

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATED FRIDAY, THE TWENTY EIGHTH DAY OF JULY  
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN(A)

&

HON'BLE SHRI G.SREEDHARAN NAIR, VICE CHAIRMAN(J)

ORIGINAL APPLICATION NO.304/89

1. A.Abdul Latheef
2. S.Vijayamohanen
3. M.N.Pushpangadhan - Applicants
4. G.Sujatha

V.

1. Chief General Manager,  
Telecommunications,  
Kerala Circle, Trivandrum.
  2. Director General,  
Telecommunications Department  
of Telecommunications,  
New Delhi-110 001.
  3. Secretary to the Government of  
India, in the Ministry of  
Communications, Department of  
Telecommunications,  
Sanchar Bhavan, 20, Ashoka Road,  
New Delhi-110 001.
  4. U.P.S.C. represented by its  
Secretary, New Delhi. - Respondents
- Mr G.Sasidharan Chempazhanthiyil - Counsel of the  
applicants
- Mr P.V.Madhavan Nambiar, SCGSC - Counsel of the  
respondents

O\_R\_D\_E\_R

(G.SREEDHARAN NAIR, VICE CHAIRMAN)

Can the inter se merit of candidates with a  
Degree in Engineering and those with a Degree in Science  
be determined by arranging them merely on the basis of

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the aggregate marks obtained by them in the Degree examination? Can it be accepted as a valid mode of selection? Is it violative of the principle of equality of opportunity enshrined in the Constitution of India? These are the questions that arise in this application.

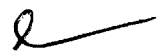
2. The applicants are Technicians in the Department of Telecommunications. They are Engineering graduates. Annexure-II notification has been issued by the Department of Telecommunications inviting applications for appointment to the post of Junior Telecom Officers. The educational qualifications prescribed are, a Degree in Engineering in Mechanical/Electrical Telecommunications/Electronics/Radio Engineering or equivalent qualification from a Recognised University OR B.Sc/B.Sc.(Hons) Degree of recognised University (with Physics and Mathematics as main/elective/subsidiary/additional/optional subjects) with 60% marks in the aggregate obtained in Part III of the Degree examination. It is stated in the notification that selection will be strictly according to the order of merit on the basis of the aggregate marks obtained in the Degree examination.

3. The applicants have submitted their applications for selection, pursuant to the aforesaid notification.

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Their grievance is against the mode of selection. It is urged that the determination of merit on the basis of the aggregate marks obtained in the Degree examination shall inevitably lead to a preference to the Science graduates, for such graduates with Mathematics and <sup>optional</sup> Physics as ~~additional~~ subjects obtained aggregate marks upto 98%, while the highest marks ever obtained in the Engineering Degree examination is only 84%. It is pointed out that while the notification enables Engineering graduates irrespective of the marks obtained by them in the Degree examination to apply for the post, and ~~while~~ Science graduates with less than 60% marks are not entitled to compete, when the selection is done merely on the basis of the aggregate marks secured in the Degree examination, the eligibility afforded to the Engineering graduates with less than 60% marks turns out to be illusory. According to the applicants, the Engineering graduates have to be given preference taking into account the fact that they are experienced in the functions attached to the post of Junior Telecom Officer.

4. The applicants have prayed for the issue of a direction to the respondents to modify the instructions contained in the letter dated 15.9.1981 from the Assistant Director General to the Heads of Telecom Circles, indicating



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that the selection is to be done in the order of merit from those who have passed B.E. and those who have passed B.Sc. with at least 60% marks. They have also prayed for a direction to the respondents to prepare rank list of candidates in such a manner that the Engineering graduates will <sup>get</sup> ~~give~~ equal representation, if not more than the Science graduates in the select list. The proposed mode of selection is sought to be quashed as unreasonable and illegal.

5. In the reply filed by the respondents, it is stated that selection is made strictly according to the recruitment rules, under which no preferential treatment can be granted to Engineering graduates. The non-fixation of a minimum percentage of marks so far as the Engineering graduates are concerned, is explained to be on the ground that they have already a background of engineering. It is pointed out that as there is a combined training course in the various disciplines of Telecommunications for a period of 33 weeks, the Science graduates have equal eligibility for the post. It is contended that as the recruitment rules ~~do~~ not prescribe any written test or interview, the selection has to be on the basis on the aggregate percentage of marks which have <sup>been</sup> prescribed as the basic qualification.

6. Recruitment to the post of Junior Telecom Officer, which post was formerly designated as Junior Engineer, is governed by the Junior Engineers(Recruitment) Rules, 1980, under which for the purpose of direct recruitment, Degree in Engineering or B.Sc./B.Sc.(Hons) Degree of recognised University(with Physics and Mathematics as main/elective/subsidiary/additional/optional subjects) with 60% in the aggregate obtained in the examination is the prescribed educational qualification. By the instructions contained in the letter dated 15.9.1981, issued by the Assistant Director General(Exbt. Annexure-III), the candidates are to be selected strictly in order of merit from amongst those who have passed B.E. and those who have passed B.Sc. with at least 60% marks i.e. B.E. and B.S.c. have to be grouped together for preparing the merit/select list. The grievance of the applicants is essentially against these instructions.

7. Normally this Tribunal will be loathe to interfere with the prescriptions relating to educational qualifications or the method of recruitment laid down in recruitment rules made in exercise of powers conferred by the proviso of Article 309 of the Constitution, for it has to be taken that it is after a proper job evaluation that such prescriptions have

been made. As such, though counsel of the applicants took exception to the inclusion of the B.Sc. Degree holders along with the Engineering Degree holders for the purpose of recruitment to the post of Junior Telecom Officer, we have only to repel the attack, as according to the Administration, since a course of training is imparted to the persons selected when they are made to acquaint themselves with the various disciplines of Telecommunications, a basic Degree in Science is sufficient for their purpose for appointment to the post.

8. <sup>as regards</sup> However, the plea of the applicants relating to the unreasonableness and illegality as regards the mode of selection prescribed under Annexure III, we are of the view that there is force. Admittedly, the recruitment rules are silent regarding the mode in which the actual selection is to be made. Hence it is open to the Executive to lay down the necessary prescription. But if such prescription is unfair and unreasonable, and is assailed on that ground, the Tribunal can, and is bound to extend its arms.

9. In the notification inviting applications for the post, a Degree holder in engineering, irrespective of the marks secured by him in the Degree examination

is enabled to apply for the post, while a Science Degree holder <sup>can</sup> compete only if he ~~has~~ secured 60% marks in the aggregate in Part III of the Degree examination. This assumes that a Science Degree holder is equated with a <sup>degree</sup> holder in engineering only if he has secured 60% marks in the aggregate in part III of the Degree examination. After doing so, grouping both the categories together for preparing the merit/select list and making the selection in the order of merit on the basis of aggregate marks obtained in the Degree examination, in the cases of both categories, virtually ~~these~~ <sup>goes</sup> against the educational qualifications prescribed under the recruitment rules, and renders ~~it~~ <sup>the</sup> distinction that is maintained in the recruitment rules ~~to the effect~~ <sup>that</sup> that no minimum marks is required in the case of engineering Degree holders. We are impressed by the submission <sup>of</sup> ~~by~~ the counsel of the applicant that it will be totally unreasonable to compare the aggregate marks obtained by an Engineering Degree holder with that of a Science Degree holder. The subjects which they have to do for the examination are different, so that if in ~~some~~ <sup>one case</sup>, there is scope for scoring 100% marks, in ~~the~~ others there may not be the occasion for securing even 80% by a brilliant candidate.

10. That a course of training for 8 months is imparted to all the selected candidates so as to equip

themselves with the concerned subjects, in our view, cannot be a ground for not striking down the mode of selection, since the vitiating factors attached to it as explained above are in no way cured by the course of training.

11. It is to be stated at this juncture that the post for which recruitment is proposed to be made is a highly technical post, the holder of which is expected to handle modern and sophisticated technological instruments. It needs no mention that the manual system of Telephone Exchanges are being substituted by Electronic exchanges <sup>and</sup> ~~to~~ the Microwave and Satellite transmission systems. In the modern technological set up, the Junior Telecom Officer has an important role. The necessity for recruitment of the best and the really apt for such a post cannot be <sup>lost</sup> ~~lost~~ <sup>of</sup> ~~sighted~~. We are conscious that it is for the <sup>Administration</sup> ~~Admin~~ to have regard to these aspects, <sup>Suffice</sup> ~~than~~ ourselves. /to state that when a mode of selection is prescribed, the ~~Administration~~ has necessarily to give recognition to these aspects. We are satisfied that the prescription contained in the instructions dated 15.9.1981 (Annexure III) <sup>pays</sup> ~~no~~ <sup>no</sup> regard for these considerations. Even if no preferential treatment or weightage is given to Degree holders in engineering in the matter of selection, a



written test or at least an interview of <sup>all</sup> <sup>eligible</sup> the candidates  
to assess their aptitude has to be done, in the absence  
of which the process of selection, in a case of this  
nature, where Degree holders in two different and distinct  
disciplines are allowed to participate, becomes illusory  
and farcical.

12. In the result, we hereby quash the mode of  
selection for appointment to the post of Junior Telecom  
Officer, laid down in the instructions contained in the  
letter dated 15.9.1981(Annexure III). We hereby direct  
the respondents to examine the matter in the light of  
what has <sup>been</sup> stated above and to evolve a <sup>proper</sup> mode of selection  
before making appointment to the post of Junior Telecom  
Officer.

13. The application is allowed as above.

  
(G. SREEDHARAN NAIR)  
VICE CHAIRMAN(J)

  
(S.P. MUKERJI)  
VICE CHAIRMAN(A)

28-7-1989

trs

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATE 9.3.1990

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN (A)

&

HON'BLE SHRI G. SREEDHARAN NAIR, VICE CHAIRMAN (J)

R.A. 53/89 in O.A. 304/89

Jily Mathew

Review petitioner

Vs.

1. A. Abdul Latheef, Technician,  
Telephone Exchange, V. S. S. C.,  
Trivandrum
2. S. Vijayamohanan, Technician  
Telephone Exchange, V. S. S. C.,  
Trivandrum
3. M. N. Pushpangadhan, Technician,  
Telephone Exchange, Sreekarium,
4. G. Sujatha, Sivalayam, TC 6/496  
Vattiyoar Kavu, Trivandrum-13
5. The Chief General Manager,  
Telecommunications, Kerala Circle  
Trivandrum
6. The Director General, Telecommunications,  
Department of Telecommunications,  
New Delhi-1
7. The Secretary to the Govt. of India  
in the Ministry of Communications,  
Department of Telecommunications,  
Sanchar Bhavan, 20 Ashoka Road,  
New Delhi and
8. UPSC represented by its Secretary,  
New Delhi

Respondents

M/s M. R. Rajendran Nair &  
P. V. Asha

Counsel for the  
Review Petitioner

Mr. Sasidharan Chempazhantiyl

Counsel for  
R 1 to 4

Mr. P. V. Madhavan Nambiar, SCGSC

Counsel for  
R-5-8

HON'BLE SHRI G. SREEDHARAN NAIR, VICE CHAIRMAN(J)

When a notification was issued by the Department of Telecommunications inviting applications for appointment to the post of Junior Telecom Officers, four Engineering graduates filed O.A. 304/89 against the mode of selection, being aggrieved by the instructions contained in the letter dated 15.9.1981 from the Assistant Director General indicating that the selection is to be done in the order of merit from those who have passed B. E. and those who have passed B.Sc with atleast 60% marks. By the final order it was held that the prescription contained in the aforesaid instructions to prepare the merit list on the basis of the aggregate marks obtained in the Degree Examination in the case of both Engineering graduates as well as Science graduates, virtually goes against the educational qualifications prescribed under the Recruitment Rules and renders illusory the distinction that is maintained in the Recruitment Rules that no minimum marks is required in the case of Engineering Degree holders. Accordingly, it was suggested that in the matter of selection a written test or atleast an interview of all the candidates to assess their aptitude has to be done.

2. The Review petitioner urges that she had sent her application for the post pursuant to the notification.

She is a Science Degree holder. It is stated that if the existing mode of selection was followed she would have got selection and appointment and that <sup>she</sup> ~~herself~~ and similarly situated persons who are vitally affected by the decision in the Original Application should have been made parties in which case she could have satisfied the Tribunal that there is nothing wrong with the existing set up. She prays for review of the final order and for re-hearing the O. A.

3. Since the Review petition has been filed beyond thirty days from the date of the final order, a petition for condoning the delay has also been filed where it is stated that the petitioner came to know of the final order only on 2.9.1989 and the petition is being filed within thirty days thereof.

4. Both the Review Petition as well as the petition for condoning the delay are opposed by the respondents 1 to 4, who are the applicants in the Original Application.

5. We have heard counsel on either side as well as the Senior Central Government Standing Counsel.

6. Since the Review petitioner was not a party to the Original Application and a copy of the order on the Original Application has not been served on her, we allow the petition for condonation of delay accepting the averments therein that she came to know of the order only on 2.9.1989.

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7. With respect to the merits of the Review petition, the main ground urged by the counsel for the petitioner was that considering the nature of the relief, persons as the petitioners should have been made parties, so that the Science graduates could have had an opportunity of presenting their case. The submission has force. However, it is seen from the records that for recruitment to the post of Junior Telecom Officer against the vacancies of the year 1990 and onwards, the rules are being amended so as to prescribe a competitive examination followed by an interview. As such, the question for consideration is limited to the selection in respect of the vacancies for the year 1989. It was stated that no selection has yet been conducted.

8. In the reply filed by the respondents 5 to 8 (the Administration) it is stated that the Telecom Commission has modified the recruitment procedure from the recruitment year 1990 by introducing competitive written test and personality test and that <sup>only</sup> the Kerala Circle could not recruit for the 1989 recruitment year on account of the pendency of the Original Application. They have prayed that they may be permitted to go ahead with recruitment in respect of the recruitment year 1989 in accordance with the existing rules. It was also stated that in all other Circles selection for

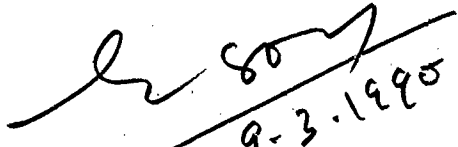
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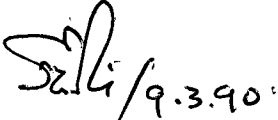
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the year 1989 recruitment year was made in accordance with the existing instructions.

9. In the circumstances, we are of the view that the interests of justice would be met by a modification of the final order dated 28.7.1989 so as to make the same applicable only to recruitment to the post of Junior Telecom Officer with respect to the recruitment years 1990 and onwards. We would also add that if any of the original applicants in O.A.304/89 is overaged for the 1990 examination he or she shall be given necessary age exemption for availing of the modified mode of selection. It is hereby ordered accordingly.

10. The Review petition is disposed of as above.

  
(G.Sreedharan Nair)  
Vice Chairman(J)

  
(S.P.Mukerji)  
Vice Chairman(A)

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