

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.349/90, 460/90, 486/90
and 683/90

DATE OF DECISION 17.6.91

In O.A. 349/90

K.Sudheer and 3 others	Applicants
M/s.M.K.Damodaran & Vijay Mohanan P.K. Advocate for the Applicants	
vs.	
Union of India represented by Secretary to the Ministry of Communications, New Delhi and 2 others	Respondents
Mr.Mathew J.Nedumpara,ACGSC	Advocate for the Respondents

In O.A No.460/90

P.A.Thanuja	Applicant
M.K.Damodaran,Alexander Thomas and Prabhanandan	Advocate for the Applicant
vs.	
Union of India represented by the Secretary to Ministry of Communications New Delhi and 2 others	Respondents
Mr.C.Kochunni Nair,ACGSC	Advocate for the Respondent

In O.A 486/90

Ajitha V.and another	Applicants
Mr.P.K.Lakshmanan	Advocate for the Applicants
vs.	

Union of India represented by the Secretary to the Ministry of Telecommunications, New Delhi and 4 others	Respondents
Mr.N.N.Sugunapalan,SCGSC Mr.Pirappancode Sreedharan Nair	Advocate for the Respondents

In O.A.683/90

Madhusudanan Namboodiri	Applicant
M/s.M.K.Damodaran & Alexander Thomas	Advocate for the Applicant
vs.	
Union of India represented by the Secretary to Ministry of Communications, New Delhi and 2 others	Respondents
Mr.George Joseph,ACGSC	Advocate for the Respondents

CORAM:

THE HON'BLE MR.S.P.MUKERJI, VICE CHAIRMAN

THE HON'BLE MR.A.V.HARIDASAN,JUDICIAL MEMBER

- 1.Whether Reporters of local papers may be allowed to see the judgment? ✓
- 2.To be referred to the Reporters or not? ↗
- 3.Whether their Lordships wish to see the fair copy of the judgment? ↗
- 4.To be circulated to all Benches of the Tribunal? ↗

JUDGMENT

(Hon'ble Shri S.P.Mukerji,Vice Chairman)

Since common questions of law, facts and reliefs are involved in the aforesaid for Original Applications, they are being disposed of by a common judgment as follows.

2. In O.A. No.349/90 originally filed on 20th April 1990 and amended on 22.1.1991, the four applicants therein who are ordinary Science Graduates some with Post Graduate Degrees have prayed that the selection criteria notified by the respondents in March 1989 for selection to the post of Junior Telecom Officer in Kerala Circle should be strictly followed. The brief facts of the case are as follows.

3. According to the applicants in March 1989 the educational qualifications notified by the respondents while inviting applications for the posts of Junior Telecom Officers, Kerala Circle indicated that for Science Graduates for eligibility they must obtain 60% marks in the "aggregate obtained in the examination of a Recognised University". According to the applicants it was also notified that the selection criterion would be that candidates shall be selected strictly in the order of merit which will be based on percentage of marks obtained by them at the Final Degree Examination. Their grievance is that even

though they had obtained more than 90% marks in the Final Degree Examination they were not selected because the respondents, according to them, instead of following the advertised selection criteria in the notification, based the selection on the ~~basis of~~ aggregate marks obtained in the Main, Optionals and Languages papers. According to them, they should have taken the marks obtained by the candidates at the Final Degree Examination. By modifying the notified selection criteria, their chances of appointment have been adversely affected. They have argued that in the 1983 examination the selections for the post of JTOs in the Kerala Circle were made on the basis of marks obtained for the Main and Optional papers only. According to them in Punjab and Haryana Telecom Circles where similar notifications have been issued in February and March 1989, selections were made on the basis of percentage of marks obtained by the candidates at the Final Degree Examination. They have referred to the Recruitment Rules at Annexure-3 whereunder selection is to be made from amongst who have obtained 60% marks in the aggregate obtained in the examination of a Recognised University. On 28.8.1982 a clarification was issued at Annexure-3(a) that 60% refers to the aggregate marks obtained in the special and optional subjects taken under Part III of B.Sc course the marks being those reckoned by the Universities for awarding the Class/ Division. By including marks obtained in Part I and Part II also for selection

persons with low percentage of marks in Part III would get selected.

By this the Kerala Graduates will be at ^a disadvantage compared to the Graduates from Universities outside Kerala. In Kerala in the Degree Examinations the Universities consider the total marks scored for Part III Optional Subjects only for awarding rank or division. They have argued that the mode of selection prescribed in the notification is contrary to the instructions issued to the candidates at Annexure-6 in which it was mentioned that selection will be strictly in accordance with the "order of merit on the basis of aggregate marks obtained in the Degree Examination to the extent of vacancies".

4. No counter affidavit has been filed by the respondents but a statement has been filed by the learned counsel for respondent 3, i.e., the Chief General Manager, Telecom, Kerala Circle stating that in identical cases OA 149/90 and OA 470/90 the stand taken by the respondents has been upheld and in that light, the present application be dismissed.

5. In O.A 460/90 the applicant has sought the same reliefs as in the preceding O.A giving more or less similar arguments. She is an ordinary Science Graduate with M.Sc.(Physics) in First Division. She had secured 89.2% marks in the Final Year B.Sc.Examination and has argued that had these marks been taken into account, she would have been selected. She has referred to another Application No.349/90 in which by an interim order dated 3.5.1990 the respondents were directed by the Tribunal to

consider the applicants therein for selection to the post of JTO subject to the outcome of that application.

6. In O.A 486/90 the two applicants had obtained 93.4% and 92.2% marks in the Final B.Sc. Degree Examination. They feel that since candidates who had obtained only 92% marks in the Final Degree Examination have been selected, they also would have been selected if Final Degree Examination marks had been taken into account for selection instead of aggregate marks in the Main, Optional and Languages papers. They have given the same arguments and sought the same reliefs as in the preceding applications. In the counter affidavit filed by the additional respondent 4, who is one of the selected candidates and is a First Class Engineering Graduate, it has been stated that in the notification inviting application it was stated that the selection will be strictly according to the order of merit on the basis of aggregate marks obtained in the Degree Examination and not on the basis of marks obtained in Part III alone. He has stated that after subjecting themselves to the recruitment process, the applicants cannot question its legality when they are not selected. He has stated that on the basis of the aggregate marks, the applicants could not be selected. He has stated that in his case the marks obtained by him in 40 written papers and 13 practical examinations, including English were taken into account for deciding his rank and selection. In the case of the applicants, however, who are ordinary Science Graduates the marks obtained only in 14 papers were considered. If language papers are also taken into account there will be 20 papers. The chances of Engineering Degree holders of being selected are much less than those of ordinary Science

and
Graduates / if only Part III examination papers for ordinary Science

Graduates are taken into account, none of the Engineering Graduates

would be selected. The nature of duties of Telecom Officers is highly

technical and the respondents are fully justified in taking the aggregate

marks. In Punjab and Haryana Circles the notification specifically stated

that selection will be on the basis of marks obtained in Subjects alone,

while it was not so in case of Kerala Circle. Respondents 1 to 3 in the

counter affidavit have referred to the notification (Annexure-RI) issued

in Kerala Circle

by the department / inviting applications upto 1.5.89/15.5.89 for the post

of Junior Telecom Officers in which it was made clear that the selection

"will be strictly according to the order of merit on the basis of the aggre-

gate marks obtained in the Degree Examination to the extent of vacancies"

They have clarified that in the notification 60% marks for Part III was

prescribed for eligibility but not for selection. They have also referred

to the circular dated 16.2.74 at Annexure-RII in which it was stated that

"the marks obtained by the candidates in the examinations of all Parts

viz. Part I, Part II, Part III, etc., in all the Semesters which are conducted

by the Universities and are reckoned for determining the Division or Merit

in the awarding of the final Degree/Diploma should be reckoned for deter-

mining the inter-se-merit". A further circular of 8.8.82 at Annexure-R.III

clarifies that 60% marks for eligibility are with reference to Part III of

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the examination. They have conceded that in 1983 selection was made on the basis of marks obtained in Part III alone, but that was due to misinterpretation of rules and prior to and after that, selections were made strictly on the basis of aggregate percentage of marks obtained in all the three parts. They have stated that by quoting from the advertisements issued by the Punjab and Haryana Telecom Circles, the applicants have tried to mislead the Tribunal. They have further clarified that in the University of Kerala, degree is awarded on the basis of the performance in all the three parts even though the examinations are held at the end of the second and third year of three year Degree course. The criteria followed in other Universities outside Kerala cannot be adopted in Kerala for selection. The respondents have been taking consistent stand in all similar applications before the Tribunal decided earlier. They have clarified that only those candidates who got an aggregate of 79% marks were included in the Select List. Since the applicants had scored 77.38% and 76.94% they could not be selected.

7. In O.A 683/90 the applicant an ordinary Science Graduate with 95% marks in the Final Year B.Sc. Examination has sought similar reliefs as in the previous applications and advanced similar arguments. With his application he has appended notices issued by the Department of Telecommunications of Punjab and Haryana Circles but did not append the notice issued by the Kerala Circle, a copy of which has been appended

by the respondents as at Annexure RI. The respondents have also appended a copy of the judgment dated 31.8.90 in O.A 149/90 by the same Bench, in which similar applications were dismissed.

8. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Most of the applicants in these applications have appended the notifications issued by the ^{and based their case on} Punjab and Haryana Telecom Circles without quoting from the notification issued by the Kerala Telecom Circle. Fortunately the respondents have produced photocopy of that notice. Since the applicants have challenged ^c the selection made in the Kerala Telecom Circle, the Tribunal will have to refer to the notifications inviting applications, issued by that Circle. The educational qualifications and the modality of selection have been indicated in that notification as quoted below :-

"EDUCATIONAL QUALIFICATIONS: A Degree in Engineering in Mechanical/Electrical/Telecommunications/Electronics/Radio Engineering or equivalent qualification from a Recognised University OR B.Sc/B.Sc(Hons) Degree of recognised University (with Physics and Mathematics as main/elective/subsidiary/additional optional subjects) with 60% marks in the aggregate obtained in Part-III of the Degree examination of Recognised University.

Applicant must be registered with any of the Employment Exchanges in Kerala State or Lakshadweep Islands and the registration must be current.

SELECTION: Selection will be strictly according to the order of merit on the basis of the aggregate marks obtained in the Degree examination to the extent of vacancies."

From the above it is clear that while for eligibility, 60% marks in Part III of the Degree examination have been mentioned, for selection "marks obtained in the Degree examination" have been mentioned. There is a clear distinction between the criterion of eligibility and criterion of selection and this distinction cannot be faulted. The applicants cannot claim

that the criterion of eligibility should also be the criterion of selection.

Criterion of selection as in these cases can be stricter than the criterion of eligibility. The clarifications issued by the department in 1974 and 1982 make it abundantly clear that for eligibility 60% of marks in Part III are to be taken into account while for selection aggregate marks obtained also in all the three Parts of the Degree examination which are taken into account for awarding Degree and rank will be taken into account. The following extracts from our judgment dated 31.8.90 in OA 149/90 will be very relevant:-

"7. The above in any case will show that even with all the three Parts taken together, an ordinary Science graduate may get more marks than the highest scorer amongst the Engineering graduates. In that context, to give a further advantage to the ordinary Science graduate by taking the marks of Part III papers only into account, would be unfair to the Engineering graduates. Considering the importance of Engineering graduates in Telecom Department, it would not also be in the public interest to put them to a still less disadvantageous proposition vis-a-vis the ordinary Science graduates. Already, under the existing dispensation only 44 Engineering graduates could find places within the first 214 positions in the merit list. If only Part III paper is taken into account for preparing the merit list, the Engineering graduates will further fade away numerically. The Recruitment Rules as they stand, as also the Advertisement and Instructions to the Candidates clearly distinguish between the eligibility and selection criteria. For ordinary Science graduates the eligibility criterion is at least "60% marks in the aggregate obtained in Part-III of the Degree examination of recognised University" For selection it is clearly laid down that the basis would be "the order of merit on the basis of the aggregate marks obtained in the Degree examination to the extent of vacancies". Thus, it will be a violation of the Recruitment Rules and the advertised criteria if at this stage the selection criterion is changed from aggregate marks to marks in Part III of the Degree examination for ordinary Science graduates."

"8. So far as the administrative instructions dated 15.9.81 and 28.8.82 are concerned, we do not find anything in them which would persuade us to recognise marks in Part III paper to have been laid down as the criterion for selection. These instructions referred to 60% of the marks in part III of the B.Sc course as relevant for eligibility and not for selection."

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9. In view of what has been discussed above, we see no force in any of the four applications before us and dismiss the same without any order as to costs.


7/6/91
(A.V.Haridasan)
Judicial Member


7/6/91
(S.P.Mukerji)
Vice Chairman

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