

Central Administrative Tribunal
Ernakulam Bench

Date of decision: 26-2-1990

Present

Hon'ble Shri S.P.Mukerji, Vice Chairman
&
Hon'ble Shri A.V.Haridasan, Judicial Member

Original Application No.541/89

P.Nalinakumari - Applicant

v.

1. Senior Superintendent,
Telegraph Traffic Division,
Trivandrum.
2. Chief General Manager,
Telecom,
Trivandrum.
3. Chairman,
Telecom Commission,
Department of Telecommunications,
New Delhi.
4. Union of India represented by
Secretary, Department of
Telecommunications, New Delhi. - Respondents

M/s Thomas Mathew &
G Gopinathan Nair - Counsel for the
applicant

Mr PV Madhavan Nambiar, SCGSC - Counsel for the
respondents

JUDGEMENT

(Shri A.V.Haridasan, Judicial Member)

The grievance of the applicant in this application filed under Section 19 of the Administrative Tribunals Act is that though she was selected provisionally for Training and appointment to the cadre of R.T.P.Telegraphists for the year 1983 along with 12 other persons, the respondents have not called her for Training and given her appointment while all the others have been trained and appointed.

2. The material averments in the application are as follows. The applicant is a member of the Scheduled Caste. In response to a notification issued by the Indian Posts and Telegraphs Department, inviting applications for recruitment to the cadre of Telegraphists vacancies of 1983, she submitted an application. She was called for a dictation cum hand writing test in English held on 29.7.1983. Having passed the test and after verification of the original records of the applicant, she was informed vide letter No. ST/Rectt.TLs/RTP/83 dated 28.11.1983 that she had been provisionally selected for Training and appointment to the cadre of R.T.P. Telegraphists for the year 1983 and was directed to call at the office of the first respondent on or before 9.12.1983 as the training class was likely to commence in January/February 1984. The applicant appeared before the first respondent, executed the necessary documents and produced the testimonials, but she was not called for the Training. To her repeated enquiries, the first respondent went on assuring her that she would be called for Training without much delay. While she was hopefully awaiting call letter for Training and appointment, on 5.11.1988 she came to know that some of the candidates who had been selected along with her had already ^{been} deputed for Training as early as in the year 1986. The applicant on 6.11.1988 made a representation to the second respondent

and requested him to depute for Training and to appoint her as Telegraphist. But to her great disappointment she received a communication from the first respondent dated 9.2.1989 (Annexure-A5) informing her that as the Scheme of R.T.P. appointments had since been stopped and as the chances of vacancies coming up in future are bleak the select list for R.T.P. appointments for 1983 in the Telegraphists cadre under the Telegraph Traffic Division, Trivandrum had been treated as lapsed. The applicant again made two representations on 16.3.1989 and 5.6.1989 to the Chief General Manager with copy to Director, Telecommunications, Trivandrum requesting that she may be absorbed as Telegraphist as per the selection already made, as she had already become over aged and ineligible for applying to any other job. In response to her representation dated 16.3.1989, she received a reply from the Area Manager, Telecom, Trivandrum dated 20.7.1989 (Annexure-A10) stating that the case had been examined by the Chief General Manager and that he was directed to convey that she could be absorbed in the near future as the prospect of future vacancies were very bleak and that, as the R.T.P. appointment has been stopped, she could not be employed as R.T.P. hand even if trained. Aggrieved by Annexure-A5 and A-10, the applicant has filed this application. It has been averred in the application that the respondents have illegally denied

her Training and appointment though she was selected for Training and appointment as R.T.P. Telegraphists while all the other persons selected along with her had been deputed for Training and appointed in vacancies which arose thereafter. It has also been alleged that she being a member of the Scheduled Caste should have been at any rate sent for Training along with other candidate and that the failure to do so is violative of principles of natural justice and her fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India. The applicant has further alleged that there are sufficient number of vacancies still subsisting to accommodate her, that even retired persons have been reemployed as short term Telegraphists and that the denial of Training and appointment to her was purposely done for the purpose of giving undue preference to persons to belong to other communities. The applicant therefore prays that the impugned orders at Annexure-A5 and A-10 may be quashed and that the respondents may be directed to absorb the applicant after Training in the existing regular vacancy, if any, to be filled up by Scheduled Caste candidates as per roster or to depute the applicant for Training and employ her as short duty Telegraphist in Trivandrum Telegraph Traffic Division as notified in Annexure-A1 and to absorb her as Telegraphist in a regular vacancy that has to be filled up by Scheduled Caste candidate in due course or to

appoint her as a Clerk in the Telecom. Department permitting change of cadre.

3. The respondents have filed a reply statement. It has been contended in the statement that the applicant who had been provisionally selected as an R.T.P. candidate and not even trained, has no claim for employment in the Department, that on account of the abolition of the scheme for training R.T.P. candidate by the Government of India the list had to be cancelled, that the applicant who had no right to any employment has no right to challenge the cancellation of the list, that out of the R.T.P. candidates none junior to the applicant has been sent for Training or appointed, that everybody who were sent for Training was senior to the applicant, that the communal roster was strictly followed that one vacancy reserved for Scheduled Tribe which was converted into Scheduled Caste vacancy became available only after the cancellation of the list, that though there are two vacancies presently, since the list has been cancelled, the applicant is not entitled to claim appointment and that as there is no violation of principles of natural justice or Articles 14 or 16 of the Constitution the applicant has no legitimate grievance. The averment in the application that retired hands has been appointed is also denied in the reply statement.

4. The applicant thereafter filed a rejoinder. The important contention raised in the rejoinder are as follows. The applicant being a member of the Scheduled Caste should have been sent for Training as No.5 out of the persons selected on the basis of the communal roster. Out of the 13 candidates, all the 12 persons who belong to other communities were sent for Training excluding the applicant thereby discriminating her and also violating the mandate of Article 335 of the Constitution of India. The fifth place which as per the communal roster should have gone to the applicant has been wrongly given to one Sunithakumari who was an O.C. candidate. The case of the respondent that she cannot be absorbed since the scheme for Training R.T.P. hands has been abolished is unsustainable because no documentary evidence has been produced to show that such a scheme has been abolished and even if the scheme has been abolished, it cannot be abolished with retrospective effect so as to affect the rights of persons who had already been selected as R.T.P. candidates. The respondents have not intimated the applicant about the cancellation of the list and it is not known as to when the list was cancelled. The respondents cannot cancel the list after training all the 12 O.C. candidates and refusing to send the applicant alone for Training.

The denial of even the Scheduled Caste vacancy which occurred in 1988 or 1989 on conversion from Schedule Tribe to the applicant on the ground that such vacancy arose only after the cancellation of the list is intentional and malafide to see that the applicant is not given employment. The respondents have admitted in the counter statement that 7 new posts have been created in these posts of R.T.P. candidates from Ernakulam Division have been appointed while the applicant who has been selected in 1983 and to whom an offer of appointment has been made and who is kept waiting hopefully is remaining unemployed. The respondents could not have given employment to R.T.P. candidates from other Divisions depriving the applicant of her chance. Instances of retired persons being appointed for months together has been mentioned in the rejoinder. The applicant prays that considering the fact that she is a Scheduled Caste candidate that she was selected in the year 1983 and that she has become over aged to apply for any other Government job, the respondents may be directed to give her Training and to absorb her in a regular vacancy without delay.

5. We have heard the arguments of the learned counsel on either side and have also carefully perused the documents produced. The allegation in the application and in the rejoinder that out of the 13 candidates selected in the

year 1983 all the others excepting the applicant were sent for Training and absorbed are not seriously disputed. The applicant claims that she is a member of the Scheduled Caste which is not disputed. Her claim that according to the communal roster, she should have been sent for Training as the fifth person and that denying her the benefit of one Sunithakumari who belong to Other Community has been sent for Training is also not disputed. Though in the reply statement, the respondents have contended communal that the ~~✓~~ roster has been followed and that no person junior to the applicant has been sent for Training or absorbed, the specific averments in the rejoinder that the applicant should have been sent for Training in the place of Sunithakumari has not been controverted by the respondents. The 13 persons including the applicant were selected ~~in~~ anticipated vacancies for 1983. While 12 persons were sent for Training, it does not stand to reason as to why the applicant alone was not sent for Training. It has been contended in the reply statement that in ~~in~~ 7 additional posts created, 7 persons who remained as R.T.P. hands in Ernakulam Division were appointed. This became necessary because 7 persons in Ernakulam Division who had already trained were remaining outside. If the applicant also was sent for Training ~~xxxxxx~~ along with the persons selected with her, then instead of accommodating trained hands of Ernakulam

one of
Division, the applicant would have been appointed in/the
additional vacancy which was created at Trivandrum
Division. In cases where pre-appointment Training is
necessary, the persons selected towards reserved vacancy
should be sent for Training in the order of rotation.
Therefore it is difficult to understand how the
applicant was not sent for Training while all the other
12 persons recruited along with her were sent for Training.
We are convinced that the authorities concerned have not
considered the case of the applicant correctly and in
accordance with law. The respondents have contended that
the Government has abolished the scheme of R.T.P. selection
and that xxxxxxxxx the select list of 1983 has been
cancelled. But the Government orders regarding the
abolition of the R.T.P. scheme and the order by which
the select list has been cancelled have not been produced.
It is arbitrary to cancel the select list after 12
persons in the list had already been trained and absorbed
leaving out only one person. Such action cannot be
sustained. Having selected the applicant in the year
1983 and having offered her to be Trained for appointment
and having kept her waiting for all these years, the
respondents are barred by principles of ^{primis} estoppel
from saying that the list has been cancelled after she
has became over aged and ineligible to apply for any other

Government job. The contention of the respondents that the seniority of those who were selected were deputed for training according to the merit list is not substantiated by the production of the merit list or a copy thereof. Even if they are sent on the basis of merit when all the 12 O.C candidates were sent for Training they should not have kept out the applicant who is a Scheduled Caste candidate. In the reply statement filed by the respondents, it has been averred as follows:

"....On 28.3.89, the Deputy G.M.Telemc, Trivandrum reviewed the communal roster and directed to interchange the ST vacancy for SC in view of difficulty in getting ST candidates and with the intention of filling up all reserved vacancies before 31.8.89 as per the directions from the Govt. of India. Thus the vacancy for SC has arisen as a result of interchange of ST into SC and this has happened after the cancellation of select list of 1983 recruitment. Subsequently Roster points from 59 to 64 were filled by temporarily accommodating RTP Telegraphists of Ernakulam TT Division in the strength of this division as per the policy of the department. regarding absorption of all trained RTP Telegraphists existing as on date. This had to be done as these trained RTP hands of Ernakulam Division could not be accommodated there or want of vacancies and this division got sanction of 7 new posts for absorbing remaining RTPs of the Kerala Circle which was also after cancelling the list of 1983. As a result this division has at present two SC vacancies. One being arisen as a result of interchange of ST into SC and another due to temporary absorption of excess RTP candidates recruited by Ernakulam TT Division."

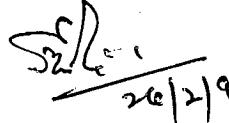
The above quoted statement of the respondents would clearly show that in 1989 one vacancy of Schedule Caste arose by conversion. The case of the respondents is that the applicant could not be given that post because this vacancy arose after the date of cancellation of the list. But the order showing the cancellation of the list has not been produced. The date on which the list was cancelled is.....11/-

not mentioned anywhere in the reply statement. So it cannot be accepted when the respondents content that this vacancy arose after the cancellation of the list and that therefore the applicant cannot be accommodated though in that post. Further ~~7~~ 7 new vacancies were created for absorbing the trained RTP hands in Trivandrum Division, those vacancies were filled up accommodating RTP hands from Ernakulam Division because they remained trained and unabsorbed. Had the respondents sent the applicant for training in time, she also would have been absorbed because even according to the respondents, the policy of the Government was to absorb all trained RTP hands. So the applicant lost the benefit of absorption on account of the inaction on the part of the respondents to send her for training in due time. The applicant cannot be made to suffer for this inaction on the part of the respondents. As stated earlier, the applicant is a Harijan lady in indignant circumstances. We are convinced that she has been subjected to hostile discrimination in not sending her for training and considering her for regular absorption while all the 12 persons who belong to other communities selected along with her had been trained and absorbed in due time. So it is a case where the respondents have to be directed to depute the applicant for training forthwith and to absorb her in a vacancy without delay.

6. In the result we allow the application, quash the Annexure-A5 and A-10 orders and direct the respondents to depute the applicant for training and absorb her in a vacancy of Telegraphist at Trivandrum Telegraph Traffic Division. The action on the above lines should be initiated within a period of one month from the date of this order. There will be no order as to costs.


(A.V.HARIDASAN)

JUDICIAL MEMBER


(S.P.MUKERJI)
26/2/90
VICE CHAIRMAN

26-2-1990

trs