

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 149/90 499
XXX No.

DATE OF DECISION 31.8.90

Lekha.S. & Applicant (s)
Radhika.S.

M/s S.Subramani & Advocate for the Applicant (s)
R.Jagadish Kumar
Versus

Chief General Manager, Respondent (s)
Telcom, Kerala Circle & 10 others.

Mr. P.Santhosh Kumar Advocate for the Respondent (s)
(for R-1)
Mr.M.R.Rajendran Nair (for R-2)

CORAM:

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

The Hon'ble Mr. A.V.Haridasan, 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

(Shri S.P.Mukerji, Vice Chairman)

The two applicants who applied for the post of Junior Telecom Officer under the Chief General Manager, Telecom, Kerala Circle, in this application dated 2nd February 1990, have prayed that the respondents should be directed that instead of aggregate marks, the marks awarded to the subject alone should be taken into account for selection and on that basis the applicants may be considered for appointment as Junior Telecom Officer. The facts of the case are as follows:

2. The respondents invited applications for the post of Junior Telecom Officer through an advertisement and Instructions to the Candidates' at Annexures-II & I respectively.

The educational qualifications and mode of selection were advertised at Annexure-II as follows:

"EDUCATIONAL QUALIFICATIONS: A Degree in Engineering in Mechanical/Electrical Telecommunications/Electronics/Radio Engineering or equivalent qualification from a Recognised University OR B.Sc/B.Sc(Hons) Degree of recognised University (with Physics and Mathematics as main/elective/subsididry/additional/optional subjects) with 60% marks in the aggregate obtained in Part-III of the Degree examination of Recognised University.

Applicant must be registered with any of the Employment Exchanges in Kerala State or Lakshadweep Islands and the registration must be current.

SELECTION: Selection will be strictly according to the order of merit on the basis of the aggregate marks obtained in the Degree examination to the extent of vacancies."

The corresponding provisions in the "Instructions to the Candidates" as at Annexure-I were published as follows:

"EDUCATIONAL QUALIFICATION: A candidate must have:

(a) obtained a degree in Engineering in Mechanical, Electrical, Telecommunications, Electronics or Radio Engineering from a recognised University or equivalent qualification.

OR

B.Sc/B.Sc (Hons) Degree of a recognised University (with Physics and Mathematics as Main/elective/ subsidiary/additional/optional subjects) with 60% marks in the aggregate obtained in Part III of the Degree examination.

No bonus marks will be awarded for any higher qualification or Sports qualification.

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SELECTION:-

The selection will be strictly according to the order of merit on the basis of the marks obtained in Engg. Degree examination or B.Sc/B.Sc (Hons) as the case may be, to the extent of vacancies."

The applicants are Post Graduates in Mathematics. Their grievance is that by taking the aggregate marks obtained in the Degree examination which includes marks obtained in languages papers, they are put to considerable disadvantage,

compared to Engineering Graduates. In their/cases, there

(Engg. Graduates)

are no such papers. According to them, for selection also, as for eligibility, the percentage of marks obtained in Part-III of the Degree examination only should be taken into consideration.

3. According to the respondents, in accordance with the clarification issued by the Director General, Posts & Telegraph vide his letter dated 28.8.82 (Annexure-R.2) it was made clear that for recruitment to the cadre of Junior Engineers (now re-designated as Junior Telecom Officers) the marks obtained in all the three parts are to be reckoned for determination of inter se merit because they are reckoned for determining the Division on merit in awarding the Degree. However, since different principles are followed by various Universities for determining the Division and Class, it was clarified that for Science graduates, the eligibility criterion of 60% and above marks refers to part-III of the BSc course. Since 60% marks is with reference to eligibility for educational qualification, this clarification will not be applicable to the criterion for selection in which all parts of the Degree examination are taken into account. They have also referred to a circular of (Ex.R.3) 15th September, 1981 in which it was indicated that merit list is to be prepared by grouping Engineering Graduates and those Science Graduates who have passed with at least 60% of marks. They have explained that Science graduates

5

generally obtain over 95% marks in Part-III and by combining the marks obtained in Part I and II, the aggregate percentage would not go below 80%, whereas Engineering graduates on their own subjects would also scarcely obtain marks above 80%. They have argued that if only Part III subjects of Science graduates are taken into account, no Engineering graduate can get marks in selected. Even by taking all the three Parts for Science graduates, amongst the first 214 in the merit list, only 44 Engineering graduates would find a place. They have further stated that in accordance with the judgement of this Tribunal, the Recruitment Rules have since been revised and from 1990 onwards the process of selection is by competitive examination and personality test. They have further indicated that a fair knowledge of language is absolutely essential for Junior Telecom Officers' posts. In a further reply, the respondents have stated that in 1982 the recruitment of Junior Telecom Officers was made on the basis of aggregate percentage of marks in all the parts of Degree examination. In 1983 it was based on marks of Part III only. From 1984 to 1988, there was no recruitment. In 1989, it was decided after due consideration that selection should be on the basis of aggregate percentage of marks in all the three Parts, i.e. Part-I (First Language), Part-II (Second Language) and Part-III (Subjects). They

27

have
clarified that in the Universities of Kerala, Degrees
are awarded in all the three parts specifically mentioning
the same in the Degree Certificate. In other States
like Tamil Nadu, Degrees are awarded on Optional Subjects
alone such as Degree in Mathematics, Physics, etc.
In Madras Circle also the 1989 recruitment was based on
marks obtained in Subjects alone. The highest percentage
of marks obtained by Engineering Graduates in the select
list is 84%, whereas a Science graduate has got 99% in
Part-III paper and 86.8 in the aggregate. Thus, if
Engineering
selection is made on Part-III alone, no Degree holder
will be within the zone of selection. The respondents
have indicated practical difficulties in undoing the
selection made, as many candidates have joined the training
after resigning their previous employment or discontinuing
higher studies.

4. We have heard the arguments of the learned counsel
for both the parties and gone through the documents
carefully. An identical question was considered by this
Tribunal in the judgement dated 28th July 1989 to which
one of us was a party, in OA No. 304/89. In that case,
the applicants were Engineering Graduates and they had
challenged the mode of selection for the post of Junior
Telecom Officers as indicated in the Circular of DGP&T
dated 15th September 1981 which is placed at Annexure-R.3
in the case before us. The Engineering graduates had

felt that by lumping the Engineering graduates with the ordinary Science graduates together and comparing the inter se merits only on the basis of the aggregate marks the respondents obtained ^{would} place the ordinary Science graduates at a great advantage. They had stated that while the highest marks obtained by the Engineering graduate is only 84%, ordinary Science graduates with Mathematics and Physics as Optional subjects obtained as high as 98% marks. The Tribunal appreciated this view-point and observed and directed as follows:

" It is to be stated at this juncture that the post for which recruitment is proposed to be made is a highly technical post, the holder of which is expected to handle modern and sophisticated technological instruments. It needs no mention that the manual system of Telephone Exchanges are being substituted by Electronic Exchanges and the Microwave and Satellite transmission systems. In the modern technological set up, the Junior Telecom Officer has an important role. The necessity for recruitment of the best and the really apt for such a post cannot be lost sight of. We are conscious that it is for the Administration to have regard to these aspects, than ourselves. Suffice to state that when a mode of selection is prescribed, the Administration has necessarily to give recognition to these aspects. We are satisfied that the prescription contained in the instructions dated 15.9.1981 pays scant regard for these considerations. Even if no preferential treatment or weightage is given to Degree holders in engineering in the matter of selection, a written test or at least an interview of all the eligible candidates to assess their aptitude has to be done, in the absence of which the process of selection, in a case of this nature, where Degree holderes in two different and distinct disciplines are allowed to participate, becomes illusory and farcical.

In the result, we hereby quash the mode of selection for appointment to the post of Junior Telecom Officer, laid down in the instructions contained in the letter dated 15.9.1981. We hereby direct the respondents to examine the matter in the light of what has been stated above and to evolve a proper mode of selection before making appointment to the post of Junior Telecom Officer."

22

Ms.

This order was sought to be reviewed by one Jily Mathew
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who was an ordinary Science graduate, in RA 53/89. Her main contention was that neither she nor any ordinary Science graduate had been impleaded in OA 304/89 and by the aforesaid judgement she and others similarly placed would lose their chances of selection and appointment. On the sole ground that ordinary Science graduates were not a party, the Review Application was allowed and the judgement dated 28.7.89 was modified so as to make the same applicable only to recruitment years 1990 onwards. The following observations were made in the

Review Order:

"In the reply filed by the respondents 5 to 8 (the Administration) it is stated that the Telecom Commission has modified the recruitment procedure from the recruitment year 1990 by introducing competitive written test and personality test and that only the Kerala Circle could not recruit for the 1989 recruitment year on account of the pendency of the Original Application. They have prayed that they may be permitted to go ahead with recruitment in respect of the recruitment year 1989 in accordance with the existing rules. It was also stated that in all other Circles selection for the year 1989 recruitment year was made in accordance with the existing instructions.

In the circumstances, we are of the view that the interests of justice would be met by a modification of the final order dated 28.7.89 so as to make the same applicable only to recruitment to the post of Junior Telecom Officer with respect to the recruitment years 1990 and onwards. We would also add that if any of the original applicants in OA 304/89 is overaged for the 1990 examination he or she shall be given necessary age exemption for availing of the modified mode of selection. It is hereby ordered accordingly."

5. The ~~impaction~~ of the O.A. No.304/89 with the Review Order was, therefore, that the mode of selection for the year 1989 has been allowed to stand.

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6. So far as the case before us is concerned, we do not see much merit in unsettling the selections which have already been made. The applicants before us are ordinary Science graduates and this Tribunal has held in OA 304/89 that "the Recruitment Rules are silent regarding the mode in which the actual selection is to be made and hence it is open to the Executive to lay down the necessary prescription. But if such prescription is unfair and unreasonable and is assailed on that ground, the Tribunal can and is bound to extend its arms." It was also held by the Tribunal that even with aggregate marks in all the three papers, an ordinary Science Degree holder is more at an advantage over an Engineering Degree holder. This assumption is supported by what has been stated by the respondents in this case from actual facts. The following para from the Counter Affidavit dated 10th July 1990 would be an eye opener:

"In this connection it is mentioned that the highest percentage of marks obtained by an Engineering Degree holder in the provisional Select List is 84 whereas the highest percentage of marks in Part III (Subjects) of the B.Sc. candidate in the provisional Select List is 99, who has secured an aggregate percentage of 86.8. Therefore if the selection is made on the basis of percentage of marks in Part. III alone, no Engineering Degree holder will be within the zone of selection. Only B.Sc. candidates with more than 90% marks in subjects alone are likely to be selected."

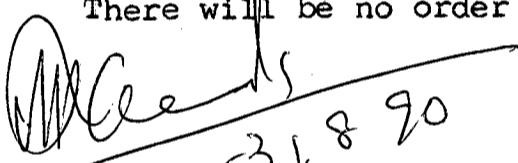
in any case
7. The above will show that even with all the three
Parts taken together, an ordinary Science graduate ^{may} get amongst the more marks than the highest scorer ⁶ Engineering graduate.

In that context, to give a further advantage to the ordinary Science graduate by taking the marks of Part III papers only into account, would be unfair to the Engineering graduates. Considering the importance of Engineering graduates in Telecom Department, it would not also be in the public interest to put them to a still less disadvantageous proposition vis-a-vis the ordinary Science graduates. Already, under the existing dispensation, only 44 Engineering graduates could find places within the first 214 positions in the merit list. If only Part III paper is taken into account for preparing the merit list, the Engineering graduates will further fade away numerically. The Recruitment Rules as they stand, as also the Advertisement and Instructions to the Candidates clearly distinguish between the eligibility and selection criteria. For ordinary Science graduates the eligibility criterion is at least "60% marks in the aggregate obtained in Part-III of the Degree examination of recognised University" For selection it is clearly laid down that the basis would be "the order of merit on the basis of the aggregate marks obtained in the Degree examination to the extent of vacancies." Thus, it will be a violation of the Recruitment Rules and the advertised criteria if at this stage the selection criterion is changed from aggregate marks to for marks in Part III of the Degree examination ordinary Science graduates.

8. So far as the administrative instructions dated 15.9.81 and 28.8.82 are concerned, we do not find anything in them which would persuade us to recognise marks in Part III paper to have been laid down as the criterion for selection. These instructions referred to 60% of the marks in part III of the B.Sc. course as relevant for eligibility and not for selection.

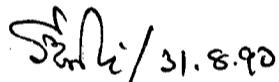
9. In the facts and circumstances, we see no force in the application and dismiss the same with the direction that if either of the two applicants before us is over-aged for the 1990 examination, she shall be given necessary age exemption for availing of the modified mode of selection.

There will be no order as to costs.



31.8.90

(A.V. Haridasan)
Judicial Member



31.8.90

(S.P. Mukerji)
Vice Chairman