

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.529 OF 2002

MONDAY this the 18th day of October, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

1. N.Kesavan, aged 55 years,
S/o Narayanan, Junior Telecom Officer,
Telephone Exchange, Kalamassery
residing at Ellathukudiyil House,
PO.Pattimattom, Kizhakkambalam,
Ernakulam District.
2. P.V.Jose, aged 48 years,
S/o Varghese, Junior Telecom Officer,
C.DOT Telephone Exchange
Perumbavoor residing at
Pottackal House, Irongol PO
Perumbavoor.Applicants

(By Advocate Mr.T.C.Govindaswamy)

Vs

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of Communications,
New Delhi.
2. Chairman & Managing Director,
BSNL, New Delhi.
3. Chief General Manager, Telecommunications,
Kerala Circle, BSNL, Trivandrum.
4. S.Ramachandran Nair, Sub Divisional
Engineer/Installation,
Telephone Bhavan, BSNL
Tiruvalla.
5. M.D.Kuriappan,
Sub Divisional Engineer (Telecom)
Parakkadavu
Via. Badagara, Calicut District....Respondents

(By Advocate Mr. C.Rajendran, SCGSC (R.1to3)

The application having been heard on 16.8.2004 the Tribunal
on 18.10.2004 delivered the following:

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O R D E R

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

The applicants 1 & 2 who were while working as Phone Inspector and Transmission Assistant respectively promoted as Junior Telecom Officers (JTOs) under 10% seniority-cum-fitness quota on the basis of the qualifying examination are aggrieved that they were given year of recruitment 1993 while they claim 1992. The undisputed facts are as follows. According to the Recruitment Rules notified in 1990 the posts of JTO are to be filled 65% by direct recruitment and the remaining 35% are to be filled by promotion in three groups as per column 12 of the schedule as under:

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

(ii) 10% by promotion of Transmission Assistants/Wireless Operators/Auto Exchange Assistants and Wireless Operators through a competitive examination

and

(iii) 10% by promotion of Transmission Assistants/Telephone Operators, Auto Exchange Assistants, Wireless Operators on seniority cum fitness basis through a separate qualifying test, the inter-se seniority being decided on the basis of length of service.

2. In 1990 willingness of departmental hands for qualifying examination for promotion against 10% posts against future vacancies was called for. The applicants applied. However finding that there was no vacancy the notification was cancelled. In 1991 another notification was issued in which it was indicated that those who had applied pursuant to the notification of 1990 need not apply

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afresh. The applicants however applied again. They also got qualified in the examination held on 29.2.1992 and 1.3.92. While so pursuant to the order of the Ernakulam Bench of the Central Administrative Tribunal in OA 22/1991 for those who did not respond to the notification issued in 1991 but had applied in 1990 another examination was held in September, 1992. As a consequence of this a doubt arose as to which batch was to be sent for training first. OA 323/93 and OA 423/93 on this issue was decided by the Tribunal on 21.4.1993 by a common order on the basis of a consensus between the contesting parties. The formula directed to be implemented was as follows:

"Para 11. On the basis of the submissions made in the Bar, the following consensus have emerged:

- (i) Candidates who were eligible to appear in 1990 examination and who applied in response to the notification dated 9.7.90 and appeared in the qualifying examination of 1991 held on 29.2.92 and 1.3.92 will automatically be included in the list for training to be deputed first, if they have qualified in this examination, and eligible in all other respect.
- (ii) Candidates who were eligible to appear for 1990 examination and applied in pursuance of the notification issued on 9.7.90 and 18.9.92 will also be sent for training first, if they have qualified in the examination held on 22.10.92 and satisfy all other requirements.
- (iii) The seniority of candidates in item (i) and (ii) will be interpolated as per their length of service in the grade keeping the inter-se seniority of each group in tact and thus the integrated seniority list will be prepared.
- (iv) The candidates in the integrated seniority list as mentioned in (iii) above will be sent for training first as per their seniority to the extent of available training facility. If the training could not be given to all the persons in one lot in

this group, they will be sent in batches, without dislocating the priority indicated above.

(v) The candidates who were eligible for appearing in the qualifying examination 1991 and appeared for the qualifying examination 1991 held on 29.2.92 and 1.3.92 and qualified in the same will be sent for training only after the completion of the training of the candidates listed in (iii) above.

On the basis of the above formula the applicants were sent for training in 1994. The first applicant had secured 1309 and second applicant 1326 marks out of a total 1400 marks in the test held during the training which according to the applicant should determine the inter-se seniority. The applicants were appointed as JTOs against vacancies of the recruitment year 1993. Qualifying tests were held for the qualifying examination held in 1992 also during 1993, 1994 and for some more vacancies diverted for promotion from direct recruitment also. Thereafter Annexure.A.5 seniority list of JTOs was published on 29.4.1998 placing the applicants 1 and 2 at serial numbers 1373 and 1354 respectively. Finding that some promotees who did not appear in 1992 examination and had not responded to 1990 notification had been placed above the applicants they submitted Annexures.A6 and A7 representations. In the meanwhile the Seniority List of JTOs dated 5.5.2000 was published by the Principal General Manager (Annexure.A8). Aggrieved the applicants submitted Annexures.A9 and A.10 representations and then Annexures.A11 and A.12 representations highlighting a decree of Mumbai Bench of Central Administrative Tribunal. Annexure.A11

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representation submitted by the first applicant was rejected by Annexure.A.13 order. While so by Annexure.A14 order dated 30.5.2002 some JTOs including respondents 4 and 5 who had allegedly got lesser marks than the applicants in the qualifying examination were promoted on adhoc basis to TES Group B. The applicants alleging that they having applied in 1990 as also in 1991 and had secured higher marks in the tests held during the training should have been treated seniors and appointed as JTOs against vacancies of the year 1992 and promoted to TES Group B in preference to Respondents 4 and 5 have filed this application seeking the following reliefs:

(a) Declare that the applicants are entitled to be granted the year of recruitment in the cadre of JTOs as 1992 in preference to those who had secured lesser marks than the applicants at the end of the training course, and direct the respondents to grant the consequential benefits thereof;

(b) Declare that the applicants are entitled to be considered for promotion to the cadre of TES Group B in preference to respondents 4 and 5 and direct the respondents accordingly.

(c) Call for the records leading to issue of Annexure.A.14 and quash the same to the extent it excludes the applicants and includes the respondents 4 and 5 herein.

(d) Award costs of and incidental to this application

and

(d) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

3. The respondents contend that against the 54 vacancies available for promotion of test qualified

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officials on seniority-cum-fitness basis for the recruitment year 1992, 54 seniormost officials based on length of service were absorbed and the applicants who did not come in seniority were accommodated at the appropriate places against vacancies of the recruitment year 1993. They further contend that inter se seniority for promotion is to be reckoned on the basis of length of service in the feeder grade and determination of seniority inter se on the basis of the cumulative marks during the training is applicable only in the case of recruits for one year. It is also contended by the respondents that the judgment of the Tribunal in OA 323/93 and 423/93 deals only the question of sending various groups for training and it does not stipulate nothing regarding inter se seniority of persons promoted as JTOs during different recruitment years. Since the respondents 4&5 were seniors to the applicants in the seniority list of JTOs they were along with others given adhoc promotion and similarly the applicants in this case also have been given adhoc promotion to TES Group 'B' in their turn in the circle gradation list by CGMT letter dated 25.7.02 and order dated 5.9.02 (Annexure.R.2 and R.3 respectively). The fixation of seniority and allocation of year of recruitment being in conformity with the rules, the respondents contend that the applicants do not have any legitimate grievance calling for redressal.

4. Shri T.C.G.Swamy, the learned counsel of the applicants argued that the cumulative marks in the

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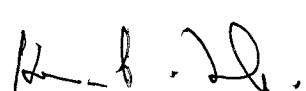
examination held during the training being the criteria for fixation of seniority and as this Bench of the Tribunal in its order in OA 323/93 and OA 423/93 have directed the respondents to implement the consensus arrived at by deputing the officers who qualified in the examination held in February, 1992 and September, 1992 the applicants who have responded to the notification issued in 1990 as also in 1991 and qualified in the examination held in February, 1992 should have been on the basis of marks obtained by them given the proper seniority and assigned the recruitment year 1992. The learned counsel of the respondents Shri C.Rajendran, on the other hand argued that according to the Recruitment Rules as quoted by the applicants in the application itself, the promotion of Transmission Assistants, Telephone Inspectors etc. as JTOs against the 10% quota is to be made on the basis of seniority-cumfitness based on qualifying test interse seniority being decided on the basis of length of service, the argument of the learned counsel of the applicants that the seniority should be determined on the basis of the cumulative marks in the examination held during training is wholly unsustainable. We find substance in the argument of the learned Senior Central Government Standing Counsel. The applicants admittedly were promoted as JTOs under 10% seniority-cum-fitness quota on qualifying examination. Element of seniority being important from among those who qualified in the examination. Appointment to the vacancies are to be made on the basis of seniority-cum-fitness. Those

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who come in the zone of consideration against vacancies of a particular year would be on the basis of fitness appointed against those vacancies. Those qualified but are juniors would be appointed against next arising vacancies. The inter-se seniority on the basis of marks obtained in the examinations held during training would be applicable only in the case of those who are appointed against a particular year of recruitment that too if they underwent training in one batch. The applicants have no case that respondents 4 and 5 were junior to them in the feeder grade. As promotions were made on the basis of seniority-cum-fitness the claim of the applicants that they should have been promoted as JTOs ahead of respondents 4 and 5 and considered for adhoc promotion to TES Group B in preference to respondents 4 and 5 have to be rejected.

5. In the result the application which is devoid of merit is dismissed. No costs.

Dated this the 18th day of October, 2004


H.P.DAS
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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