

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 91/1999

FRIDAY, THIS THE 27th DAY OF APRIL, 2001.

C O R A M

HON'BLE MR. A. M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

George Paul S/o Poullose
Officiating Sub Divisional Engineer (External)
Department of Telecom, Kalpetta
residing at C-3, Telecom Staff Quarters,
Muvattupuzha. Applicant.

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. The Chairman
Telecom Commission
New Delhi.

3. The Chief General Manager
Telecom, Kerala Circle,
Trivandrum.

Respondents

By Advocate Mr. Govindh K. Bharathan, SCGSC

The application having been heard on 2.4.2001, the Tribunal delivered the following on 27.4.2001.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant working as a Sub Divisional Engineer (External), Department of Telecom filed this Original Application seeking the following reliefs:

(a) Call for the records leading to the issue of Annexure A-6 and quash the same, to the extent it deems 1966 vacancies in the cadre of TES Group-B created on 15.10.98 as vacancies created in 1993.

(b) Direct the respondents to fill up the 1966 vacancies created in terms of annexure A-6 strictly in accordance with annexure A-3 Recruitment Rules

(c) Call for the records leading to the issue of Annexure A-7 and quash the same to the extent it reads that for the qualifying examination only candidates of Scheduled Caste and Scheduled Tribe Communities shall apply.




(d) Declare that the applicant and all those who were eligible to appear for the qualifying-cum-competitive examination in terms of Annexures A1 and A2 are liable to be considered for the qualifying - cum competitive examination to be conducted in terms of Annexure A-7 and direct the respondents accordingly.

(e) Declare that the applicant is eligible to be considered for promotion against 66 2/3% quota and 33 1/3% quota of vacancies which existed prior to 22.7.96 in the event of his qualifying in the qualifying-cum-competitive examination on the basis of seniority-cum-suitability or relative merit, as the case may be and as provided in Annexures A1 and A2.

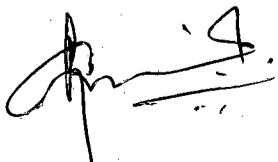
(f) Award costs of an incidental to this Application.

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


2. According to the applicant he was holding the regular post of Junior Telecom Officer (JTO for short). His next promotion in the avenue was to the cadre of Telecom Engineering Service (Group-B) (TES Group-B for short) and he being aggrieved by the arbitrary non-feasance on the part of the respondents in considering him for regular promotion to the cadre of TES Group-B filed this Original Application seeking the reliefs stated above. Prior to 22.7.96 the appointment to the cadre of TES Group-B was to be made 100% by promotion. 66 2/3% of the total number of vacancies were to be filled by selection on the basis of departmental qualifying examination conducted in accordance with the provisions laid down in A-1 Recruitment Rules and the remaining 33 1/3% were to be filled up by selection on the basis of limited departmental competitive examination to be conducted in accordance with A-1 Recruitment Rules. By A-2 notification dated 4.2.1987 appearing in Gazette of India dated 28.3.87 A-1 Recruitment Rules were amended. Referring to the different sections of the A-1 and A-2 Recruitment Rules applicant claimed that if a candidate took both the examinations together and failed in the qualifying examination he would not be considered for competitive



examination of that year or till he qualified in the qualifying examination. A-1 and A-2 Recruitment Rules were modified by A-3 Recruitment Rules issued on 22.7.96. According to A-3 100% of the vacancies in the cadre of TES Group-B were to be filled up by promotion; xxxxxxxx 75% on the basis of only seniority-cum-fitness and the remaining 25% on the basis of departmental competitive examination. The requirement for the conduct of the departmental qualifying examination was totally dispensed with. The applicant alleged that from 1991 onwards the respondents never conducted combined departmental qualifying - cum competitive examination and also did not fill up the vacancies in accordance with the Rules. They were treating those who had qualified in the qualifying examination prior to 1991 as a pampered class and all the vacancies including the qualifying and competitive quota vacancies were being filled up only from among these group of people which resulted in all the others despite their seniority and eligibility could not get an opportunity of being considered for promotion. This resulted in series of litigations before the various Benches of the Tribunal and finally the matter was taken up before the Hon'ble Supreme Court in SLP (C) No. 26071/95 (CA NO. 8890/96). This case was disposed of by the Hon'ble Supreme Court by A-4 judgment dated 25.10.96 recording the undertaking of the counsel on behalf of the respondents in that case that the vacancies which existed till the new Rules came into force would be filled up in accordance with the Rules which were in force prior to the new Rules. According to the applicant inspite of the categorical undertaking before the Hon'ble Supreme Court respondents persisted in showing undue favouritism and granting unlawful benefits to those who had qualified in the departmental qualifying examination conducted prior to 1991 which led to another



round of litigation before this Tribunal in different O.As which were finally disposed of by A-5 common order dated 1.5.98. According to the applicant the net result of A-4 and A-5 was that the vacancies as it existed prior to 22.7.96 were to be filled up exclusively in terms of the pre-existing rules by considering all those who were eligible to be considered and the vacancies which came into existence after 22.7.96 were to be filled up by the new Rules. The respondents created 1966 posts of Sub Divisional Engineer in the TES Group-B in terms of A-6 order dated 15.10.98 It was stated in A-6 that the said posts were deemed to have been created along with 2636 posts in the year 1993 itself. According to the applicant in this process the respondents nullified the effect of A-3, A-4 and A-5 by one stroke taking away the vested rights of the persons like the applicant who were otherwise eligible to be considered for promotion on the basis of seniority-cum-suitability against the vacancies that came into existence after 22.7.96. The respondents also issued A-7 order dated 6.11.98 allegedly in compliance with A-5 judgment. The applicant submitted his application in response to Annexure A-7. However, since he had no opportunity to appear in the qualifying examination earlier it was informed that his application would be rejected summarily. Annexures A-6 and A-7 resulted in total denial of such consideration to the applicant on par with other JTOs who were identically situated. Hence, A-6 and A-7 were totally unlawful and unconstitutional. Hence he filed this O.A. He being a 1984 recruited JTO appointed in the year 1987 he was entitled to be considered for all vacancies which existed after 22.7.96 strictly in accordance with A-3 Recruitment Rules. That right of the applicant which had been crystallized in the light of the statutory force of A-3 could not be taken away by the respondents by issuing



executive orders/administrative instructions like A-6 stating that the vacancies created as on 15.10.98 would be deemed as vacancies which existed as on 1993. As per A-3 Recruitment Rules the vacancies which were created after A-3 the respondents could not revive and enliven the rules which were superseded as on 22.7.96. Annexure A-6 to the extent it revived and enlivened the Rules which were superseded on 22.7.96 for the vacancies which were created after the said date was totally in excess of jurisdiction, colourable exercise of power, ultravires A-3 and hence arbitrary and violative of the constitutional guarantees enshrined under Articles 14 and 16. Annexure A-6 to the extent it deemed 1966 vacancies created on 15.10.98 as vacancies created during 1993 was not based on relevant considerations but based on irrelevant considerations. Annexure A-7 was also to the extent it permitted only the members of the SC/ST communities to appear for the qualifying -cum-competitive examination and to the extent it denied a consideration to all the other JTOs who were otherwise eligible to be considered for promotion against qualifying quota and competitive quota vacancies which existed prior to 22.7.96 was highly arbitrary, discriminatory and unconstitutional. Para 5 of A-7 was a clear nullification of A-4 and A-5 judgment of the Tribunal according to which respondents were bound to fill up the vacancies which existed prior to 22.7.96 only in accordance with the pre-existing rules. According to the applicant the respondents were trying to interpret A-5 judgment of this Tribunal to mean that the respondents were bound to conduct competitive-cum-qualifying examination only as regards the members of SC and ST and not as regards others. This would render the examination for filling up of the competitive quota as an empty formality since only those who had qualified in the qualifying examination prior to 1991



would be competent to appear for the competitive quota examination. All those who had qualified in the qualifying examination prior to 1991 had also been promoted by the respondents against the entire vacancies which existed prior to 22.7.96 and arose after 22.7.96. Such an interpretation would be to suggest that the Tribunal had entered into an area of legislation by amending A1 and A2 to the extent it denied consideration to the applicant and others similarly situated for promotion to the post of TES Group-B against 66 $\frac{2}{3}$ % quota vacancies and 33 $\frac{1}{3}$ % quota vacancies which existed prior to 22.7.96. He was prevented from appearing in the qualifying examination because the respondents did not conduct the annual examination for the period from 1991 onwards though they were legally bound to do. There was no justification in putting the applicant to suffer for no fault on his part. All those who were eligible to be considered for promotion against both the quota had a right to be considered and that right could not be taken away by the arbitrary action of the respondents.

3. Respondents filed reply statement resisting the claim of the applicant. They submitted that the qualifying examination to Telegraph Engineering Service Group-B was conducted upto 1991 and as at that time a large number of qualified JTOs were awaiting their promotion it was decided to suspend the examination for three years which was later extended to another three years. Thereafter, the Recruitment Rules were modified dispensing with the qualifying examination from 23.7.96. It was submitted by the respondents that they had acted in accordance with the directions of Hon'ble Apex Court as well as the directions of the Ernakulam Bench of the Tribunal dated 1.5.98. As per the rules for maintaining seniority of TES Group-B, persons



passing the earlier qualifying examination of TES Group-B would be senior to those who qualify in a later examination. Accordingly since a large number of qualified JTOs were available to fill up the vacancies of qualifying quota upto 22.7.96, no purpose was to be served by allowing other community candidates to appear in the ensuing qualifying examination and it might create administrative problems. However, as sufficient SC/ST candidates were not available they had been allowed to appear in the qualifying as well as competitive examinations. They referred to the order of this Tribunal dated 1.5.98 in O.A. Nos. 1497/96, 297/98, 629/97 and 1186/97 in support of their submissions. They also gave the background as to why 1966 posts in TES Group-B were upgraded. It was submitted that the action of the department to hold Departmental Promotion Committee and issue promotion orders was in tune with the direction of the Hon'ble Supreme Court in judgment dated 25.10.96 reiterated in the interim order dated 9.10.97 of Principal Bench of the Tribunal in O.A. No. 2226/97. As there was no shortage of qualified JTO of Other category to fill up the vacancies of TES Group-B the examination had been limited for the SCs/STs. Even if other community employees were allowed and they qualified in the examination they could not be promoted to TES Group-B as sufficient number of qualified JTOs from earlier examination were available for promotion and as per the rules, the person who qualify earlier was to be promoted first if otherwise fit for promotion. In the circumstances, according to them the Original Application was devoid of merit and liable to be dismissed with costs to the respondents.

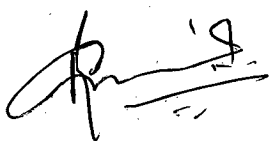
4. Respondents filed an additional reply statement. It was submitted that the applicant was permitted to appear in the qualifying examination held on 28.11.91 and 30.11.91



under Roll No. KT/84/91/1/107 issued vide Chief General Manager, Telecommunication by R-3(a) letter dated 21.10.91. But he had absented from the examination. It was averred that the said fact was concealed by the applicant with the intention to mislead the Tribunal by stating that the applicant was prevented from appearing in the departmental examination by not conducting the annual examination from 1991 onwards. The applicant having not qualified earlier was not eligible for appearing for the competitive part of the examination held in the light of the directions of this Tribunal. Further, having been an official of 'other community' he could not appear for the qualifying part of the examination, as it was directed to conduct the qualifying part of the examination for SC/ST only. Hence, the relief prayed for by the applicant to allow him to appear in the qualifying part of the examination was against the spirit of the order of this Tribunal in O.A. 1497/96 and connected cases. According to the revised Recruitment Rules the applicant could appear for the 25% of the competitive quota without being qualified in the qualifying examination. The claim of the applicant had no merits. It was further submitted that in the combined judgment dated 10.9.99 of the Bangalore Bench of the Tribunal, the Tribunal had quashed the Department order No. 5-1/93/TSAE.II dated 15.10.98 creating 1966 posts of TES Group-B from 1993 onwards for the reason that these posts were created after 23.7.96 and given effect from a date anterior to 23.7.96 and this was against the assurance given before the Supreme Court in SLP NO. 26071 of 1995 that vacancies existing till the new rules came into force would be filled up in accordance with the rules which were in force prior to the new rules. Accordingly, the Department of Telecom by Annexure R-3B letter dated 6.10.2000 decided to cancel the creation of 1966 posts of TES Group-B



issued vide A-6 letter dated 15.10.98. A large number of officers who had qualified upto the year 1991 and promoted to TES Group-B were now facing reversion as the above order had been implemented and there were no vacancies to accommodate these officers promoted as per the Recruitment Rules prior to 1996. Added to this if the officers like the applicant in the present O.A. were permitted to appear in the qualifying part of the examination the administration would be put to serious problems as there would be no vacancy in the qualifying quota to accommodate those who qualify in the proposed examination. The prayer of the applicant to quash A-6 order had become infructuous. They also referred to the judgment of the Bangalore Bench of this Tribunal in O.A. 961/99 filed by Sri K.S. Hegde and referred to R-3C order dated 1.2.2001 issued by the department and submitted that the posts occupied by officers qualified in the 2/3rd qualifying part of the examination had to be vacated and hence additional vacancies were to be created to accommodate these affected officers and it would adversely affect a large number of interse positions of seniority already allotted. They also referred to the judgment of the Hon'ble Supreme Court in Union of India Vs. Madras Telephone SC & ST Social Welfare Association in I.A. 2/99 and Civil Appeal No. 6485-86/98 and contempt petition No. 121 of 1999 in CA No. 4339/95 and Civil Appeal Nos. 6485-86/98 dated 26.4.2000 (Annexure-R-3D) and submitted that the Department was in the process of refixing the interse seniority of the officials. It was submitted that in view of the above two judgments, the Department had to create large number of vacancies to accommodate those JTOs who had qualified in the qualifying examinations upto the year 1991 and promoted to TES Group-B in accordance with the pre-1996 Recruitment rules and the seniority list of the TES Group-B officers would be subjected



to a further reshuffle in addition to the recasting of seniority list as ordered by the Apex Court. If the applicant was permitted to appear in the qualifying examination according to the prerevised recruitment rules and came out successful he would be placed junior to all those who passed in the earlier examination and recruited in the year of Recruitment to which he belonged, there would be no vacancy to accommodate him/^{as} the department was already facing serious problems in the light of the above judgments. It was stated that 3629 JTOs promoted by order dated 29.10.1998 belonged to the 2/3rd quota and it did not include 1/3rd quota and that from 1992 to 1996 upto 22.7.96 there were 1242, 992, 1843 and 1814 vacancies available in Group-B against 1/3rd quota (Annexure R-3(E)) for each of the years.

5. Heard learned counsel for the parties. The learned counsel for the applicant took us through the pleadings, A-5 judgment, A1 and A-2 Recruitment Rules in detail and submitted that unless the applicant qualified himself in the qualifying part of the examination he would not be able to take part in the competitive part of the examination and therefore that part of A-7 which restricts the qualifying examination only to candidates of SC/ST communities was liable to be quashed. He conceded that in the light of the order of the Bangalore Bench of this Tribunal dated 10.9.99 in O.A. No. 946/98, 1034/96, 94/99 and Annexure R-3B of the Department the relief sought under para 8(a) has become infructuous.

6. The learned counsel for the respondents took us through the pleadings and submitted that in view of the judgment of the Bangalore Bench of this Tribunal and the Hon'ble Supreme Court in Civil Appeal No. 6485-86/98 the



Department had to create large number of vacancies to accommodate those JTOs who had qualified in the qualifying examination upto the year 1991 and promoted to TES Group-B in accordance with the pre-1996 Recruitment Rules and the seniority list of the TES Group -B officers would be subjected to a further reshuffle in addition to the recasting of seniority list as ordered by the Apex Court and that if the applicant was permitted to appear in the qualifying examination according to the pre-revised recruitment rules and came out successful he would be placed junior to all those who passed in the earlier examination and recruited in the year of Recruitment to which he belonged, there would be no vacancy to accommodate him as the department was already facing serious problems in the light of the judgment.

7. We have given careful consideration to the submissions made by the learned counsel for the parties and have perused the documents brought on records. The first relief sought for by the applicant in this O.A. namely quashing of Annexure A-6 to the extent the same deemed 1966 vacancies in the cadre of TES Group-B created on 15.10.98 as vacancies created in 1993 has become infructuous in view of the order of the Bangalore Bench of this Tribunal in O.A. 946/98, 1034/98 and 94/99.

8. The relief sought for in para 8(b) is for a direction to the respondents to fill up the 1966 vacancies created in terms of Annexure A-6 strictly in accordance with Annexure A-3 Recruitment Rules. This relief no longer holds good in view of Annexure R-3B communication from the Ministry of Communications dated 6.10.2000 according to which the Department had decided as follows:



"In compliance of CAT, Bangalore Bench judgment dated 31.8.99 subsequently upheld by Bangalore High Court, it has been decided to cancel the order for creation of 1966 posts of TES Group-B issued vide DOT No. 5-1/93-TE-II dated 15.10.98."

In the light of the above decision the question of any direction to the respondents to fill up non-existent posts would not arise.

9. We will consider the 3rd, 4th and 5th reliefs sought by the applicant which are as follows:

(c) Call for the records leading to the issue of Annexure A-7 and quash the same to the extent it reads that for the qualifying examination only candidates of Scheduled Caste and Scheduled Tribe Communities shall apply.

(d) Declare that the applicant and all those who were eligible to appear for the qualifying-cum-competitive examination in terms of Annexure A-1 and A-2 are liable to be considered for the qualifying - cum competitive examination to be conducted in terms of Annexure A-7 and direct the respondents accordingly.

(e) Declare that the applicant is eligible to be considered for promotion against 66 2/3% quota and 33 1/3% quota of vacancies which existed prior to 22.7.96 in the event of his qualifying in the qualifying-cum-competitive examination on the basis of seniority-cum-suitability or relative merit, as the case may be and as provided in Annexures A1 and A2.

10. The applicant, in the reasons given by him in the O.A. for being aggrieved by the action of the respondents in deeming to have created 1966 posts from 1993 itself by A-6 letter, averred that his right for being considered on seniority-cum-suitability basis for the posts/vacancies created/occurring after 22.7.96 had been taken away by the respondents by their aforesaid action. At the same time, the above reliefs were sought because according to him respondents by certain conditions in A-7 were not allowing him to be considered for the vacancies against both 66 2/3% and 33 1/3% quota which had arisen from 1991 to 1996, July 22nd.



11. Admittedly the department had decided to conduct the departmental qualifying and competitive examination for promotion to TES Group-B posts as notified in A-7 communication dated 6.11.98 in compliance with the judgment dated 25.10.96 of the Hon'ble Supreme Court and the order of this Tribunal dated 1.5.98. The applicant's grievance is with specific regard to para 5 of the above communication which reads as follows:

For the qualifying examination candidates of SC&ST communities only shall apply. For competitive examination candidates of all communities may apply.

In order to consider the above issues we have examined the judgment of the Hon'ble Supreme Court dated 25.10.96 and the order of this Tribunal dated 1.5.98. According to A-4 judgment dated 25.10.96, the Telecom Engineering Service Group-B Recruitment Rules 1996 had been promulgated and published in the Government of India Gazette dated 27.7.96 and that according to Rule 3 of the said Rules they came into force on the date of their publication in the official Gazette. The vacancies which were existing till the new rules which came into force would be filled up in accordance with the Rules which were in force prior to these Rules. The order of this Tribunal dated 1.5.98 referred to in A-7 circular of the department is at Annexure A-5. The said A-5 order was a common order covering OAs 1497/96, 297/98 and 629/97 and 1106/97. In para 8 of the said order we find the major issues involved in the said OAs were stated as follows:

8. The major issues involved in these OAs may be summarised usefully as follows:

i) Whether the Department of Telecommunications, Government of India which is the administrative Department for all the official respondents in these OAs is justified in not conducting the Qualifying Examination (QEs) for the JEs for the years 1992 to 1996. It is admitted that QEs are prescribed under

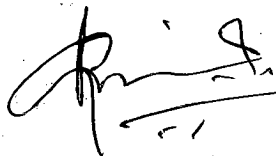


the Recruitment Rules 1981 notified on 7.5.81 available at Annexure R4(e) in O.A. 1497/96 along with its Appendices (1981 Rules for short) read with the amendment to the said Recruitment rules called the Telegraph Engineering Services (Group-B) posts) Amendment Rules 1986 notified on 2.5.86 available in Annexure R-4(f) of the same O.A. (1986 Rules for short) and the further amendment to the same rules called the Telecommunication Engineering Service (Group-B posts) Recruitment (Amendment) Rules 1987 notified on 4.2.87 (R-4(g) in the same O.A.) These Recruitment Rules are referred to as 1981 Rules, 1986 Rules and 1987 Rules respectively for convenience.

ii) Whether the said Department, is similarly justified in making promotions either on ad hoc or on a regular basis against the vacancies in TES Group-B arising upto 22.7.96, when the earlier 1981 Rules, 1986 Rules and 1987 Rules were further amended by the Telecommunication Engineering Services (Group-B posts) Recruitment Rules 1996 notified on 2.7.1996 (called the 1996 Rules for short), dispensing with the requirement of passing the Qualifying Examination for promotion to TES Group-B, treating only those Junior Engineers as eligible for promotion to TES Group-B posts who have passed the Qualifying Examination prescribed under the 1981 Recruitment Rules as amended in 1986 and in 1987 referred to above and treating those who have passed the said prescribed Qualifying Examination (QE) earlier as seniors to those who have passed the QE later, irrespective of their seniority as Junior Engineers i.e., in the feeder category, in terms of the executive instructions like Para 206 in the P&T Manual Vol IV (Para 206 for short) or any other similar executive instructions like the circular letter dated 12.11.92 issued by the Department (1992 order for short) superseding earlier instructions dated 24.4.73 and para 206. The executive instructions lay down that for determining the eligibility among the officers who have passed the QE, it is the year of passing the QE and not their year of recruitment as JEs which will be the relevant criterion.

iii) Whether in view of the facts that since 1992 no QEs have been held, that the DPC has not met since 1994 and that no promotions have been effected to the cadre of TES Group-B in terms of the 1981 Recruitment Rules as amended in 1986 and 1987, since 1994, the said Department is no longer required to hold the QEs under these old Rules, but it is required to make promotions to TES Group-B, under the 1996 Rules since they have already come into force and based on the criterion of seniority-cum-fitness as prescribed under the 1996 Rules.

The Tribunal after surveying the entire development in the matter of filling up TES Group-B posts have answered the issues as follows in paragraphs 22, 23 and 24:



22. At this stage, it is not necessary to go into the merits of the points urged on behalf of the applicants in O.A. Nos 1497/96, 297/98 and 629/97 about the validity of the order passed in 1997 modifying the date of abrogation of the effect of para 206 from 15.4.94 to 23.7.96. However we observe that under the pre-1996 Recruitment Rules 1/3rd of the vacancies in the TES Group-B cadre are required to be filled up with JEs/JTOs who qualify in both parts of the combined Departmental Examination i.e. the Qualifying Examination and the Competitive Examination (Competitive Officers). Obviously, the quota meant for these Competitive Officers in the TES Group-B vacancies cannot be filled at all if the Combined Departmental Examinations are not held. For the conduct of these combined Departmental Examinations the first of these Examinations namely the qualifying examination is a must. Secondly, we have also notified that the number of posts to be earmarked for SCs/STs in the promotional cadre in the TES Group-B after 1994 have not yet been identified for the years 1992 onwards upto 1996. The entire quota when identified for the SCs/STs cannot reasonably be expected to be filled up adequately with only those SCs/STs who have already become qualified upto 1991. For these two reasons alone, action of the department in not holding the ~~xx~~ Qualifying Examinations since 1991 upto 1996 cannot be held legally valid.

23. However, we cannot hope to put the clock entirely back and in all conscience order that to meet the two specific and legally prescribed objectives mentioned above, i.e. in respect of filling up the quota for Competitive Officers and that for the SCs/STs, the DOT must religiously hold a combined Departmental Examination as technically required under the then Recruitment Rules i.e. pre-1996 Rules every year. We have taken judicial notice of the fact that the JTOs who are the applicants before us in the most of the above OAs had an opportunity of appearing at the Qualifying Examinations as a part of the Combined Departmental Examinations. In fact, a large number among them have already appeared at the Qualifying Examination part of the Combined Departmental Examination but have not become successful. For the reasons explained below, we have held that these JTOs will have to be considered as Junior to the JTOs who have already qualified themselves by passing the Qualifying Examination part of the Combined Departmental Examination. We are, therefore, constrained to strike a balance between the technical requirement of the pre-1996 Recruitment Rules and what is feasible administratively for achievement of the limited and residual objectives of those Rules in these circumstances. In our considered view, such a balance can be achieved if for the entire period between 1992 and 1996, the Combined Departmental Examination is held for enabling the SCs/STs quota in the TES Group-B cadre and the 1/3rd quota in that cadre earmarked for the Competitive Officers to be filled before further regular promotions are thereafter effected in terms of the amended

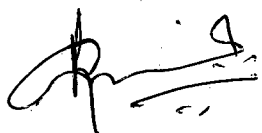


Recruitment Rules for the TES Group-B brought into effect from 22.7.1996 without the requirement of any such examination except for the Competitive quota.

24. In other words only one combined Departmental Examination need be held for the year 1992 to 1996 following the spirit of the order of the Hon'ble Supreme Court in SLP NO. 0 26071/96 dated 25.10.96 which has become final and considering the fact that the department cannot legally be permitted to contravene the statutorily prescribed Recruitment Rules of 1981, 1986 and 1987 which incorporated the requirement of holding this combined Departmental Examination, while, at the same time, recognising the fact that the JTOs already qualified are to be treated in any case as senior to those who will now qualify merely at the Qualifying part of the combined Departmental Examination. We therefore, answer the first issue directing that the department must hold one Combined Departmental Examination comprising both the Qualifying and Competitive Examinations for the years from 1992 upto 22.7.1996 within six months from the date of receipt of a copy of this order.

12. After analysing the Recruitment Rules along with the government orders and the judgment of the Allahabad High Court confirmed by the Hon'ble Supreme Court, the Tribunal in para 31 came to the conclusion as follows:

31. Even if it is granted that in terms of the ruling of the Hon'ble Supreme Court generally an administrative order cannot have retrospective effect and therefore the 1997 order modifying the effect of abrogation of para 206 from 15.4.94 to 23.7.96 may have to be considered as non est, the order of the same department of Telecommunications dated 12.11.92 found at R-4(k) in O.A. 1497/96 is, in our opinion an equally competent executive order which was obviously and specifically passed by the Government for the purpose of regulating the principle of seniority for the purpose of preparing the eligibility list of JEs/JTOs who qualify at the departmental Qualifying Examination. No material whatsoever has been placed before us even to suggest that this 1992 order does not hold the field simultaneously with the pre-1996 Recruitment Rule. In these circumstances, following the principle first laid down by the Hon'ble High Court of Allahabad (Lucknow Bench) and upheld finally by the Supreme Court, referred to above, in the context of Para 206, we hold that such an executive order must be deemed to be supplemental to the Recruitment Rules and hence valid. We therefore concluded that the officials who have already qualified at the Departmental Qualifying Examination upto 1991 will have to be treated as senior to those who qualify after them at the same departmental Qualifying Examination, for the specific purpose of regular promotions to the vacancies in TES Group-B cadre arising upto 22.7.96, from which date the 1996 rules came into force removing the requirement of passing the Departmental Qualifying Examination for the purpose of promotion.



Finally this Tribunal allowing the O.A. in part, gave the following direction:

35. In sum, we direct that the Department shall fill up the vacancies arising upto 22.7.96 only with the officials of JEs/JTOs cadres who have qualified and may qualify themselves at the Qualifying Examination part of the one Combined Departmental Examination for the quota of SC/ST vacancies for the TES Group-B cadre earmarked for the Qualified Officers and fill up 1/3rd quota earmarked for the Competitive Officers who have qualified themselves or may qualify themselves at the same Combined Departmental -cum-Competitive Examination. The posts earmarked for SC/STs in the promotional cadre of TES Group-B are directed to be filled up appropriately with the qualified SC/ST officials from the feeder cadre of JEs/JTOs based on the results of this examination. As we have already directed that one Combined Departmental Examination shall be held by the D.O.T. within six months from the date of receipt of a copy of this order.

13. According to A1 Recruitment Rules 66 2/3% of the promotion quota and 33 1/3% quota are to be filled up by selection on the basis of a departmental Qualifying Examination and Limited Departmental Competitive Examination respectively - both conducted in accordance with the provisions contained in Appendix-I, Appendix-II and Appendix-III. As per para 4 of Appendix -III of the A-1 Rules, qualifying in the Departmental Qualifying Examination is a pre-requisite for the candidate to be considered for competitive examination of that year. The said para 4 reads as under:

The candidates shall have the option to take both the examinations together or to take Department Qualifying Examination initially and the Limited Departmental Competitive Examination in subsequent years. However, for appearing in the Limited Departmental Competitive Examination it shall be obligatory to qualify in the departmental qualifying examination. In other words if a candidate takes both the examinations together and fails in the qualifying part, he will not be considered for the competitive examination of that year or till he qualifies in the qualifying examination.



By A-2 amendment to the Recruitment Rules dated 28.3.87 the appointment against 66 2/3% promotion quota was made on the basis of seniority-cum-fitness on the recommendations of the DPC from amongst the employees qualifying in the Departmental Qualifying Examination instead of on the basis of selection on the recommendations of a duly constituted Departmental Promotion Committee provided for in the 1981 Rules. It is on the basis of the above rules as per the law laid down by the Hon'ble Supreme Court at that time that this Tribunal in A-5 order came to the conclusion that those who qualify in an earlier qualifying examination would be senior to those who qualify in the later examination and it is on this premise that this Tribunal had directed that one Combined Departmental Examination should be conducted. The direction given in para 35 regarding the conduct of the Combined Departmental Examination would be clear if the order is read complete especially para 22 extracted earlier. Thus, it is evident from the judgment that the examination which was directed to be conducted under para 35 was meant for filling up the vacancies of SC/ST by the qualifying part of the Combined Departmental Examination against 66 2/3% vacancies and 33 1/3% vacancies by the Limited Departmental Competitive Examination, both against promotion. As unless an employee qualifies himself in the qualifying part of the Combined Departmental Examination he could not appear in the Competitive Examination for filling up the 33 1/3% of the promotion quota vacancies, we hold that not permitting the applicant and similar others if they were otherwise eligible in the Combined Departmental Examination was not in line with the statutory rule or the ruling of this Tribunal in the above order.



14. If we examine para 5 of A-7 no infirmity as such could be found on the same. Para 5 of xxxxxxxx A- 7 is as follows:

For the Qualifying Examination candidates of SC & ST communities only shall apply. For competitive examination candidates of all communities may apply.

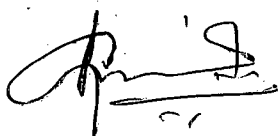
15. It is evident that it is in line with A-5 order of this Tribunal. But it had been interpreted and implemented erroneously by the respondents in that the department had excluded the applicant and other similarly situated employees from appearing in the qualifying part of the examination conducted by A-7 notification (The examination had been conducted in November, 2000) thereby effectively denying them the opportunity to appear in the Competitive part of the Examination. We note from the additional reply statement that by R-3 judgment in Civil Appeal No.4339/95 Union of India Vs. Madras Telephone SC & ST Social Welfare Association with Contempt Petition No. 121 of 1999 in CA No. 4339/95 and CA No. 6485-6486 of 98 dated 26.4.2000 a three Judge Bench of Hon'ble Supreme Court held that the judgment of the Hon'ble Supreme Court in Civil Appeal 4339/95 had rightly interpreted the relevant provisions of the Recruitment Rules read with the procedure prescribed in Memo dated 28.9.96. The Hon'ble Supreme Court held:

" The Departmental Promotion Committee is duty bound to prepare an approved list by selection from amongst the officials who qualify the departmental examination. In view of the amendment to the rules made on 4th of February, 1987 the criteria or selection is seniority cum fitness. In accordance with the prescribed procedure for preparation of eligibility list, notified by the Govt. on the 28th of June 1966, the DPC has to prepare separate lists for each year of recruitment in the feeder category. In other words, if in 1958 the DPC is recommending people for promotion to class II, then all the eligible candidates who had passed the departmental examination and who had been recruited in 1950 are to be listed separately from those officers who also



have qualified departmental examination and were recruited in the year 1951 and so on and so forth. Once separate lists are prepared by the DPC of the officers recruited in different recruitment years in the feeder category and the criteria for promotion being seniority-cum-fitness, then it would create no problem in promoting the officers concerned. As to the inter se position of the officials belonging to the same year of recruitment in the feeder category the procedure to be adopted has been indicated in paragraph (iii) of the memorandum dated 28th June, 1966.

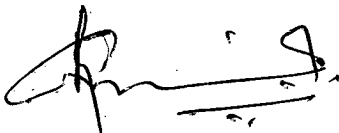
16. According to the respondents as per the directions of the Hon'ble Apex Court the department was in the process of finalisation of promotions in TES Group-B and the same was nearing completion. They further submitted that as a result of the judgment the department had to create large number of vacancies to the cadre of JTOs who had qualified in the qualifying examination upto the year 1991 and promoted to TES-Group B in accordance with the pre-1996 Recruitment rules and the seniority list of TES Group-B employees would be subject to further reshuffling. While we note the above, as the department had conducted the examination notified under A-7 in November, 2000 after the judgment of the Hon'ble Apex Court dated 26.4.2000 and the applicant had not been permitted to appear in the same in spite of the interim direction of this Tribunal and there are unfilled vacancies against Competitive Examination quota the above development should not stand in the way of disposing of this O.A. As we have already held that not permitting the applicant and others similarly placed like him in the Departmental Examination had deprived them from effectively participating in the Competitive quota part of the Examination, we direct the respondents to conduct a special Supplementary Qualifying -cum-Competitive Examination in continuation of the one conducted as per A-7. In this Examination the applicant and other employees similarly placed like him who apply for the same should be allowed to participate. If they pass in the



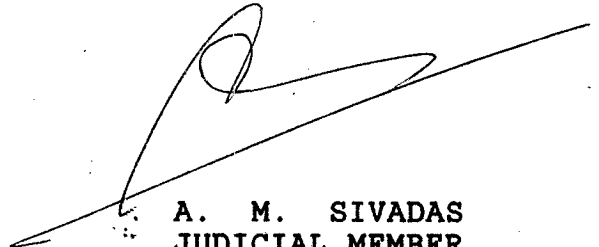
qualifying part of the Examination they shall be considered for promotion against the 33 1/3% Limited Departmental Competitive Examination quota of vacancies. We make it clear that the above direction shall in no way affect the rights if any which have accrued to the applicant and others similarly placed by virtue of the judgment of the Hon'ble Apex Court dated 26.4.2000 in implementation of which action is stated to be under process by respondents.

17. The Original Application stands disposed of as above with no order as to costs.

Dated the 27th April, 2001,



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A. M. SIVADAS
JUDICIAL MEMBER

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List of Annexures referred in this Order.

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| A1 | True copy of the Telegraph Engineering Service (Group-B) Recruitment Rules, 1981. |
| A2 | True copy of the TES (Group-B Recruitment (Amendment) Rules, 1987 as published in the Gazette of India Part-II Section 3, Sub Section (i) dated 28.3.87 |
| A-3 | True copy of the TES (Group -B posts) Recruitment Rules 1996 as notified in the Gazette of India dated 22.7.96 |
| A-4 | True copy of the judgment of the Hon'ble Supreme Court in SLP(C) No. 26071/96 dated 25.10.96 |
| A-5 | True copy of the judgment of this Tribunal in O.A. No. 1497/96 and connected cases dated 1.5.98 |
| A-6 | True copy of the letter No. 5-I/93/TE-II dated 15.10.98 issued from the office of the first respondent. |

- A-7 True copy of the letter No. 5-7/98-2B dated 6.11.98 issued from the office of the second respondent.
- R-3A Photo copy of the letter No. Rectt/22-2/91 dated at TVM-33 21.10.91 of the Chief General Manager, Telecom. Trivandrum
- R-3B Photo copy of the letter No.5-1/93-TE-II dated 6.10.2000 of the Ministry of Communications, New Delhi.
- R-3C Photo copy of the letter No. 15-78/99-STG II dated 1.2.2001 of the Ministry of Communications, New Delhi.
- R-3D Photo copy of the judgment in Civil Appeal No. 4339/95 dated 26.4.2000 of the Hon'ble Supreme Court of India.