

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 552 1989
T.A. No.

DATE OF DECISION 3.8.90

G. R. Santhosh and another Applicant (s)

Shri G. Sasidharan Chempazhanthi Advocate for the Applicant (s)

Versus

Telecom. Distt. Manager, Tvm Respondent (s)
and others

Mr. C. Kochunni Nair for R-1 to 4 Advocate for the Respondent (s)

Mr. Mathew Nedumpara for R-6

CORAM: Mr. G. Sivarajan for R-11

Mr. G. P. Mohanachandran for R-8 to 10, 11 & 13

The Hon'ble Mr. N. V. Krishnan, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

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

JUDGEMENT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

This application is filed by the two applicants against the selection of the respondents 5 to 13 as technicians in the Department of Telecommunication. Their grievance is that these respondents are not qualified to be so appointed and that no opportunity was given to persons like the applicants who have better qualifications than the above respondents to be considered for selection.

2. The post of technicians were advertised in the 'Mathrubhoomi' daily for recruitment of SC and ST only, (An III) vide Annexure-3 dated 26.3.1989. The qualification

The qualification specified was a diploma in engineering after passing matriculation. It was also specifically stated that candidates possessing qualifications other than diploma will not be considered.

3. There was also a circular letter regarding this direct recruitment by Annexure R-1 dated 24.7.1989. In that circular it was stated that educational qualification would be a diploma in engineering as mentioned in Annexure ¹⁰ ~~III~~ advertisement in the Mathrubhoomi. However, the provision further states that ex-servicemen who are matriculates and have minimum five years experience in certain related subjects will also be eligible for consideration.

4. It was admitted by the respondents 1 to 3 that respondents 5 to 13 do not have the qualification specified either in Annexure-III or in Annexure R-1. Their only justification for selecting them is that Scheduled Castes and Scheduled Tribes with the qualifications advertised or notified were not available and therefore the qualifications were relaxed by the Chief General Manager (Respondent-2) and these respondents were selected.

5. It is also submitted by the respondents 1 to 4¹¹ at about the same time applications were invited for the posts of Telecom. Office Assistant/Telephone Operator for which the required qualification was a pass in the

matriculation . The two applicants^{2 also} applied for these posts. The DPC did not find them suitable (Annexure R-10) while Respondents 5 & 6 were included in the rank list Annexure R-10. As suitable S.C./ST candidates having the qualification mentioned in Annexure-III and R-1 were not available, it was decided to make selection for the post of technician from those who applied for the post of Telecom Office Assistants/Telephone Operators on the basis of which Respondents 5 & 6 were selected. In this regard we notice that, no doubt, the names of Respondents 5 & 6 find place in Annexure R-10 but the names of Respondent-7 to 13 are not mentioned therein. Respondents 1 to 4 have also not stated how they were selected.

6. The applicants submit that the power to relax the educational qualification rests with the Central Government only as per Rule 8 of Annexure-7 which is the Recruitment Rules for the post of Technicians. It is

/rejoinder)

further stated therein that reasons for relaxation are (vide telegram of the CGM(T) reproduced in para 5 of the/ to be recorded in writing. The relaxation granted/does not satisfy this requirement. The reliance of Respondents relating to relaxation 1 to 4 on Annexure R-6 and R-7/does not help their case as these circulars have no application in this case.

7. The counsel for the applicants further pointed out that even if the relaxation given by the Chief General Manager (Telecommunication) in the message reproduced in the rejoinder is considered to be issued with full authority of Respondent-4 still, it has been misunderstood

by Respondent 1. That relaxation can only mean that ex-servicemen who were required by R-1 letter to have minimum qualification of matriculation with five years experience are now exempted from having that experience.

8. The learned counsel for the respondents admits that no other notification or advertisement has been issued specifying matriculation with five years experience as a qualification for any class of people other than ex-serviceman. Therefore, the relaxation given by the Chief General Manager can only mean that this relaxation relates to only ex-servicemen and no other group of people. Admittedly Respondents 5 to 13 were not ex-servicemen and cannot be given the benefit of relaxation.

9. We have considered the stand taken by the respondents as indicated in para 5 supra about the manner in which Respondents 5 & 6 were selected. The applicants as well as Respondents 5 & 6 had applied for the posts of Telecom Office Assistants and Telephone Operators for which Matric was the only qualifications. It is true that in the selection made for that post vide Annexure R-10, Respondents 5 & 6 have been included in the ranking list, while the applicants have not been included at all. This is based only on the performance in the Matric Examination. In our view, that ranking cannot be taken into account for a selection to the post of Technicians,

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for which the prescribed qualification is a Diploma in Engineering. If the qualifications for the post of Technician had also been reduced to only Matriculation and the Respondents had invited common applications for the posts of Telecom Assistant or Telephone Operator or Technicians, the Respondents would have been justified in considering the Ext. R-10 appraisal for making selection to the post of Technicians. As noticed above, there is no order by a competent authority relaxing the qualifications for the post of Technicians to Matriculation only. Hence, there is no justification whatsoever to select Respondents 5 & 6 on the basis of Annexure R-10. That apart, Respondents 1 to 4 have not stated as to how the names of R 7 to 13 were selected. In the result, we are of the view that the selection of Respondents 5 to 13 is vitiated.

10. We are therefore satisfied that respondents 1 to 4 have not given any reasonable explanation as to how respondents 5 to 13 have been selected, though they do not possess the minimum qualification. We are also satisfied that the Department has the power to relax the qualification but it was their duty to either advertise the decision in the newspaper as was done when Annexure-III was published or to circulate this decision to all divisions as has been done in Ext. R-1. This is essential to ensure that persons who possess the relaxed

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qualification could offer themselves for the post if they so like. By doing neither they have denied opportunity to a large number of SC & ST candidates who might have the same or better qualification than Respondents 5 to 13. In fact the applicants' claim to have a higher qualification than respondents 5 to 13 who are only matriculates, because the second applicant has obtained National Trade Certificate after Matric and the first applicant has completed two years of a three year Diploma Course. They did not apply for the post of Technician because of the tenor of the advertisement Annexure-III though, they applied for the post of Telecom Office Assistant/Telephone Operator, for which Matric was the qualification, but not selected.

11. The respondents 5 to 13 though served, have not appeared before us. Two counter affidavits have been filed respectively by Respondent-6 and respondents 8 to 13. Those counter affidavits do not answer the issues raised above.


12. In the circumstances, we dispose of the application with the following orders/directions:

- i) Annexure-IV impugned order in so far as it refers to the provisional selection of the 5th and 6th respondents for training and appointment as Technicians is quashed;
- ii) Similar orders by which Respondents 7 to 13 were selected and deputed for training and appointment as Technicians are also quashed even though


they have not been exhibited before us.

iii) The respondents are also directed to take fresh steps for special recruitment of SC/ST candidates to fill up the posts of Technicians only after fixing the number of posts to be filled up and prescribing the qualification for the post as relaxed by the competent authority. They should also advertise the same so as to enable all eligible candidates to apply and compete for the selection.

13. With the above orders/directions, this application is allowed. There will be no order as to costs.


(N. Dharmadan)
Judicial Member

3.8.90


(N.V. Krishnan)
Administrative Member

kmm

INDEX SHEET

LIST OF PAPER IN ... C.C.P. 3/92 v. O.A. ... NO. 552/80 DE 49

Sl. No. of papers on record			Date of paper or Date of filing	Description of paper
Part I	Part II	Part III		
			8-1-92 & 26-2-92	Proving & F.O.
	(1)		31-12-91	Affidavit...
	(2)		<u>—</u>	C.C.P.
	(3)		31-12-91	Md for sky
	(4)		12-2-92	Md for Smith
	(5)		26-2-92	Statement by Add case for Receipt

(15)

CCP. 3/92 in
C.A. 552/89.NOTE AND

Mr. Manu Nani for the petitioners
Mr. P. K. Madhusudhanan proxy for SCBSC.

The SCBSC enters appearance for the respondents and submitted that the case is handled by Shri C. Kochummi Nani, A.C.B.S.C. In the circumstances he seeks time to enable him to make statement on behalf of the respondents.

We have perused the records. Heard learned counsel for the petitioners. In the circumstances of the case, the learned counsel for respondents should make a statement on 10.1.92.

8/1/92

NOTE AND

Mr. Manu Nani
A.C.B.S.C. by proxy.

Let this case be listed for further direction on 13.1.92

10/1/92

(15)

NVK & ND

(19) Mr MR Rajendran Nair
Mr C Kochunni Nair, ACGSC

Heard. The learned counsel for the respondents submits that the original judgment of the Tribunal was not sent by the Counsel's Office to the General Manager who alone could have taken proper decision, instead ~~it was~~ ^{it was} sent to the ~~Divisional Engineer~~ of the Telecom District Manager. He, therefore, submits that the Annexure-III is issued because of this confusion. He admits that the Annexure-III is not in tune with the directions given by the Tribunal and states that it is being withdrawn immediately. He undertakes that a fresh notification in this connection will be issued within a period of one month.

In the circumstance and in view of the undertaken ^{ing} given by the learned counsel for the respondents we close this CCP.

(N Dharmadan) 13.1.92
Judicial Member

(NV Krishnan)
Administrative Member

13-1-92

MP 298/A2 in
CCP 3/A2 in OA 552/89 NVK & ND

Mr M R R Nair
Mr C Kochunni Nair ACGSC by proxy

At the request of the learned
counsel for respondents call on 26.2.92

by
18/2/92

F.C.
14/1/92
mm. 45

①

NVK & ND


- (16) Mr C Kochunni Nair for petitioner/Respondent in OA
Mr MRR Nair for Respondent/ Applicant in OA

The learned counsel for the original respondents submits that MP 298/92 may be permitted to be withdrawn. He submits that Respondents have already taken ~~main~~ ^{action} to publish the advertisement as directed by the Tribunal and the same has been sent to the Press.

In the circumstance, we allow the prayer and MP 298/92 is dismissed as having been withdrawn.

The learned counsel for the original respondents also submits that the advertisement has been sent to the Press and is likely to be published within a couple of days. There might be delay of 3/4 days as compared to the date stipulated in our judgment in the original application. This is noted.


(N Dharmadan)
Judicial Member


(NV Krishnan)
Administrative Member

26-2-1992

Handwritten notes:
B
2/5
m prob
1/6
2/4

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by Smt. Aridamma George

3rd party

(Applicant/

Respondents in OA/TA No. 552/89) seeking a review of
the order dated 3-8-90 passed by this Tribunal in the
above noted case.

As per Rule 17(ii) and (iii), a review petition shall
ordinarily be heard by the same Bench which passed the Order
and unless ordered otherwise by the Bench concerned, a review
petition shall be disposed of by circulation where the Bench
may either dismiss the petition or direct notice to the issued
to the opposite party.

The Review petition is therefore, submitted for orders
of the Bench consisting of Hon'ble Mr. N.V. Krishnan, Member (A)
Hon'ble Mr. N. Dharmadran Member J-1
which pronounced the Order sought to be reviewed.

[Signature]

PS to Hon'ble Member (A)

[Signature]
11/11/90

we may hear the review. There is no
need to ~~recall~~ recall the order, as the
order has been passed on the facts of the
case. If the order does not apply to
the applicant, the Com should so by facts
etc. - Respondents have argued that once
as their own reasoning for ~~terminating~~ the
cancellation the applicants apply order.

8/11/90

The order filed / the applicant (PSS) is
is ~~not~~ not for 2/11/90 we can take the
can then

[Signature]

574 notice issued
to counsel for
parties

5/11/90

1/11/90 Member Mr. Dharmadran Ver by
5/11/90

Passed on for
n.a. *[Signature]*
5/11/90
NA

NVK & ND

Mr. M R Rajendran Nair for the review applicant

Mr. G. Sasidharan Chempazhanthiyil for R 1 & 2

Mr. Kochunni Nair, ACGSC for R 3-6

Mr. Mathews J. Nedumpara for R-8. He also submits that he is relinquishing the vakalatma
None for other respondents

List along with O.A. 855/90 for final hearing on

29.11.90.

8.11.90

NVK & ND

Mr M R Rajendran Nair for the ^{Review} applicant
Mr. G. Sasidharan Chempazhanthiyil for R.
Mr. K. Ramesh Kumar for R-2 by Proxy
Mr. C. Kochunni Nair for R 3-6
Mr. G P Mohanachandran for R 10-12, & 14
Mr. G. Sivarajam for R-3

It is stated that the judgment sought to be reviewed in this R.A. is also to be considered in O.A. 855/90 which is also fixed for final hearing today. Let this R.A. be listed along with O.A. 855/90 on 4-1-91.

29/11/90

NVK & ND

Mr M R Rajendran Nair for the applicant
Mr. Sasidharan Chempazhanthiyil for R I
Mr. K. Ramesh Kumar for R-II. & none for others.

At the request of the learned Counsel for R-2, call on 31-1-91.

4-1-91

Adjourned filed
by the applicant
on 21-11-90

(30)

Counter statement
by the R-1
on 29/11/90
/p

4/1/91

(26)

Adjourned to
7-2-91 by notice
11-2-91

4/1/91

Counter filed by
the 2nd respondent
on 6-2-91

4-1-91

- 2 - RA 119/80

NVK & ND

11/2/81

(15)

Mr MR Rajeshwar Nair for applicant

Mr. G. Sankararam R.I.

Mr K. Ram Kumar (Not present)

Mr C. Kochum Nani (R 3-6)

Name for R: 8, 10-12 & 14-15

With this RA along with

OA 855/80 on 13/3/91

Adjourned to
20-3-91 by
notice
Y

by [Signature]

11/2/81

NVK & ND

20/3/91

(16)

Mr MR Rajeshwar for applicant.

Mr Sankararam R.I.

Mr K. Ram Kumar R-2.

Mr C. Kochum Nani R 3-6.

Mr Kethes T. Nedupane for R-8.

Name for others

With this A/w. OA 855/80 & OA 939/80
on 26-3-91 (AN).

Counsel of respondents 3 to 6 also
directed to state as to what action has
been taken on the interim order dt. 7-2-89 in to OA
Wherein it was stated that all the new
appointments will be subject to the out-
come of O.A. 552/89 and in particular
that such appointees may be informed
about this condition.

by [Signature]

20/3/91

mm mm
12/2/91

26/3/91
(10)

NVK & RD.

Mr NVK Rajeshwar Rao for applicant.
Mr G. Sanidharan R-I.
Mr K. Rameshwar R-2.
Mr C. Kochummanwar Aggr. of R 3-6.
Mr G.P. Mohanachandran R 10-12, 14-15.
Mr S. Sivaregar for R-13

Mr Mathew J. Nedupara, Aggr. states that he does not appear for R. 8

Heard the other parties. Reserved for orders.

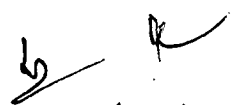


26/3/91

17-4-91

NVK & ND

Orders pronounced in open Court.



17/4/91

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

RA 119/90 in O.A. No. 552/89
~~xxxxxx~~

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DATE OF DECISION

17-4-91

Aniamma George Applicant (s)

Mr MR Rajendran Nair Advocate for the Applicant (s)

Versus

GN Santhosh & 14 others Respondent (s)

Mr G Sasidharan Chempazhanthiyil for Respondent-1

Mr K Ramakumar for Respondent-2

Mr C Kochunni Nair, ACGSC Advocate for the Respondent (s) 3 to 6

Mr Mathew J Nedumpara, ACGSC for Respondent-8

CORAM: Mr GP Mohanachandran for Respondent 10-12, 14 & 15

Mr G Sivarajan for Respondent-13

The Hon'ble Mr. NV Krishnan, Administrative Member
and

The Hon'ble Mr. N Dharmadan, Judicial Member

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

JUDGEMENT

Mr NV Krishnan, A.M

The review applicant has filed this application seeking a review of the final order dated 3.8.90 of this Bench in OA 552/89, to which she was not a party. By that decision the orders relating to the provisional selection of respondents 5 to 13 therein for training and appointment as Technicians were quashed and the respondents 1 to 4 i.e., the Department, were directed to take fresh steps for special recruitment of SC/ST candidates to fill up the posts of technicians only after fixing up the number of posts to be filled up and prescribing the qualification for the posts as relaxed by the competent authority.

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2 The review applicant submits that though she was not a party in OA 552/89, in which the aforesaid order was passed, yet, by Annexure-RA-1 dated 9.10.90, the Telecom District Manager, Trichur has cancelled the posting order given to her as Technician Trainee, though her appointment was not challenged in that OA. Hence, she seeks a review of the final order therein i.e., Annexure-RA-2.

3 After notice to parties, the matter was heard in great detail. The learned counsel for the review applicant fairly conceded that, on merits, the original order passed cannot be faulted on any ground, on the basis of which alone a review thereof can be pressed for. The review applicant's grievance is that several other candidates with lesser qualifications have been appointed earlier and hence her appointment is not liable to be set aside. She has filed OA 855/90 challenging the order dated 9.10.90 (Annexure RA1) of the Telecom District Manager, Trichur and that OA is pending.

4 The learned counsel for the review applicant also brought to our notice that in purported compliance of the final order issued by us, the respondents have now initiated proceedings for fresh selection of Technicians belonging to SC/ST and complained that while doing so, the Department has now prescribed more stringent eligibility conditions,

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including educational qualifications for selection.


5 We have heard the counsel of the other parties as well as perused the records.


6 In our view, no case has been made out to call for a review of the original order. If the applicant has any complaint against the order cancelling her appointment as Technician Trainee (RA-1), she is at liberty to institute separate proceedings, which she has already done in OA 855/90. Therefore, this review application is liable to be dismissed subject to the ~~xxxxxxx~~ clarifications in respect of the following aspects.

7 The respondents 1 to 4 (i.e., the Department) in the original application sought to defend the action taken by them on the ground that SC/ST candidates having normal prescribed qualifications were not available and hence eligibility conditions had to be relaxed so that candidates with such lesser qualifications could apply for these posts which are reserved for them. The case was decided against the respondents only on the ground that such relaxation was not done in accordance with law and intimation thereof was not generally made available, thus depriving many candidates of a chance to stake their claims for appointment. That being the case, it is not now open to the Department to prescribe any higher qualifications for recruitment in pursuance

of para 12(iii) of our original order so as to deprive the chances available to such candidates.

8 We, therefore, dismiss this review application with a direction to the respondents 1 to 4 in the original application (Department) to invite applications after ensuring that the qualifications prescribed for the posts are the same as the ones on the basis of which the respondents 7 to 13 therein were selected.


(N Dharmadan)
Judicial Member


(NV Krishnan)
Administrative Member