2300 w.e.f. 1.3.92 on officiating basis. He was later promoted as Senior Technical Supervisor in scale Rs. 1600-2660 w.e.f. 1.7.92. He claimed that as he belonged to Scheduled Caste community he was entitled to be considered

for promotion against the quota meant for the community. He claimed that he was empanelled for promotion and appointment as Telecom Technical Assistant (TTA for short) but was not sent for training while one batch of those who were screened along with him were sent for training in April, 1999. According to him in that batch his juniors were also sent. He was sent for training only in August, 1999 and he completed the training on 22.10.99 and thereafter he was posted as TTA on and with effect from 23.10.99 by A2 office order dated 17.12.99 against vacancies which arose prior to 1.8.99. Meanwhile by A3 notification dated 30.11.99 issued by the 2nd respondent intimating the intention to hold a screening test as on 8.1.2000 for promotion to the post of Junior Telecom Officers against 35% quota. He claimed that there were no posts earmarked for other categories whereas 39 vacancies were earmarked for members of Scheduled Caste community. It was stipulated that only those officials under SC/ST category eligible as on 31.8.99 would be entitled to apply. Applicant submitted A4 representation dated 23.12.99 as he came to know that he would not be considered having become a TTA only on 23.10.99. In A4 the applicant had specifically indicated that the delay in posting him as TTA was for reasons directly attributable to the respondents and not on account of any laches on the his part. According to him his juniors like Smt. Sheela, M/s Sasidharan, Muraleedhran who xxx were allowed to officiate as TTAs without being regularly posted were said to be qualified for appearing for the screening test. However, the screening test was kept in abeyance. While so he came across A1 order in which those who belonged to Other Community were allowed to participate. However, it was reiterated that applications from officials eligible as on 31.8.99 alone need be forwarded. According to the applicant as he belonged to SC

community and had long years of service as Technician was entitled to be considered for promotion as TTA against the reservation quota in preference to his juniors and others screened along with him for vacancies which arose prior to 31.8.99 and the delay in sending him for training/ granting him promotion on officiating/regular basis was for reasons directly attributable to the respondents and therefore there was no justification in denying consideration to him. His juniors were posted as TTA against vacancies which existed prior to 31.8.99 and he was being made to forego the long years of service in the category of TTA. Persons not belonging to SC/ST were being considered for screening test while he was denied the opportunity of being considered.

4. Respondents filed reply statement resisting the claim of the applicant. They submitted that the claim of the applicant was not maintainable under law or on facts. The applicant applied for and obtained an intercircle transfer from Bombay where he was originally working, under Rule 38 of P&T Manual Vol.IV to Kerala whereunder he had to forego his seniority. He joined Kerala Circle w.e.f. 4.6.90. Having forfeited his seniority on availing inter Circle transfer, he was sent for training and thereafter offered promotion as TTA on his due turn on 23.10.99. Since Annexure A1 related to vacancies existing prior to 1.9.99 they were governed by JTO Recruitment Rules, 1996 which was superseded by JTO Recruitment Rules, 1999 w.e.f. 1.9.99. Applicant who was not a TTA on 31.8.99 was not entitled to take part in the test according to 1996 JTO Rules. Under the circumstances Annexure A1 specifically confined the receipt of applications from officials eligible as on 31.8.99. Annexure A1 could not be legally faulted. Further in the absence of specific challenge against A2 applicant was not entitled for a

declaration as prayed for. Annexure R2(a) was the true copy of the declaration given by the applicant at the time of availing Rule 38 transfer. A mandatory condition under rule 38 transfer was that the applicant could not claim his past service under the Bombay Telephones considering for his seniority etc. under Kerala circle and that he could not claim the benefit of his past service under the Bomaby Circle for appearing in any departmental examination unless he completed the required service after joining Kerala Circle. At the time of joining the Kerala circle he was placed as juniormost in Technicians' cadre under the gradation list of the Secondary Switching Area. Thereafter he was empanelled for deputation for training and subsequent appointment as TTA strictly on the basis of his position in the gradation list. Annexure R2(d) was the relevant copy of the gradation list wherein the applicant was shown at Sl. NO.236 whereas Smt. Sheela K.V., S/Shri Sasidharan A and Muraleedhran T. who were all SC candidates were 197, 205 and 210 respectively and the applicant had not objected to the gradation list so far. Under these circumstances there were no illegalities or irregularities in the empanelment, deputation for training or appointment of the applicant as TTA attributable against the department. As the applicant was not a TTA on the crucial date of 31.8.99 under the 1996 Recruitment Rules he could not have a claim against the relevant Recruitment Rules.

O.A. 485/2000

5. The applicant two in number aggrieved by A1 notification dated 8.3.2000 issued by the second respondent inviting applications for second Screen Test for the post of JTO from amongst the eligible categories who were TTAs as on 31.8.99 and A2 letter dated 26.4.2000 issued from the office

of the third respondent rejecting the applicants' applications on the ground that they did not have the required services, filed this Original Application seeking the following reliefs:

- (i) call for the records leading to the issue of Annexure A2 and quash the same.
- (ii) call for the records leading to the issue of Annexure A1 and quash the same to the extent it denies applicants consideration for being promoted as JTOs, against the 35% departmental quota.
- (iii) Declare that the applicants are also entitled to be considered for promotion to the cadre of JTOs against the 35% departmental quota and that they are eligible to compete in the screening test proposed to be conducted for this purpose as per Annexure A1 and directed the respondents accordingly.
- (iv) grant such other further reliefs as the Hon'ble Tribunal may deem just, fit and proper in the facts and circumstances of the case.
- (v) award costs of and incidental to this application.

6. According to the Applicants at the time of filing of this O.A. they were working as Telecom Technical Assistants (TTAs). The first applicant was appointed as Technician on 31.10.95 and thereafter he was promoted as TTA on and with effect from 23.10.97 in the scale of pay of Rs. 4500-7000 and he continued in that post since then. Second applicant joined the service of the department as Technician on 6.6.85. During the period from 1993 to 98 he being eligible and qualified was selected and sent on deputation to the Telecommunications Consultant India Ltd. When the applicant was away as above respondents conducted the first screening test to be promoted as TTA during 1995-96. The applicant claimed that he was never informed of the said screening test nor was he given an opportunity of being considered for promotion as TTA along with his juniors. On return from deputation on representation to the authorities he was informed that he would be considered for screening test when the next test/^{was} held. The next screening test was held during

January, 1999 and the results were announced by February, 1999. Thereafter while several others out of those who qualified were sent on training during April, 1999 the applicant was not sent though he was one among the seniormost. He was promoted as TTA on officiating basis by A3 order dated 18.6.99 issued from the office of the 3rd respondent. His officiating promotion was extended again by A4 order dated 7.12.99 issued by the 3rd respondent. Thereafter the applicant was sent for training and on successfully qualifying in the training later promoted as TTA on and with effect from 9.10.99 by A5 order dated 17.12.99 issued by the 3rd respondent. Meanwhile by notification dated 30.11.99 the second respondent intimated the intention to hold a screening test on 8.1.2000 for promotion to the post of JTO against 35% quota. All the vacancies earmarked were vacancies reserved for SC and ST community. A6 was subsequently cancelled and Annexure A1 was issued permitting the candidates belonging to the general category also to appear in the screening test along with the members of SC/ST. The eligibility condition of six years service in the cadre were not insisted and they were permitted provisionally subject to the outcome of the decisions in various O.As filed before the different Benches of the Tribunal and High Courts. The applicants had applied for the test against 35% quota for promotion to the post of JTOs. They received A2 notice rejecting their candidature and refusing to permit them to participate in the examination. According to the applicants A2 and A1 to the extent they denied consideration of the applicants was highly arbitrary and discriminatory, contrary to law and unconstitutional. Hence they filed this O.A. seeking the above reliefs.

7. According to xxx the first applicant he being a TTA as early as on 23.12.97 there was no justification for denying consideration. The second applicant's plea was that he ought to have been promoted as TTA as early as in 1996-97 on par with his juniors in the cadre of Technicians. The denial of consideration and promotion to the said applicant was for reasons directly attributable to the respondents and not on account of any laches on the part of the applicant. As the applicant was on deputation, the respondents ought to have given him the benefit of promotion as TTA from the date juniors became TTAs. The delay in screening the applicant for training was directly attributable to the respondents and hence he was entitled to be treated as promoted prior to 31.8.1999.

8. Respondents filed reply statement resisting the claims of the applicants. According to them the first applicant was appointed only on 31.10.95 as Technician and he did not satisfy the requirement of 6 years service which was a mandatory qualification. Even assuming that on the strength of the DOT letter which permitted TTAs on 1.7.99 with 6 years regular service as TTA and previous cadres to take part in the screening test, the 1st applicant having entered service on 30.10.95 did not possess 6 years qualifying service on 1.7.99. Similarly the second applicant though had more than 6 years service as he was on 1.7.99 not a regular TTA. The OA was liable to be dismissed.

9. Applicants filed rejoinder and respondents filed additional reply statement.

10. Heard learned counsel for the parties. Shri T.C. Govindaswamy learned counsel for the applicants in both the O.As. took us through the factual aspects as contained in the O.As. He submitted that the first applicant in O.A. 485/2000 was appointed as Technician on 31.10.1995 and had become a TTA as early as on 23.10.97. As the respondents had permitted TTAs provisionally without any restriction of six years service in the cadre there was no reason to deny the first applicant the opportunity to appear for screening test. As regards the second applicant he was appointed as Technician on 6.6.1985 and became eligible to be promoted as TTA as early as 1995 and his non-promotion as TTA at par with his juniors who were promoted in 1996 were for the reasons directly attributable to the respondents. It was not for any laches on the part of the said applicant. Hence, he submitted that denial of consideration of the said applicant was arbitrary and unconstitutional. The said applicant was on deputation from 1997 to 1998 and even applying the 'next below rule' he ought to have been given the benefit of promotion from the date of promotion of his immediate junior and hence he should have been considered at par with his juniors in the cadre of Technician and granted consequential benefits. Further, the result of the screening test was announced in February, 1999. Respondents started sending persons for 10 weeks training without any fixed policy. Those who had completed the training were promoted on dates prior to 31.8.99 and were considered for the reasons that they were trained prior to 31.8.99 for the qualifying screening test of JTOs. Another factor was that the applicant was promoted against vacancies which existed prior to 31.8.99. In the case of the applicant in O.A. 484/2000 also he was not posted as TTA in time according to his

seniority for reasons directly attributable to the respondents. So he was eligible to be allowed to appear for the second screening test for promotion to JTO.

11. Learned counsel for the respondents took us through the reply statement and reiterated the points made therein. He submitted that it was incorrect and misleading to state that the applicants juniors were promoted as TTA. The second applicant in O.A. 485/2000 failed to exercise his option against his first call during 1995-96 inspite of having been given opportunity. He could not complain against his juniors who exercised option during the said occasion. He was considered and sent for training on the basis of his option in the second time strictly according to his turn. Since he completed the training and was given a regular posting only w.e.f. 9.10.99 he did not have any legitimate claim for being permitted to appear for JTO screening test as he did not satisfy the requirement of being a TTA on 1.7.99 he could not be considered. Similarly the applicant in O.A. 484/2000 became a TTA with effect from 23.10.99. The first applicant in OA 485/2000 did not have the required length of service having been appointed only on 31.10.1995. Hence the two Original Applications were liable to be dismissed.

12. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record.

13. This Tribunal had occasion to consider similar issues in O.A. 47/2000 and three other O.As. A Division Bench of this Tribunal after hearing the above four OAs framed the following issues for consideration.

(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

14. The Division Bench because of divergent views of two earlier Divisions Benches referred the following question of law to be placed before a Larger Bench:

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 O.A. 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 1754/98."

15. The Larger Bench went into the issue and by its order dated 9.8.2002 answered the reference as follows:

"The PI/AEA/WO/TA/TTA who possess the High School/Matriculation qualification should have completed six years of regular service in the department in order to be eligible to appear for the Screening Test under the 35% quota as per the relevant recruitment rule."

16. In O.A. 47/2000 this Tribunal in its order dated 29.8.2002 held as follows:

There is no dispute that the applicant has not completed six years of regular service as on 21.7.99 or on 31.8.99. The only ground as advanced by her was that when juniors were permitted to appear in the screening test, the seniors also should be called. When the Full Bench of the Tribunal after considering the Recruitment Rules had held that for being

eligible for Screening Test, an employee should have put in six years of regular service and admittedly the applicant does not have six years of regular service *prima facie* she is not entitled for being called for the screening Test and A3 to the extent it rejected the applicant's request on the ground of "no required service" could not be faulted.

10. On considering R1(a) Recruitment rules also, we do not find anything there to indicate that the 35% quota earmarked for being filled up by promotion/transfer of staff from different cadres of the Department on the basis of educational qualifications or on the basis of the screening Test gives any weightage for seniority. Basically, the criteria stated therein is length of service and educational qualifications. Therefore, we hold that the applicant is not entitled to get the reliefs sought for in this Original Application.

11. Accordingly we dismiss this original application. No costs.

17. In O.A 418/2000 this Bench of the Tribunal after considering the second issue held as follows:

"7. In this case the issue involved is whether the length of service put in by her in another Circle can be counted towards six years of regular service. As the Full Bench has decided that what is required for eligibility to appear in the screening test against 35% quota is only six years of regular service as distinct from the service in the eligible cadres, the length of service put in by her in Maharashtra Circle could not be excluded for the purpose of eligibility for appearing in the Screening Test. Further in OA 47/2000, we have held after considering the provisions of the Recruitment Rules R1(a) that for recruitment against 35% quota selection for JTO, only educational qualifications and length of service have been specified for eligibility and had not given any criteria of seniority. Therefore, even though the applicant is junior in the Kerala Circle, as the applicant has six years of service specified in the Recruitment Rules, we are of the considered view that she cannot be prevented from the Screening Test on the ground that she does not have the required service in Kerala Circle.

18. We are of the view that the case of the applicants in these two OAs have to be considered in the light of the dictum laid down by this Tribunal in the above two OAs.

19. It is an admitted fact that the applicant in O.A. 484/2000 had become a TTA only on 23.10.99 having completed his training as TTA on 22.10.99. Thus he was not a TTA on

the crucial date 31.8.99. Respondents' case was that new Recruitment Rules had come into effect from 1.9.99 and the second qualifying screening test was being conducted for filling up the vacancies of JTO which occurred upto 31.8.99 and hence there was nothing arbitrary in fixing the date of 31.8.99 as the crucial date for deciding the eligibility of the candidates to appear for the screening test. It is now well accepted that fixing cut off dates in recruitment notifications is an executive action and such action can be interfered with in Judicial Review by Courts/Tribunals only if the said fixation of cut off dates is found to be arbitrary on irrelevant considerations. We find from the respondents' averments and A1 that the second Qualifying Screening Test was for vacancies which existed before 1.9.99. Further it is not under dispute that the new Recruitment Rules had come into force from 1.9.99. Under such circumstances we cannot accept the applicant's contention that the date 31.8.99 laid down in A1 notification is in any way arbitrary calling for interference by this Tribunal.

20. Admittedly the applicant in O.A. 484/2000 had not become a TTA on 31.8.99. He became a TTA only on 23.10.99. We also find that the applicant has not disputed the respondents' averments that Smt. Sheela K.V. and S/Shri A. Sasidharan A. and Muraleedharan T. were at Sl No. 197, 205 and 210 and the applicant was at Sl. NO. 236 in the seniority list. In the light of the above factual position we cannot fault the respondents' decision in not allowing him for appearing in the second qualifying screening test for promotion to the post of JTO against 35% quota.

21. As regards the first applicant in O.A. 485/2000 it is an admitted fact that he had been recruited directly as TTA on 31.10.95. Thus on 31.8.99 he had put in less than six years of service. As the Full Bench of this Tribunal has held that as per the Recruitment Rules 6 years of regular service was required for a TTA to appear in the second qualifying screening test and the applicant having not put in 6 years of service cannot be held to be eligible for appearing in the second qualifying screening test. Further, in O.A. 418/2000 this Tribunal had held that seniority was not a criteria for the qualifying screening test. In the light of the foregoing the first applicant cannot get the relief sought for in this O.A.

22. The second applicant in O.A. 485/2000 had not become a regular TTA on the crucial date of 31.8.99. But we find that he had been posted as a TTA in February, 1999. we find that the respondents had not disputed that the second applicant in OA No. 485/2000 is senior to S/Sri Prajithraj P., Sasidharan M.A., Sasidharan A., Muraleedhran T-II, and Alavi P. They had also not disputed the further averment of the applicant that the latter three persons qualified in the second screening test but had been posted as TTA on regular basis on dates prior to 1.7.99. We find that the only reason given by the respondents was that the second applicant was sent on deputation on his own request and volition and that he could have also opted out of the same. Their further plea was that inspite of deputation the lien of the applicant remained with the Department of Telecom (DOT for short) and he could not have been unaware of the developments like restructuring of cadres, calling of options, etc. According to them nothing prevented the second applicant from exercising the timely option back to DOT to undergo the

qualifying test earlier and to get a post as TTA on regular vacancy earlier and the omission was on his part. We are not able to accept these pleas of the respondents. From a reading of the pleas put forth by the respondents in the pleadings we find that they are refusing to give the second applicant what is his due under the "next below rule." They have not put forth a case that the applicant was specifically asked to exercise the option while on deputation and he refused to do so and continued on deputation. A person who is on deputation does not forego his service benefits like promotion, seniority, etc. in his parent cadre on his repatriation. Hence we have no hesitation in holding that the second applicant in O.A. NO. 485/2000 is eligible to appear for the second screening test because we find that he could not become a regular TTA in time because of the failure of the respondents to advise him in time while he was on deputation to exercise the option for becoming a TTA.

23. In view of the foregoing we are unable to sustain the action of the respondents in not permitting the second applicant in O.A. 485/2000 to appear for the second screening test as contained in A2 letter dated 26.4.2000 in that O.A. Hence we are of the view that A2 is liable to be set aside and quashed as far as the second applicant in O.A. No. 485/2000 is concerned. We do so accordingly. By the interim order dated 28.4.2000 we had directed the respondents to permit the applicants in the both the O.As to appear in the second screening test. In the light of our finding regarding the second applicant in O.A. NO. 485/2000 we make the said interim order absolute as far as he is concerned and direct the respondents to take further follow up action and grant the consequential benefits to him as due in accordance with law.

24. In the result we dismiss O.A. NO. 484/2000 and allow O.A. No. 485/2000 to the extent indicated in the foregoing paragraphs. There shall be no order as to costs.

Dated 14.11.2002.

Sd/-
K.V.SACHIDANANDAN
JUDICIAL MEMBER

Sd/-
G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

APPENDIX

O.A. 484/2000

APPLICANT'S ANNEXURES

- A1 True copy of order No. Rectt/30-6/99 dated 8.3.2000 issued by the 2nd respondent.
- A2 True copy of Order No. STT-2001/69 dated 17.12.1999 from the office of the 3rd respondent.
- A3 True copy of Order No. Rectt/30-6/99 dated 30.11.1999 issued from the office of the 1st respondent.
- A4 True copy of applicant's representation dated 23.12.99 addressed to the 2nd respondent.

RESPONDENTS' ANNEXURES

- R2(a) True copy of declaration given by the applicant
- R2(b) True copy of the JTO Recruitment Rules 1996
- R2(c) True copy of letter No. 5-11/99-NCG dated 23.3.2000
- R2(d) True copy of relevant pages of the gradation list of Technicians as on 1.7.1988

O.A. 485/2000

Applicants' Annexures

- A1 True copy of Office Order No. Rectt/30-6/99 dated 8.3.2000 issued by the second respondent.
- A2 True copy of letter No. SES-4041/2000-01/69 dated 26.4.2000 issued by the 3rd respondent.
- A3 True copy of order No. STT-2007/32 dated 18.6.99 issued from the office of the 3rd respondent.
- A4 True copy of Order No. STT-2007/38 dated 7.12.99 issued by the 3rd respondent.
- A5 True copy of Order No. STT-2001/69 dated 17.12.99 issued by the 3rd respondent.

RESPONDENTS' ANNEXURES

- R2(a) True copy of JTO Recruitment Rules 1996
- R2(b) True copy of letter No. 5-11/99-NCG dated 23.3.2000 issued by Assistant Director General (ST-C) DOT New Delhi.

CERTIFIED TRUE COPY
Date

Deputy Registrar