

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.26/2002

Friday this the 6th day of August, 2004

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HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

1. K.Krishnan Namboothiri, S/o P.G.Krishnan Namboothiri, Junior Telecom Officer, Telephone Exchange, Mannar, Alapuzha District residing at Palathinkara Illom, Kuttamperoor PO Alappuzha.
2. V.Baiju S/o Vincent, aged 32 years Junior Telecom Officer, O/o the General Manager, bharat Sanchar Nigam Ltd. Thiruvalla, residing at Kuzhivila Chemmakkad PO, Perinad, Kollam.
3. Pinky S.John W/o Philipose Omman, aged 28 years, Junior Telecom Officer E.10B Telephone Bhavan, Pathanamthitta.689645.
4. K.S.Unni S/o U.Kumura Pillai aged 29 years, Junior Telecom Officer, Telecom Training Centre, Kaimanom, Trivandrum.40 residing at TC 40/1003 Nayakodeu Sreevaraham, Trivandrum.9.Applicants

(By Advocate Mr.M.R.Rajendran Nair)

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1. Union of India, represented by the Secretary to Government of India Ministry of Communications, New Delhi.
2. The Chairman, Telecom Commission, New Delhi.
3. The Chief General Manager, Bharath Sanchar Nigam Limited, Kerala Circle, Trivandrum.Respondents

(By Advocate Mr.Sunil Jose, ACGSC)

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The application having been heard on 3.6.2004, the Tribunal on 6.8.2004 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicants were directly recruited on the basis of a competitive examination as Junior Telecom Oficer (JTO for short). At that time the Recruitment Rules of the year 1990 was in vogue and the ratio for Direct Recruits and Promotees was 65:35. The applicants were at Serial Numbers 84,67,96 and 66 respectively in the Rank List. The direct recruits were sent to different training centres in batches and there was an examination on the closure of the training. A gradation list of JTOs, portion of which is Annexure.A2, was circulated as on 1.11.1998. But without any notice to the applicants a fresh seniority list of JTOs as on 1.1.1998 (Annexure.A.1) was issued fixing the seniority between Direct Recruits and Promotees ~~✓~~ in the ratio 1:1 while in terms of the Recruitment Rules prior to 1966 it was 65:35. It was also understood by the applicants that inter se seniority was determined among the trainees on the basis of marks in the tests held during the training. Objecting to the change in the ratio between the Direct Recruits and Promotees adopted and the method of determining seniority among trainees on the basis of tests the first applicant submitted Annexure.A3 representation. Similar representations were made by the other applicants also. In reply to these representations the applicants were told by Annexure.A.5 order that ratio between Direct Recruits and Promotees was changed to 50:50 vide DOT order No.27-11/91 TE

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II dated 2.12.1991 and the seniority is therefore ^{be} to/fixed 1:1 and that fixation of seniority on the basis of marks in the test conducted during the training is clearly on the basis of instructions and practice. Aggrieved by these the applicants have filed this application challenging Annexures A.1 and A5 as also Annexure.A7 order of the DOT dated 2.12.1991 and for a direction to the respondents to recast the seniority list of JTOs till Recruitment Year 1996 in the ratio 2:1. It has been alleged that the Mumbai Bench of the Central Administrative Tribunal in OA 488/1996 has directed recasting of seniority of JTOs observing that seniority will count from date of permanent appointment.

2. The respondents admit that according to the Recruitment Rules for appointment as JTOs till it was revised in 1996 the ratio between Direct Recruits and Promotees was 65:35. They seek to justify the Annexure.A.1 seniority list and Annexure.A.5 order on the ground that although as per Recruitment Rules of 1990 the ratio was 65:35 between Direct Recruits and Promotees, the ratio was revised and recruitments were made following the ratio 50:50 and therefore the refixation of seniority in the same ratio 1:1 was necessary and proper. It has been stated that this has been clarified by DOT letter dated 26.11.2001 (Annexure.R.1). On the grievance against determining seniority on the basis of test held during the training, the respondents contend that this practice has been in vogue for a long time and they relied on Annexure.R.2 Memorandum dated 28.6.1966.

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3. We have heard the learned counsel of the parties. Shri Hariraj, the learned counsel of the applicant vehemently argued that when the rules prescribe a ratio administrative instructions cannot abridge or modify it and therefore the stand taken by the respondents to justify the change in the ratio from 65:35 to 50:50 is not sustainable in law. He relied on several rulings of the Apex Court to buttress his argument that administrative instructions can only supplement statutory rules and cannot supplant or supersede it. The above position of law is so well established that one need not look up for any precedent. However, the issue in this case does not appear to be what the counsel has projected. The ratio 65:35 was of course prescribed in the Recruitment Rules, but it is seen that from the Recruitment Year 1990 onwards the ratio for recruitment followed was 50:50. The applicants were recruited in the year 1992 under that revised ratio. Therefore the seniority also has got to be fixed accordingly because, as contended by the applicants themselves length of service in the cadre should in the absence of any rules regarding seniority to the contrary be the criterion for seniority. Since recruitment was actually made in the ratio 1:1 the respondents cannot be faulted in fixing the seniority also accordingly. Further fixation of seniority on the basis of merit in the test held during the training also cannot be faulted as such was the system being followed guided by instructions. That from the Recruitment Year 1990 onwards the revised ratio of 50:50 was followed for Direct

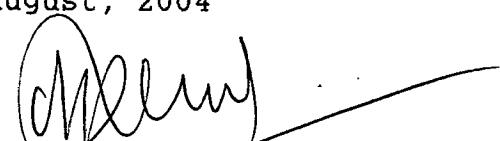
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Recruitment and Promotion as mentioned in Annexure.R.1 has not been disputed in the rejoinder filed by the applicant. Under these circumstances we do not find any infirmity with the impugned orders.

4. In the result, the Original Application which is devoid of merit is dismissed leaving the parties to suffer their costs.

Dated this the 6th day of August, 2004

H.P.Das
H.P.DAS
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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