

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.506/2000

Monday, the 18th day of November, 2002.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. Baijumon,
Telecom Technical Assistant,
O/o the SDE Installation
(Sub Divisional Engineer),
RLU Buildings,
Alappuzha.
2. G.Unnikrishnan,
Telecom Technical Assistant,
Kayamkulam Telephone Exchange,
Alleppey District.
3. Babu.K.A.
O/o the SDE
(Sub Divisional Engineer),
Angamaly Telephone Exchange,
Ernakulam District. - Applicants

By Advocate Mr K.C.Eldho

vs

1. The Director General,
Department of Telecommunications,
20 - Ashoka Road,
Sanchar Bhavan,
New Delhi-1.
2. Chief General Manager Telecom,
Trivandrum.
3. Union of India represented by
the Secretary to the Government,
Department of Telecom,
Government Secretariat,
New Delhi.
4. Sijimol.M.A.
Senior Telecom Office Assistant,
O/o the General Manager
Telecom(GMT),
Thrissur.
5. Thressiakutty.P.K.
Senior T.O.A.
O/o the GMT,
Kottayam.

6. Beena Mathew,
T.O.A., O/o the GMT,
Trivandrum.
7. Saramma.M.C.
Senior T.O.A.
O/o the GMT,
Ernakulam.
8. Sasikumar.T.V.
Senior T.O.A.
O/o the GMT,
Trivandrum.
9. Balachandran.N.
Senior T.O.A.
O/o the GMT,
Ernakulam.
10. Omana.C.
Senior T.O.A.
O/o the GM,
Kannur.
11. Vidya.A.,
Lower Division Clerk,
Circle Office,
O/o the CGMT,
Trivandrum.
12. Lila.K.S.
Senior T.O.A.,
O/o the GMT,
Thrissur.
13. Geetha.M.B.
Senior T.O.A.
O/o the GMT,
Ernakulam.
14. Ramachandran.K.V.
Senior T.O.A.
O/o the GMT,
Kannur.
15. Ranjini Bhai.R.,
Senior T.O.A.,
O/o the GMT,
Alleppey.
16. Narayanan Nambisan,
Senior T.O.A.
O/o the GMT,
Kannur.
17. Jyothi.S.S.
Hindi Translator,
Circle Office,
O/o the CGMT,
Trivandrum.

18. Balakrishnan.A.
Senior T.O.A.
O/o the GMT,
Kannur.
19. Sobhanakumari.T.K.
Senior T.O.A.
O/o the GMT,
Thiruvalla.
20. Padmajadevi.I.
Senior T.O.A.
O/o the GMT,
Regional Telecom Training Centre,
Trivandrum.
21. Shanthi.P.G.
Senior T.O.A.
O/o the GMT,
Kannur.
22. Prasanna Rajan,
Senior T.O.A.
O/o the GMT,
Ernakulam.
23. Babu.P.N.
Senior T.O.A.
O/o the GMT,
Ernakulam.
24. Sukruthamma.M.M.
T.O.A.
O/o the GMT,
Ernakulam.
25. Harikumar.V.
Senior T.O.A.
O/o the GMT,
Ernakulam.
26. Gopalakrishnan.K.K.
Senior T.O.A.
O/o the GMT,
Ernakulam.
27. Mini.C.S.
Senior T.O.A.
O/o the GMT,
Kollam.
28. Kumari Jayasree.R.S.
Senior T.O.A.
O/o the GMT,
Trivandrum.
29. Mohammed Basheer.P.V.
Senior T.O.A.
O/o the GMT,
Calicut.

- Respondents

By Advocate Mr P.Vijayakumar, ACGSC(for R.1 to 3)

By Advocate Mr M.R.Rajendran Nair(for R.4 to 29)

The application having been heard on 19.9.2002 the Tribunal on 18.11.2002 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicants, three in number, are Telecom Technical Assistants (TTAs for short) who aspire for promotion to Junior Telecom Officer(JTO for short) through competitive examination for filling 15% of the vacancies earmarked for Group 'C' employees in the Department of Telecom as specified in the relevant Recruitment Rules. The applicants appeared for the Departmental Examination which was conducted on 15th and 16th May, 1999 in pursuance of A-4 notification dated 4.12.98, which stipulated that the Recruitment Rules in force in the year 1995 would be applicable for filling up the vacancies of the post of JTO for the recruitment year 1995 and the Recruitment Rules of 1996 would be relevant for filling the vacancies pertaining to the period 1996-99. The 2nd respondent published the select list of successful candidates as per A-5 communication dated 4.2.2000. The applicants' names did not figure in the yearwise lists attached to A-5 communication. At the request of the applicants, A-6, A-6(a) and A-6(b) communications containing particulars of marks obtained by each of the applicants were sent to them. The applicants consider that though their names did not figure in the select list, candidates shown from Sl.No.91 to 116 secured less marks than the applicants. Those persons are impleaded as respondents 4 to 29. According to the applicants, they

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were all Group 'C' employees and their pay scale was less than that of JTO and they had fulfilled the eligibility criteria for the 15% competitive quota. As per 1996 Recruitment Rules (A-7), those candidates working as TTAs are not eligible for competitive examination for 15% quota though there was no such prohibition in the previous recruitment rules, viz, recruitment rules of 1990 for the JTOs. The applicants find that the stipulation regarding exclusion of TTAs from 15% quota from recruitment years 1996 onwards as discriminatory. By the impugned circular dated 12.1.99 (A-8), it is clarified that qualifying screening test (35% quota) in respect of vacancies for 1996, 1997 and 1998 would be conducted as per the 1996 Recruitment Rules notified on 9.2.96 and that TTAs would be eligible for 35% quota screening test and not for 15% competitive quota for the JTO vacancies for the years 1996, 1997 and 1998 as per the existing Recruitment Rules of 1996. Being aggrieved, the applicants seek orders from this Tribunal quashing that part of A-5 list to the extent to which it includes the names of respondents 4 to 29 at Sl.Nos.91 to 116 as those candidates have secured less marks than the applicants and setting aside that part of A-7 and A-8 treating the applicants who are working as TTAs as ineligible to apply for promotion to the post of JTO against the 15% competitive quota and a direction to the respondents 1&2 to publish the rank list pursuant to A-4 considering the applicants against all the vacancies accrued in the year 1995, 1996, 1997 and

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1998 in the post of JTO and promote the applicants in accordance with their merit in the rank list.

2. The official respondents in their reply statement have stated that as per Recruitment Rules 1996 (A-7), Group 'C' employees with pay scale less than that of JTO falling under regular cadres other than Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants, Wireless Inspectors and TTAs alone would be eligible for competing against 15% quota. This classification was reasonable because the TTAs together with other specified categories could avail of opportunity under 35% promotion quota by qualifying in a screening test. However, in view of the subsequent modification of the Recruitment Rules, TTAs were considered for vacancies for 1996, 1997 and 1998, for this purpose their eligibility as on first day of relevant year was taken as the basis. Accordingly, the 1st applicant was considered against vacancies of 1997, the 2nd applicant was considered against vacancies of 1996 and the 3rd applicant was against 1995, 1996 based on their eligibility on the relevant dates. Their exclusion was owing to the fact that they did not obtain the necessary marks. The vacancies of 1995, 1996 and 1997 were filled up by eligible persons, who had obtained higher ranks than the applicants. The applicants could not, however, be considered against 15% promotion quota for 1998.

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3. Shri A.Balakrishnan, 18th of the 26 respondents has filed a reply statement. According to him, the applicants were not eligible to be considered for recruitment against vacancies for the year 1998 since the Recruitment Rules 1996 excluded the TTAs from the eligible category for appearing for the 15% limited departmental examination. They were, however, eligible to be considered against 35% promotional quota by means of the screening test only. The marks furnished as per A-6 series did not substantiate the applicants' claim that they enjoyed superior merit position compared to respondents 4 to 29. The applicants were eligible for the 15% competitive examination quota only for the year 1995 and not thereafter, since TTAs were specifically excluded. The provisional permission granted to TTAs to participate in the 15% competitive quota for the years 1996 and 1997 was due to the pendency of litigation in that regard and therefore, they had no entitlement for consideration against vacancies under 15% quota for the year 1998 in any case. In view of the clear provisions of A-4 notification, the applicants were well aware of the conditions applicable to them at the time of participation in the examination. Therefore, the present O.A. is only motivated by their failure in the examination.

4. We have heard Shri K.C.Eldho, learned counsel for the applicants, Shri P.Vijayakumar, learned ACGSC for respondents 1 to 3 and Shri M.R.Hariraj, learned counsel for respondents 4 to 29.

5. Learned counsel for the applicants would maintain that since the applicants secured higher marks than respondents 4

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to 29, the former's exclusion from A-5 list was unjustified and that the condition in A-7 Recruitment Rules in so far as it excludes the applicants from being considered for promotion for 15% competitive quota was not maintainable as it amounted to violation of the fundamental rights. Since the clarifications contained in A-8 had the effect of disqualifying the applicants' category of employees, i.e. TTAs from participating in the 15% competitive examination in respect of vacancies arising in 1996, 1997 and 1998 does not have any rational nexus to the objects sought to be achieved, A-8 to that extent was not maintainable in law, according to the learned counsel. Shri Vijayakumar, learned ACGSC would, however, contend that the recruitment rules as per A-7 were framed on the basis of reasonable norms of classification and that therefore, no injustice has been caused to TTAs like the applicants. They could, depending upon their eligibility, participate in the 35% quota for promotion to JTO by appearing in the screening test for the recruitment years 1996, 1997 and 1998. The avenue for promotion was still available for the applicants and therefore they could have no grievance in this respect. The allegation that the respondents 4 to 29 got less marks than the applicants was also incorrect since they were considered against the vacancies of the recruitment years for which the applicants could not seek promotion through the channel of 15% quota. Shri M.R. Hariraj, learned counsel for the party respondents relied on the pleadings in the reply statement filed by the 18th respondent substantially supporting the contentions put forward by the learned ACGSC. It was only reasonable that the Recruitment Rules in force

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prior to 1996 were to be applied for the vacancies arising in 1995, according to the counsel. The applicants could be considered only against those vacancies. Their provisional inclusion in 1996 and 1997 were only on account of an interim order from this Tribunal. They were obviously ineligible to be considered for 15% quota for 1998. In any event, they could apply for the 35% quota, i.e. screening test, depending on their fulfilling other conditions of eligibility. The O.A. was, therefore, misconceived according to counsel for the party respondents.

6. We have examined the case records and have carefully considered the contentions put forward by counsel for the applicants, the official respondents and the party respondents.

7. In our considered view, there is little material to support the contention that the party respondents were selected inspite of their lower marks as compared to the applicants thereby discriminating the applicants and denying them the benefit of natural justice. It is well settled that when promotion examination is held for filling the vacancies of a number of years, the Recruitment Rules relevant for each of the years should be applied in order to determine the eligibility of the different categories of employees. In this case, the second screening test was held in the year 1999 for filling the vacancies of JTOs arising in 1995, 1996, 1997 and 1998. The Recruitment Rules of 1990 were holding the field till the new Recruitment Rules were formulated in 1996. The

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1996 Recruitment Rules were again replaced by Recruitment Rules of 1999 for JTOs. Thus, as far as the promotion to the post of JTOs against the vacancies of 1995 is concerned, the Recruitment Rules of 1990 were relevant. For the vacancies of 1996, 1997 and 1998, the Recruitment Rules of 1996 had to be applied. Viewed against this, the applicants' eligibility for consideration against the 15% quota would be confined only to the recruitment year 1995, because from 1996 onwards, TTAs were not permitted to participate in the limited departmental competitive examination for 15% quota. But that does not mean that the TTAs are denied the benefits of promotional avenues. They are specifically brought under the 35% quota for departmental employees and therefore they could be considered against that quota by appearing for the screening test against the vacancies 1996, 1997 and 1998. We do not find any infirmity in the Recruitment Rules as the classification visualised in the Recruitment Rules does not spell out anything arbitrary or violative of the fundamental rights. Since the respondents themselves have accepted that the TTAs would be eligible to appear for the screening test for promotion to JTO against 35% quota for and from 1996 in the light of the 1996 Recruitment Rules, there is no substance in the applicants' contention that any injustice is caused to them. In our considered opinion, the area of choice would be larger for the applicants from the recruitment year 1996 onwards as they would be eligible to appear for the screening test for 35% quota category. It is pertinent to quote the relevant provisions in the Recruitment Rules concerning 50% departmental quota for promotion to the post of JTOs as per the 1996 Recruitment Rules (A-7):

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"In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer to be made:

1. 50% by promotion transfer of departmental candidates referred to in item under column 11 will be regulated as under:

i) 15% by promotion of departmental candidates through a competitive examination.

ii) 35% by promotion/transfer of Transmission Assistants/Wireless Operators/Auto Exchange Assistants/Phone Inspectors Telecom. Technical Assistants.

.....

35% transfer/promotion from amongst:

(a) the Phone Inspectors Auto Exchange Assistants Transmission Wireless Operator who possess the qualification prescribed in column 8 and have completed 5 years regular service in the cadre of Phone Inspector /Auto Exchange Assistant/Transmission Assistant/Wireless Operator.

(b) the Phone Inspectors/Auto Exchange Assistant/Wireless Operators/Transmission Assistant/Telecom Technical Assistants who possess the High School/Matriculation qualification and who have completed 6 years of regular service through a qualifying screening test, unless he has already passed such test."

(emphasis supplied)

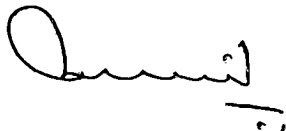
Thus, from 1996 recruitment year onwards TTAs with six years regular service can avail of the 35% quota screening test for promotion to JTO. The scope and import of the expression 'six years of regular service' appearing at (b) above in A-7 Recruitment Rules dealing with 35% quota has been considered by the Full Bench of this Tribunal in O.A.Nos.47, 418, 446 and 448 of 2000 and it has been held that the PI/AEA/WO/TA/TTA who possess the High School/Matriculation qualification and who have completed six years of regular service in the department

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are eligible to appear for the screening test under the 35% quota as per the relevant Recruitment Rules. In the light of the above, we find that the applicants can, subject to their eligibility otherwise, avail of 35% quota by way of screening test for and from 1996 under the 1996 Recruitment Rules until the said Recruitment Rules were replaced by the Recruitment Rules of 1999.

8. In view of the facts and circumstances discussed above, the applicants' grounds are bound to fail since no injustice has been caused to them. The application is accordingly dismissed, leaving the parties to bear their respective costs.

Dated, the 18th November, 2002.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures

1. A-1: True copy of the order of confirmation dt.13.5.98 vide Memo No.E-11/Confn/IV/25.
Respondents' Annexures:
2. A-2: True copy of the order of promotion dt.17.9.97 vide Memo No.E-150/TTA/Gen/55.
3. A-3: True copy of the order of appointment as Technician dt.20.4.98 vide No.ST/EF-218/4/Col.IV/6.
4. A-4: True copy of the notification dt.4.12.98 vide No.Rectt./30-4/99 issued by the 4th respondent.
5. A-5: True copy of the result of the departmental competitive exam dt.4.2.2000 vide No.REctt/30-4/99/II.
6. A-6(a): True copy of the order No.30-4/11/99/36 dt.25.2.2000 issued to the 2nd applicant.
7. A-6(b): True copy of order 30-4/99/11 dt.17.2.2000 issued to the 1st applicant.
8. A-7: True copy of the recruitment rule dt.8.2.96 vide No.Rectt/30-1/rlgs./VI.