

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 163
TAXXNOX

1990

DATE OF DECISION 13-8-19 91

J. Yesudas and _____ Applicant (s)
V.S. Saji

Mr. T.A. Rajan _____ Advocate for the Applicant (s)

Versus

Deputy Genl. Manager, _____ Respondent (s)
Telecom Division, Quilon and others

Mr. V.V. Sidharthan, ACGSC _____ Advocate for the Respondent (s)
(for R1-4)

CORAM: Mr. K. Ramakumar (For R-5-7)

The Hon'ble Mr. N.V. Krishnan, Administrative Member

The Hon'ble Mr. N.Dharmadan, 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 N.V. Krishnan, Administrative Member)

The applicants are Engineering Diploma holders in Mechanical Engineering having completed a 3 years' diploma course. They were placed in first class with distinction in the final year examination vide the certificates at Annexure-I and II. Their marks in the final year examination are as at Annexure-III and IV. Their grievance is that despite this attainment, they have not been selected by the Telecommunication Department for the post of Technicians. That department has found that other candidates who had secured more marks than the applicant, in the aggregate, in the 3 years of the course are more suitable for selection in accordance with Rules and accordingly Respondents 5 to 7 have been selected by them.

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2. Therefore, the only question that arises in this case for consideration is whether for the purpose of selection for the post of Technicians under the provisions of the relevant recruitment rules, the merit classification in the final examination of the 3 years diploma course (and where merit classification is the same, the marks obtained for securing such merit classification) alone should be taken into account or the aggregate marks secured in the 3 years of the full course should be taken into account.

3. The applicant contends that only the merit classification and the marks on which such classification is granted (i.e., Annexure I, II, III & IV) are relevant. In support of his contention, the applicant has filed Annexure-VI document dated 7.3.91 issued by the Joint Controller of Technical Examinations, Trivandrum which reads as follows:-

"This is to certify that, the class and distinction in the Engineering/Technology diploma Certificates are awarded only on the basis of the marks the candidate has secured in the final year examinations. The marks secured in the 1st and Second year examination are not considered for deciding the 1st class or distinction."

He contends that this clinches the issue.

4. Respondents 1 to 4 (Department, for short) have filed a detailed reply. The O.M. containing the instructions issued on 22.3.79 for recruitment to the cadre of

Technicians has been exhibited as Ext. R1. Therein it is stated as follows:-

"Selection is to be made on the basis of the marks obtained by the candidates in the respective examination. The percentage is to be reckoned on the total marks obtained by the candidates for the entire course and not for the final examination alone."

5. However, on 1.8.83, rules under Article 309 of the Constitution called the P&T Department Technicians (Telephone, Telegraph, Carrier and Wireless) Recruitment Rules, 1983 (Rules, for short) were notified vide Ext. R-2. The preamble indicates that similar rules were framed in 1975 and that they have superceded by the Ext. R-2 rules. Therefore, the Respondent-1's instructions appear to be with reference to the 1975 recruitment rules. The provisions in the 1983 Rules appear to be different. The requirement regarding educational qualifications required for direct recruitment to the post of Technicians is stated in Col. 7 of the Schedule to Rules which reads as follows:-

"Diploma in Electrical or Mechanical or Radio or Telecommunication or Electronic Engineering from any Technical Institute recognised by the Central Govt. or such Diploma awarded by a State Board of Technical Education obtained after passing Matriculation or equivalent examination."

This extract does not indicate how to identify the more suitable candidate where more than one person has the same diploma qualification. Guidance in this regard is given in Col. 10 of the same schedule. Instead of

stating clearly whether the aggregate marks secured in entire course or the marks secured in the final

year examination should determine the selection, it gives/ which guidance in Col. 10/ is as follows:-

"65% by direct recruitment by selection on the basis of per centage of marks secured by candidates in the examination or examinations reckoned for the award of the Diploma prescribed in column 7."

This guidance is ambiguous.

6. The Department contends that the Diploma is awarded on the basis of the marks secured in all the three years of the Diploma course. Hence, the aggregate marks alone are relevant. It is also contended that the subjects dealt with in the first 2 years of the diploma course are also relevant for considering the suitability of the candidate for appointment as Technician. Hence, aggregate marks give a more complete idea of the suitability of the candidate.

7. Respondents 5 to 7 have impleaded themselves as additional respondents at a late stage of the hearing. They have not filed any reply. The learned counsel for these respondents submitted that in all other centres where recruitment has been made, the eligibility has been determined on the basis of aggregate marks

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obtained in the entire diploma course. He also submitted that OA 67U/89 was a similar case in which a decision was initially rendered holding that the selection is to be made on the basis of the aggregate marks obtained in the course. However, in review, that decision was recalled and ultimately the applicants chose to withdraw the application itself. Hence, there is no decision of the Bench at present which determines this issue.

8. We have heard the arguments of the learned counsel of all the parties and perused the records carefully.

9. The revised rules were framed in 1983 vide Ext. R-2. If the intention was that the same yardstick which was in force till then (i.e., Ext. R1 instruction) should remain unchanged in the 1983 rules, it would have been easy to specify the same criterion in Col. 10 of the Schedule. Instead, the provision in Col. 1u is different. Therefore, it is clear that something different from the criterion laid down in Ext. R-1 is meant and intended. and we have to interpret this provision.

10. The provision under Col. 10 of the Schedule to

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the Rules is as follows:-

"65% by direct recruitment by selection on the basis of per centage of marks secured by candidates in the examination or examinations reckoned for the award of the Diploma prescribed in Col. 7."

Thus, the Schedule itself does not direct either that the aggregate marks of all the years or only the marks of the last year should be taken into account. It only gives a guideline. The marks are those secured in the examination/examinations which have been reckoned for the award of the Diploma. The only authority who can conclusively say which marks were reckoned for the award of the Diploma is the authority which conducted the examination.

11. We notice that the respondents have stated that the applicants were also in the zone of consideration. The selection was made "on the basis of per centage of marks secured by the candidate in the Diploma examination (percentage reckoned on the total marks obtained by the candidate for the entire course of Diploma". It is again stated in para 3 of the reply -

"As per the rules selection is to be made on the basis of percentage of marks secured by the candidates in the respective examinations. The percentage is to be reckoned on the total marks secured by the candidate for the entire course and not for the final examination alone."

The percentage is to be reckoned on the total marks secured by the candidate for the entire course and not for the final examination alone. It is on this basis that the applicants were not selected because their aggregate per centage for the whole course was less than those of Respondents 5 to 7.

12. We are of the view that these contentions of the respondents are ~~not~~ borne out either by the Recruitment Rules ~~or~~ nor by any authoritative statement of the body which conducted the examination.

13. The applicants have obtained first class with distinction in the Diploma Course vide Annexure-I and II certificates. They have produced the mark list for the final year diploma examination (Annexure III and IV). They have also produced a certificate from the Controller of Technical Examination, Trivandrum, dated 17.3.91 (Annexure-VI) which reads as follows:-

"This is to certify that the class and distinction in the Engineering/Technology diploma Certificates are awarded only on the basis of the marks the candidate has secured in the final year examinations. The marks secured in the 1st and Second year examination are not considered for deciding the 1st Class or distinction."

14. It is clear that the marks secured in the first and second year examinations are not considered for deciding placement in the first class or awarding

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distinction. Though there is no specific averment to the effect that the marks obtained in the first and second year's course are not taken into account for the award of the diploma, we are of the view that this is the only interpretation that can be made in the circumstances of the case.

15. A candidate has to pass the first and second year examinations before he enters the final year of the course. He will have to secure a minimum per centage of marks as may be prescribed in all the three years. He will then be awarded the Diploma. The next issue is how to grade or qualify the Diploma. This is done by classifying it as 3rd Class, 2nd Class, 1st Class Diploma depending on the marks scored. For this purpose Annexure-VI clarifies that only marks in final year examination will be taken into account. What we therefore, see is that the award of the Diploma is inextricably intertwined with its class and quality. Ultimately, it is the class and quality of the Diploma that matters. Therefore, the examination reckoned for this classification is also really the examination reckoned for grant of diploma. In the present case the relevant examination is the final year examination and the marks secured therein.

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16. In this view of the matter, we are satisfied that the applicants should not have been left out in the selection process merely on the ground that they have secured lesser marks in the aggregate for the whole course than other candidates. ~~xxx~~ They are entitled to be considered again for selection on the basis of our aforesaid observations ~~on~~ ^{as} the yardstick for selection. v

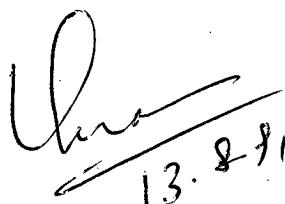
17. We, therefore, declare that the applicants are better qualified for selection than those selected on the basis of other norms. Hence, they shall be appointed as Technician by Respondents 1 to 4 within a period of two months from the date of receipt of this order, if necessary, by creating supernumerary posts. We refrain from passing any order in respect of Respondents 5 to 7, as no prayer has been made in this respect and secondly, this is a matter for the Respondents 1 to 4 to consider separately in the exigency of service and in accordance with law ^{as in} ~~under~~ the above directions.

18. The application is disposed of as above. There will be no order as to costs.



13.8.91

(N. Dharmadan)
Judicial Member
SAC, Mysore



13.8.91

(N.V. Krishnan)
Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. RA 58/91
T.A. No. in OA 163/90 190

DATE OF DECISION 6-11-91

Deputy General Manager, Applicant (s)
Telcom Dn. Quilon & 3 others.

Mr. N. N. Sugunanpalayam Advocate for the Applicant (s)
SCMC
Versus

J. Yesudas & 4 others Respondent (s)

Mr. T. A. Rajan Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V.Krishnan, Administrative Member

The Hon'ble Mr. N.Dharmadan, 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

(N.V.Krishnan, AM)

We are of the view that the R.A. can be disposed of by circulation.

2. We have seen the grounds. Grounds C,D & E only have some connection with the subject. All these have been considered in the judgement.
3. Hence no error apparent on record is shown.
4. Therefore R.A. deserves to be dismissed. We do so.

N.Dharmadan
(N.Dharmadan)
Judicial Member

N.V.Krishnan
(N.V.Krishnan)
Administrative Member