

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.1415/96 & O.A.210/97

Tuesday, this the 22nd day of July, 1997.

CORAM

HON'BLE MR P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

O.A.1415/96

1. P. David, S/o E.A. Pappachan,
Group 'D',
Stored Programme Control Telex,
Telephone Exchange, Ernakulam.
2. P. Rajaram, S/o P. Kesavan Mannadiar,
Group 'D',
Stored Programme Control Telex,
Telephone Exchange, Ernakulam.
3. P. Rajagopal, S/o V.G. Parameswaran Pillai,
Group 'D',
Office of the Sub Divisional Engineer,
(Cross Bar) Maintenance,
Telephone Exchange, Ernakulam.
4. V.L. Sajeevan, S/o Late Shri Leeladharan,
Group 'D',
Office of the Sub Divisional Engineer,
(Cables-III-Pressurisation),
Panampally Nagar, Kochi-36.
5. K.N. Sunil, S/o Narayanan,
Group 'D',
Office of the Sub Divisional Engineer,
(Air Condition and Power),
Telephone Exchange, Ernakulam.
6. N.R. Udayakumari, W/o Rajaram,
Group 'D',
Stored Programme Control Telex,
Telephone Exchange, Kochi-11.
7. A. Achuthanandan, S/o Narayanan Nair,
Group 'D',
Office of the Assistant Engineer,
(Cross Bar Exchange),
Telephone Exchange, Ernakulam.
8. K.A. Kabir, S/o Late Shri Abdulla,
Group 'D',
Office of the Assistant Engineer,
(Air Condition and Power),
Telephone Exchange, Ernakulam.

...Applicants

By Advocate Mr T.C. Govindaswamy.

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Vs.

1. Union of India represented by the Secretary to the Govt. of India, Ministry of Communications, (Department of Telecom), New Delhi.
2. The Chairman, Telecom Commission, Sanchar Bhavan, New Delhi.
3. The Chief General Manager, Telecom, Kerala Circle, Trivandrum.
4. The General Manager, Telecom, Ernakulam.
5. All India Telecom Employees' Union Class-III, Ernakulam Telecom District Branch, represented by its District Secretary, N.M. Abdul Kareem, Telecom Technical Assistant, Office of the Sub Divisional Engineer(Air Condition & Power), Telephone Exchange, Ernakulam, Kochi-11.
6. All India Telecom Employees' Union, Line Staff and Group D, Ernakulam Dist.Branch, rep. by its District Secretary T.P. George, Telephone Supervisor, Trunk Exchange, Ernakulam, Kochi-11.
7. K.D. Devassy, Regular Mazdoor (Group D), Office of the Sub Divisional Engineer, (Air Condition and Power), Telephone Exchange, Ernakulam, Kochi-11.
8. M.K. Aravindakshan, Wireman, Office of the Sub Divisional Engineer, (Test Desk and Main Distribution Frame), Telephone Exchange, Ernakulam, Kochi-11.

... Respondents

By Advocate Mr T.P.M. Ibrahim Khan, SCGSC for R 1-4

" Mr O.V. Radhakrishnan for R 5-8

O.A.210/97

1. T.G. Pius, S/o T.A. George, Regular Mazdoor, Microwave, Irinjalakkuda.
2. A.K. Vincent, S/o Kochappu, Regular Mazdoor, Microwave, Irinjalakkuda.
3. M.D. Varghese, S/o M.V. Devassay, Regular Mazdoor, Microwave, Irinjalakkuda.

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4. P.A. Mathews, S/o Antony,
Regular Mazdoor, Co-axial Station,
Trichur.

...Applicants.

By Advocate Mr T.C. Govindaswamy.

Vs.

1. Union of India represented by
the Secretary to the Govt. of India,
Ministry of Communications,
(Department of Telecom), New Delhi.
2. The Chairman,
Telecom Commission,
Sanchar Bhavan, New Delhi.
3. The Chief General Manager, Telecom,
Kerala Circle, Trivandrum.
4. The General Manager, Telecom,
Trichur.

...Respondents

By Advocate Mr T.P.M. Ibrahim Khan, Sr.CGSC.

The applications having been heard on 18.6.97 and
30.6.97, the Tribunal delivered the following on 22.7.1997.

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Ex-
us
Facts and the reliefs sought in both these
applications are identical.

2. Applicants seek for a declaration that Note-4,
Below Rule-2 of the Department of Telecommunication Phone
Mechanics Recruitment (Amendment) Rules, 1996 to the
extent it is retroactive and covers the vacancies of
Phone Mechanics sanctioned/created/existed prior to
25.5.96 is arbitrary, discriminatory and illegal and
to direct the respondents to fill up the vacancies in
the cadre of Phone Mechanics prior to 25.5.96 in terms
of A-2 Recruitment Rules with consequential benefits.



3. Applicants are working as Group 'D' staff in the Department of Telecommunications. They were regularised as Group 'D' employees on different dates. Upon the recommendations of the Expert Committee, the technical cadres in the department were decided to be restructured and accordingly a new restructured cadre, namely 'Phone Mechanics' was created as per A-1 order dated 16.10.90. To facilitate filling up of the posts in the cadre of 'Phone Mechanics', the Department of Telecommunications Phone Mechanic Recruitment Rules, 1991 were framed (A-2). As per A-2, 50 per cent of the vacancies are to be filled up from the walk-in-group and the remaining 50 per cent to be filled up through a Competitive Examination from amongst the cadres as specified in the schedule. In terms of A-2 Recruitment Rules, the respondents for the first time against 50 per cent quota earmarked for competitive examination conducted a selection in the year 1993. Though in the year 1994 a notification was issued for filling up the existing/sanctioned vacancies of 1994 by a competitive examination, that was cancelled and the respondents changed the mode of filling of the vacancies of 50 per cent competitive examination quota by a process of screening test as per A-3, say applicants. A-3 being the amendment to A-2 Recruitment Rules by executive instructions was challenged by the first applicant in O.A.1415/96 by filing O.A. 917/94 before this Bench of the Tribunal. The said O.A. was allowed directing the respondents to follow the statutory rules in force till the rules are amended in accordance with law. The review application filed by the respondents against the order in the said O.A. was dismissed. In spite of this, respondents did not fill up the existing



vacancies in accordance with A-2 Recruitment Rules in force, according to applicants. In the meanwhile, applicants in O.A. 1415/96 filed O.A. 1322/95 contending that they are eligible to be selected and appointed as Phone Mechanics in the light of the competitive examination held in the year 1993. During the pendency of the said O.A., A-6 dated 25.5.96 notification was issued by the respondents and it came into existence. In A-6, Col.10 of the schedule of A-2 order was substituted as 'transfer/promotion'. Col.11 was also modified. Applicants say that 240 + 110 vacancies of Phone Mechanics were sanctioned/created prior to 25.5.96 which are not filled up in the manner specified in A-2 Recruitment Rules and hence substantial prejudice is caused to them and their vested right to be considered for promotion against those vacancies is taken away.

4. The cause of action in respect of which O.A. 1322/95 was filed and that of O.A. 1415/96 is one and the same. Facts, pleadings and reliefs claimed are substantially the same. When O.A. 1322/95 came up for hearing, learned counsel for the applicants submitted that the O.A. is not pressed. Accordingly, that O.A. was dismissed as not pressed. Applicants in O.A. 1415/96 are the applicants in O.A. 1322/95 also.

5. In Saruja Transport Service V.S.T.A.T (1987 (1) KLT, Short Notes Case No.11) the Apex Court has been held thus:

"The principle underlying Rule 1 of Order 23 of C.P.C should be extended in the interests of administration of justice to



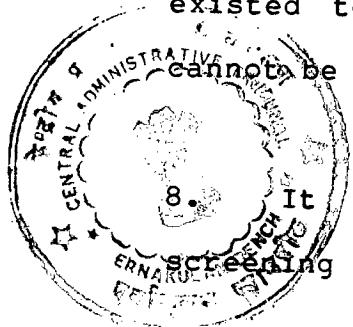
cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy. While the withdrawal of a writ petition without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art.32 of the Constitution since such withdrawal does not amount to res judicata the remedy under Art.226 should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. But this principle is not applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right under Art. 21 of the Constitution since such a case stands on a different footing altogether."

6. In O.A. 1322/95 no permission to file a fresh O.A was sought and granted. It was not dismissed without prejudice to the continuance of O.A. 1415/96. That being so, O.A. 1415/96 is to be dismissed on this sole ground.

7. From R-5(C) in O.A.1415/96 it is seen that there were 49 vacancies in the category of Phone Mechanics for being filled up on the basis of competitive examination and 49 candidates were selected on the basis of the competitive examination held in the year 1993.



The applicants in O.A. 1415/96 are not included in R-5(C) select list. In O.A. 210/97 for filling up the quota through competitive examination, in the examination held in 1993, 21 candidates came out successful on merit. A-9 in O.A. 210/97 and A-10 in O.A. 1415/96 are produced by the applicants to make out a case that 108 and 218 vacancies of Phone Mechanics existed prior to 25.5.96 respectively. From A-9 and A-10 it is clearly seen that only officiating arrangement in the cadre of Phone Mechanics were made. So, A-9 and A-10 would not show that the vacancies as contended by the applicants existed prior to 25.5.96. A-7 dated 18.8.94 in O.A.1415/96 is the memo issued by the Government of India, Department of Telecom of the Chief General Manager, Kerala stating that sanction for creation of 1096 temporary posts in the cadre of Phone Mechanic is granted. This is only a sanction for creation and not creation of posts. From A-7 it is seen that before creating the posts in the cadre of Phone Mechanic, matching savings/reduction of posts as per instructions contained in DOT letter No.27-4/87-TE.II dated 11.7.91 is to be strictly adhered to. It is also specifically stated that the posts created/surrendered in each occasion and the date(s) of creation/filling of the posts to be intimated to the Circle Office and all concerned units. So, on the strength of A-7 it cannot be said that the posts have been created. So, based on A-9 in O.A.210/97 and A-10 in O.A.1415/96 the stand of the applicants that vacancies existed to accommodate the applicants prior to 25.5.96 cannot be accepted.



8.

It is contended by the respondents that the screening test was conducted after about 1 year of the

competitive examination conducted against the sanctioned vacancies, that before the introduction of screening test there were representations from the staff associations against holding competitive examination for entry into the restructured cadres like Phone Mechanic/Telephone Technical Assistant etc., stating that competitive examination is test of mainly academic skill and not the real aptitude of the person to assimilate new technologies, that the competitive examination is acting as a disincentive to the staff to move over to the restructured cadres, and that the department wanted to utilise the knowledge and experience gained by the vast majority of the employees advantageously to the benefit of the Department and for better customer satisfaction in tune with the technological development. The issue was discussed in the Departmental Council of Consultative Machinery held on 16.3.94 and it was decided to replace the competitive examination by a qualifying examination, that it was felt that the process of selection can be made simpler and effective if it is made on a test of skills, and that consequently it was decided to introduce qualifying screening test instead of competitive examination.

9. Learned counsel appearing for the applicants relying in Y.V. Rangaiah and others Vs. J. Sreenivasa Rao and others (1983 SCC(L&S)382) argued that the existing vacancies were required to be filled up on the basis of law prior to the date of amended rules.

10. Learned counsel appearing for the respondents relying on Dr.K.Ramulu and another Vs. Dr.S. Suryaprakash



Rao and others (1997 SCC (L&S) 625) argued that the government's conscious decisions not to fill up the vacancies is perfectly valid. The ratio in Rangaiah's case was considered by the Apex Court in Dr.K. Ramulu's case and it has been held that:

"The Government therein merely amended the Rules, applied the amended Rules without taking any conscious decision not to fill up the existing vacancies pending amendment of the Rules on the date the new Rules came into force. xxx Thus, we hold that the first respondent has not acquired any vested right for being considered for promotion in accordance with the repealed Rules in view of the policy decision taken by the Government which we find is justifiable on the material available from the record placed before us."

Since the government have taken a conscious decision not to make any appointment till the amendment of the rules, the ratio in Rangaiah's case is of no help and the conscious decision of the government not to fill up the vacancies till the amendment of the existing rules is valid.

11. Here from the materials placed it is seen that the government took a conscious decision to introduce a qualifying screening test instead of competitive examination. So, even if vacancies existed prior to 25.5.96 in the light of the decision in Dr.K. Ramulu's case the action of the government is valid and justified.

12. Applicants in O.A.1415/96 appeared for the screening test and were included in the list of qualified candidates in the screening test and they are also included in the eligibility list as borne out by R-5(b). Applicants have taken calculated chance and appeared for the screening test. Now they are barred by the principle of estoppel by conduct or acquiescence in coming forward with the reliefs claimed in this O.A.

13. In para-7 of O.A.1415/96 it has been stated:

"The applicants further declare that they have not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them."

14. It is very clear that the applicants filed O.A.1322/95 in respect of the same relief substantially. That being so, the declaration contained in Para-7 in O.A.1415/96 is false to the knowledge of the applicants. Applicants who suppress material facts within their knowledge in an O.A. are bound to suffer and face the consequences. The consequence is that the O.A. will be dismissed.

15. Accordingly, we find no merit in these O.As and are dismissed. No costs.

Dated the 22nd day of July, 1997.

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A.M. SIVADAS
JUDICIAL MEMBER

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P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

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CERTIFIED TRUE COPY

Date 29.7.97

Deputy Registrar

