

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 115
~~T. A. No.~~

1990

DATE OF DECISION 22.3.91

C. S. Balan and Sreekumar C. Applicant (s)

Mr. K. Ramakumar Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
Secretary, Ministry of Communication, New Delhi and others

Mr. A. A. Abul Hassan Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

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

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

Two applicants working as Technicians in the Telecom. Department, Government of India have filed this application under section 19 of the Administrative Tribunals' Act, 1985 for a declaration that the insistence of a competitive test for promotion to the post of Junior Telecom. Officer, hereinafter referred to as JTO, in the Telecom Department is violative of the Article 14 and 16 of the Constitution of India.

2. When the case was taken up for hearing, the learned counsel for the applicant submitted that the first applicant has passed the competitive examination conducted by the Telecom Department for the promotion to the post of JTO and he is undergoing training. So the grievance of the

second applicant alone survives for consideration in this application.

2. The second applicant joined as Technician in the Telecom Department on 15.6.1981. He passed B. Tech Degree in Electrical Engineering with Departmental permission. After acquisition of the Degree he submitted representations for getting promotion as JTO but his representations have not been forwarded to the higher authorities for consideration. According to the applicant the post of JTO is a promotion post for which selection is being made after conducting a competitive test in which departmental candidates consisting of Clerks, Telephone Operators, Technicians, etc. are allowed to participate. According to the applicant such a test is unnecessary so far as the applicant is concerned because of the long experience in the Department and acquisition of the Engineering Degree with the approval of the Department. The method of selection insisting on a Departmental test for the promotion under the above circumstances would be illegal particularly when no such test is prescribed for direct recruitment to the post of JTO. Thus, according to the applicant the respondents have adopted a patent discriminatory treatment in the case of departmental promotion and direct recruitment for the same post. The applicant further submitted that the failure on the part of the respondents to forward his representation to the higher authorities is a default on their part and this Tribunal should issue a mandamus directing them to forward the representation.

3. The respondents in the counter affidavit stated that as per the Recruitment Rules, the cadre of JTOs is filled up by 65% outsiders and 35% from Departmental employees of different categories. The Recruitment of outsiders is made from candidates possessing B.Tech or

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B.Sc with Maths. and Physics as subjects having more than 60% marks for Part-III in the case of B.Sc Degree holders. Out of the departmental quota of 35%, 10% is filled up by qualifying test from Telecom Inspectors, Transmission Assistants, Wireless Operators and Auto Exchange Assistants with about 10 years of service. The balance of 15% is filled up on the basis of competitive examination from Technicians, Telephone Operators and Telecom Office Assistants. They submitted that there is no discrimination between the direct recruits and promotees as contended by the applicant. So long as statutory rules are in force, there is no substance in the arguments of the learned counsel for the applicants.

4. Having heard the matter and after perusal of the records, we are fully satisfied that the applicant has no case in the light of Annexure-D Recruitment Rules produced along with M.P. 126/90 by the learned counsel for the respondents. The relevant portion of the Rule is extracted below:

"Scheme

Method of recruitment whether by direct recruitment or by promotion or deputation/transfer and percentage of the vacancies to be filled by various methods.

(10)

- i) 65 percent by direct recruitment;
- ii) 15% by promotion of departmental candidates through a competitive examination;
- iii) 10 per cent by promotion of Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators through a competitive examination; and
- iv) 10 percent by promotion of Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators on seniority-cum-fitness basis through a separate qualifying test, the inter-seniority of the officials being decided on the basis of the length of service in the grade."

5. Under the provisions of the aforesaid statutory rules, 15% of the posts of JTOs is being filled up after conducting competitive test. The applicant can get his promotion to the post of JTO by passing in the test prescribed by the rules, so long as the rule is in force. subject to his eligibility ✓
He can also/get an appointment as JTO by seeking his chance through direct recruitment of 65% whenever advertisement is issued for selection to the post of JTO. In fact, it is stated in the counter affidavit that the applicant applied for the selection of JTO pursuant to the advertisement issued in 1989. His application No. was 2751. But he was not considered on account of deficiency in the marks and he was not within the zone of selection. So he was not included in the provisional Select List prepared for the year 1989. But he can/again appear for the further selection if eligible ✓
if he so desires. Since the applicant has not challenged the Annexure-D Recruitment Rules, his prayer in the application cannot be granted except directing the respondents to forward his representation if any submitted before the respondents as alleged in the application, for being considered and disposed by the competent and appropriate authority in accordance with law without any delay. Accordingly we dispose of the application with the direction referred to above. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

22.3.91


(S. P. MUKERJI)
VICE CHAIRMAN

22/3/91

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