

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. ~~XXXXXX~~ 22 of 91 199

DATE OF DECISION 20-12-91

K.S. RAVINDRANATHAN NAIR Applicant (s)
and 2 others

Mr. Sasidharan Chempazhathiyil Advocate for the Applicant (s)

Versus

UNION OF INDIA and 2 ors. Respondent (s)

Shri V.V. Sidharthan, ACGSC Advocate for the Respondent (s)

CORAM :

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

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
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

N. Dharmadan, M(J)

The applicants are eligible to be promoted to the cadre of Junior Telecom Officer (JTO for short) against 10% quota of vacancies provided they pass in the qualifying Departmental examination notified as per Annexure-II. Though they applied for the examination which was scheduled to be held on 27th and 28th of December 1990 for filling up of the vacancies in the year 1990 it was cancelled so far as the Kerala Circle alone as per the proceedings at Axe-V, of the

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Chief General Manager, Telecommunications, Kerala
Circle, Trivandrum.

2. In this application the applicants are challenging the said order, Axe-V dated 16-8-90 and prays for a direction to the respondents to conduct the qualifying examination for promotion to the post of JTO as per Annexure-II notification.

3. Brief facts:- The first applicant is a Phone Inspector and 2nd and 3rd applicants are Transmission Assistants. They have rendered more than 10 years of service in this cadres and aged 40, 45 and 41 respectively. The Transmission Assistants(TAs)/Phone Inspectors(PIs)/Auto Exchange Assistants(AEAs)/Wireless Operators(WOs) are in the feeder category for promotion to the cadre of JTO in the pay scale of Rs.1640-2900 under the Recruitment Rules, Axe-I. Under these Rules 20% of the posts is reserved for TAs, PIs, AEAs, WOs out of which 10% is filled on the basis of competitive examination and the balance on the basis of qualifying examination. A-II notification was issued on 11-7-90 intimating that the departmental qualifying examination for promotion from AEAs, PIs, TAs and WOs to the cadre

of JTOs against 10% quota against the vacancies of 1990 would be held in December 1990. The respondents invited applications. The applicants submitted their applications. In the meantime second respondent introduced a new scheme for restructuring all the cadres by which 20% of departmental quota prescribed in Axe-A-I for TAs/AEAs/WOs was reduced. However, they have issued A-III letter clarifying that two departmental examinations, one in 1990 and second in 1991 would be conducted for the promotion of the employees to the cadre of JTOs so as to enable the departmental candidates to sit for examination. A-III letter of the Director No. DOT/17-4-87-TE-II dated 16-10-90 was issued as a general order. This was followed by A-IV communication sent to Chief General Manager, Kerala Circle, Trivandrum which reads as follows:

".....The restructuring scheme has provided you to be placed in the scale of Rs-1640-2900 on completion of 26 years in Rs-2000-3200 and your cadre officials can also compete for the cadres of JTOs as per existing rules for two years i.e. 1990 and 1991....."

✓ your cadre and also 10% will be placed in the scale of

But before A-III and IV, the qualifying examination for promotion to the cadre of JTO, proposed as per A-II notification against 10% quota of vacancies for 1990 was cancelled by impugned order at A-V dated 16-8-90 on the ground that no vacancies are available for the

year 1990.

4. The applicants are challenging the cancellation order on the ground that the statement that there is no vacancy for conducting the examination is not a genuine reason. On account of the re-structuring of the cadres as indicated in A-III and IV 20% of the departmental quota prescribed in Axe-I was taken away. Nevertheless in A-III and A-IV, the Director General has clearly stated that 2 departmental qualifying examinations for promotion to the post of JTO would be conducted under the existing rules. This is treated as an assurance by the applicants. Since there is no mention that the conduct of the examination will depend upon the existence of the vacancies they are bound to conduct the examination irrespective of the vacancy position in the years 1990 and 1991. Hence according to the applicants non-availability of vacancies cannot deprive the chance of them to sit for the examination. If the cancellation order is not quashed they will be deprived of the chance of sitting for two examinations which is an accrued right. Hence Annexure-V is illegal and void.

5. The respondents have filed their reply statement in which they have admitted that departmental promotion examination for filling up the post of JTO are being conducted every year for filling up the department quota and Axe-II notification was issued in respect of 1990 vacancies. Since there is mass reduction of vacancies consequently on restructuring of the cadres it was found unnecessary to conduct the examination during 1990. This is a policy decision which cannot be set aside on the grounds raised by the applicants. There is no merit in the application^{tion} and it is only to be rejected.

6. Having heard the argument, of the learned counsel appearing both sides, we are of the view that the applicants have made out a strong case and they are entitled to succeed on the basis of the policy decision of DG regarding the departmental qualifying examination for promotion to the cadre of JTO as contained in Axe-III and IV. In fact the department has notified vacancies to be filled up by promotion to the cadre of JTO against 10% quota^{of} posts on December 1990 from the eligible candidates working in the feeder category. Pursuant

to the notification the applicants submitted their applications. The respondents accepted the same. When the applicants were waiting for their chance to sit for the examination, the respondents on 16-8-90 issued the impugned order intimating the cancellation of the said examination which stated that the proposed examination to be held in December 1990 could not be held for want of vacancies for the year 1990.

7. The decision to cancel the examination though taken prior to December 1990, appears to be against the policy decision of the Director General as contained in A-III proceedings dated 16-10-90 and A-IV letter dated 18th December 1990. In both Axe-III and Axe-IV there is clear indication that two departmental examinations for promotion to JTO for 1990 and 1991 would be conducted under the existing Recruitment Rules. There is no indication either in Axe-III or Axe-IV that the conduct of the examination will depend upon the existence of vacancies nor that the notification already issued would be withheld or cancelled for want of vacancies. When the decision ^{was} taken to hold two qualifying examinations against that

10% quota of JTOs for 1990 and 91 based on the vacancies the cancellation merely on the basis of the vacancy position for the year 1990 above appears to be not in order. The respondents have no case that there is no vacancy of JTO for the year 1991. Another important aspect brought to our notice by the learned counsel for the applicant is that the examination scheduled in Kerala Circle alone was cancelled where-as the similar examinations proposed in the neighbouring States giving two chances to the employees both in 1990 and 91 are being duly held without any objection regarding ^{vacancy} ~~position~~.

8. From the averments and the statements in the pleadings and from the arguments of the learned counsel for the applicant it is clear that the respondents adopted a discriminatory treatment in the matter of conduct of qualifying examination for the JTO cadre so far as Kerala and other States are concerned. By the cancellation of the examination in the Kerala Circle alone, two chances for sitting in the qualifying examination ^{are} ~~denied~~ to the employees in the Kerala while the same benefit is available to the similar category of officers in the neighbouring States.

9. The learned counsel for the respondents submitted that the practice followed in this Deptt. is to conduct departmental examination for promotion to the JTO post only after ascertaining the existing vacancy^{is} for the post. Notification A-II was issued after verification of the vacancy position for the year 1990. But after restructuring of the cadre since it was found that there is no vacancy after the notification of Axe-II they have decided to cancel the qualifying examination. Therefore, in terms of ^{the} practice followed by the department the respondents have decided to cancel the examination. Hence, the decision is legal and valid. The applicants on the other hand, stated in the application that the vacancy position has nothing to do with the conduct of qualifying examination for promotion to the cadre of JTO. So the non-availability of vacancy of JTO posts cannot be a ground for cancelling the examination which has already been notified fixing the schedule for examination and invited applications from the eligible candidates. Accordingly, the applicants and others duly submitted their applications.

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At the time of notification of Axe-II there were existing vacancies and there ^{were} ~~was~~ prospects for increasing the vacancies.

10. Even if the respondents found after the notification that there is no existing vacancy as on the date of examination they need not ^{have} ~~cancelled~~ the examination on this ground alone, for they ^{have} ~~could~~ conducted the examination as per original schedule and prepared a list of candidates who were successful in the examination fixing a time limit for the validity of the list and make appointment and postings as and when vacancies arises in future. Such a practice is also in vogue in the deptt. In fact, according to the applicants, in conducting the qualifying examination, the existence of vacancies is not a condition precedent at all. Irrespective of the existence of vacancies qualifying examination is being conducted in every year and the respondents used to prepare list of qualified candidates for appointment in the vacancies arising during the relevant years. Such a practice is being adopted in the neighbouring States including Tamil Nadu Circle. According to the applicants this practice is ^{being} ~~is~~ followed

not only in other States, but also in this State as well for the last several years. They also cited an example and submitted that in the case of the qualifying examination to TES Group-B this practice is being followed ~~in~~ every year in spite of non-availability of vacancies in Group-B. Hence according to the applicants, the cancellation of present examination by the 3rd respondent as per Axe-V is arbitrary and contrary to the procedure and practice followed by the department in the matter of conduct of examination.

11. When the respondents are following a practice of conducting the qualifying examinations without reference to the vacancy position there is no justification in adopting a different practice in the matter of promotion and ^{posting} ~~xxx~~ of officers in the cadre of JTO particularly when they had already issued Axe-II notification fixing a schedule for the conduct of examination. Under these circumstances we are not in a position to appreciate the arguments advanced by the respondents on the ground of practice and procedure.

12. When the DG has already taken the policy decision

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to conduct two examinations during 1990 and '91 providing the departmental employees two separate chances for competing in the qualifying examination for promotion to the post of JTO, Axe-V cannot be sustained. The statements in Axe-III and IV can be treated as a promise by the Director General to the employees who are working in the feeder category. The applicants are entitled to the benefit of this promise particularly when they submitted applications pursuant to the notification with bonafide belief that they will be getting a chance to participate in the examination in December 1990.

13. Under these circumstances the cancellation of the examination which was notified as per Axe-II simply on the ground of non-availability of vacancy for the year 1990 alone is totally arbitrary and cannot be upheld. It is to be remembered in this connection that the applicants who have put in long service in the feeder category and are awaiting for earlier promotion cannot be deprived of the chances for competing in the qualifying examination if such promotions are depending upon solely on the pass in the qualifying examination. If such chances are not


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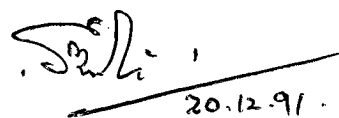
given there will be stagnation and disappointment among the employees now working in the feeder category and hence it is fair and proper to conduct the examination for the post of JTO as proposed as per the policy statement contained in A-III proceedings of DG dated 16-10-90 and Axe-IV letter dated 18-12-90.

14. In the result we quash Annexure-V letter and direct the respondents to implement the policy decision in Axe-III and conduct two qualifying departmental examinations for promotion to the cadre of JTOs for the years 1990- and 1991, in accordance with the statement in Axe-III and IV as per the existing Rules and instructions in this regard.

15. The Original Application is thus allowed.

16. There shall be no order as to costs.


20.12.91
(N. Dharmadan)
M(J)


20.12.91
(S.P. Mukerji)
VC (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by UOI. Secy
Communication & 2 others (Applicant/
Respondents in OA/TA No. 04.22/91) seeking a review of
the order dated 20.12.91 passed by this Tribunal in the
above noted case.

As per Rule 17(ii) and (iii), a review petition shall ordinarily be heard by the same Bench which passed the Order and unless ordered otherwise by the Bench concerned, a review petition shall be disposed of by circulation where the Bench may either dismiss the petition or direct notice to be issued to the opposite party.

The Review petition is therefore, submitted for orders
of the Bench consisting of Hon'ble Shri ^{S.P. Mutyar} N.V. Krishnan, ^{U.S.} ~~Justice~~ (A)
Hon'ble Shri M. Dharmadani, member J.

which pronounced the Order sought to be reviewed.

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PS to Hon'ble

Кривые $I-I$

There is a delay of 36 days in
filing the return. It is stated and
admitted in the petition. Office may
verify delay should be found by
comparing 1982 as against the return
before entering the return. The same
12/19/86.

18/6/22

~~NRP~~
19/6/82

An MP for condonation of delay ought to have been filed by the ACSC along with this Review Application, which is now being filed by the counsel supported by an affidavit in per the direction of the registry.
Submitted please.

If Hon'ble JM(I) agrees
we may have the
portion on condonation of delay
Hon'ble JM(I) 5/2-
1/7 PS 1
17. Hon'ble

30/11

PS 1

month

1/c.

Since we have been finding it is necessary to question any person who has to work for the Government we are approving of the House Bill 3076.

✓ 3076.

R.A.89/92
in OA 22/91

7.7.92 Mr.VV Sidharthan-ACGSC
Mr.Sasidharan Chempazhanthil

M.P.905/92 in R.A.89/92 has been filed for condonation of delay. According to the applicant, the respondents have filed the R.A. and the R.A. Has been filed with a delay of 83 days and it is to condone the delay the M.P. has been filed. We have gone through the reasons mentioned in the M.P. We are not satisfied that the Review Applicants have explained each and every day of the delay to our satisfaction. Accordingly we are not inclined to condone the delay. Accordingly M.P. is dismissed.

Since M.P. is dismissed, the Review Application is also dismissed.

(Signature)

(N.Dharmadan)
Member (Judicial)

(Signature)

(SP Mukerji)
Vice Chairman

7.7.92

DO
for file
to
mk
7/7

PSHM & ND

(22) Mr Sasidharan
Mr VV Sidharthan, ACGSC

It is brought to our notice that the respondents have filed a Review Application. Accordingly, post this CCP alongwith the Review Application, No 87/92 on 7.7.92 before the other Bench.

[Signature]
ND

[Signature]
PSHM

1.7.92

7.7.92 Mr.SAsidharan CHEmpazhanthil
Mr.VV Sidharthan

Heard the learned counsel for original respondents, who seeks some time to file a reply to the CCP. He may do so within two weeks with a copy to the learned counsel for the applicant. R.A. filed by the learned counsel for respondents is disposed of.

The CCP be listed for further directions on 21/7/92.

[Signature]
ND

7.7.92

[Signature]
SPM

21.7.92. Mr. Ashok Cherian rep.Sasidharan
Mr.VVSidharthan

At the request of the learned counsel for the petitioner, list for further directions on CCP on 4.8.92.

[Signature]
ND

21.7.92

[Signature]
SPM

SPM & ND

(18) Mr Sasidharan Champazhanthiyil
Mr VV Sidharthan, ACGSC

CCP 61/92

We have heard the learned counsel for both the parties.

2 Learned counsel for the respondents undertakes to implement the final judgment of this Tribunal in DA 22/91 within a period of three months from to-day. On that basis, we close the CCP and discharge notice.

[Signature]
(N Dharmadan)
Judicial Member

[Signature]
(SP Mukerji)
Vice Chairman

4-8-1992