

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 09 of 2009

.....MONDAY....., this the 8th day of March, 2010

CORAM:

**HON'BLE SRI GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE SRI K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Madhusoodanan P.,
S/o. (late) V. Kesavan Nair,
Sub Divisional Engineer (WLL),
Office of the Divisional Engineer,
Bharat Sanchar Nigam Limited,
Telephone Bhavan, Vellayil, Calicut,
Residing at : "Parvathy Nilayam",
Nellikode P.O., CALICUT : 673 016

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Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
The Secretary to the Government of India,
Ministry of Communications,
(Department of Telecommunication),
New Delhi.

2. The Chairman & Managing Director,
Bharat Sanchar Nigam Limited,
New Delhi.

3. The Assistant Director General,
Departmental Examination Section,
Bharat Sanchar Nigam Limited,
Dak Bhavan, New Delhi : 110 001

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Respondents.

[By Advocates Mr. Sunil Jacob Jose, SCGSC (R1) and Mr. Pradeep Krishna (R2-3)]

The Original Application having been heard on 19.02.2010, this Tribunal on 08-03-10
delivered the following :

O R D E R

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER


Aggrieved by the denial of a fair consideration for promotion to the Telecom
Engineering Service Group-B against vacancies that arose prior to 1996 in the quota for

Limited Departmental Competitive Examination, the applicant has filed this O.A. He has sought a declaration that non-feasance on the part of the 2nd respondent to consider and take a decision on his A-12 representation for revaluation of Paper II (General Technical) of TES Group-B qualifying examination held on 24.09.2003, is arbitrary, discriminatory and contrary to law. He further prayed for a direction to the respondents to revalue the said paper and to grant consequential benefits of promotion to TES Group-B with effect from the due date.

2. The applicant was initially appointed as Trainee Junior Telecom Officer on 10.09.1990. His promotional avenue is the Telecom Engineering Service Group-B. 2/3rd of the vacancies in the said cadre are to be filled up by promotion through a departmental qualifying examination. The remaining 1/3rd vacancies are to be filled up through departmental competitive examination. Only those who qualify in the departmental qualifying examination would be considered eligible to participate in the competitive examination quota. On 22.07.1996, the rules were amended to the effect that 75% vacancies are to be filled up on the basis of seniority-cum-fitness and the remaining 25% through the limited departmental competitive examination. From 1991 onwards, the respondents did not conduct the qualifying as well as the competitive examinations. As per the decision of the Apex Court in SLP No. 26071/95 dated 25.10.96, the vacancies that had arisen prior to 22.07.96 were to be filled up under the pre amended rules and the vacancies that had arisen thereafter were to be filled up as per the amended rules. As directed by the Hon'ble High Court of Kerala in WP(C) No. 21656/01(S), a supplementary qualifying-cum-competitive examination was held in September, 2003 for the vacancies that arose prior to 1996. The applicant appeared in the said examination. The result of the examination showed that a very few, mostly from Orissa, had qualified and none from Kerala including the applicant had qualified. The applicant obtained a copy of the mark-list. It was found that he had secured more than 50% marks in all the papers except Paper No.II for which the applicant got only 36 marks. The qualifying marks in each paper is 40% with 50% in aggregate. In papers No. IV,

V and VI relating to the competitive examination, he had secured higher marks than the minimum qualified marks of 40% and minimum 50% in the aggregate. Meanwhile, as per the amended rules, in the promotion quota, the applicant was promoted with effect from 31.12.2001. Thereafter, he qualified for the LDCE quota and was promoted to TES Group-B for the vacancies that had arisen during 1996-97.

3. The applicant submits that he stood first in almost all the departmental examinations held ever since his appointment and there was no reason for him to fail in the examination for the second paper alone. The 2nd respondent is competent to take a decision on his representation and to revalue the answer sheets and to grant him consequential benefits. Non-feasance on the part of the 2nd respondent to do so is a clear case of failure to exercise jurisdiction and, therefore, is arbitrary and discriminatory. It was only based on the directions of this Tribunal in OA No. 91/99 that the applicant and others were allowed to participate in the supplementary qualifying and competitive examination. Probably for this reason, all those who appeared in the said supplementary examination from Kerala were shown to have not qualified. The applicant had qualified in the competitive examination conducted on 1.12.2002 and in September, 2003. Therefore, there was no reason for his failure in paper-II only.

4. The respondents contested the O.A. They submitted that the applicant had not secured the minimum pass marks in each paper in the qualifying examination. The answer books pertaining to the examination in question have been weeded out after preservation period was over and no more action was pending. The performance of the applicant in another test is not relevant to the examination under consideration. There is no provision for revaluation of answer books as per P&T Manual and, therefore, no communication was received from the Corporate Office due to this reason. The respondents relied on the decision of the Hon'ble High Court of Andhra Pradesh in W.P.(C) No. 26059/2007 and also on the decision of the Apex Court in the matter of revaluation of answer books.



5. In the rejoinder, the applicant submitted that the respondents have not stated the date on which the answer books were weeded out. They have not stated how no further action was pending when the request of the applicant for revaluation of answer books was still pending with them. If the records were weeded out as early as 10.11.2005, the retotalling alleged to have been carried out and communicated to the applicant is on a non-existing answer sheet. The applicant had scored very good marks in the competitive examination. It is quite probable that the marks scored by him for paper-II was not just 36. As the answer book was either not properly valued or marks were manipulated to defeat the legitimate right of the applicant. Of the 65 candidates selected for appointment in the 2003 examination, more than 50% belong to Orissa circle and none from Kerala circle. Even if there is no provision for revaluation of answer books, the administration has inherent power to order such revaluation when there are glaring anomalies as indicated above. There is no overt prohibition of revaluation by statutory rule.

6. Arguments were heard and documents perused.

7. The main thrust of arguments in this OA is regarding revaluation of answer books of the applicant in the examination conducted on 24.09.2003. Before dealing with that, let us consider the issue of preservation of answer books. On preservation of result sheets and answer books, Para 17 in Appendix 37 of the P&T Manual Vol.IV is relevant. It is reproduced as under :

"17. Preservation of result sheets and answer books.- (a) Tabulated result sheets or mark sheet registers of departmental examinations should be preserved for a period of *ten years* from the date of announcement of the respective results.

(b) Answer books in respect of all departmental examination should be preserved for a period of *twelve months* from the date of announcement of the respective results."

The answer book in respect of the departmental examinations is to be preserved for a period of *twelve months* only. The respondents have stated that the answer book pertaining to the examination in question has been weeded out as the preservation period was already over. The mark sheet registers are to be preserved for *ten years*. This provision provides answer to the doubts raised by the applicant that the retotalling done in respect of the applicant is on a non-existing answer sheet. When the answer books are not available for revaluation, the question of revaluation does not arise. They have been quite legally destroyed and nothing can be done about it. As far as revaluation itself is concerned, Para 15 *ibid* is applicable. The same is extracted hereunder :

"15. *Revaluation of answer books*.- Revaluation of answer scripts is not permissible in any case under any circumstances."

The revaluation of answer book is ruled out under any circumstances. Therefore, there is no legal basis for the applicant to seek revaluation.

8. Having said so, we would observe that in the circumstances of this OA especially when legal dispute on the issue of examination arises in one circle and all those who appeared on the strength of a Court order in that circle fail en masse, the respondents should have on their own verified whether any manipulation occurred in evaluating the answer sheets of the candidates from that circle. It would have instilled confidence in the system and the respondents would have been kept, like Caesar's wife, above suspicion. With regard to qualifying-cum-competitive examination, we would observe that it does not stand to reason to hold qualifying and competitive examination together as the respondents have done. The first 3 papers of the examination comprised the qualifying part ; the remaining 3 papers, the competitive part. The qualifying examination is an elimination round. Only those who clear it are eligible to appear in the competitive examination. When both the qualifying examination and competitive examination are held together, the elimination round does not take place. There is no advantage of economy of reduction in the number of candidates appearing in the competitive examination nor any sense in making



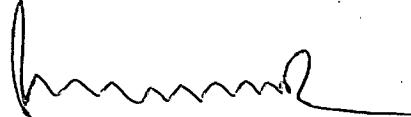
those who do not qualify, write the papers in the competitive part of the examination nor in evaluating those papers. Besides, as this case exemplifies, situations can arise wherein a person who did not qualify passes the competitive examination. This sort of ironical situation should be avoided. It is for the respondents to consider not to have a qualifying examination for competing in a limited departmental competitive examination for promotion. Further, in the interest of transparency, it is advisable to give a copy of the answer book on payment of cost to the examinee who applies for it within a year of the examination.

9. As the relief sought by the applicant is not in accordance with the rules and is infructuous in the absence of answer books, the O.A. is dismissed. No costs.

(Dated, the 08th March, 2010)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(GEORGE PARACKEN)
JUDICIAL MEMBER

CVR.