

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T. A. No.

593/92

199

DATE OF DECISION 26.2.1993

Aniamma George & 2 others Applicant (s)

Mr. M.R.Rajendran Nair Advocate for the Applicant (s)

Versus

Chief General Manager, Respondent (s)
Telecom, Kerala Circle & another

Mr. Mathews J Nedumpara ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.Haridasan, Member (Judicial)

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

JUDGEMENT

A.V.Haridasan, JM

The applicants, 3 in number, who have applied for selection to the post of Technician in the Department of Telecommunication, pursuant to notification dated 8.3.92 (Annexure-I), have filed this application praying that it may be declared that the selection to the cadre of Technician solely on the basis of marks obtained in the qualifying examination is illegal, that the entry in column 10 of the Schedule to the Recruitment Rules at Annexure-III to the extent it prescribes that selection would be on the basis of the percentage of marks secured in the examination reckoned for the award of diploma is unconstitutional and invalid and to direct the respondents to conduct the selection after holding a competitive examination or, alternatively, to direct the first respondent to consider the request of the applicants made

in their representations dated 30.3.92 before finalising the selection to the cadre of Technicians.

2. The material facts of the case can be briefly stated as follows:

3. On 26.3.89 the respondents initiated proceedings for selection of Technicians in the Department to fill up shortfall vacancies reserved for SC/ST, by issuing a notification in which the qualification prescribed was a Diploma in Engineering or Metriculation with minimum 5 years' experience in the Central Government in the Telephone, Telegraph, Carrier and Wireless branch of Engineering. Since there were no ^{qualified} persons among the candidates who responded to the notification, the Chief General Manager, relaxed the qualifications prescribed in the Recruitment Rules and selected the applicants and others who were metriculates. After the selection the applicants were deputed for training as Technicians for a period of 9 months from 16.10.89 and one month's practical training and on the completion of the training they were appointed as Technicians. The selection and appointment of the applicants and others who did not possess the qualifications prescribed as per the Recruitment Rules and as per the notification were challenged by two persons in OA 552/89 on the ground that had the relaxation been ~~given due publicity~~ ^{given due publicity} they could also have applied for selection. The Tribunal allowed the above said OA by order dated 3.8.90, set aside the appointments of applicants 2 and 3 and directed the respondents to take fresh steps for recruitment of SC/ST candidates to fill up the shortfall vacancies after fixing the number of posts to be filled up and prescribing relaxed qualification for the post and giving due publicity to such relaxation. The appointment of the first applicant was also cancelled though she was not a party to OA 552/89. The first applicant therefore filed Review Petition no. 109/90 in OA 552/89. This Review

Petition was also dismissed but it was made clear in the order that the Department should invite applications after ensuring that the qualifications prescribed for the posts are the same as the one on the basis of which the applicants 2 and 3 in this case and others were selected. Pursuant to the above direction the respondents have issued the notification at Annexure-I dated 8.3.92. The applicants have submitted their applications in response to the above notification. After submitting their applications the applicants made representations dated 28.3.92 to the first respondent requesting that the training undergone by them should be treated as an additional qualification for selection. A copy of the representation submitted by the first applicant is at Annexure-II. Since the applicants did not receive any response to this representation and apprehending that the selection would be made solely on the basis of the marks obtained in the SSLC examination by all the candidates who responded to the notification at Annexure-I, the applicants have filed this application under section 19 of the Administrative Tribunals Act, 1985.

3. It has been averred by the applicants that since Diploma in engineering or 5 years experience after metriculation is prescribed as the qualification for direct recruitment to the post of Technician, to make the marks obtained by the candidates in the SSLC examination the criteria for selection to such a post even under the relaxed standards is arbitrary and unreasonable. The applicants have further alleged that as the selection proposed is from candidates within the age group of 18 to 29 years, different candidates would have passed the SSLC examination and the equivalent examination within a period spread over 12 years and ^{a comparison of} the marks obtained by them in the examinations in the respective years would not reflect their comparative merits and standard of evaluation since during the different years the syllabus ^{are likely to have} ~~undergone~~ change. ^{The applicants' case is that in such circumstances the}

safest course is to make the selection on the basis of a competitive examination as was held by this Tribunal in OA 304/89 in which the legality of selection process to the cadre of JTOs on the basis of marks obtained by them in a qualifying examination was considered.

4. After admitting the application the Bench vide order dated 28.4.92 suggested that the respondents could go through the marks of the candidates to see if the objection raised by the applicants in regard to the method of selection is valid and if they found that the objection had some force it would be open for them to come up with a statement indicating as to what they propose to do to rectify the defects in the procedure for selection. The respondents had, on 15th July 1992, filed a statement indicating that as the Telecom Directorate had opined that the Recruitment Rules did not permit conducting a competitive examination for selection for the post of Technicians and as there was no merit in the objection raised by the applicants against the method of selection according to the extant rules the application is liable to be dismissed.

5. It is thereafter that the applicants amended the O.A. seeking to declare that the entry in column 10 of the Schedule to the Recruitment Rules at Annexure-III is unconstitutional and void.

6. The respondents have contended that in view of the decision of this Tribunal in OA 552/89 and in R.A. 109/90 the applicants are barred by resjudicata from contending that the selection may not be made on the basis of relaxed standards, as directed in the final order in OA 552/89. They also contend that the first applicant who has filed CCP 3/92 and OA 855/90 in which her selection and appointment were declared to be ab initio void, is estopped from seeking any benefit out of

her selection and training undergone on the basis of that selection. They also contend that since no competitive examination is prescribed for the post in the Recruitment Rules, as in the case of other categories of posts, there is absolutely no basis for the contention that the selection based on the marks in the qualifying examination is illegal and unjustified. The respondents ^{further} contend that the applicants are not entitled to any relief and the application is liable to be dismissed.

7. We have given our anxious consideration to the facts ⁱⁿ of the case as disclosed in the pleadings and the various documents which are on record. The selection and appointment of the applicants and some other persons as Technicians to fill up the shortfall vacancies of SC/ST held in the year 1989 was set aside by this Tribunal by its order in OA 552/89 on the ground that the persons selected did not possess the qualifications prescribed for the post in the Recruitment Rules and that the relaxation made to select them was not authorised by the competent authority and had not been given due publicity prior to the process of selection enabling similarly situated persons to participate in the selection process. It was in that background that the Tribunal directed that a fresh notification should be issued prescribing the same qualification as was considered sufficient in the case of the applicants and others for selection so as to give all similarly situated intending candidates ^{opportunities} to offer their candidature. It is evident from the records that the qualification which was considered sufficient according to the relaxed standards for the selection of the applicants and others earlier made was a pass in SSLC or equivalent examination. While considering persons possessing same or similar educational qualifications, the marks

obtained in the qualifying examination can be considered to be one of the methods to assess their inter se merit.

8. The learned counsel for the applicant with considerable tenacity argued that as the selection is to be made from among candidates within the age group of 18 to 29, it is possible that different candidates would have appeared in the SSLC examination spread over a period of 12 years and that as the method and standard of valuation and the syllabi are likely to have undergone considerable variation during this period the marks obtained by the candidates in the examinations cannot be considered as a satisfactory criteria of their merits. In support of this contention the learned counsel invited our attention to the ruling of the Supreme Court in *Dr. Dinesh Kumar and others Vs. Motilal Nehru Medical College, Allahabad and others* [AIR 1985 SC 1059] wherein their Lordships had observed as follows:-

"....The State Governments have also been equally guilty of indifference and inaction in not taking any steps for the purpose of holding an entrance examination which would test the relative merits of the students seeking admission to the minimum 30% non-reserved seats in the M.B.B.S. course in the medical colleges. Some of the State Governments and Universities, we are informed, are proposing to fill up the minimum 30% non-reserved seats for the M.B.B.S. course on the basis of the mark obtained by the students at the qualifying examinations held by different States and/or Universities, totally ignoring the fact that the standard of judging at these different qualifying examinations cannot, by its very nature be uniform. Some Universities may be very liberal in their marking while some other may be strict. There would be no comparable standards on the basis of which the relative merits of the students can be judged. It would be wholly unjust to grant admissions to the students by assessing their relative merits with reference to the marks obtained by them, not at the same qualifying examination where standard of judging would be reasonably uniform but at different qualifying examinations held by different State Governments or Universities where the standard of judging would necessarily vary and not be the same. That would indeed be blatantly violative of the concept of equality enshrined in Article 14 of the Constitution...."

9. The learned counsel for the applicant also referred to the ruling of the Full Bench of the High Court of Kerala in (1988 KLT, 369) *State of Kerala & another Vs. Rafia Rahim* where a similar observation was made. Reference was also made to the decision

of this Bench of the Tribunal in OA-304/89 to which one of us (Hon'ble VC) was a member where it was observed that making a selection based on the marks obtained in the qualifying examination where Degree holders in two different and distinct disciplines were allowed to participate is illusory and farcical.

10. Shri Mathews J Nedumpara, the learned Additional Central Government Standing Counsel appearing for the respondents argued that the decision referred to by the learned counsel for the applicant have no application to the facts of the case. According to him in Dr.Dinesh Kumar and others V. Motilal Nehru Medical College, Allahabad and others and the decision of the Full Bench of the High Court of Kerala in State of Kerala & another V. Rafia Rahim, their Lordships were considering the method of selection for admission to Medical Colleges on the basis of marks obtained by the candidates in the examinations conducted by different Universities and different Governments where the standard of judging would necessarily vary whereas in this case selection is being made from among candidates who have passed SSLC or equivalent examination for appointment to a cadre, according to the relaxed standard and therefore the principle enunciated in the above said two rulings do not apply to the facts of the case. Referring to the judgement of this Bench in OA-304/89, Shri Nedumpara argued that the Tribunal held that to consider the marks obtained in the qualifying examination where candidates who possessed Degree in different and distinct disciplines are considered for selection to a post of highly technical nature is illusory and that the instant case before us is not of a similar nature. Shri Nedumpara

argued that since this Tribunal has in the order in OA-552/89 directed the Department to make special recruitment to fill up the post of Technicians only after fixing the number of posts to be filled up and prescribing the qualifications for the post as relaxed by the competent authority and has further clarified in its order in RA-119/90 in OA-552/89 filed by the first applicant in this case that fresh selection should be made after ensuring that the qualifications prescribed for the post are the same as the one ~~on~~^{on} the basis of which respondents 7 to 13 in OA-552/89 were selected (the applicants 2&3 were parties to OA-552/89 and the applicant herein is the review applicant in RA-119/90) it is not now open for the applicant to contend that the basis for the selection ^{should be} ~~for~~ a competitive examination which would be against the directions contained in the decision in OA-552/89 clarified by the order in RA-119/90. He further argued that the first applicant who has filed the Contempt Petition No.3/92 in OA-552/89 when the Department had issued notification for selection prescribing qualification other than what was considered sufficient in the case of respondents 7 to 13 in OA-552/89 is barred by principles of estoppel and resjudicata from now claiming that the method of selection on the same basis as was adopted in the case of respondents 7 to 13 in OA-552/89 is illegal and unjustified.

11. The prayer(i)(a) in paragraph-8 of the application is to declare that the Column 10 of the Schedule to the Recruitment Rule at Annexure-III to the extent it prescribes the selection on the basis of percentage of marks secured in the examinations

reckoned for award of diploma is unconstitutional and invalid.

This prayer is absolutely unnecessary in the facts and circumstances of the case because in the case of the applicants, the marks obtained in the examination for the award of Diploma are not the criterion as they do not have the said qualification. This prayer therefore does not arise from the pleadings and therefore cannot be granted. The prayer (ii) is to direct the 1st respondent to consider the request of the applicants highlighted in their representations dated 28.3.1992 before finalising the selection to the cadre of Technicians. In the representation submitted on 28.3.1992 at Annexure-II, the first applicant had said that the training obtained by her should be treated as an additional qualification for selection to the post. Since the training was given to the applicants on the basis of a selection which has been set aside in the order in OA-552/89 and since in the final order in OA-855/90 filed by the applicant it was in unambiguous terms held that her selection and appointment was ab initio void and that she had no right to be protected on account of that selection and appointment, there is no legitimate ^{basis for the} claim of the applicants that the training undergone by them on the basis of a selection which was held null and void should be treated as an additional qualification. Therefore the prayer(ii) also cannot be granted.

12. What remains is the prayer No.(i) seeking for a declaration that the selection to the cadre of Technicians on the basis of marks obtained in the qualifying examination is illegal and for a direction to the respondents to conduct the selection after holding a competitive examination. The learned counsel for

the applicants heavily relied on the decision of this Bench of the Tribunal in OA-304/89. The question which was considered in that case was whether the inter-se merits of candidates with Degrees in Engineering and with Degree in Science on the basis of marks obtained by them in the Degree Examinations can be justly and properly assessed. The Bench held that as the standard of judging and evaluation in the ^{two} disciplines ^{are} ~~being~~ entirely different, it cannot be just and proper to assess the inter-se merits of the candidates solely basing on the marks obtained by them in their Degree Examination and that in such circumstances, it would be ~~very~~ ^{advisable} to make a selection by conducting a written test or at least an interview. In this case before us though the Technicians posts are of technical nature which normally requires Diploma in Engineering as an essential qualification for selection, the selection is being made on the basis of relaxed standards, the relaxation having become essential in the absence of persons possessing the above qualification among the special class of Scheduled Caste and Scheduled Tribe and as appointments are to be made imparting a training after selection, the assessment of merit on the basis of the relaxed qualification namely, SSLC or its equivalent cannot be described as unjust or unreasonable. Therefore ~~XX~~ the facts of the case under citation and the case before us being entirely different the dictum in OA-304/89 has no application to this case. The decisions reported in AIR 1985 SC, 1059 and 1978 KLT, 369 also have to be distinguished, because in those ^{two} ~~2~~ cases their Lordships were considering whether selection for admission to the Medical Colleges from among candidates possessing

Degrees awarded by different Universities and States with varying standards of judging would be a just and proper selection. Their Lordships held making such a selection purely on the basis of the marks obtained at the examinations held by different Universities and different Governments with varying standards of judging would lead to violation of the concept of equality enshrined in Article 14 of the Constitution whereas in this case there is no case that any of the applicants or other persons who participated in the selection process had acquired the SSLC or equivalent qualification from any other States and also the selection in this case ^{is} for direct recruitment to a post. However, the broad principle enunciated by their Lordships that judging the merits of a candidate on the basis of marks obtained in qualifying examinations conducted by different Universities with different syllabus and standard of judging may be argued to hold good even in the case of a selection for appointment to a post. But in this case the applicants are not entitled to raise this question because in ~~the~~ previous proceedings to which they were parties namely, OA-552/89 and RA-119/90, the Department has been directed to fill up the post of Technical Assistant after issuing a notification prescribing qualifications for the post as relaxed by the competent authority and that the relaxed qualification should be the same as the ones on the basis of which the respondents 7 to 13 in OA-552/89 (respondents 7 to 13 includes applicants 2&3 in this application) were selected. It is evident from the order in OA-552/89 as also from the order in OA-855/90 that the applicants in this case were first selected as Technician on the basis of their performance in the SSLC examination. In the

reply statement filed in OA-552/89 the respondents 1 to 4 had contended that the respondents 5&6 in that application were selected based on the percentage of marks obtained by them in the SSLC examination. In its order in the RA-119/90 in OA-552/89 filed by the first applicant herein, the Bench had clarified as follows:

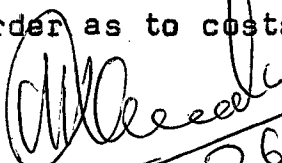
"We therefore, dismiss this review application with a direction to the respondents 1 to 4 in the original application(Department) to invite applications after ensuring that the qualifications prescribed for the posts are the same as the ones on the basis of which the respondents 7 to 13 therein were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

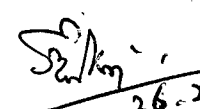
In the face of this clarification[~] and the order in OA-552/89, the Department has no other alternative but to consider all the candidates on the same basis and criteria as was adopted while the applicants 2&3 were originally selected. It is also pertinent to note that the first applicant in this application had filed a Contempt Petition when the Department initiated proceedings for selection afresh stipulating qualifications higher than what was directed in the judgement in OA-552/89 and that when the Department admitted the mistake and undertook to issue a fresh notification in accordance with the directions contained in the final order in OA-552/89 as clarified in RA-119/90, the Contempt Petition was closed. A copy of the order in the CCP-3/92 in OA-552/90 is at Annexure-R4. In view of the directions contained in the judgement of this Tribunal in OA-552/89, the respondents are bound to make the fresh selection only on the basis of the criteria adopted in earlier selection in which the applicants 1 to 3 were selected. Since no written test or interview was held or prescribed in the earlier selection, the applicants cannot now contend that the selection should be based on a written test or an interview. The

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applicants are estopped by reason of the judgement in OA-552/89 and OA-855/90 from contending that a selection based on the marks in the SSLC Examination is arbitray and illegal.

13. In the light of the above discussion, we do not find any merit in the application and therefore, ^{we} dismiss the same without any order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

26-2-1993

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