

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 265/2000

Monday, this the 11th day of March, 2002.

CORAM :

HON'BLE SHRI G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE SHRI K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. R.SIVADASAN, aged 50, S/o. R.Raghavan, Junior Telecom Officer, External I Telecom Attingal, residing at Arunima, Ambedkar School Jn., Koranip.O., Trivandrum District.
2. T.M.SALIM, aged 53, S/o.A.Abdulkhader, Junior Telecom Officer, Office of the Sub Divisional Engineer Transmission Maintenance (PCM) Central Telephone Exchange, Trivandrum-1, residing at Aswathy, Sainik School PO, Kazhakuttam, Trivandrum.
3. G.STEPHEN, aged 52, S/o. Gnanabhavanam, Junior Telecom Officer, Office of the Sub Divisional Engineer Transmission Maintenance Telecom Bhavan Trivandrum - 11., residing at S.K.Cottage, Powdikonam, Trivandrum.
4. J.SUSEELA, aged 52, D/o. P.R.Janardhanan, Junior Telecom Officer (1/D) Amabalamukku RLU, Trivandrum residing at Syam Nivas, Charachira.
5. K.S.RAVINDRANATHAN NAIR, aged 49, S/o. Sekharan Nair Junior Telecom Officer, Telephone Exchange, Vellayambalam, Trivandrum, residing at Karuvappelly House, Punnapuram, Fort PO, Trivandrum-23.
6. P.JAYACHANDRAN, aged 57, S/o. Parameswaran, Junior Telecom Officer, OCBMDF, Central Telephone Exchange, Trivandrum, residing at TC.5/95, Anil Nivas, Near GHS Ambalamukku, Trivandrum.
7. V.SASIDHARAN, aged 53, S/o. Vasu, Junior Telecom Officer, Distt. Telecom Training Centre, Trivandrum, residing at TC.4/45, Kowdiar, Trivandrum.
8. G.THANKAPPAN, aged 54, S/o. Gangadharan, Junior Telecom Officer (Ele) Central Telephone Exchange, Trivandrum, residing at 'SHELLS' Convent Road, Pravachambalam, Nemom PO, Trivandrum -20.
9. C.M.VISALAKSHI, aged 44, D/o. C.R.Mahadevan, Junior Telecom Officer E 10 B (MTCE) Telecom Bhavan Trivandrum, residing at TC.23/440, Chinnachala, Trivandrum.
10. C.RAVINDRAN NAIR, aged 56, S/o. Chellappan Pillai Junior Telecom Officer Cable Construction (South) Poojapura, Trivandrum, residing at TC.27/1084-1 Padippura, Veedu, Vanchiyoor PO, Trivandrum - 35.

.... Applicants

(By Advocate Shri Sasidharan Chempazhanthiyil)

Vs.

1. Chief General Manager Telecom
Kerala Telecom Circle, Trivandrum.
2. Director General, Telecom Department
New Delhi.
3. Union of India rep. by its Secretary
Ministry of Communication, New Delhi.
4. Alexander, M.
Junior Telecom Officer, CTO
Alappuzha.
5. Abraham, P.V.
Junior Telecom Officer, C.T.O
Kottayam.
6. Harikumar, T.K B.Sc
Junior Telecom Officer
O/o. Chief General Manager Telecom
Trivandrum.
7. Hifsur Rahiman, M.A .
Junior Telecom Officer (Telephones),
Kareli House, No. 9/374, Near Municipil Library,
T.B. Road, Perumbavoor, Ernakulam.
8. Unnikrishnan, S. B.Sc
Junior Telecom Officer, Telephone Exchange,
Perinthalmanna, Malappuram.
9. Suresh Babu, B., Junior Telecom Officer
C.T.T.C, Santhinagar, Housing Board
Building, Trivandrum.
10. Reghuthaman Nair, B. Junior Telecom Officer
CTO, Trivandrum.
11. Jayakumar, S., Sub Divisional Engineer
Office of the General Manager Telecom
Sastha Towers, Kowdiyar, Trivandrum.
12. Janaki Krishnan, Junior Telecom Officer
CTO, Ernakulam, Cochin.
13. Mohankumar, G., Junior Telecom Officer
Commercial Computer Section Flamboodu
office of the D.G.M
Trivandrum.
14. Satheesh Chandran, R., Junior Telecom Officer
Office of the S.S.TT
Ernakulam.
15. K.J. Stephen, Junior Telecom Officer .
C.T.O., Cochin.
16. Sasidharan Pillai., Junior Telecom Officer
C.T.O., Kollam.
17. Ali Koya, M.P.
Sub Divisional Engineer, CTO
Kavarathi - 682 555.

... Respondents

(By Shri K. Shri Hari Rao, ACGSC(R 1-3)
Shri M.R. Rajendran Nair(R 4, 5, 6, 9, 10, 13, 14, 15)

This application having been heard on 11.3.2002, the Tribunal on the same day delivered the following :

ORDER

HON'BLE SHRI G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This original application has been filed by the applicants aggrieved by the seniority assigned to them in the Circle Gradation List of JTOs 1998 circulated by A5 order dated 27.2.1998 of the 1st respondent, A8 Gradation List of JTOs, Kerala Circle as on 1.1.1998, and A13 Memorandum dated 26.11.1999 issued by the 1st respondent by which the representations submitted by the applicants regarding the seniority position in the Circle Gradation List as on 1.1.1998 had been rejected. They sought the following reliefs :-

- (1) Call for the records and quash Annexure A13.
- (2) Call for the records and quash Annexure A5 and Annexure A8 in as much as it is inconsistent with Annexure A9.
- (3) Declare that the applicants are entitled to be considered as 1990 J.T.O. recruitees and direct the respondents to give them placement accordingly in the Gradation List at Annexure A8.
- (4) Direct the respondents to revise Annexure A8 in accordance with Annexure A9.
- (5) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
- (6) Award the cost of these proceedings.
- (7) Direct the 1st respondents to promote the applicants with effect from the date of promotion of the respondents 4 to 17 or any one of them to T.E.S. Group 'B' with all consequential benefits.

2. The applicants before becoming Junior Telecom Officers(JTOs for short) were working as PI/TA/WO/AEA. They claim that they were recruited as JTOs against 10% vacancies earmarked for PI/TA/WO/AEA in the year 1990. According to them they were recruited in the qualifying quota for the year 1990 and in support of this, they produced A1 notification dated 4.9.1992



issued by the 2nd respondent and the result of the examination published by the 1st respondent by A2 order dated 28.1.1993. In A2 the applicants' names appear under Trivandrum Secondary Switching Area. The 1st respondent issued a draft seniority list of JTOs by A5 letter dated 27.2.1998 and the applicants names appear in the said list against Sl. Nos.1300, 1296, 1288, 1469, 1447, 1322, 1476, 1324, 1464 and 1408 among JTOs recruited in the year 1992 and 1993. The applicants claim that since they were recruited in the year 1990 they should have been shown amongst 1990 recruitees in A5. It was also submitted that a few Assistant Superintendent Telegraphic Traffic who were absorbed in the JTO cadre in 1996 were shown in A5 against the recruitment year 1990, the same according to them was irregular. Referring to A6 dated 13.1.1998 and A7 dated 11.1.1999, it was claimed that inclusion of Assistant Superintendent Telegraphic Traffics as recruitees of 1990 in the merged list was irregular. A8 was the seniority list of JTOs in Kerala Circle as on 1.1.1998 issued by the 1st respondent in the middle of 1999. In this seniority list, respondents 4 to 17 who were Assistant Superintendent of Telegraphic Traffics and who were merged with the JTO cadre in the year 1996 were shown as 1990 recruitees in the JTO cadre. According to them, the placement of respondents 4 to 17 in enbloc as JTO recruitees of 1990 without giving placement to the applicants and others like them in the 1990 JTO vacancies was against the rules governing merger. Relying on A9 order dated 5.4.1994, they submitted that according to the methodology of merger of Assistant Superintendent Telegraph Traffics and JTOs the year of recruitment was the main criteria for the merger and first separate lists of Assistant Superintendent Telegraph Traffics and JTOs were to be prepared and thereafter these two lists should be mixed together on yearly pro-rata basis. Thus placement of respondents 4 to 17 in A5 and A8 seniority lists enbloc was against the scheme of merger in annexure A9 issued by



the 2nd respondent. The first applicant submitted A10 representation dated 19.8.1998 and also another representation A11 dated 16.6.1999 and similar representations by other applicants were also submitted. Since the 1st respondent did not consider the representations, the applicants filed OA No.795/99 before this Tribunal which disposed of the said OA by A12 order dated 22.7.1999. Pursuant to the order of this Tribunal, the 1st respondent rejected the representations by A13 common letter addressed to the applicants. In A13, respondents had taken a stand that there were no vacancies of JTOs in the year 1990 and relying on A14, A15 and A16, the applicants submitted that there were vacancies and the respondents' statement was incorrect and was deliberately advanced to suppress material facts. Pursuant to the above order of the Tribunal, respondents 4 to 17 were likely to be considered for promotion to Telecom Engineering Service Group B on the basis of the assignment of seniority as 1990 JTO recruitees. Alleging that A5 and A8 seniority lists were illegal and discriminatory and A13 was illegal and arbitrary, they sought above reliefs.

3. Respondents 1-3 filed reply statement resisting the claim of the applicants. The respondents explained that Junior Telecom Officer(JTO for short) and Assistant Superintendent Telegraph Traffic(ASTT in short) were two separate cadres with same scale of pay. Recruitment to these cadres were being made separately in accordance with the relevant Recruitement Rules. Due to restructuring of cadres, there were no vacancies to be notified and filled in JTOs for the recruitment year 1990 and this position was notified by R1 letter dated 9.8.1990. However, there were vacancies in the cadre of Assistant Superintendent Telegraph Traffic under Departmental Competitive quota for the recruitment year 1990 and the same was notified by R2 letter dated 11.10.1989. Respondents 4 to 17 were those selected for



the ASTT cadre against vacancies as well as competitive examination for the year 1990 notified vide Annexure R2. They were accordingly trained as ASTTs and posted in the cadre of ASTT. In the case of Junior Telecom Officer the method of recruitment as per relevant recruitment rules existing was as follows.

65% Direct Recruitment.

15% by competitive examination from eligible cadres other than PI/TA/AEA/WO as specified in the recruitment rules.

10% by competitive examination from among officials in the cadre of Phone Inspector/Transmission Assistant/Auto Exchange Assistant/Wireless Operator(PI/TA/AEA/WO in short).

10% on the basis of a qualifying examination from among officials in the cadres of PI/TA/AEA/WO as specified in the recruitment rules.

4. As there were no vacancies, no recruitment in JTO cadre under any of the quota indicated above was made in Kerala Circle for the recruitment years 1990 and 1991. However, this Tribunal in its order dated 20.12.1991 in OA No.22/1991 held that qualifying examination should be held every year without reference to the vacancy position. Further pursuant to the direction of this Tribunal in OA 764/1990 dated 5.7.1991, Department of Telecom decided to increase the competitive quota from 10% to 20% and qualifying quota from 10% to 15%. This 35% vacancies of JTO was later decided to be filled up by giving promotions as walk-in-group to those who possess qualifications



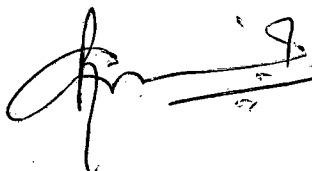
prescribed for direct recruitment and remaining vacancies on the basis of a simple Departmental qualifying screening test. Pursuant to this direction of this Tribunal in R3, qualifying test for the year 1990 was held on 22.10.1992 and 23.10.1992. Their training and appointment in the cadre of JTO was to be made on availability of vacancies according to their turn within the 10% qualifying quota as per relevant rules and guidelines issued by DG, Telecom, New Delhi. R4 and R5 were the guidelines issued. Accordingly, applicants were sent for training and appointed against the vacancies earmarked for their streams viz. 10% qualifying quota for the year in their turn as per relevant rules. By passing the qualifying examination conducted for the year they have only attained eligibility to be considered for appointment in JTO cadre against future vacancies under 10% qualifying quota but not for the recruitment year. Respondents 4 to 17 were selected through the Departmental competitive examination held on 8th and 9th January, 1990. They were given seniority of 1990 by the specific orders of the Tribunal. According to the methodology of merger of ASTTs with JTOs, if there is recruitment to both ASTT and JTO cadre in a year, the lists of ASTTs and JTOs were to be mixed on pro-rata basis and if there were recruitment only for one cadre in a year, all those recruited in that year will rank enbloc senior to those belonging to both cadres recruited in the following recruitment year. Accordingly, under A9 combined gradation list was prepared. The post in JTO cadre is created by abolishing equal number of ASTT post and hence the JTO posts are not held by the ASTTs as suspected. The date of merger was refixed as the date of notification of the amended statutory JTO recruitment rules on 8.2.1996 in DOT order dated 13.1.1998.



5. The private respondent 15 filed a reply statement, according to him, he belonged originally to the Telegraph Traffic Wing and became an ASTT through a competitive examination and the competitive examination was held for a stipulated number of vacancies. Those who had passed the competitive examination pertaining to a particular year will get seniority with respect to that particular year and hence he who passed the examination for the year 1990 got his seniority reckoned for that year. According to him, the applicants have failed to appreciate the distinction between qualifying examination and competitive examination and hence the application was devoid of any merit.

6. The applicants filed rejoinder reiterating the points in the original application. It was submitted that the qualifying examination for the year 1990 though notified in time was conducted belatedly in 1992 due to departmental delays and the belated conduct of the examination or training or appointment would not in any way alter their year of recruitment which was 1990. Even the 1990 ASTTs, respondents 4 to 17 were appointed after training in 1992 and 1993 as per A5 and A8, but they were treated as 1990 recruits. Hence, they were also entitled to a similar treatment.

7. Heard the learned counsel for the parties. The main limb of argument of the learned counsel for the applicants was on the basis of provisions in A9. He referred to sub para (v) of para 4 and claimed that seniority list of merged ASTTs and JTOs had to be prepared in accordance with the provisions contained in the said sub para. He also referred to A14, A15 and A16 and submitted that when JTOs who were working in Kerala Circle were promoted and posted to Telecom Engineering Service Group B vacancies of JTOs occurred in Kerala Circle in 1990. The learned counsel for the respondents referred to R1 dated 9.8.1990, in



which it was decided not to conduct competitive examination for recruitment to the cadre of JTOs due to non-availability of vacancies for the year 1990. The learned counsel for respondents 4 to 17 submitted that the applicants had been accommodated against vacancies in the year 1992 and later years, and they could not claim seniority against a year when there were no vacancies. Further before entry in a cadre, they cannot claim seniority in that cadre.

8. We have carefully considered the submissions made by the learned counsel for the parties and the pleadings of the parties, and have perused the documents brought on record. On the basis of the material placed before us, we are of the considered view that the applicants have not made out any case for the reliefs sought for by them.

9. The basic question here is whether in the year 1990, there were vacancies of JTOs or not. The applicants are relying on Annexure A14, A15 and A16 to show that there were vacancies. A14 is a memorandum of promotion and posting to TES Group B against 2/3 quota. In this there is a list of 6 JTOs who had been promoted to officiate in TES Group B against 66.2/3 % vacancies. In all cases, the Recruitment Circles had been shown as other than Kerala. Again in A15 the applicants had extracted 4 names, here again, there is no indication that they belong to Kerala Circle. In A16, the list of 115 names are included who are JTOs promoted as TES Group B in Kerala Circle. In this letter it is stated that all officiating arrangements made at CTTC, Circle Office and SSAs would terminate when the newly posted officers join duty. Further juniormost JTO of RTTC Tvm who was officiating as Lecturer was reverted and Annexure II thereto was a list of officers reverted. These would not indicate that there were any vacancies of JTO in the year 1990. Further the



respondents categorically submitted that there were no vacancies during 1990 and in support of this they had produced R1 dated 9.8.1990 and also the decision of the Tribunal in OA 22/91. On the basis of the above two documents, it would appear that there were no vacancies of JTOs during 1990. In R3, it was also stated that irrespective of the existence of vacancies, the qualifying examination should be conducted so that JTOs in the Kerala Circle also get the advantage of the policy decision of the DG, and also the JTOs working in Kerala Circle would get the chance for competing in the qualifying examination for promotion, such promotion were depending upon solely on the pass in the qualifying examination in accordance with the policy statement of DG dated 16.10.1990 and 18.12.1990.

9. In A9, sub para (v) of para 4 reads as under :-

"For the purpose of merger of these cadres, the year of recruitment may be the criterion and the merger will be done on All India basis. All India seniority based on the training centre marks in both the cadres is already being prepared separately. These two lists will be mixed together on yearly pro-rata basis. For example, if in a particular year of recruitment 1000 JTOs and 100 ASTTs(optees only) have been recruited, 100 ASTTs would be merged with the 1000 JTOs in the ratio of 1:10. the 100 ASTTs would be placed in the All India Gradation List of JTOs in the following positions.

5A, 15A, 25A, 35A.....995A

After preparing the All India combined gradation list of the merged cadres of ASTTs/JTOs, the circle combined gradation lists merged cadres of ASTTs/JTOs, the Circle combined gradation lists will be derived by picking out the officials of the Circle."

10. According to the above, we find that the year of recruitment would be the criteria for the merger of two cadres and the said merger would be done on All India basis. It is also stated that All India seniority based on the training centre marks in both the cadres was being prepared separately and the two lists would be mixed together on yearly pro-rata basis. For example, if in a particular year of recruitment 1000 JTOs and 100 ASTTs have been recruited, 100 JTOs would be merged with the 1000



JTOs in the ratio of 1:10 and would be placed in the All India gradation list of JTOs at places 5A, 15A, 25A, 35A.....995A. We have also held that as per records before us, there were no vacancies of JTOs in 1990. When there were no vacancies of JTOs in 1990, ASTTs who have been recruited and trained in 1990, would be placed together. In this view of the matter we do not find any infirmity in the seniority list issued by the respondents.

11. In the result, we find no good ground to interfere in the impugned orders A5, A8 and A13. Accordingly, we dismiss this original application without any order as to costs.

Dated the 11th March, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicants' Annexures:

1. A-1: True copy of the notification No.12-20/92/DE dated 4.9.92 issued by the 2nd respondent.
2. A-2: True copy of the ltr.No.Rectt-30-6/90 dtd.28.1.93 issued by the 1st respondent.
3. A-3: True copy of the ltr.No.299/3-70-STA.II dated 24.7.73 issued by 3rd respondent.
4. A-4: True copy of the ltr.No.1-40/874-RCG dtd.14.7.75 issued by the 2nd respondent.
5. A-5: True copy of the seniority list vide STA-2-20/97 dtd.27-2-98 issued by the 1st respondent.
6. A-6: True copy of the ltr.No.5-1/94-SE.II dtd.13.1.98.
7. A-7: True copy of the ltr.No.1-1/98-STG.II dtd.11.1.99 issued by the 3rd respondent.
8. A-8: True copy of the seniority list of Junior Telecom Officers in the Kerala Circle as on 1.1.98 (relevant portion).
9. A-9: True copy of the order No.5-1/94.TE.II dated 5.4.94 of the 2nd respondent.
10. A-10: True copy of the representation sent by the 1st applicant to the 1st respondent dtd.19.8.98.
11. A-11: True copy of the representation dtd.16.6.99 of the 1st respondent (1st applicant)
12. A-12: True copy of the order dated 22.7.99 of the Hon'ble Tribunal, Ernakulam Bench.
13. A-13: True copy of the Memo No.STA/2-76/OA dated 26.11.1999 issued by the 1st respondent.
14. A-14: True copy of the ltr.No.232-7/89-STG.II dtd.30.3.90 issued by the 2nd respondent.
15. A-15: True copy of the memorandum NO.232-7/89-STG.II dtd.25.4.90 issued by the 2nd respondent.
16. A-16: True copy of the ltr.No.STA/1-7/90/IV dated 27.11.90 issued by the 1st respondent.

Respondents' Annexures:

1. R-1: True copy of the letter No.Rectt/30-4/90(11) dated 9.8.90 of the 1st respondent.
2. R-2: True copy of the letter No.Rectt/29-4/89 dated 11.10.89 of the 1st respondent.
3. R-3: True copy of the judgement dated 20.12.91 in OA No.22/91 of this Hon'ble Tribunal.
4. R-4: True copy of the letter No.4-16/85-NCG dated 7.9.90 of the 2nd respondent.
5. R-5: True copy of the letter No.5-11/89 - NCG dated 27.11.91 of the 2nd respondent.
6. R-6: True copy of the amended Telegraph Traffic Supervisors (Recruitment and Training) Rules 1974
7. R-7: True copy of the letter No.Rectt/29-4/88 dated 21.3.90 of the 1st respondent along with Annexure.
8. R-8: True copy of the judgement dated 11.3.93 in OA No.1587/91 of this Hon'ble Tribunal.
