

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 488
T. A. No. 1991

DATE OF DECISION 14.8.91

S. Nalinakshan _____ Applicant (s)

Mr. Sasidharan Chempazhanthiyil _____ Advocate for the Applicant (s)

Versus.

The Chief General Manager, Telecom _____ Respondent (s)
Kerala Circle, Trivandrum and others

Mr. N N Sugunapalan, SCGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Y*
4. To be circulated to all Benches of the Tribunal? *W*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant belongs to Telegraph Engineering Service Group-B (TES Group-B for short) working under the third respondent. He is a member of the Scheduled Caste community. His main grievance is against Annexure-VI, the posting and transfer order passed on ¹⁴ 27.3.91 without giving any benefit eligible to a member belonging to S.C. community.

2. Admittedly the applicant is the only SC candidate among the officers of TES Group-B who were called by the third respondent for the selection to the post of

5

..

Lecturer in the RTTC/GTTC, by letter dated 6.8.90,

Annexure-I. Annexure-III discloses that there were thirty three post of Lecturers in RTTC and 12 post in CTTC,

Trivandrum (one post belongs to non-allowance post). Thus the total number of allowedance Lecturers' post are 44.

According to the applicant against the total 44 posts of Lecturers, only two posts were held by /on the basis of selection by DPC. From among the candidates who applied for the post of Lecturers in RTTC/CTTC, Trivandrum, the first respondent appointed Asstt. Engineers as Lecturers provisionally including the applicant as shown in Annexure-IV Pursuant to Annexure A-IV, the applicant joined as Lecturer of CTTC on 5.12.1990 and he is continuing in that post.

But he was not selected for the post though he was interviewed by a Committee constituted for selection as Lecturers in CTTC/RTTC Trivandrum on 18.3.91. The Committee consisted of three members namely the Dy. Director General (Personnel), Dy. Director General (Trg), Telecom Commission and CGM, Kerala Telecom. In the preliminary selection only 22 candidates were interviewed. The applicant submitted that he was not asked any question on technical subjects.

When Annexure-VI posting orders of selected candidates were issued indicating the transfer and posting as Lecturers, the applicant's name was not included.

3. The applicant is attacking the selection and posting of Lecturers by transfer under the afore-said order mainly

on two grounds (i) the Committee constituted was not properly constituted for selection in accordance with law and (ii) the respondents have not given any preference to the member of the SC community while making the appointment to the post of Lecturers when there are about 44 posts. He has also relied on the instructions Annexure-VII and VIII No. O.M. No. 41013/16/80-Estt (SCT) dated 10.8.81 and 36024/3/85-Estt. (SCT) dated 24.6.85 of the Ministry of Home Affairs and Ministry of Personnel and Training respectively, to include a SC Member also in the Selection Committee to safe guard the interest of candidates belonging to SC/ST community.

4. The respondents in the reply statement submitted that the applicant was one among the candidates and he was interviewed by properly constituted Selection Committee as per proceedings prescribed by the Department for selection and posting of Lecturers from TES Group-B officers. The selection was made by a Committee constituted for this purpose as per the relevant orders. The Committee prepared the list of candidates to be called for interview as provided in Annexure R-2 and he was interviewed by the Committee in terms of Annexure R-2. But the Committee did not find the applicant suitable and hence he was not

selected and included in the list.

5. We have heard the arguments of the learned counsel appearing on both sides and also perused the documents. The learned counsel for the applicant, Shri Sasidharan Chempazhanthiyil, brought to our notice Annexure R-4 O.M. dealing with the constitution of Selection Committee for the preparation of panel for posting in RTTC/CTTC/DTT's and submitted that the the Committee xxx consisted of the following persons:

DDG (TRG)

DDG (T)/GMTCC, Jabalpur

CGM concerned with the administrative control of the training centre.

But according to the applicant, GMTCC Jabalpur who was having administrative control over the establishment was not in the Selection Committee and he alone will be a competent person to assess the merits of the candidates by testing the candidates on technical matters. The absence of such an officer vitiated the entire selection. This contention of the applicant has not been controverted by the respondents. The interview for the selection for the post of Lecturers was conducted on 18th and 19th March, 1990. Twenty five persons were selected but the applicant was not included. He further submitted that the remaining posts are manned by persons not selected on the basis of prescribed

procedure. He also gave the following list of persons who are allowed to work as Lecturers in RTTC/CPTC but were not subjected to any test or selection:

" RTTC Trivandrum

No. of special pay posts: 33

Names of A.E.s who are working as Lecturers without test

period from which working

1. KSB Warrier	6/83
2. V. Janardana Iyer	6/81
3. George Oommen	6/81
4. U K Narayanan	9/84
5. S. Hariharan	7/82
6. NMJ Thampy	9/84
7. S. Damodaran Potti	6/84
8. PNK Namboodiri	7/87
9. GK Nair	4/88
10. R. Subramania Iyer	11/82

JUNIOR TELECOM OFFICERS working as Lecturers as on 25.4.91

1. N. Gopalakrishnan
2. Unnikrishnan
3. Elsamma Raju
4. Sebastian Jose
5. Balakrishnan
6. Appu
7. R. Ramany
8. Murukesan
9. Yohannan
10. Rooby

Of the ten named JTOs, 6 have since been transferred out and the persons named against Sl. Nos. 1,3,4 and 5 are still working.

The present position is as follows:

Lecturers working on the basis of selection	17
Lecturers working (without test)	10
JTOs working as Lecturers on temporary basis with special pay (without test)	4
Lecturers whose selection without a properly constituted DPC as approved by the Directorate prior to 1990	2
Total:	33

10

...

CTTC Trivandrum

Sanctioned strength of special pay 11
Lecturer post

1. Persons who are working as Lecturer without test	-
(a) R. Ganesa Pillai (DE)	
(b) M K Thankappan (AE)	2
2. Lecturers working on the basis of selection	8
3. Vacant post	1
Total:	11

The overall position.

Total Lecturer posts 44
(RTTC + CTTC)

1. Lecturers working after test	25
2. Lecturers working without test	16
3. Vacant	1
4. Lecturers whose selection prior to 1990 by an improperly constituted committee regularised by the Directorate.	2
Total:	44

These 16 persons are retained to be replaced, if at all, after completion of a fresh selection in the future."

The applicant also submitted that he has completed 29 years of service under the respondents which include 12 years of service as Assistant Engineer. He has no adverse remarks. He is the only SC candidate for the post of Lecturers out of the 44 working in the Centre. Not even an SC/ST candidate has been selected or posted as Lecturer considering

✓

..

✓ of Govt. of India and the guide lines for selection reservation policy/contained in Annexures VII and VIII. .

The Lecturers posts are carrying 30% special pay and in terms of monetary benefits the amount admissible to the applicant would come to about Rs. 1000/- and the denial of this benefit to the applicant without making a proper assessment of his merit by a regularly constituted Committee is arbitrary and violative of Article 14 and 16 of the Constitution. He has also alleged malafide against the first respondent and submitted that the first respondent in fact wanted to avoid him. That is the reason why no question was asked to him pertaining to technical matter in the course of the interview.

6. The respondents admitted that there is no SC/ST candidates out of the 44 posts of Lecturers. No specific reason is stated for the non-inclusion of SC/ST candidates as Lecturers in RTTC/CTTC. The respondents have not given to uphold the stand b satisfactory and convincing reason/that the Lecturers' post being a non promotion post no reservation could be introduced reserving posts for the SC/ST candidates. They have simply stated in the reply statement " the rules of reservation to SC/ST candidates are not applicable in this case since it is neither a recruitment nor a promotion." Prima facie it is difficult to treat the selection and appointment as Lecturers as neither a recruitment nor a selection to a better post particularly when

xxx they have not given any explanation as to the exact nature of the selection and appointment. Under these circumstances it is rather surprising that SC/ST candidate is not given any sort of encouragement by the respondents for getting selection either by reserving some posts for them or at least recognising Annexure VII and VIII and implementing the same in the selection proceedings particularly when the Constitution makers have proclaimed by incorporating various provisions such as Articles 15(4), 16(4), 46, 330, 332, 335, 338 and 366 (24) and (25) of the Constitution of India indicating that "Scheduled Caste and Scheduled Tribes are by and large backward in comparison with other communities in the country. This is the result of historical causes."

(See T. Devarsan Vs. The Union of India, AIR 1964 SC 179).

There is a definite need to improve the condition of the Scheduled Caste and Scheduled Tribe so as to bring them at par with other sections of society as part of the scheme for their uplift as envisaged in our Constitution. In State of Kerala Vs.

AIR 1976 SC 490, N.M. Thomas, Justice Khanna has made the position very clear and beyond a pale of doubt as follows:

"The framers of the Constitution were conscious of the backwardness of large section of the population. It was also pointed to them that

because of their backwardness those sections of population would not be in a position to compete with the advanced sections of the community who had all the advantages of affluence and better education. The fact that the door of competition were open to them would have been a poor consolation to the members of the backward classes because the chances of their success in the competitions were far too remote on account of the inherent handicap and disadvantages from which they suffered."

It was this consciousness and awareness of the Constitution makers about the neglected position of certain section of Indian Society which inspired them to make provisions of reservation in favour of backward classes, Scheduled Caste and Scheduled Tribe citizens in public employment.

7. This constitutionally protected right of the Scheduled Castes and Scheduled Tribes should be respected by all employers including the Government of India. The Supreme Court in K.C.Vasantha Kumar Vs. State of Karnataka, AIR 1985, said as follows:

".. The Scheduled Castes, the Scheduled Tribes and the other socially and educationally backward classes, all of whom have been compendiously described as 'the weaker sections of the people, have long journeys to make society. They need aid; they need facility; they need launching; they need propulsion. Their needs are their demands. The demands are matters of right and not of philanthropy. They ask for parity, and not charity. The days of Dronacharya and Ekalavya are over. They claim their constitutional right to equality of status and of opportunity and economic and social justice. Several bridges have to be erected, so that they may cross the Rubicon. Professional education and employment under the State are thought to be two such bridges. Hence the special provisions for advancement and for reservation under Articles 15(4) and 16(4) of the Constitution."

(emphasis supplied)

In the light of the constitutional mandate and the decisions of the Supreme Court pertaining to the rights of the SC/ST candidates we can only observe that the failure of the respondents to set apart at least one post out of the 44 Lecturers in RTTC/CTTC is not in consonance with the spirit and policy underlying the Constitution of India and policy of the Government in this behalf.

8. In the reply statement the respondents have categorically stated that "the constitution of the Selection Committee is laid down in Annexure R-4. From item 3 of Annexure R-4 it can be seen that the Selection Committee should consist of only DDG (Trg), DDG (T) and CGMT, Trivandrum." The respondents have misunderstood the provision for the constitution of the Committee. Annexure R-4 provides that the Committee shall consist of the following officers " DDG (Trg)/DDG (T), GMTTC, Jabalpur/ CGM concerned having administrative control." The applicant very vehemently submitted that GMTTC, Jabalpur who is a technical man to verify the technical knowledge of the candidate was absent in the Committee. This is not controverted by the respondents. Hence the Selection Committee which conducted the selection had been irregularly constituted particularly when Annexure R-4 does not provide as for a minimum quorum. The Supreme Court in State of A.P. vs. Mohanji Singh, (1988) Suppl. SCC 562, held as follows:

" .. The Govt. order being clear as to the constitution of the committee to function as the selection body, in the absence of the representative of the Director of Higher Education, it cannot be said that there was a proper selection committee constituted on the date when respondent 1 was selected. Ratification by the District Education Officer at a later point of time cannot validate the proceedings of the selection committee as there was no quorum and in its absence, the committee

b/

..

was not entitled to transact business. The Govt. order makes it clear that the selection committee is intended to function as a body. In case all the members were present at the selection there would have been scope for exchange of views when the candidates appeared and the selection would have been in terms of the scheme. Once a decision is taken and the absentee member is called upon to ratify the conclusion already reached, it becomes a very different type of activity. We are, therefore, not prepared to accept the decision of the Administrative Tribunal on principle that the subsequent ratification constituted valid selection."

In B'S Minhas Vs. Indian Statistical Institute, (1983) 4 SCC

dealing with the Constitution of Selection Committee 582, the Supreme Court/observed as follows:

".. It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in Vitarelli v. Seaton where the learned Judge said:

An executive agency must be rigorously held to the standards by which it professes its action to be judged... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.

The aforesaid principle laid down by Mr. Justice Frankfurter in Vitarelli V. Seaton' has been accepted as applicable in India by this Court in Amarjit Singh Ahluwalia v. State of Punjab¹ and in subsequent decision given in Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi². Mathew J. quoted the above referred observation of Mr. Justice Frankfurter with approval.(1) 359 US 535, LEd 2d 1012 (1959) ²AIR 1975 SC 984 (2) AIR 1975SC 1331.)

24. In view of the pronouncement of this Court on the point it must be held to be obligatory on the part of respondents No.1 to follow the bye-laws, if the bye-laws have been framed for the conduct of its affairs to to avoid arbitrariness. Respondent No. 1 cannot, therefore, escape the liability for not following the procedure prescribed by bye-law 2. "

9. In the instant case since all the selected candidates

are not parties in this application we are handicapped and we

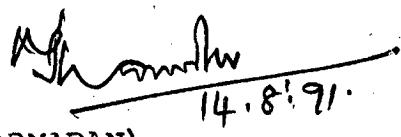
b/

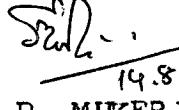
..

are not inclined to set aside the selection already made by the respondents by constituting incompetent committee.

10. Having considered the facts and circumstances of the case and after careful consideration of the matter, we are of the view that interest of justice will be met in this case if this application is disposed of with the direction that the applicant should be interviewed once again by a properly constituted special selection committee in terms of Annexure R-4 to assess his suitability to be absorbed as Lecturer in accordance with law. The respondents should thereafter pass necessary orders about his appointment. This shall be done by the respondents within a period of three months from the date of receipt of a copy of this judgment. Till final orders are passed pursuant to the above direction the interim order already passed in this case on 1.4.91 will continue.

11. The application is disposed of as above. There will be no order as to costs.


14.8.91
(N. DHARMADAN)
JUDICIAL MEMBER


14.8.91
(S. P. MUKERJI)
VICE CHAIRMAN

KMN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

R. A. 64/91 in

O.A. No. 488/91

T. A. No.

199

DATE OF DECISION 12.11.91

The Chief General Manager, Applicant (s)
Telecom., Trivandrum

Mr. N.N. Sugunapalan, SGSC Advocate for the Applicant (s)

Versus

Mr. S. Nalinakshan Respondent (s)

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

This R. A. is to be considered and disposed of by circulation. The only point raised in this R.A. filed by the original respondents in the original application is that "from item 3 of Annexure R-4 it can be seen that the Selection Committee should consist of only Deputy Director General (T) and Chief General Manager, Telecom, Trivandrum" and this being so it was not lawful to include the GMTCC Jabalpur as one of the members of the Selection Committee." This cannot be considered as an error in the judgment. It

is only the view of the respondents. But we have considered all the aspects on the basis of the ~~valuable~~^{available} records and the arguments of the learned counsel appearing on both sides.

2. There is nothing wrong in the directions issued in this case. The review applicants have not made out any ground for the review of the judgment in O.A. 488/91 dated 14.8.91. It is only to be rejected. We do so.

Pronounced in the open court.

N. Dharmadan
(N. DHARMADAN) 12.11.91.
JUDICIAL MEMBER

S. P. Mukerji
(S. P. MUKERJI) 12.11.91.
VICE CHAIRMAN

kmm

Pronounced in open court.

12.11.91